



F/T: 0300 244 4000
E: dfmcse@gov.scot

James Hamilton
Independent Adviser on the Scottish Ministerial
Code

By Email

13 January 2021

Dear Mr Hamilton

Thank you for your letter of 11 January about the First Minister's self-referral under the Ministerial Code.

I note your intention to address in your report a number of points that have been raised with you by some MSPs and also by the former First Minister.

As I set out in my letter to you of 4 November, both the First Minister and I have separately advised Parliament that you are free to consider evidence on any aspect of the Ministerial Code as you consider necessary and appropriate. Your intention to include these matters is therefore entirely consistent with the previous commitments we have made to Parliament.

Please let me know if there is anything further the Scottish Government can do to assist you.

JOHN SWINNEY



Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit
airson Foghlam agus Sgilean
Deputy First Minister and Cabinet Secretary for
Education and Skills



Scottish Government
Riaghaltas na h-Alba
gov.scot

John Swinney BPA/MSP
F/T: 0300 244 4000
E: dfmcse@gov.scot
James Hamilton
Advisor on the Ministerial Code
By email to **[Redacted]** @gmail.com

04 November 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing to you in connection with the work you are doing on the First Minister's self-referral under the Minister Code.

As you will be aware, the First Minister made the following remarks at First Ministers Questions on 29 October in response to a question from Oliver Mundell.

Oliver Mundell (Dumfriesshire) (Con):

Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

The First Minister (Nicola Sturgeon):

My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

The Scottish Government has also been asked a number of Parliamentary questions by Alex Cole-Hamilton about the remit of the Code Referral.

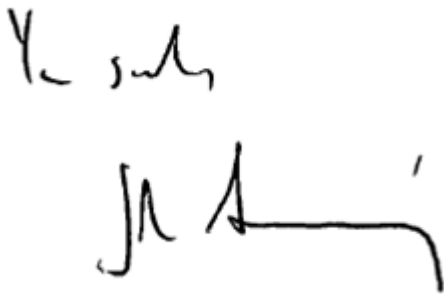
I plan to answer the Parliamentary Questions as follows.

Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W 31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

This answer makes clear that, in the delivery of your remit, you can consider any relevant evidence on other aspects of the Ministerial Code. I hope you find this information helpful.

Please let me know if it would be helpful to discuss this further

Yours sincerely



JOHN SWINNEY

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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From: [redacted]@gov.scot
Sent: 16 December 2020 12:37
To: First Minister <firstminister@gov.scot>
Subject: Ministerial Code investigation- video interview- availability

P/S First Minister,

As you know, James Hamilton is currently conducting an investigation into the First Minister's self-referral under the Ministerial Code. The First Minister has provided a written statement to Mr Hamilton.

As set out in his letter of September 2020, Mr Hamilton may wish to invite those who have provided written statements to him to participate in an interview to discuss the content of the written statement and to allow Mr Hamilton to ask any supplementary questions.

Mr Hamilton is finalising his consideration of written statements, and would like to ask whether the First Minister would be available to participate in a video interview in the week commencing 11th or 18th of January 2021?

Best wishes,

[redacted]

From: [redacted]@gov.scot on behalf of; First Minister <firstminister@gov.scot>
Sent: 16 December 2020 90:08
To: [redacted]@gov.scot
Subject: Ministerial Code investigation- video interview- availability

[redacted],

Just to confirm we have received your email and once we have had the opportunity to discuss with the First Minister I will be able to get back to you.

Kind regards

[redacted]

[redacted] | **PS/First Minister | T: 0131 24** [redacted]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

From: [redacted]@gov.scot **On Behalf Of** First Minister
Sent: 22 December 2020 19:29
To: [redacted]@gov.scot; First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

[redacted],

Apologies for the delay in getting back to you.

Can we suggest two dates please – Wednesday the 13th and Wednesday the 20th, both around 1500hrs . I do want to add a caveat (as I have to do with any meetings I currently arrange) that the First Minister may have to react to urgent business and I therefore may ask to reschedule. This would only be in an emergency situation and I will make all attempts to ensure the meeting takes place.

Grateful if you could send me the details of the video interview so I can arrange set up.

Please do not hesitate to contact me if you have any problems or queries.

Best wishes

[redacted]

[redacted]

Private Secretary to the First Minister

5th Floor | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | T: 0131 244

[redacted]



All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

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From: [redacted]@gov.scot

Sent: 06 January 2021 17:00

To: First Minister <firstminister@gov.scot>

Subject: RE: Ministerial Code investigation- video interview- availability

Hi [redacted],

With apologies for any trouble caused, could we cancel the meeting arranged for next week?

