



The Scottish Parliament  
Pàrlamaid na h-Alba

## Committee on the Scottish Government Handling of Harassment Complaints

Nicola Sturgeon MSP  
First Minister

c/o Clerk to the Committee  
Room T1.03  
The Scottish Parliament  
Edinburgh  
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BY EMAIL

[SGHHC@parliament.scot](mailto:SGHHC@parliament.scot)

7 July 2020

Dear Ms Sturgeon,

I am writing to you in my capacity as Convener of the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints, inviting you to provide written evidence to the Committee's inquiry. Annexe A provides details of matters to take into account in preparing your submission. The written evidence submitted will inform decisions on which witnesses to call to give oral evidence before the Committee, and in what order.

As you will be aware, the Committee was established with the following remit:

“To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's “Handling of harassment complaints involving current or former ministers”<sup>1</sup> and procedure and actions in relation to the Scottish Ministerial Code.<sup>2</sup>

The Committee has published a written statement on the handling of information and evidence, which is in Annexe B of this letter. Please refer to this statement for information on how the Committee will handle personal data provided in your submission. The statement also explains what personal data is not required. Where this applies to your submission, we request that you submit the evidence in a suitably anonymised format. It has also agreed a general initial approach to its inquiry which should provide useful context for your submission which is in

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<sup>1</sup> [Policy on handling of harassment complaints involving current of former ministers](#)

<sup>2</sup> [Scottish Ministerial Code](#)

Annexe C. Specific questions for you to address in your submission are detailed below.

In addition to answering the specific questions below, the Committee also requests full copies of relevant records from you. Where these records are already being provided as part of a Scottish Government response to the Committee, please make this clear in your response as there is no requirement to provide multiple versions of the same records.

The Committee appreciates there may be records, or elements of records, that you hold that may not be able to be shared with the Committee on the basis of the terms of the data handling statement agreed by the Committee (in Annexe B). Where entire records exist but cannot be shared, please provide a broad description of each record being withheld and the basis of the decision to withhold it. Where elements of records cannot be shared please redact these documents, stipulating the legal basis upon which different pieces of text have been redacted.

### **Complaints policy development**

Please provide the information, relevant to the Committee's remit, about your role in the evolution of the Procedure on the handling of harassment complaints involving current or former Ministers, including the basis for any changes you suggested to its draft contents between versions and what factors influenced your suggestions on changes to the policy. This includes any meetings in this context that you took part in, or any documents you have written suggested changes on, where no minutes or other written records exist.

### **Complaints handling procedure**

The Committee is interested in:

- a. when you were first made aware of the existence of complaints that were investigated against Alex Salmond under the Procedure on handling of harassment complaints involving current or former ministers;
- b. when you were made aware, in person or in writing, of the detail of the complaints;
- c. what action you took, were aware of others taking, or what actions you invited others to take;
- d. the extent, if any, of your involvement in the decision to refer the complaints to the police, what factors were taken into account in taking the decision and at that time;
- e. whether you considered the response to the complaints to be appropriate, satisfactory or effective.

## **Judicial review**

The Committee is interested in the roles and responsibilities in relation to the Scottish Government's conduct of litigation generally and in this case in particular:

- a. the extent to which the Scottish Government kept emerging details and prospects of success under review;
- b. the factors taken into account in deciding to initially withhold documents relevant to the review;
- c. how the decision to settle was taken, including the timing of the decision;
- d. what factors contributed to the cost of settlement.

Please confirm the extent to which you were involved in Scottish Government work under above, giving a full chronological account of your actions and provide all relevant records as set out in Annexe A.

## **Ministerial Code**

The Committee is specifically requesting all relevant information on the circumstances that informed your self-referral under the Ministerial Code to the independent panel of advisers.

This should include all relevant meetings and communications relevant to the Committee's remit and including from November 2017 onwards.

The Committee requests details of, or copies of, all communications relevant to its remit, between yourself (or your private office) and one or more of the following:

- the former First Minister, Alex Salmond;
- your Chief of Staff, Liz Lloyd;
- the Permanent Secretary or senior Civil servants;
- the former First Minister's former Chief of Staff, Geoff Aberdein;
- any other relevant individuals.

