

Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters

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The Remit for the Investigation

The remit for the investigation

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

“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 is has been (sic) 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:

Review any relevant documentation relating to the meetings and discussions listed above.

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.

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.

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.

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.

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.”

In accordance with the remit I sought and received written observations from persons who included the following: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the Permanent Secretary to the Scottish Government, Ms Leslie Evans; Ms Liz Lloyd, Chief of Staff to the First Minister; Mr Geoffrey Aberdeen, formerly Chief of Staff to the former First Minister; Mr Duncan Hamilton, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicolson, Ms Lorraine Kay and Mr Peter Murrell. All of these witnesses gave me full cooperation and answered follow-up questions where necessary although I had no power to compel any person to cooperate with the investigation. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required.

Report and Findings

1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond resigned as First Minister of Scotland on 18 November 2014 and was succeeded as First Minister the following day by Nicola Sturgeon.

1.2. In December 2017 the Scottish Government adopted a new procedure entitled “Handling of harassment complaints involving current or former ministers” (subsequently referred to in this report as the Procedure) which is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister¹.

1.4. **[Redacted]** Mr Geoffrey Aberdeen, former Chief of Staff to Mr Salmond, met **[Redacted]**

[Redacted] Mr Aberdeen says that **[Redacted]** informed him that two complaints had been made against Mr Salmond and named one of the complainers. **[Redacted]** disputes this. Having discussed the matter with other persons Mr Aberdeen decided to inform Mr Salmond of what he had been told and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him that complaints had been made.

1.5. On 29 March 2018 there was a meeting between the First Minister, **[Redacted]** and Mr Aberdeen, which took place in the First Minister’s office in the Scottish Parliament.

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

¹ [SP SGHHC - FN29.pdf \(parliament.scot\)](#)- page 10

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister's home. Mr Aberdeen and Ms Lloyd were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister's home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

2. The adoption of the Procedure for handling complaints against Ministers and former Ministers

2.1. In December 2017 the Scottish Government adopted a procedure entitled “Handling of harassment complaints involving current or former ministers.” It is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet” and will be referred to as “the Procedure” in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

2.2. The Procedure was adopted following a process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Chief of Staff, the Scottish Parliament, the Scottish Government’s People Directorate, as well as the Scottish Government Legal Directorate. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and the consultations involved are described in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament’s Committee on Scottish Government Handling of Harassment Complaints.²

2.3. The Response Document includes the following explanations of the motive behind the policy review:-

Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government’s organisational strategy, as it did at the time covered by this statement...

The 2016 People Survey³ continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised⁴, this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and

² Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf](https://www.gov.scot/publications/SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf) (www.gov.scot)

³ [Scottish Government People Survey 2005 to 2018 - gov.scot](https://www.gov.scot/publications/Scottish+Government+People+Survey+2005+to+2018+-+gov.scot) (www.gov.scot)

⁴ <https://www.gov.scot/publications/foi-17-02235/>

harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.⁵

A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.⁶

2.4. The review process identified a gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it...As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers⁷ so that there would be a single procedure that could be applied in respect of harassment complaints involving

⁵ Response to Committee of the Scottish Government Handling of Harassment Complaints, [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](#) paragraph 4.

⁶ Ibid., paragraph 5

⁷ [SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.⁸

2.5. It appears that its drafters did not consider that there might be any legal obstacle to applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been provided to Scottish Government at the time but we do know that according to the Response Document the Scottish Government's lawyers were consulted as part of the approval process of the Procedure. The Procedure did not cover historic claims against former civil servants.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the Procedure to him and ultimately sought a judicial review against it. Among the objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced as an administrative act without any statutory or other legal basis. He challenged the retrospective effect of the Procedure. Mr Salmond also alleged procedural unfairness in the operation of the Procedure. These issues are further addressed in Chapter 13 in which I discuss Mr Salmond's claim that the manner in which Scottish Government defended the case which he brought amounted to a breach of the Ministerial Code on the part of the First Minister.

2.7. It is not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims. These were matters of Scottish law which ultimately only the Scottish courts could have decided and to an extent did decide.

2.8. So far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by Ms Laura Dunlop QC has prepared a report which was published on 16 March 2021.

⁸ [SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether paragraphs 4.22 and 4.23 of the Code were breached but am expected to enquire whether any breach of the Code has been committed by the First Minister regarding her meetings and discussions with Mr Salmond between 29 March 2018 and 18 July 2018.

2.11. I am not aware of anything in the conduct of the First Minister in respect of the introduction of or her observance of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister to lead this process and to give it every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal directorate, as well as experts in the area of human resources and the handling of complaints. In my opinion the First Minister was entitled to rely on the advice she received. If there was any error in that advice- and I offer no opinion on that question- she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond. It is not part of my remit to examine the administrative arrangements for the introduction of the Procedure and I make no comment about these.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers as a result of which she was not informed of the two complaints against Mr Salmond. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are the subject of enquiries by the Committee on the Scottish Government Handling of Harassment Complaints of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that at present the First Minister has any responsibility under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons, if there were any such shortcomings or wrongdoing, in relation to matters from which she has properly excluded herself from any involvement. Later in this report I raise the question whether Ministers should bear responsibility for the activities of their special advisers.