Mr Hamilton is considering some additional written statements and documents and would like to defer any meeting with the First Minister until he has finished this work, so he can be sure of which issues he might want to discuss.

Mr Hamilton has indicated he may have some questions he would like to discuss with the FM- would it be possible to have a provisional slot in the diary in the week of the 25th in case this is required?

Happy to discuss.

Best wishes,

[redacted]

From: [redacted]@gov.scot

Sent: 30 December 2020 16:45

To: First Minister <firstminister@gov.scot>

Subject: RE: Ministerial Code investigation- video interview- availability

Hi [redacted],

Many thanks for suggesting these dates and understand that the date may need to change depending on any emergency business that might arise. Mr Hamilton would prefer the 13th if that would be possible?

I need to do a couple of things to finalise arrangements for the video interviews, but once I have done that I will send over some joining instructions. It would also be helpful to arrange a technical test with someone from the private office a couple of days before the meeting just to check everything works.

Best wishes,

[redacted]

From: [redacted]@gov.scot **On Behalf Of** First Minister

Sent: 11 January 2021 11:20

To: [redacted]@gov.scot First Minister <firstminister@gov.scot>

Subject: RE: Ministerial Code investigation- video interview- availability

[redacted],

Apologies for the delay in getting back to you and no worries for cancelling the meeting – I know how busy everyone is just now.

The week commencing the 25th January is when we are expecting the First Minister to be at committee. What dates and times would suit Mr Hamilton for that week? Would you be able to identify some dates for WC 25 January and also WC 01 February so we can give both Mr Hamilton and the First Minister a bit of flexibility?

As always happy to discuss further.

Kind regards

[redacted]

[redacted] | **PS/First Minister | T: 0131 24** [redacted]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

From: [redacted]@gov.scot

Sent: 12 January 2021 17:56

To: First Minister <firstminister@gov.scot>

Subject: RE: Ministerial Code investigation- video interview- availability

Hi [redacted],

Mr Hamilton can do the 25th and the 29th, and possible the 26th (would be able to confirm next week).

Any time in the week of the 1st would be ok.

Best wishes,

[redacted]

From: [redacted]@gov.scot

Sent: 12 January 2021 17:11

To: First Minister <firstminister@gov.scot>

Subject: RE: Ministerial Code investigation- video interview- availability

Hi [redacted],

Many thanks, I will ask Mr Hamilton for his availability in those two weeks and get back to you as soon as possible.

Best wishes,

[redacted]

From: [redacted]@gov.scot
Sent: Sun 13/01/2019 13:17
To: [redacted]@gmail.com; [redacted]@gmail.com
CC: Hynd JS (James) <James.Hynd@gov.scot>
Subject: IN CONFIDENCE: Scottish Ministerial Code: Referral to Independent Advisers

The Rt Hon Dame Elish Angiolini DBE QC
James Hamilton

Copy to : James Hynd, Head of Cabinet Secretariat, Scottish Government

Dame Elish,
James,

I am writing to you on behalf of my colleague, James Hynd, Head of Cabinet Secretariat in the Scottish Government, to alert you to the fact that the First Minister, Rt Hon Nicola Sturgeon MSP, has decided to make a referral to the independent advisers on the Ministerial Code.

I am sending you (in box below) the text of the First Minister's planned statement, which she is due to issue early this afternoon.

The proposed remit for the referral is still being finalised, but it will be sent to you as soon as possible.

James will be in touch tomorrow (Monday) to discuss your potential availability. I understand that he has already spoken briefly to James Hamilton.

Please do not hesitate to contact James Hynd or myself if we can be of any assistance in the meantime.

With kind regards,

[redacted]

Ministerial Code: Referral to Independent Advisers

First Minister Nicola Sturgeon has today confirmed that she will make a referral to the panel of independent advisers on the Ministerial Code.

Confirming the referral, the First Minister said:

“It is in the interests of the women who have complained that the ongoing police investigations are allowed to continue without any risk of prejudice. That must be the priority for everyone.

“Questions have been raised about my meetings and telephone calls with Alex Salmond during the Government's investigation into the complaints which were made.

“I have acted appropriately and in good faith throughout, and in compliance with the Ministerial Code at all times. However, I have reflected carefully and understand that it is also important for Parliament and the wider public to be assured of that.