The details of all of the forms of information that the Committee is specifically seeking is in Annexe A. The Committee also seeks a full chronological account from you that covers the detail of all of these communications.

## **Party political matters**

The Committee also seeks details of all relevant communications with the SNP given your dual roles as First Minister and as the leader of the SNP. This includes all communication, relevant to its remit, relating to the complaints made against Alex Salmond under the Procedure on handling of harassment complaints involving current or former ministers.

The Committee requests details of how you ensure that there is a clear distinction between your role as First Minister and your role in the SNP, and also that the distinction is maintained by your Chief of Staff and other special advisers.

The Committee also requests details of how you ensure that integrity of processes can be demonstrated, including holding sufficient minutes of meetings and communications using Scottish Government communication channels for all Government business.

The Committee will be considering the extent to which the Scottish Government holds records of communications in formats that enables its actions to be scrutinised by Parliament, for example whether minutes, call logs and email communications using Government accounts are created and retained.

The Committee would like to gain insight into the means by which the SNP head office communicates between staff and post holders. In particular, the safeguards that are in place to ensure these means are not used for communications that should be redirected to Scottish Government communication channels. In the case of this inquiry, the Committee requests details of any instances where you have communicated on a party channel or a non-government channel and then have taken steps to correct this behaviour including transferring relevant records.

## **Culture**

The Committee is including as a central theme of its evidence taking, a focus on the culture within the Scottish Government in the period from 2008 -2014 to the present and including the new complaints handling procedure being implemented in December 2017. Please provide comments from your perspective as First Minister and in your previous roles during this period.

The Committee requests details and any relevant correspondence from this period on the culture within the Scottish Government. The Committee also seeks any evidence you can provide, in your written submission, on the adequacy of the agreed Procedure on handling of harassment complaints involving current or former ministers and the adequacy of the Ministerial Code or the Civil Service Code.

## **Oral evidence**

The Committee intends to commence evidence taking in mid-August so a response from you on these matters is requested by 4 August. The Clerks will inform you at the earliest opportunity whether you will be called to give oral evidence.

Please note that the Committee has agreed that it will administer an oath/solemn affirmation for witnesses as a matter of course but that it will review this position in the case of any vulnerable witnesses.

Should you have any questions about this request or the handling of your written evidence, please do not hesitate to contact the Clerks to the Committee.

Yours sincerely

**Linda Fabiani MSP**

**Convener, Committee on the Scottish Government Handling of Harassment Complaints**

## Annexe A: Matters to take into account in preparing a response

### Committee remit

The Committee was established with the following remit:

“To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government’s “Handling of harassment complaints involving current or former ministers”<sup>3</sup> and procedure and actions in relation to the Scottish Ministerial Code.<sup>4</sup>

All evidence submitted should fall within the terms of the remit of the Committee’s inquiry.

Please note this covers the period from 2008 -14 and up to the present and includes any information relevant to the Committee’s remit which you may have in your current and/or any former role or capacity.

### Data processing statement

The Committee has agreed a statement which sets out how it will handle evidence received to this inquiry. Everyone submitting written evidence must abide by the terms of this statement so please give this careful consideration throughout the preparation of your response. Your response will also be reviewed by Parliament officials to ensure compliance with the statement. It is reproduced in Annexe B.

### Details of records required by the Committee

As stated in the cover letter, the Committee is seeking copies of all records from you / your organisation, unless you know the Committee is being provided these records by another individual or organisation.

The detail the Committee is interested in is provided below. Please note this is not an exhaustive list and the same generic wording for records requested is being sent to all those being asked for written evidence.

- Correspondence - including letters, emails (official/formal/private/personal/party), text messages, WhatsApp messages, and all other electronic forms of correspondence), as well as handwritten notes, copies of handwritten notes, and handwritten notes that have been transcribed into official communications.

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<sup>3</sup> [Policy on handling of harassment complaints involving current of former ministers](#)

<sup>4</sup> [Scottish Ministerial Code](#)

- Documentation - including any physical typed documents, as well as handwritten notes; copies of handwritten notes; handwritten notes that have been transcribed into official instructions; and electronic documents stored on any electronic files or otherwise recorded.