3. The operation of the Procedure

3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. “An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative.” (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. Crucially in relation to the complaints against Mr Salmond it was the failure to observe this provision which led to the success of his petition for judicial review. The role of the Investigating Officer will be to undertake an impartial collection of facts, from, (sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister’s behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future. (Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps

to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

3.6. Chapter 13 below deals in more detail with certain aspects of how the procedure was adopted and its operation in relation to Mr Salmond.

4. Meetings between [Redacted] and the former Chief of Staff [Redacted]

4.1. There were meetings [Redacted]

[Redacted] and Mr Geoffrey Aberdein. He had been Chief of Staff (the most senior special adviser) from 2011 to December 2014 during Mr Salmond's time as First Minister and had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [Redacted]

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4.2. [Redacted]

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4.3. [Redacted]

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4.4. [Redacted]

[Redacted] In the light of the "me too" movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues [Redacted]

[Redacted] if there was anything of that nature, from his time as Chief of Staff, [Redacted]

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4.5. [Redacted] had remarked the previous week that the content of an official briefing provided for First Minister's Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of "No" to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than five cases of sexual harassment had been reported in the civil service, the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister in general or into Alex Salmond in particular.

4.6. [Redacted] admits to having been aware at that time of growing rumours about Mr Salmond but claims at that stage not to have been aware of actual complaints made against him. [Redacted

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4.7. Whilst discussing “me too” in general, [Redacted] described asking Mr Aberdein whether he was aware of anything of concern. [Redacted] said Mr Aberdein had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [Redacted] gave a general description of the incident which he presented as being in his view a minor incident,[Redacted] says that he named the person concerned and that he did not seem to think it was a particularly significant incident. [Redacted

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4.9. The conversation about “me too” also covered a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as “inappropriate behaviour” which was not specified in the Sky News report. Mr Salmond was reported as “strongly denying” any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. [Redacted] also referred to “jungle drums” in the media about Mr Salmond ever since the “me too” movement became prominent in October 2017. A number of [Redacted] had apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to [Redacted] suggested that Mr Salmond would not cope well with such allegations, but said he wasn’t aware of anything further, and that he and Mr Salmond weren’t really in touch that much anymore and there was no other discussion on the issue.

4.11. Mr Aberdein in his account makes no mention of discussing any of these matters [Redacted] He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Alex Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is

agreed by both participants that this subject was indeed discussed at this meeting.

4.12. Mr Aberdein, however, believes that the main purpose of **[Redacted]**

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4.13. **[Redacted]**

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4.14. **[Redacted]**

[Redacted]] says that this resulted from **[Redacted]** increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be an investigation in the future as it was clear there could be something to investigate.

[Redacted]

]

4.15. **[Redacted]**] claims that in order to **[Redacted]**

[Redacted]] indicated that **[Redacted]** had a reason to believe there might be a complaint and it could be about Mr Salmond. **[Redacted]** says that this was an overstatement **[Redacted]**

[Redacted]] says that Mr Aberdein took this to mean that someone within government had given **[Redacted]** information about a complaint and began to name individuals who might have done so. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. **[Redacted]** then denied knowing if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood what **[Redacted]** was saying.

4.16. Mr Aberdein has a very different recollection of this meeting. He states that it is his clear recollection that **[Redacted]** informed him that the Scottish Government had received official complaints about Mr Salmond. He says that **[Redacted]** denied knowing the full details of the complaints but did tell him

there were two individual complainers and named one of them. **[Redacted**

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4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdein's account is more straightforward than the rather complicated account given by **[Redacted]**. It is difficult to see how there can have been a misunderstanding as to what was actually said despite **[Redacted]** elaborate explanation of how Mr Aberdein could have misunderstood what **[Redacted]** said.

4.18. However, whether it is the case that **[Redacted**

] There is no evidence to suggest that the First Minister was aware of Mr Aberdein's version of events before the end of March. If Mr Aberdein's account is correct I think it quite likely in any event that **[Redacted**

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4.19. **[Redacted**

] would undoubtedly have been well aware that under the Procedure harassment complaints were required to be treated in confidence and the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip about such a complaint **[Redacted**

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4.20. Mr Aberdein states that it was **[Redacted**

] Furthermore, the information which Mr Aberdein later gave Mr Salmond turned out in fact to be correct.

4.21. The same day Mr Aberdein met with a former civil servant with whom he was friendly to tell her what had happened. She has made a statement con-firming this. Later that day Mr Aberdein contacted Mr Kevin Pringle and Mr Duncan Hamilton by telephone to inform them of what he had been told about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what hap-pened. Mr Hamilton initially declined to make a statement to me in view of his professional relationship with Mr Salmond but subsequently made a statement confirming Mr Aberdein's statement when released from his obligation of con-fidentiality by Mr Salmond. On 9 March and again on 11 March Mr Aberdein informed Mr Salmond by telephone of what **[Redacted]** had told him. In view of the fact that Mr Aberdein informed these four individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by **[Redacted]** the existence of complaints and the identity of a complainer is credible.