“I have therefore decided to refer the matter for consideration by one or both of the Independent Advisers on the Ministerial Code.

“The Independent Advisers will now be consulted on their precise remit, and advice will also be sought on how to ensure that there is no risk of prejudice to the ongoing police investigation. The remit will be published in due course.

“The fact remains that at the centre of this issue are two women whose complaints could not be swept under the carpet. Any continuing commentary about these issues at this stage – whether from myself, the Government or Mr Salmond and his representatives – would only serve to distract from and potentially compromise the proper consideration by the police of the subject matter of their investigations. That is something we will not do.”

[redacted] | Cabinet Secretariat | Scottish Government | T 0131 244 [redacted] |
Room 4N.02, St Andrew's House, 1 Regent Road, Edinburgh EH1 3DG

From: Hynd JS (James)
Sent: 23 January 2019 10:01
To: 'James Hamilton' [redacted]@gmail.com
Subject: Ministerial Code Referral

Dear Mr Hamilton

As discussed, please find attached a letter concerning the referral under the Ministerial Code. Also attached is a copy of the near-final remit for the referral, along with the text of the First Minister's statement announcing her decision to self-refer herself to the Independent Advisers.

I look forward to receiving your views on this material.

With best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [redacted]
0131 244 [redacted]

Ministerial Code: Referral to Independent Advisers

First Minister Nicola Sturgeon has today confirmed that she will make a referral to the panel of independent advisers on the Ministerial Code.

Confirming the referral, the First Minister said:

“It is in the interests of the women who have complained that the ongoing police investigations are allowed to continue without any risk of prejudice. That must be the priority for everyone.

“Questions have been raised about my meetings and telephone calls with Alex Salmond during the Government’s investigation into the complaints which were made.

“I have acted appropriately and in good faith throughout, and in compliance with the Ministerial Code at all times. However, I have reflected carefully and understand that it is also important for Parliament and the wider public to be assured of that.

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“The Independent Advisers will now be consulted on their precise remit, and advice will also be sought on how to ensure that there is no risk of prejudice to the ongoing police investigation. The remit will be published in due course.

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T: 0131-244 [redacted]
E: james.hynd@gov.scot

James Hamilton
[redacted]

23 January 2019

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I writing to you in connection with the First Minister's decision to refer herself to the Independent Advisers on the Ministerial Code. I re-attach a copy of the First Minister's statement to that effect.

As set out in her statement, the First Minister indicated that advice would be sought from the Independent Advisers on the terms of the remit. At the same time, she also noted that advice would be sought on how to ensure that there would be no risk of prejudice to the ongoing police investigation. We are still in the process of seeking advice on that latter point from the appropriate authorities.

Subject to the receipt of that advice, I am passing to you the current draft remit for your consideration at this time. We may, of course, need to adjust the remit to reflect the advice noted above, as well as taking into account your own views.

As I think you will also be aware, Dame Elish Angiolini has recused herself from involvement in this referral as she is already undertaking a policy review on behalf of Scottish Ministers.

Please let me know if it would be helpful to discuss the draft remit, or any other aspect of the referral.

Yours Sincerely

James Hynd

Ministerial Code: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the

Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit and appointment letter will be published.

The final report will be published. If required in order to avoid any risk of impacting on, or prejudicing, the police investigations or any criminal proceedings, a report may be published with any redactions thought necessary by the Independent Advisers. If redactions are required for legal reasons, a full, un-redacted version of the report will be published following the conclusion of any criminal proceedings, including any appeal, reflecting any legal reporting restrictions that are applied.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Scottish Government
January 2019

From: James Hamilton [redacted]@gmail.com
Sent: 30 January 2019 19:08
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Re: Ministerial Code Referral

Dear Mr Hynd,

Thank you for your letter dated 30 January 2019 sent by email.

I should begin by making it clear that, as you are aware, I cannot and do not purport to give legal advice to the Scottish Government as I am not a person qualified in Scottish law. My professional experience was as a former practitioner at the Bar of Ireland, subsequently as a legal adviser in the Office of the Attorney General of Ireland where I was permanent head of office for over four years followed by just over twelve years as Director of Public Prosecutions of Ireland.

I note that the Crown Agent of Scotland could not provide any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation (now a prosecution) were the investigation by the Independent Advisers to proceed in the terms of the draft remit. I have no reason whatsoever to disagree with that assessment. As well as being a very senior Scots lawyer the Crown Agent is no doubt aware of the case the prosecution intends to present. I have no such knowledge. No investigation into the alleged criminal offences with which the former First Minister is now charged will, of course, form any part of the draft remit given to the Independent Advisers and such issues are exclusively for the prosecutors, the police and ultimately the courts of Scotland.

