

ANNEX A

FMQ briefing – 10 December 2020

Harassment

The Deputy First Minister previously set out in his letter to the committee of 13 November the detailed consideration the government is giving and also the extensive steps that are being taken to secure the release of further documentation ([DFM Letter to Convener - 13 November 2020](#)). The Government has already made available significant detail on our legal position to the Committee through the evidence already provided by the Lord Advocate.

Legal Professional Privilege

-The Deputy First Minister wrote to Parliament on 1 December [SG -DFM letter to Parliament - 1 December 2020](#)

-Lord Advocate's to Committee evidence -17 November, p14, para 3 [Official Report \(parliament.scot\)](#)

The Scottish Ministerial Code provides a clear framework for decisions about legal professional privilege. [Scottish Ministerial Code: 2018 edition - gov.scot \(www.gov.scot\)](#) - paras 2.38-2.40

I have provided full details to the Committee of my contact with Mr Salmond in 2018 – which the Committee has now published. I have agreed to personally give evidence to the Committee and stand ready to do so anytime.

Every request from the Committee for written material has been met and will be met so far as possible within legal requirements, the Law Officers' Convention and legal privilege. We have already provided the Committee with over 1,700 pages of relevant material, responding directly to the questions asked by the Committee, and SG witnesses have provided 19 hours of oral evidence so far.

Release of documents

[SG - DFM letter to Committee - 19 November 2020](#) para 1, para 3 - lines 1-2

[SG - DFM letter to Committee - 21 September 2020](#) - para 10

Scottish Government witnesses are providing evidence to the best of their knowledge on behalf of Ministers. They are, under Oath, giving their own recollections of complex events that took place some time ago. Where further information or clarification has been required, we have followed up quickly in writing, including to correct inaccurate assertions that documents had not been provided when they had in fact already been submitted.

As the Committee has recognised, the inquiry involves sensitive information. The Scottish Government is providing the relevant information requested so far as is possible given the confidentiality, data protection and legal restrictions that apply and will continue to do so. In the normal course of Government business not all conversations and meetings are minuted.

Crown Office and Procurator Fiscal Service exists and operates entirely separately from the Scottish Government. Any decisions on the release of evidence held by the Crown Office would be a matter for the COPFS.

Judicial Review

We have been open about the litigation costs for the Judicial Review.

The Deputy First Minister's letter of 13 November to the Committee addressed the question of legal costs for the judicial review

[Official Report \(parliament.scot\)](#) – p 8, para 8 (3 November 2020 – Paul Cackette evidence)

The Scottish Government had a duty to investigate the serious complaints raised and it was absolutely right and proper to do so.

Arbitration - Permanent Secretary's evidence - 12 January 2021 p9 para 6 [Official Report](#)

The Permanent Secretary wrote to the Committee regarding provision of information on 3 June 2020 [Permanent Secretary.dot \(parliament.scot\)](#)

The DFM wrote to the Convener on 14 August clearly setting out our approach to legal privilege and data protection and other legal restrictions on the release of information.

[SG - DFM letter to Harassment Committee 14 August 2020\(parliament.scot\)](#)

The Lord Advocate explained legal privilege in his evidence at Committee on 8 September 2020 p55 [<Official Report> \(parliament.scot\)](#)

Permanent Secretary evidence - 17 November 2020 - p57 para 3 [Official Report \(parliament.scot\)](#)

Principal Private Secretary John Somers gave evidence to the Committee on 1 December 2020 on his meeting with one of the complainers - p 73-76 [Official Report \(parliament.scot\)](#)

I have previously set out to Parliament when I was informed of information in relation to the complaints. As I have previously made clear, I look forward to giving evidence in person to the committee in due course, and am awaiting a date from the Committee to do so.

My self-referral under the Ministerial Code is underway.

Remit for Ministerial Code referral - [Motions, Questions and Answers Search - Parliamentary Business : Scottish Parliament](#)

The Scottish Government was asked in a Freedom of Information request of 24 April 2019 for dates of meetings with SG counsel defending the Judicial Review, and identified 15 dates of such meetings.

[Judicial Review against the Scottish Government by former First Minister: FOI release - gov.scot \(www.gov.scot\)](#)

There was regular communication about the Judicial Review and reviewing of prospects throughout the process. Where decisions or commissions arise they are recorded for action or the official record as necessary.

During the Judicial Review process the Scottish Government provided documents at various points in response to requests. There were a number of requests for documents from Mr Salmond's agents which changed in scope over time. It was not the case that precisely the same documents sought in November, and no further documents, were sought under the Commission in late December.

The Scottish Government on 5 November 2018 provided further detailed factual information on the development of the Procedure and contact between complainers and senior employees of the Scottish Government.