4.22. In the absence of any evidence that **[Redacted]**] the First Minister about either the existence or the contents of the complaints, then the dis-cussions between Mr Aberdein and **[Redacted]** do not in my opinion constitute any breach of the Ministerial Code by the First Minister. **[Redacted]**

It remains the fact that the name which Mr Aberdein says was given to him was in fact the name of one of the complainers against Mr Salmond. **[Redacted]**

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5. When did the First Minister become aware that there were allegations against Mr Salmond?

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 4.9 above. The report led to her having a “lingering concern” about Mr Salmond. She described it in an interview with me in the following terms:

Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the “me too” allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By “we” I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I’m not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I’m about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet’s nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can’t have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said “oh no, that’s not to say that I think there is anything there”. But it was just the combination of things left me with a “is there something that is about to come forward about Mr Salmond’s behaviour?” It wasn’t something I thought about every day, or worried me every-day, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond under the Procedure had been made at the meeting on 2 April discussed below. Mr Aberdeen believes he told the First Minister of the existence of complaints on 29 March; he did not have details of these complaints at that time. (See paragraph 6.10 below).

6. The meeting on 29 March 2018

6.1. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdein that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdein cannot be precisely certain when and how this was arranged but believes he [Redacted] through a phone call.

6.2. Thereafter, he believes he may [Redacted

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6.3. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by his former Chief of Staff. The purpose of the contact was to tell Mr Salmond [Redacted

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6.4. Mr Aberdein said that at [Redacted] had informed him of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers and named one of the complainers to him. At that stage [Redacted]

6.5. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.

6.6. Mr Salmond and his legal advisers then identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree

of knowledge and involvement in the policy on the part of **[Redacted]** the First Minister **[Redacted]**

6.7. **[Redacted]**

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6.8. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdein, former Chief of Staff to Mr Salmond, which took place in the First Minister's office in the Scottish Parliament. **[Redacted**

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6.9 The First Minister described in an interview the circumstances in which the meeting was held. **[Redacted**

] Mr Aberdein had recently made contact to ask if the First Minister would agree to see Mr Salmond because there was an issue he wanted to talk to her about and he was in a state of great distress. **[Redacted]** said Mr Aberdein might be in the Parliament on 29 March. The First Minister appears to have been told that a civil servant colleague, somebody that Mr Aberdein had worked closely with was having a birthday celebration in the office and Mr Aberdein might be attending and if so he might try to grab a word with her. In fact Mr Aberdein did attend the Parliament that day.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come

on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, that was [arranged] over the weekend. But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.10. Mr Aberdein agrees that the initiative for this meeting came from his making an approach on behalf of Mr Salmond. However, he is quite clear that he came to the Parliament on 29 March for the purpose of meeting the First Minister. He says he had not come in for the purpose of attending the birthday party of which he had been unaware in advance of his arrival in the Parliament. However, he did join the celebrations. The First Minister also briefly joined the party and they stepped into her office to discuss Mr Aberdein's concerns. The First Minister says that during the conversation he raised an incident allegedly involving Mr Salmond. It appears that this may have been the incident discussed by [Redacted] and Mr Aberdein [Redacted] , concerning which it is disputed who said what to whom. The First Minister says that he spent most of the meeting seeking to persuade her to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdein was in parliament for a longer period, socialising with former colleagues. Mr Aberdein says that he gave a brief account of the complaints against Mr Salmond to the First Minister. Contrary to what Mr Salmond told the Parliamentary Committee he did not give details of the conduct alleged to have been engaged in by Mr Salmond as he did not in fact know the details. He agrees the meeting was a short one lasting ten or fifteen minutes. The meeting on 2 April resulted from that short conversation.

6.11. I find it very hard to know what to make of this story about the birthday party. Mr Aberdeen's account to me was very convincing. Equally the First Minister seemed both convinced by and convincing in her account. It may be that **[Redacted**

] It may simply have been **[Redacted**

] However, this is speculation and it would probably not be right to place too much significance on the matter.

7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's judicial review proceedings which the Scottish Government had withdrawn their opposition to⁹.

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on 7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to refer to the meeting with Mr Aberdeen on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that Mr Aberdeen's purpose was to persuade the First Minister that she should meet Mr Salmond and to agree the necessary arrangements if she decided to do so. Clearly Mr Aberdeen was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

7.5. The First Minister recalls that **[Redacted]** the meeting of 29 March **[Redacted]** and she understood that **[Redacted]**] the possibility of allegations

⁹ [Official Report 8 Jan 2019 \(parliament.scot\)](#)

emerging against Mr Salmond (see paragraph 6.9 above). This was around the same time that a former Scottish Government minister had resigned from the SNP over allegations against him, so such matters were topical. The First Minister understood that [Redacted] Mr Aberdein [Redacted]to see if the First Minister would meet Mr Salmond, as there was a specific matter that he wanted to discuss with her. Mr Aberdein was said to have indicated [Redacted] that Mr Salmond was in a state of distress and considering standing down from the SNP. [Redacted

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7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdein was primarily seeking to persuade her to meet Mr Salmond. Her account of the meeting is set out at paragraph 6.9 above. She recalls that the discussion covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdein agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdein says that he relayed to the First Minister a broad summary of the complaints as described to him by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having "relayed to me, in very high level, a summary of the complaints." By "in high level" Mr Aberdein meant "not in detail"- indeed he made it clear to me in discussion that he was not aware of the detail. It is clear that the information given by Mr Salmond to the First Minister on 2 April was much more detailed than that relayed by Mr Aberdein on 29 March.