For the avoidance of doubt the above includes all correspondence and documents you may have initiated, received or been copied into.

- Meetings - Please also include details of any meetings or discussions held, including the date (if you cannot recall the exact date include an estimate), details of attendees and matters discussed; any meeting minutes or associated notes; any diary/calendar entries on the meeting including details included in the calendar reminder of the purpose of the meeting.
- Phone calls – Please also include any relevant call logs you hold or details of the estimated date of a relevant phone call, the other person or persons taking part in the call and the issues covered.

Wherever relevant please also detail, including in relation to all meetings and phone calls, who initiated any form of contact.

Other relevant matters

In addition to answering the questions that have been tailored to you, the Committee asks that you consider the terms of its inquiry remit carefully and the approach paper in Annexe C in preparing a response. If there are pieces of evidence you hold, or situations you recall, or observations you could make, that are relevant to the inquiry, you should also cover these in your submission.

Here the Committee considers the “reasonable person test” should apply and “any information you consider relevant” would include information which, should it come to light, would be considered, by a reasonable person, to be information which should be disclosed in whichever form it takes.

The Committee hopes to establish as much as possible from written evidence enabling only the necessary witnesses to be called for oral evidence. Should the Committee learn of evidence you could reasonably have offered at the start of the inquiry at a later stage from other witnesses, the Committee may call you to give evidence to explain. Please note that similar requests for all relevant evidence have been made to a number of key people in this inquiry.

Where relevant evidence exists but you are not in a position to provide it due to the terms of the Committee’s data handling statement in Annexe B, please stipulate, as far as is possible, the nature of the information being withheld, the associated date and the legal grounds for withholding this information including reference to the section of the relevant legislation. Wherever possible please

provide records and redact the sensitive material, and stipulate the grounds for doing so.

*Other relevant individuals*

In preparing your evidence, it is entirely understandable to consult others, for example where details of the dates of meetings require to be sourced by support staff in an organisation you are part of. However, for those being asked to respond on an individual basis, the Committee is seeking your personal account of events and on that basis there should be no discussions between you and others who are submitting evidence, that seek to verify or align each other's accounts. Where the Committee is seeking accounts from individuals it will not, as a rule, accept joint responses from two or more individuals.



## **Annexe B: Committee on Scottish Government Handling of Harassment Complaints written statement on handling of information and evidence**

### **Introduction**

1. The Committee on the Scottish Government Handling of Harassment Complaints (the “Committee”) was established with the following remit for its inquiry:

*To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government’s “Handling of harassment complaints involving current or former ministers”<sup>5</sup> and procedure and actions in relation to the Scottish Ministerial Code.*

2. In fulfilling its remit, the Committee’s approach will be as follows:
  - \* establish where issues arose in the handling of the complaints and the actions in relation to the Scottish Ministerial Code;
  - \* consider what actions were taken that gave rise to these issues;
  - \* consider whether the policies are sufficient and fit for purpose or whether it was the application of the processes which gave rise to these issues;
  - \* consider whether robust governance of policy evaluation and decision-making is in place; and
  - \* consider whether any lessons could be learned to avoid the issues arising again.
3. Given the content of its remit and the sensitive issues it anticipates exploring, the Committee wishes to set out publicly its approach to the handling and processing of data it receives in the course of its inquiry.

### **General Considerations**

4. For the avoidance of doubt, the Committee wishes to set out the general parameters which apply to the discharge of its remit and the conduct of all participants in its proceedings.
5. The Committee and all participants must comply with the court order made by the Lord Justice Clerk, Lady Dorrian, on 10 March 2020 preventing publication of the names and identity and any information likely to disclose

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<sup>5</sup> [Policy on handling of harassment complaints involving current or former ministers](#)

the identity of the complainers in the case of HMA v Alexander Elliot Anderson Salmond<sup>6</sup>.