The Permanent Secretary published a statement of 8 January 2019- [Statement from Permanent](#)

[Secretary at the Scottish Government Leslie Evans - gov.scot \(www.gov.scot\)](http://www.gov.scot)

A first set of documents on the development of the procedure for handling harassment complaints against current and former Ministers was requested by 22 June and was delivered on 19 June. A second set of documents on the judicial review brought by Alex Salmond was requested by mid-July and was delivered on 20 July. The Committee asked for a third set of documentation, on the investigation of complaints against Alex Salmond, by the end of July but also asked for an explanation if that deadline could not be met.

The Permanent Secretary explained that the volume of material and complexity of legal issues was such that those documents would not be available before the end of August.

The DFM wrote to the Committee on Monday 31 August [SG - DFM letter to Harassment Committee 31 August 2020\(parliament.scot\)](#) The DFM wrote to the Committee on 21 September providing a chronology which set out the Judicial Review process, along with 127 pages of further documentation. [SG - DFM letter to Harassment Committee 21 September 2020\(parliament.scot\)](#)

This was followed on 26 October by a more detailed timeline setting out step by step the SG handling of the Judicial Review. [SG -DFM letter to Harassment Committee 26 October 2020\(parliament.scot\)](#)

On 30 June the Committee asked for a fourth set of documentation on my self referral under the Ministerial Code by the end of recess at the latest. That documentation was delivered on 10 August.

The Deputy First Minister wrote to the Committee on 21 September setting out the Scottish Government's willingness to seek a Court ruling to enable release of further documents to the Committee, and gave a further update on 26 October. The Deputy First Minister wrote to the Committee on 30 November providing a statement and timeline and 288 supporting documents relating the investigation of the complaint phase of the committee's inquiry.

Scottish Government witnesses have provided many hours of oral evidence. Officials have given over 19 hours of evidence at Committee meetings so far:

[Meeting Papers & Official Reports - Parliamentary Business : Scottish Parliament](#)

Where further information or clarification has been required, the SG has followed up quickly in writing, including to correct the record where it was inaccurately asserted that we had not provided documents when we had already done so.

The Information Commissioner considered the alleged leak of the data protection objection and found no evidence of wrongdoing Following our investigation the matter was referred to the Information Commissioner for consideration. Following the Information Commissioner's consideration, it was concluded that no further investigation was required and the matter was closed.

The Permanent Secretary clarified the point around special advisor involvement, [DG Permanent Secretary.dot \(parliament.scot\)](#) (9 September) and wrote again on Friday 11 September with further details in response to other specific questions asked at the evidence session.

Bullying and harassment are unacceptable behaviours and should be addressed appropriately. Civil servants – and everyone – should be able to expect a professional and respectful work environment.) [Committee Official Report 8 Sept 2020> \(parliament.scot\)](#)– page 13 paras 1-5)(Perm Sec evidence to Committee 8 September 2020).

The review I instigated in 2017 was intended to further strengthen existing protections in place since 2010. Scottish Government remains the only civil service department that has a standalone policy in place for the investigation of ministerial harassment concerns. Support for staff and exercise of our employer duty of care remains paramount and I maintain that investigating concerns remains the correct course of action.

In relation to the actual subject of my statement to Parliament, there were 5 contacts with Alex Salmond. [Nicola Sturgeon.pdf \(parliament.scot\)](#) – Annex A

The Deputy First Minister informed Parliament on 3 August that we are now able to re-commence the referral. [Motions, Questions and Answers Search - Parliamentary Business : Scottish Parliament](#)

I have asked the DFM to take on any Ministerial oversight of the SG review of the Harassment Procedure. He informed Parliament on 3 August that Laura Dunlop QC has agreed to lead this review. [Motions, Questions and Answers Search - Parliamentary Business : Scottish Parliament](#)

Specialist external legal assistance was also required to advise on the specific requirements of the petition.

We have already made public the cost of our external legal advice in this case -(published FOI response on 15 March 2019) [Various questions surrounding the expenses/financial repercussions of the case against the former First Minister: FOI release - gov.scot \(www.gov.scot\)](#). As is customary for an in-house legal team, our legal department doesn't allocate time and cost against the individual strands of advice which it provides.

The Court in this case awarded expenses to Alex Salmond. Established procedures were followed to agree the sums to be paid.

[Written question and answer: S5W-24819 | Scottish Parliament Website](#)

All Scottish Government payments over £25,000 are routinely published on the Scottish Government website following checks to ensure accuracy of data and descriptions and, where relevant, to ensure that any issues of confidentiality in respect of a payee are respected.

The interim and final payments to Mr Salmond have now been published as part of that routine process. [The Scottish Government Consolidated Accounts for the year ended 31 March 2019 \(www.gov.scot\)](#) p58