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdein that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the alleged incident at Edinburgh Airport which had been raised by Sky News in the query made to the SNP in early November 2017 and which concerned allegations of misconduct on the part of Alex Salmond and are discussed at paragraphs 4.9 and 5.1 above. She spoke to Mr Salmond about the allegations at the time. He denied them and, as it happened, Sky did not subsequently run a story about it. Since the identity of the individuals making the allegations was not made known to the SNP and they did not approach the SNP directly, there

was no further action that it would have been possible for the SNP to take. However, even though Mr Salmond assured her to the contrary, all of the circumstances surrounding this episode left the First Minister with a lingering concern that allegations about Mr Salmond could materialise at some stage.

7.8. [Redacted] recalled a reference by Mr Aberdein to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She thinks the reason this meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as set out in paragraphs 7.4, 7.5, 7.6 and 7.7 above. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdein, she already had what she described as a 'lingering concern' that allegations might emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her. Had it been, her memory might have been more vivid. But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdein on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism by some, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that I find it difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdein who was expected to report it back to Mr Salmond it would have been naive to think that the meeting would remain secret given the First Minister's poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes the First Minister's contention that she forgot the meeting¹⁰. He argues that:-

In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.

34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. Mr Salmond overstates the case when he refers to "the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting". The Official Reports of the Scottish Parliament for 8, 10 and 17 January 2019 contain no such claim by the First Minister. She did deny that the meetings were Government meetings which she explained on the basis that she had no responsibility for operating the Government's harassment complaints procedure and indeed no knowledge of the complaints except for what Mr Salmond

¹⁰ [Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](#)

told her. She claims that she confined her role in these meetings to explaining that she could not and would not become involved in the matter. Mr Salmond claims that she agreed to intervene. The fact is that she did not intervene. Mr Salmond has also claimed that her failure to intervene to prevent what he saw as an illegal procedure was also a breach of the Ministerial Code.

7.12. The failure to disclose the meeting of 29 March with Mr Aberdeen to the Scottish Parliament on 8 January 2019, although the First Minister's statement was technically a correct statement of the occasions on which she had met Mr Salmond nonetheless resulted in an incomplete narrative of events. For the reasons stated above I accept that this omission was the result of a genuine failure of recollection and was not deliberate. That failure did not therefore in my opinion amount to a breach of the Ministerial Code.

8. The meeting of 2 April 2018

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon's home in Glasgow. The meeting took place at Mr Salmond's request and with the First Minister's agreement. Present in the house were the First Minister, her Chief of Staff, Ms Lloyd, Mr Salmond, and Mr Aberdein. Mr Duncan Hamilton, an advocate retained on behalf of Mr Salmond, was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chief Executive Officer of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because Mr Salmond initially asked to see the First Minister privately. No permanent civil servant was present at any part of the meeting. The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdein describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received informing him of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints. In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear, contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the “lingering suspicion” she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdeen on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless agreed to the meeting, she states that the reasons were both personal and political. She thought Mr Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister’s statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it could not in my opinion be characterised as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister’s husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from which the First Minister was excluded by its express terms as a result of the policy adopted in 2017 and she claims that her involvement was only to explain why she could not and would not become involved..

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to

that effect on 2 April. His account is supported by his advocate, Mr Duncan Hamilton, who states that he has a clear recollection that the First Minister said that “If it comes to it I will intervene”. Mr Aberdeen did not hear this statement made but he had absented himself from the room at one point and he points out that it could have been said in his absence.

8.11. The First Minister, in her written statement, says that she was clear to Mr Salmond that she would not intervene. When appearing before the enquiry in the Scottish Parliament in reply to a question from Mr Stuart McMillan as to why she said to Mr Salmond “I want to assist”, which he took to mean that she would intervene to advocate for mediation in the first instance, she replied:-

I want to paint a picture—or rather, give people the context. I was sitting in my house. We are talking about 2 April, which was Easter Monday. The man whom I had worked with, been friends with and in my earlier years had looked up to so much had just told me something pretty shocking. My head was spinning and I was dealing with complicated emotions. When you are sitting with a friend who is saying, “I’m facing this terrible situation,” it is entirely possible that you say things like, “I’d love to help if I could”—people say that kind of thing. This was a human situation. We are talking about it now as a political scrutiny situation, which is absolutely proper, but in the moment, it was a human situation between two people who knew each other really well.

As I think that I have described to Andy Wightman, from the minute I saw the letter, I knew that it would not be appropriate for me to intervene. I was probably trying to soften that for him. From his accounts, maybe I softened that too much. In real time, I was also thinking, “Is there anything I have to do? Do I have to report this to anybody?” All of that was going through my head as we were having that discussion. However, I did not intervene because, for the reasons that I set out very vehemently to Margaret Mitchell, I did not think that that would have been appropriate for me to do¹¹.