The scope of the remit given to Independent Advisers to advise on alleged breaches of the Ministerial Code is entirely a matter for the First Minister to determine. With regard to the possibility of minimising any risk to the integrity of the criminal prosecution it seems from my admittedly very limited knowledge on the facts of the case at this stage that the two matters likely to present the greatest potential risk of interference with the criminal prosecution are, firstly, the allegation that the First Minister failed to report discussions she had with her predecessor, in which the substance and the character of those discussions is likely to be important, and secondly, the suggestion that the First Minister attempted to interfere with the Scottish Government's own enquiry into allegations of harassment, allegations which may overlap with or be related to the allegations which are now the subject-matter of criminal charges.

That is not to say that consideration of these two issues by the Independent Advisers would definitely lead to prejudice, but that there is a risk. That risk could be mitigated by postponing publication of the Independent Advisers' report, but perhaps not altogether eliminated. These two matters appear to be at the core of the proposed remit and without enquiring into them there would seem to be little or no basis on which the Independent Advisers could advise whether the Ministerial Code was breached.

I therefore concur with the conclusion that reducing the scope of the remit would unduly restrict the Independent Advisers' ability to investigate fully the questions of conduct that have been raised.

In conclusion I think there would be a substantial risk either that an attempt to conduct an enquiry while criminal proceedings are in being could create a risk of prejudice, or else, resulting from attempts to avoid such an outcome, lead to an inconclusive result. A further consideration is that the Independent Advisers have no power to compel witnesses and one has to wonder whether persons involved in the forthcoming criminal trial would be willing to cooperate with the Independent Advisers in advance of that trial.

For these reason I believe that the wiser and the proper course of action is to defer the referral of possible breaches of the Ministerial Code until after the conclusion of criminal proceedings.

Yours sincerely,

James Hamilton
Independent Adviser on the Scottish Ministerial Code

T: 0131-244 [redacted]
E: james.hynd@gov.scot

James Hamilton
[redacted]

30 January 2019

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing in relation to the First Minister's decision to refer herself to the Independent Advisers on the Ministerial Code.

As you are aware, a key consideration in taking the referral forward has been to ensure that there would be no risk of prejudice to the ongoing police investigation. Last week's developments, in terms of an arrest and charges, have made that consideration particularly acute. The laying of those charges brings into effect the protections under the Contempt of Court Act 1981.

The Crown Agent has not provided us with legal advice on the matter. However, nor could he provide us with any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation were the Independent Advisers to proceed with an investigation in terms of the draft remit I previously sent you, and which I attach again to this letter.

In light of that view, we have considered whether it might be possible to revise the remit to minimise any possible risk to the criminal investigation. We have concluded that reducing the scope of the remit would unduly restrict the ability of the Independent Advisers to investigate fully the questions of conduct that have been raised. Neither could we be sure that even a restricted remit would not have the potential to interfere with the criminal proceedings in some way. We therefore need to balance the public interest in proceeding with a referral that was broad enough to address fully the concerns that have been raised, with that of ensuring that there is no risk of prejudice to the fairness of the criminal investigation.

To inform that consideration, it would be helpful to have your views on whether you think you would be able proceed on the basis of the remit as set out while the criminal investigation was under way, or if another course of action, such as deferring the Ministerial Code referral while there are active criminal proceedings, would be more appropriate in these circumstances.

Please let me know if it would be helpful to discuss these issues further

Yours Sincerely

James Hynd

From: Hynd JS (James)
Sent: 30 January 2019 20:08
To: 'James Hamilton' [redacted]@gmail.com
Subject: RE: Ministerial Code Referral

Dear Mr Hamilton

I am writing to acknowledge, with thanks, your email below. The contents will be given very careful attention. I will revert to you as soon as I can.

Best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [redacted]
0131 244 [redacted]

From: Hynd JS (James)

Sent: 31 January 2019 10:10

To: 'James Hamilton' [redacted]@gmail.com ; 'Elish Angiolini' [redacted]@gmail.com

Subject: Ministerial Code Referral

Dear Mr Hamilton and Dame Elish

You will wish to be aware that Scottish Ministers will this morning announce that neither the First Minister's self-referral under the Scottish Ministerial Code, nor the separate internal review into the Scottish Government's handling of the investigation into the former First Minister Alex Salmond, will be progressed while there are active criminal proceedings.

