

MR SALMOND'S SIX POINTS OF "EVIDENCE" (OFFICIAL REPORT PAGES 96-97)

In response to Mr Wightman's request for "evidence of his accusations (Official Report page 96-97), Mr Salmond made 6 points as "evidence" of his case. In reality, none of the accusations are supported by "evidence".

1. Application of the procedure to Former Ministers: "First would be the timing of the policy on former ministers and the fact that, as has already been said, there was a query about Edinburgh airport two days before the policy began to be constructed. I have already said that that query came to nothing, understandably so, but I do not think that that was the reaction of the permanent secretary at the time. That was on 6 November. On 8 and 9 November there were the first iterations of any sort of policy from two different civil servants, one who said that he was starting with a blank sheet of paper but there was another civil servant who also, presumably, had a blank sheet of paper."

Reality: This is not supported by any evidence. Mr Salmond himself acknowledged that there were discussions in Cabinet and in Parliament on 31 October 2017 which resulted in a review of existing policies being commissioned (Official Report page 22). The Permanent Secretary's all-staff message of 2 November 2017 highlighted this review of policies. There is absolutely nothing surprising that more than one civil servant working in the appropriate areas identified a gap in existing policies relating to former Ministers. Those Civil service witnesses have set out, under oath, with documentary evidence, why and how the Procedure was developed to include former Ministers.

2. Role of the Permanent Secretary: "Secondly, I would have thought that the open record meeting between the permanent secretary and the First Minister on 29 or 30 November is significant, basically because, until then, every iteration of the policy placed the First Minister in the policy at an early stage. By 5 December, the policy had changed dramatically so that the permanent secretary became the key decision maker. The committee knows that the permanent secretary had knowledge of the emerging complaints, certainly by 22 November, and actually before then. Therefore, the very least you could say is that the permanent secretary put herself at the centre of a policy, as a decision maker, with the knowledge that complaints were coming forward. That is the minimum conclusion that you could draw from that, and it was a radical departure in Scottish Government policy."

Reality: This is not supported by any evidence. Officials have set out clearly why it was not considered appropriate that the First Minister should be the decision maker with reference to former Ministers who might come from a different political party. There is nothing inappropriate in the Permanent Secretary determining whether a complaint is well-founded in the event of an employee raising an issue.

3. Role of Crown Agent: "Thirdly, there is the Crown Agent. I think that it was you who pointed out that the policy says that, under certain circumstances, the Scottish Government would refer to the police. It does not say that the Government would refer to the Crown Agent. I think that that is significant, and it is highly significant that the Crown Agent's attempt to give the chief constable and the lead

officer a copy of the permanent secretary's report was declined by them, because they said that it might influence their investigation. There was also the fact that, despite the information that was offered by the police that they would be opposed to matters becoming public in case it contaminated their investigation, it was the intention to release a press statement on 23 August, two days later. That was, of course, stopped by the threat of interdict."

Reality: The Lord Advocate has advised the Committee why it was considered appropriate that the allegations should be referred to the Crown Office for onward transmission to the Police, given the extreme sensitivity of the case. The Scottish Government has confirmed why a brief public statement was considered necessary in the context of the legal requirement on the Scottish Government to respond to a specific Freedom of Information request about complaints made against Mr Salmond. Both of these decisions took account of legal advice.

The police advice referred to by Mr Salmond appears, from the document he has provided to the committee, to have been offered by Police Scotland to the Crown Agent, not directly to the Scottish Government.

4. External Legal Advice: The fourth point that I would put, which is well known to the committee, concerns the question of the external legal advice, which, as we know, was probably provided on 31 October, and the extraordinary lengths that have been gone to prevent that advice from being shared with the committee and the Parliament. We know that the content of that advice was strong. We do not know the full extent of it, but we can certainly conclude that the external legal advisers were telling the Government at that stage that the prospects were not looking good, to say the least, for the judicial review. Therefore, what possible reason could there be for extending that action—which would be much more difficult when it came to court than it would be in an earlier concession, never mind the hundreds of thousands of pounds that were being wasted—unless there was a hope of the review perhaps being sisted and never coming to court? That is why it comes to be a major point in terms of the non-provision of sisting information.

Reality: This is not supported by any evidence. The possibility of sisting the case was considered by the Scottish Government when the JR first was raised in September, long before the issue of prior contact was identified at the end of October. The Scottish Government did not seek or make any application to the Court to sist the JR either in August/September or later. It would have been, of course, open to Mr Salmond as the person bringing the petition for judicial review, to seek a sist on the same basis (that there was an ongoing police investigation).

Contrary to what Mr Salmond says the Committee has seen a summary of the legal advice from both internal and external sources. The Lord Advocate, as the Scottish Government's principal legal adviser has confirmed that it was entirely appropriate for the Government to continue to defend the JR into December 2018.

5. Investigation: My fifth point, which we have been discussing, concerns the question of the integrity of the investigative function. My belief is that, once the police start an investigation, it is not for other agencies to conduct parallel investigations. That is quite wrong. It is one matter to assist the police with their inquiries, which

every responsible citizen should do, but you should not try to assist them with their inquiries to the extent of producing the evidence that you are frustrated that the police cannot find, or creating the evidence, or suborning witnesses, or pressurising witnesses, pressurising the police—on all of which the committee has information.

Reality: The accusation here is not clear. The Police conducted their investigations independently and concluded that potential criminality should be referred to the Crown Office. There is no evidence that Police were pressurised or influenced in their independent investigation and it would be an insult to professional officers to suggest otherwise. It is extraordinary to suggest that any employer should ignore their duty of care to their staff, and cease their attempts to protect staff in the future, just because the police are carrying out their own, separate, confidential investigation. This would not be in line with the ACAS guidance.

6. Information not released to the Committee: “Finally, although the full extent of neither the Government information nor the text messages is known to the committee, between us, Ms Mitchell and I have already read out half a dozen such messages that are in the public domain and which can be considered by the committee, because the one exemption that section 162 provides is for information that is in the public domain. I think that those six instances give you pretty substantial justification for what you have just read out to me. We can look at those instances individually, but if we look at all six—there are perhaps another dozen that I could mention as well—and take those as the main themes, that is not an unreasonable conclusion. Obviously, my conclusion is informed by other material that I have seen.”

Reality: We do not know what “Government information” Mr Salmond is referring to. Relevant documents held on Scottish Government systems have been shared with the Committee and do not support any accusation of malicious intent. Mr Salmond’s supporters have previously claimed that text messages would reveal inappropriate interactions only for the Committee to conclude when they saw them that they were actually messages of support between women. The Scottish Government has absolutely no role or influence with reference to the application of section 162 by COPFS. The Lord Advocate has explained why Mr Salmond’s interpretation of section 162 is not correct and the accompanying documents for the Bill that became the 2010 Act support the Lord Advocate’s explanation. As noted by legal expert Andrew Tickell, if there was compelling evidence of a conspiracy against Mr Salmond to falsely imprison him, why would Lady Dorrian not have allowed this to be considered in the criminal trial.