In reply to a question from Mr Alex Cole-Hamilton the First Minister did not deny that she had made the statement attributed to her by Duncan Hamilton:-

I made clear to him [i.e. Mr Salmond] that I had no role in the process. He could see that himself, because, I think, he had a copy of the process. I think that I made it clear that I would not intervene. Given what he has said and what Duncan Hamilton has said, there is a question about whether, in discussing with him what he thought should happen, I made that clear enough. If Duncan Hamilton says that I said something like that, there is, in a sense, disputed evidence. However, when I look at the things that I am being accused of saying, they do not strike me as being, “Yeah, yeah, I’m going to intervene.” Rather, they are things like, “Well, I’ll help if it is appropriate or if it comes to it”—if it comes to what? I do not know. The permanent secretary has got to tell me. Under the procedure, the permanent secretary would not tell me until the end. It sounds as if I was not actually thinking

¹¹ [Official Report \(parliament.scot\)](https://www.parliament.scot/Official-Reports/Official-Reports-2014-15/Official-Reports-2014-15-10)- page 120

of intervening. However, if Alex left there with the impression that I was, all that I can say is that that, clearly, was not the impression that I wanted to give him.

A crucial part in this is that I did not intervene. It has been put to me today that I should have intervened, but I did not. Whatever way I expressed myself and whatever discussions I took part in, I did not intervene in the process¹².

As the First Minister has repeatedly, and correctly, stated, she did not intervene. Indeed, her failure to intervene has been a constant source of complaint from Mr Salmond who has even suggested that her failure to do so may itself have been unlawful as contrary to the Scotland Act (see his text message of 3 June referred to in paragraph 10.2 below). If Mr Salmond was entirely confident that he had in fact secured an unequivocal commitment from the First Minister to intervene one might have expected him to follow it up and to press home his advantage. In fact, however, the next communication between the First Minister and Mr Salmond did not occur until three weeks later.

¹² [Official Report \(parliament.scot\)](#)- page 120

9. The telephone call of 23 April

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from the SNP while I fight to clear my name' or even a partial *mea culpa* 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what she assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. The First Minister thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond asked her to advise the Permanent Secretary that she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation and arbitration in two distinct contexts. Initially he referred to possible mediation between himself and the complainers. At a later stage he was referring primarily to a possible process of arbitration concerning the issues which finally gave rise to his legal proceedings against the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was always a subject of complaint from him. The First Minister states that she was in any event clear that she would not become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

10. The decision to inform the Permanent Secretary

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She says that she still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on 1 June the First Minister wrote "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend." Mr Salmond describes this as the opposite of the assurance she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-

My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!). If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action.

As a result, she decided to inform the Permanent Secretary. The permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of opinion, but on the other hand, there was no reason why she would have disclosed this to Mr Salmond in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and to make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in

this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[Redacted]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Government's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I

came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018: (Here the Permanent Secretary quoted from the First Minister's letter set out above).

11. The meeting on 7 June

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

12. The meeting on 14 July and telephone conversation of 18 July

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message. The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp saying the First Minister wanted to meet him, which led to their third and final meeting being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reasons that she says she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should "reach whatever decision [she]

thought appropriate” (see paragraph 10.8 above and Paragraph 12.6 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond’s belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr Salmond’s interpretation of her saying that she was not involved in the decision. I quote:-

Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone’s satisfaction.

12.5. By this time, it was clear to the First Minister that her relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The First Minister made clear to the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister’s return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July 2018. Again, she did not respond. She has had no contact with Mr Salmond since.

13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme.

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt others do not share this view. Mr Salmond made a forceful case to the effect that the First Minister may intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. In the event the Government accepted that the process of investigation in the case of the complaints made against Mr Salmond was flawed because of contact between the person who was appointed as investigating officer and the complainants both before and at the time their complaints were formally made. It is not part of my remit to examine how or why that happened or whether matters might have been handled differently except insofar as it is alleged that certain aspects of the conduct of the Government's defence to Mr Salmond's legal proceedings in themselves constituted a breach of the Ministerial Code. This aspect of the matter is dealt with in Chapter 14 below. I have, however, been asked in the remit "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." I am not asked in my remit to comment on whether the Procedure itself may require revision in the light of

experience and it is not part of the function of the independent advisers on the Ministerial Code.

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints about the procedures applied in his case apart from the issue conceded by the Government. In his submission to me he has repeated his view that there are serious deficiencies in the Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister who had already left office when the Procedure was introduced. It seems to me that a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer. Since Mr Salmond's judicial review proceedings were conceded by the Scottish Government on one of the grounds argued there is no court decision on the merits of the various other legal grounds advanced in Mr Salmond's proceedings. It may be necessary, therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to serious criminal conduct, is a matter which should receive further consideration.

13.6. A process of review of the Procedure by Ms Laura Dunlop QC was completed on 16 March 2021. Ultimately the question of whether there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

4. ...The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.