I attach below the text of the written Parliamentary answer which will shortly be given to the Scottish Parliament by the Deputy First Minister. I should be grateful if you would respect the confidentiality until such time as the answer is published, which should be very soon.

The Scottish Government has arrived at this decision in order to ensure that there is no activity undertaken which may unintentionally prejudice live criminal proceedings, adversely impact the rights of anyone involved in the proceedings or affect the formal criminal process which is now under way.

In addition, for those reasons, we are not currently planning to publish the remit for the Ministerial Code referral that I had previously shared with you.

If you are approached by the media for any comments, may I suggest that you simply refer all enquiries to today's statement. Any further media enquiries can be referred to me and I will pass these on to the appropriate SG Comms officer.

When criminal proceedings are no longer active, we will revert to you about the arrangements for commencing the referral and agreeing the final remit.

In the meantime, many thanks indeed for all assistance in this matter.

Text of Parliamentary Question and Answer

Q: To ask the Scottish Government for an update on the review of its procedure for handling complaints about Ministers or former Ministers and the First Minister's self-referral under the Ministerial code?

A: The Scottish Government is committed to carrying out a review of the application of its procedure for handling complaints about Ministers or former Ministers. The review will be externally led and will examine the first application of the procedure to ensure that lessons are applied for any future complaints that are brought forward.

However, the Scottish Government does not wish to undertake any activity which may unintentionally prejudice live criminal proceedings, adversely impact the rights of anyone involved in the proceedings or affect the formal

criminal process which is now under way. As a result, this review of its procedure for handling complaints about Ministers or former Ministers will not be progressed at this stage.

The First Minister's self-referral under the Ministerial Code has been discussed with James Hamilton, the Independent Adviser on the Code. Mr Hamilton has concluded that there is a potential risk of prejudice if the First Minister's self-referral under the Ministerial Code were to proceed at the present time. It has therefore been agreed that the inquiry under the Ministerial Code should also be deferred while criminal investigations are active.

Both the Scottish Government Review and consideration under the Ministerial Code will re-commence once criminal proceedings are no longer active and the risk of prejudice has been removed.

With Regards

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [redacted]
0131 244 [redacted]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: Sat 25/07/2020 20:49
To: James Hamilton [redacted]@gmail.com
Subject: Ministerial Code Referral

Dear Mr Hamilton

I am writing simply acknowledge receipt of your email.

I will pick up these various point and respond to you as soon as I can.

With best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [redacted]
0131 244 [redacted]

From: James Hamilton [redacted]@gmail.com
Sent: 25 July 2020 13:13
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Ministerial Code Referral

Dear Mr Hynd

Since we last spoke I have given some thought to how to proceed. I have come to the conclusion that the best course of action is to press ahead now with the task I have accepted notwithstanding the parliamentary committee's intention to issue its own report.. It is quite true that the scope of the parliamentary inquiry is broad and expressly includes the matter which I have been asked to report on under the referral procedure provided for in the Ministerial Code. However, the referral procedure is intended to produce an independent expert assessment whereas the parliamentary inquiry is likely to produce a more political result. Having undertaken the task I would be loathe to walk away from it notwithstanding the obvious difficulties.

At this stage, therefore, it is necessary to settle the terms of the remit. I was content with the draft provided in your letter and email of 30 January and I suggest that it be formally adopted by the First Minister.

It will be necessary to appoint somebody to act as secretary/ administrator /organiser to the referral procedure. This will need to be done as soon as possible as I would wish to respond to the request from the Parliament preferably before their proposed

deadline of 4 August which is now just over a week away. At the very least the letter needs to be acknowledged before that date.

I would like to see some of the recent opinions given under the referral procedure to get some sense of the "house style". Are they available on a website? [redacted] I would also propose to point out to the committee that I do not have any evidence at present concerning the matters they are asked to inquire into and will not have any such evidence other than what will be made publicly available in my report. I will suggest that in these circumstances it will not be appropriate that I should be asked to give evidence before the committee. I think this reply should be issued through the secretary to the referral as I do not think I should respond directly to the parliamentary committee using my personal email.

[redacted]

Yours sincerely

James Hamilton

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: Tue 28/07/2020 16:51
To: James Hamilton [redacted]@gmail.com
Subject: Ministerial Code Referral

Dear Mr Hamilton

I am still working my way through the different aspects of your email below. I hope to come back shortly on the terms of the final remit and I am also in the process of securing the support that you have identified.