6. The Committee will comply with its obligations under GDPR and the ECHR. Only material that is relevant to the inquiry will be published.
7. The Code of Conduct for Committee<sup>7</sup> members also regulates the handling of confidential material.
8. The Committee will not revisit the criminal trial nor reinvestigate the substance of the complaints originally made to the Scottish Government.
9. The Committee acknowledges that anyone who made or will make a complaint under the Scottish Government's procedure for handling harassment complaints should expect the procedure to be conducted in a manner that protects confidentiality and does not inhibit complainers from coming forward. In undertaking its inquiry, the Committee will seek to support and not to compromise those principles.

### **Specific considerations and actions**

10. Working within these parameters, the Committee can confirm that the following will be taken into account when processing personal data:
  - Parliamentary committees generally publish all written evidence unless there are legal or other reasons (such as volume or relevance) not to do so. The Committee will take a similar open and transparent approach to other parliamentary committees.
  - However, there are some additional considerations the Committee will make when handling written evidence. The Committee will redact personal or other identifying information in material it publishes where it considers it necessary to do so to comply with the Court Order (particularly in relation to jigsaw identification<sup>8</sup>) and data protection requirements.
  - The Committee will publish documents as packages, after making necessary redactions, rather than individually as they are received, to avoid accidentally increasing the risk of jigsaw identification.
  - Identifying information about individuals below SCS senior civil service grades (including Special Advisers) will not be required from the Scottish Government unless the Committee has established and can show that

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<sup>6</sup> The order was made under section 11 of the Contempt of Court Act 1981 and has indefinite effect.

<sup>7</sup> <https://www.parliament.scot/msps/code-of-conduct-for-msps.aspx>

<sup>8</sup> Jigsaw identification means enabling others to identify a person by providing sufficient pieces of information about them without revealing the identity outright, including revealing missing puzzle pieces of information that disclose the identity in combination with other information already in the public domain.

## **Annexe B**

there is a public interest to do so in an individual instance and if the inquiry's aim can only be achieved if the Committee obtains the identifying information.

- If the Committee seeks evidence directly from individuals, it will do so with due regard to data protection requirements including observing principles of fairness and human rights.
  - The Committee will consider what processing is necessary, proportionate and fair on a case by case basis, according to the individual circumstances of the data subject concerned.
  - The Committee will collect and retain only the minimum amount of personal data needed to fulfil its remit. The Committee is currently undertaking a full data protection impact assessment.
  - The Committee has put in place appropriate measures to keep any information it receives secure with strictly restricted access, under the supervision of the Scottish Parliament's DPO and Information Manager.
  - The Committee will ensure that all participants are aware that the complainers in the criminal trial should not be identified or discussed in public session. This includes the expectation that all witnesses will take their best endeavours to avoid jigsaw identification.
11. In line with the Parliament's Privacy Notice on submitting views to a committee, the Committee may, on occasion, accept written submissions in a non-standard format. Anyone submitting written evidence can request that their evidence be anonymised or that it should be treated as "confidential" (not for publication).
12. The decision on whether the written evidence will be accepted either anonymously or as "confidential" (not for publication) is for the Committee to take. Evidence accepted as "confidential" (not for publication) will not be published online or referenced in any Committee report and access will only be given to relevant SPCB staff and the Committee Members. The Committee will also make a separate assessment on whether publication is compatible with data protection duties.

**SGHHC Committee  
June 2020**

## **Annexe C: Committee on Scottish Government Handling of Harassment Complaints approach to inquiry (last updated 1 July 2020)**

### **Committee remit**

1. The inquiry remit is:

“To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government’s “Handling of harassment complaints involving current or former ministers<sup>9</sup> and procedure and actions in relation to the Scottish Ministerial Code.”<sup>10</sup>

### **General approach to its inquiry**

2. The Committee has agreed the following overall objectives in conducting its inquiry and what it wishes to achieve from this—

- establish where issues arose in the handling of the complaints and the actions in relation to the Scottish Ministerial Code
- consider what actions were taken that gave rise to these issues
- consider whether the policies are sufficient and fit for purpose or whether it was the application of the processes which gave rise to these issues
- consider whether robust governance of policy evaluation and decision-making is in place
- consider whether any lessons could be learned to avoid the issues arising again