6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the

leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government including the First Minister as recently as a few months before. While that Procedure had not been enacted into law, and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by the First Minister been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential arbitration process, as Mr Salmond was proposing, at a time when significant complaints against a former First Minister were actually under investigation, would undoubtedly have undermined public confidence in the processes of government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction could be drawn between an involvement in the Procedure to override the Permanent Secretary's decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently in fact brought by Mr Salmond by agreeing to his demands for arbitration. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was being defended. Even on the assumption that the Law Officers got it wrong it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

14. The Handling of Mr Salmond’s Judicial Review Proceedings and the Ministerial Code

14.1. Mr Salmond has raised a further matter which he says constitutes a breach of the Ministerial Code. He refers to the manner in which the Scottish Government attempted to defend his petition for judicial review in which he challenged the legality of the Procedure and its application in his case.

14.2. As is now well known the Scottish Government’s defence of the petition was a saga of failures to disclose relevant evidence. The key documents relevant to the Government’s defence have been, rather belatedly, published by the Scottish Government on its website¹³.

14.3. I do not propose to set out here a full chronology of what happened. The key problem was that the Investigating Officer in charge of investigating the complaints against Mr Salmond had had prior contact with the complainers before the complaints were formally made. However, the Procedure Stated that the IO “will have had no prior involvement with any aspect of the matter being raised.” Unfortunately the full extent of the prior involvement was not revealed all at once and the details of that involvement emerged in instalments. The impact of this can be gauged from counsel’s response at different stages- “a very real problem indeed” and “extremely concerning” on 31 October, the Petition “more likely than not to succeed” on 6 December. On that date counsel advised

29 The question that will justifiably now be asked is where this takes us. There are only two options.

30 One is to concede the Petition and, if so advised, return to square one. We have no doubt whatsoever that this is not an attractive option: it would require the conceding of (doubtless substantial) expenses, and would be trumpeted everywhere by the petitioner.

31 The other is simply to press on regardless. That is, in many ways, even less attractive: the expenses will be far higher, and the trumpeting far louder, if the case proceeds to a written judgment. Moreover, and potentially of more concern, is the real prospect of damaging criticism from Lord Pentland. He is not a judge known to pull his punches, and we are both concerned at the possibility of criticism, both from the bench in the course of the hearing and in any written judgment, which would not reflect well on the respondents.

32 Ultimately, our own view is that the “least worst” option would be to concede the Petition. We understand how unpalatable that advice will be, and we do not

¹³ <https://www.gov.scot/publications/legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-governments-handling-of-harassment-complaints-sghhc/>.

tender it lightly. But we cannot let the respondents sail forth into January's hearing without the now very real risks of doing so being crystal clear to all concerned¹⁴.

14.4. In an email of 11 December from an unknown Government source it is stated that the Lord Advocate "was indeed clear about no question of conceding, with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure, even if there is a risk - which we all know and understand - that he may be forced to hold that there were faults in the way it was applied in the particular case". In another email of the same date from an unknown Government source it is stated that the Lord Advocate and the Solicitor General were "very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard. Senior Counsel made clear that his note was not intended to convey that he didn't think we had a stateable case...¹⁵"

14.5. On 17 December Counsel's pessimism had deepened. A joint advice of Senior and Junior Counsel of that date includes the following passages:-

1 We have drafted this note for the eyes of the Lord Advocate and Paul Cackette only.

2 It has been prepared in response to a series of events in the week of 10 December 2018 which led us to consider very seriously whether we were bound to withdraw from acting for the respondents in this matter. Having given the question anxious consideration we concluded that we would be entitled to so withdraw but at this stage are not bound to do so.

3 We introduce matters in this way to convey the seriousness of matters from our perspective.

31. It has become increasingly clear that the approach of the petitioner in this matter is one which may appropriately be described as a "scorched earth" one. It is clear that there is no concern on his part as to who might be criticised, or harmed, as a result of these proceedings. We understand that this is well understood by those "in the crosshairs" – most obviously the Permanent Secretary and the First Minister. If instructions are to proceed notwithstanding then so be it – we are not in a position where we are professionally unable to mount a defence (because, for example, there is no stateable defence). We are, however, perilously close to such a situation. We are firmly of the view that at least one of the challenges mounted by the petitioner will be successful. We are told that there are other aspects to the case which justify the running of the defence and that, accordingly, there is no prospect of the petition being conceded. That decision is

¹⁴ [OCT+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

¹⁵ [OCT+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

not for us to take and as long as informed consent is given the decision to proceed is one which we must obey. We are, however, entirely unconvinced as to what benefit that might arise from the hearing in January that might outweigh the potentially disastrous repercussions thereof. Leaving aside the large expenses bill that would inevitably arise, the personal and political fallout of an adverse decision – especially if, as may be the case, it is attended by judicial criticism – seems to us to be something which eclipses by some way the possibility of helpful judicial comments. That being so, and recognising as we do that the wider political picture is something that others are far better than are we to comment upon, we cannot let pass uncritically the suggestion that the petition cannot be conceded. It would be possible simply to accept (as is our genuine advice as a matter of law) that the appointment of JM as Investigating Officer was, whilst made in bona fide, on reflection indefensible. That would render nugatory all of the other, potentially more harmful, aspects to the challenge. Accepting that a technical error was made could not sensibly be criticised. This would protect those that might otherwise be harmed by the vigorous nature of the challenge that is to be mounted. It would stem the substantial expenses bill that we have no doubt is presently being incurred. Given that we genuinely cannot see the defence prevailing in any event, that seems to us to be the only sensible approach.