In the interim, I attach a link to the SG website which includes details of the previous reports prepared by independent advisers. I hope this is of some help in giving you a sense of the nature and style of past reports.

<https://www.gov.scot/publications/ministerial-code-advisers/>

I am conscious of the deadline for your response to the Committee and will be in touch again in time for meeting that deadline.

With best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [redacted]
0131 244 [redacted]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: Thu 30/07/2020 11:01
To: James Hamilton [redacted]@gmail.com
Subject: Ministerial Code Referral

Dear Mr Hynd

The draft remit appears to me to be clear and in order.

It might be useful to have a brief phone conversation just to be clear about everything. [redacted] I will be back home tomorrow (Friday) afternoon if that suited. I should be home by about 4.00 pm. Perhaps a call at about 5.00 pm if that is not too late?

Best wishes

James Hamilton

On Wed, 29 Jul 2020 at 18:36, <James.Hynd@gov.scot> wrote:

Dear Mr Hamilton

Please find attached a letter and remit for your final approval.

As I set out in the letter, I am working on putting in place admin and legal support for you.

Let me know if a call would be useful.

Best wishes

James

James Hynd

Head of Cabinet, Parliament and Governance Division

Room 4N:03

St Andrew's House

Edinburgh

Internal ext [redacted]

0131 244 [redacted]

T: 0131-244 [redacted]
E: james.hynd@gov.scot

James Hamilton
[redacted]

29 July 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing to you in connection with the First Minister's decision to refer herself to the Independent Advisers on the Ministerial Code.

I now attach a revised remit which updates the version we discussed in early 2019. The key changes that have been made are to reflect the fact that criminal proceedings are no longer active, although a relevant court order regarding anonymity remains in place, and to bring into scope an additional meeting that might be relevant. Both new sections are highlighted in the remit.

The remit, with these changes, has now been agreed by the Deputy First Minister, John Swinney MSP, who has been delegated to lead on this matter in place of the First Minister.

If you are content to proceed on this basis, we are likely to publish the remit by way of an answer to a Parliamentary Question in the Scottish Parliament. We would aim to do this on Tuesday 4 August, to coincide with your reply to the Committee due that day.

I am working on putting in place the administrative and legal support to assist you in the way you have outlined. I will report back on this as soon as I can. In the interim, I would be happy to pass on to the Committee on your behalf your reply to their letter.

Please let me know if it would be helpful to discuss this further

Yours Sincerely

James Hynd

Ministerial Code: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the

Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainant being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Scottish Government
July 2020

James Hamilton
Independent Adviser on the Scottish Ministerial Code

□

John Swinney MSP
Deputy First Minister
By email to: dfmcse@gov.scot

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11 January 2021

Dear Deputy First Minister,

I have received a letter from a number of MSPs, including Alex Cole-Hamilton, asking that I consider whether the First Minister broke Section 1(c) of the Ministerial code in relation to reporting to the Parliament of meetings between herself and Geoff Aberdein. I understand that Mr Cole-Hamilton and colleagues have also written to you on this subject.

As you know, in your reply to a parliamentary question in the Scottish Parliament on 3 August 2020, having made an express reference to sections 4.22 and 4.23 of the Ministerial Code, and having set out the sequence of meetings and discussions between the First Minister and Alex Salmond, you concluded with the statement that the remit for the referral was as follows:

- 1. Review any relevant documentation relating to the meetings and discussions listed above.*
- 2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.*
- 3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.*
- 4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.*

5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

- i. whether the Ministerial Code is engaged regarding the meetings and discussions;*
- ii. whether there has been any breach of the Code and the nature of any such breach; and*
- iii. if a breach has occurred, advice on the appropriate remedy or sanction.*

6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Having considered the evidence submitted to me by various participants, and the issues raised on this topic, I consider that the issue of reporting of meetings by the First Minister to the Parliament on a broad view appears to be within the scope of the remit but even on a narrower view is so closely connected to the remit that I am minded to include this within the scope of my report.

I also wanted to note that I consider the allegations made by Mr. Salmond concerning whether or not the First Minister should have intervened to arrange a process of mediation to be within the scope of the remit set out above.

I thought it appropriate to communicate this view to you before replying to the MSPs in case you wish to make any observations on the matter.

I hope this information is helpful.

Yours sincerely,

James Hamilton