3. The Committee agreed to break the inquiry down under three general headings. These are—

- the actions taken in relation to the policy on handling harassment complaints involving current and former ministers. This includes—
  - the development of the policy; and
  - the handling of the complaints
- the judicial review
- the actions taken in relation to the Scottish Ministerial Code

### **Written evidence from the Scottish Government**

The Committee has requested extensive evidence being held by the Scottish Government. It is expected to be received over the course of July and processed by Parliament staff, in accordance with the handing of written evidence statement, for publication thereafter in as timely a manner as possible. If any evidence held is not provided, the Committee has requested

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<sup>9</sup> [Policy on handling of harassment complaints involving current of former ministers](#)

<sup>10</sup> [Scottish Ministerial Code](#)

an explanation of why that is the case. More detail on what has been requested is below:

***Policy development***

- A written statement plus supporting documents in respect of the development of the Scottish Government's procedure for handling harassment complaints about current or former Ministers.

As well as information relevant to this part of the inquiry, the Scottish Government has been asked to address: how the policy was developed, including why the policy review was ordered in the first place and how this task was approached the steps taken during the development of the policy, and what testing was conducted to make sure the policy was robust before it was implemented; who was involved in the development process; how decisions were taken in the process and how the consultation was carried out and the implementation of the policy planned, resourced and communicated.

***Judicial review***

- A written statement plus supporting documents in respect of information about the judicial review.

In particular, the Committee has sought information on the roles and responsibilities in relation to its conduct of litigation generally and in this case in particular; the extent to which the Scottish Government kept emerging details and prospects of success under review; how the decision to settle was taken, including the timing of the decision; and what factors contributed to the cost of settlement.

***Handling of complaints***

- A written statement plus supporting documents in respect of how the Scottish Government handled the specific complaints under the harassment procedure.

In particular, the Scottish Government has been asked to address: what the process was in conducting the investigation; who conducted it; who took final decisions on the outcome of the investigation and when contact was made with Alex Salmond; and whether the findings were going to be published.

**Seeking further written evidence from the Scottish Government**

4. The Committee has also agreed to seek further evidence from the Scottish Government in relation to the final phase of the inquiry, the Ministerial Code and the application of the Code in relation to complaints handling. In general terms, the focus of this element of the inquiry will include: to give general consideration as to whether the code is fit for purpose: whether it is clear what course of action is required; whether there is too much discretion in its operation; and ultimately whether it protects integrity of public life. More specifically the Committee will explore who knew what and at what point, what

was the nature of the meetings between the First Minister and Alex Salmond and how was the distinction drawn between Government and Party matters.

### Order of oral evidence

5. The Committee intends to conduct the inquiry in a chronological way as far as is possible, and to identify themes to focus on for each evidence session. This will allow the Committee to consider the progress of events as they happened and as far as possible follow the flow of evidence in a logical way. The Committee also intends to ask all relevant witnesses about Scottish Government culture as an ongoing theme of its scrutiny.
6. The Committee has decided to seek to meet weekly from August. The Committee will commence evidence taking with a formal oral evidence session with the Permanent Secretary (and other relevant Scottish Government officials) to give evidence on the development of the complaints policy.
7. The Committee may decide to hear from the same witnesses more than once to ensure each phase of the inquiry covers all of the relevant information.

### Written evidence

8. The Committee has agreed a list of witnesses to seek written evidence from at this initial stage with a view to inviting a selection of these individuals to give oral evidence. This is an initial list and this can be extended based on the evidence the Committee receives in writing and in person. These individuals are:
  - Current and former permanent secretaries
  - Staff trade unions
  - The First Minister
  - The Deputy First Minister
  - Alex Salmond
  - Former Chief of Staff to Alex Salmond, Geoff Aberdein
  - The First Minister's Chief of Staff
  - A number of senior civil servants
  - The Lord Advocate
  - The Chief Executive of the SNP

### Handling of evidence

9. The Committee has agreed an approach to its handling of information and this has also been published on the Committee's [website](#). As with any parliamentary committee, the Committee has the ability to place witnesses under oath. The Committee has agreed that it will administer an oath/solemn affirmation for witnesses as a matter of course but that it will review this position in the case of any vulnerable witnesses.