32 We are acutely aware that much of this has already been said, and discounted. The decision to proceed has been taken by very experienced legal and political minds, who are entitled to proceed as they wish. However, we are – independently but also mutually – unable to see that the benefits in proceeding come close to meeting the potential detriments in so doing. Given the potential for harm we simply wish all concerned – and we include the First Minister in this – to be absolutely certain that they wish us to plough on regardless notwithstanding the concerns which we have outlined¹⁶

14.6. On 19 December matters had deteriorated further. The following is from a joint note from counsel:

1 We write further to recent events. With regret, our dismay at this case deepens yet further.

2 We will not rehearse the regrettable way in which document disclosure has unfolded. Suffice to say that we have each experienced extreme professional embarrassment as a result of assurances which we have given, both to our opponents and to the court, which assurances have been given on instructions, turning out to be false as a result of the revelation of further documents, highly relevant yet undisclosed. We, of course, required to consult at 9.15pm last night to discuss the ramifications thereof.

3 This morning, the first part of the commission began. The inevitable result of the last minute disclosure of the additional documents was that the commission required to be adjourned. The havers now cited for Friday can expect a torrid time

¹⁶ [OCT+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

in the witness box given the late disclosures. That comment applies in particular to the IO, for the reasons which follow.

4 All of that is bad enough. However, it pales beside the revelation in the course of this morning of two further documents. These give rise to the same two concerns discussed in the consultation last night: (i) the late nature of their revelation; and (ii) their content. Each document comes from the IO.

5 As to the late nature of the revelation, this is unexplained, and frankly inexplicable. Given the nature of the searches described by [redacted] as having been undertaken, we regret that we simply cannot understand why these documents have been made available only now¹⁷

14.7. There followed what was described as a “watershed moment” on 21 December¹⁸. The Investigating Officer in the case gave evidence on oath in the commission that in relation to a meeting between her and a complainer immediately before the complaint was made she could not remember that meeting. As counsel pointed out, this meant that the Government could not aver, much less prove, what happened at the meeting, and thus unable to rebut the rather obvious inferences that might be drawn from the fact that the meeting happened. Following this the Scottish Government decided to throw in the towel.

14.8. There is undoubtedly scope for political criticism of the manner in which Scottish Government handled Mr Salmond’s proceedings. That is not a matter for me to express any view upon. However, Mr Salmond argues that the manner in which the case was handled amounts to a breach of “the overarching duty on Ministers to comply with the law” stated in paragraph 2.30 of the Ministerial Code.

14.9. There are undoubtedly ways in which the handling of court proceedings could involve illegality. Perjury is a serious offence, and the tendering of evidence known or believed to be perjured would be a grave matter, as would the use of forged documents in legal proceedings. Malicious prosecution is both a tort and a crime. Conspiracy to pervert the course of justice is also a serious offence. It is also essential that judges can trust counsel and solicitors who appear before them and therefore very high standards are expected in respect of their duty of candour and not to mislead the court. Instructions to act in breach of these duties would therefore be a serious matter.

14.10. I cannot see that any of these issues arose in this case. On several occasions counsel made clear their disagreement with decisions that were

¹⁷ [Legal advice related to the Parliamentary Inquiry into the Scottish Government’s Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](http://www.gov.scot/Resource/0/4/04_01363main.pdf)

¹⁸ [OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](http://www.gov.scot/Resource/0/4/04_01363main.pdf)

made but in each case accepted that the final say rested with the Law Officers. There is no doubt from the whole manner and tone of counsel's advices that they would, quite properly, have declined to accept any instructions which were improper.

14.11. Mr Salmond appears to be under the misapprehension that the Government is under a duty to withdraw a case if advised that there is less than an evens chance of winning. There is no such rule and the prediction of the outcome of cases is not an exact science.

14.12. There is in my opinion no evidence whatsoever that the First Minister acted improperly or in breach of the Ministerial Code with respect to Mr Salmond's petition. The evidence suggests that the key legal decisions were taken by the Law Officers. Having regard to the duty of the Law Officers to ensure that the Government acts lawfully at all times, and having regard to the position of the Lord Advocate under the Scotland Act (he cannot be removed from his position by the First Minister without the consent of the Scottish Parliament) I think the First Minister was fully entitled to rely on his legal advice.

15. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

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.

15.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

15.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered “as part of the formulation of Government policy.” This is reinforced by the subsequent requirement in the paragraph “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.” Paragraph 4.23 then extends the provision to deal with the situation where in-

formal meetings or discussions take place but again this is qualified by confining it to discussions containing “any significant content (such as substantive issues relating to Government decisions or contracts)”. Ministers must have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to “contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists.” (Emphasis added).

15.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as “the Procedure”. As already stated its full and formal title is “Handling of harassment complaints involving current or former ministers” and it is described as an “*internal* (my emphasis) procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

15.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister’s position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

15.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

16. The Ministerial Code: Special Advisers

16.1. Paragraphs 4.15 to 4.19 of the Ministerial Code deal with special advisers. Much of these provisions deal with appointment, distribution of posts, salaries and terms and conditions of appointment. Special Advisers are subject to a code of conduct which was last revised in March 2017. This may need some further revision in the light of the implementation of the Procedure. If the First Minister is to remain excluded from any involvement in the Procedure consideration might be given to whether this should also apply to the Chief of Staff and other special advisers. Consideration might also be given to whether some of the provisions of the Ministerial Code which apply to Ministers should also apply with appropriate modifications to special advisers, for example, the requirement to record external contacts.

17. The alleged leak to the Daily Record

17.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary's Decision report to the Daily Record was sourced from the First Minister's Office.

17.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence to support this complaint he should refer the matter to the police.

18. Conclusions and recommendations

18.1. I have considered the following issues which were alleged to amount to a breach of the Ministerial Code by the First Minister:-

1. The allegation that her failure to record her meetings with and telephone discussions with Mr Salmond and others on 29 March, 2 and 23 April, 7 June and 14 and 18 July 2018 amounted to a breach of paragraphs 4.22 and 4.23 of the Ministerial Code.

2. The allegation that 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”).

3. The allegation that the First Minister misled the Scottish Parliament in relation to her meetings as specified in paragraph 1 above.

4. The allegation that the First Minister was in breach of her duty to comply with the law in respect of the Scottish Government’s response to the petition of Mr Salmond for judicial review of the Procedure.

18.2. For the reasons set out in detail above in this Report I am of the opinion that the First Minister did not breach the provisions of the Ministerial Code in respect of any of these matters.

18.3. The remit also invited me to consider “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.” In view of the urgency of addressing the other issues relating to alleged breaches of the Ministerial Code which are referred to in the remit I decided to defer consideration of this. It would also in my opinion be appropriate that the other independent adviser also take part in this process. It would also seem sensible to await decisions on what changes if any are to be made to the Procedure. It might also be appropriate to consider the matters relating to special advisers referred to in Chapter 16 in this context.

James Hamilton

22 March 2021

Bibliography

The Ministerial Code

The Scottish Ministerial Code can be found at the following link:

[Scottish Ministerial Code: 2018 edition - gov.scot \(www.gov.scot\)](http://www.gov.scot/publications/ministerial-code/2018-edition/)

The Procedure

The procedure entitled “Handling of harassment complaints involving current or former ministers”, under which the original complaints were handled, can be found here: <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>

The Scottish Government provided a submission to the Scottish Parliament Committee on the development of the policy. This can be found at the following link: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](http://www.gov.scot/publications/parliamentary-committee-on-the-development-of-the-policy/submission-to-the-scottish-parliament-committee-on-the-development-of-the-policy-19-june-2020/)

The Scottish Government also provided a timeline of the development of the procedure. This can be found at the following link: [Timeline for Statement 1 - 14 August\(1\).pdf \(parliament.scot\)](http://www.parliament.scot/publications/timeline-for-statement-1-14-august-2020/)

Documents supporting written statement on the development of the policy

Circulation of draft version 5.0 of the procedure for review :
[SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](http://www.gov.scot/publications/draft-version-5.0-of-the-procedure-for-review/)

Discussion of the procedure covering all harassment not only sexual harassment :
[SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](http://www.gov.scot/publications/discussion-of-the-procedure-covering-all-harassment-not-only-sexual-harassment/)

Fairness at work

There are a number of publically available sources which give background on fairness at work and harassment complaints in the Scottish Government.

This link provides information on harassment complaints up to 2017:
[Internal complaint system: FOI release - gov.scot \(www.gov.scot\)](http://www.gov.scot/publications/internal-complaint-system-foi-release-2017/)

This link provides information to People Survey conducted yearly in the Scottish Government to obtain view from our employees about the experience of working in the Scottish Government and its agencies:

[Scottish Government People Survey 2005 to 2018 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

The Judicial Review

The Scottish Government provided a submission to the Scottish Parliament Committee on the conduct of the Judicial Review. This can be found at the following link: [SP SGHHC2 Written Statement on the Judicial Review 20 July 2020.pdf \(parliament.scot\)](http://parliament.scot)

Official Committee's reports

The Committee's evidence session with the First Minister:
[Official Report \(parliament.scot\)](http://parliament.scot)

First Minister's opening statement on 8th January 2018:

[Official Report 8 Jan 2019 \(parliament.scot\)](http://parliament.scot)

Alex Salmond evidence submission of 23rd February 2021:
[Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](http://parliament.scot)

Documents to Legal privileged advice :

Joint counsel note of 6th December 2018 :
[OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](http://www.gov.scot)

Consultation with Law Officers, Senior Counsel and SGLD:
[OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](http://www.gov.scot)

Joint Counsel Note of 17th December 2018:
[OCT-+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](http://www.gov.scot)

Joint Counsel Note of 19th December 2018:
[Legal advice related to the Parliamentary Inquiry into the Scottish Government's Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Counsel's email to SGLD regarding the prior contact between IO and complainants:

[OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)