



The Scottish Parliament  
Pàrlamaid na h-Alba

## Committee on the Scottish Government Handling of Harassment Complaints

John Somers  
Principal Private Secretary to the First Minister

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

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29 October 2020

Dear Mr Somers

At its meeting on Tuesday the Committee considered [correspondence from Alex Salmond's lawyer](#) which included clarification on an element of the judicial review. The Committee had sought details from the Government of those called to give evidence to the Commission and Diligence from the Deputy First Minister. This included seeking details of those called to give evidence in January who were never required to give evidence because the Scottish Government conceded the case in early January. The Committee then asked Alex Salmond, through his legal representatives for details of the basis for you being called to give evidence. The relevant extract is below.

*“in the course of the Commission, documents appeared from the Scottish Government which had previously not been produced, despite a Court ordering that they be so. Some of those documents confirmed that one of the complainers had met with the Private Secretary to the First Minister on two occasions in November 2017. On the second occasion, another individual was also present. The identity of the second individual is not known to us. It was Senior Counsel’s intention to ask that question of the Chief of Staff, Liz Lloyd and the Private Secretary, John Somers, when those witnesses came before the Commission”.*

The Committee appreciates that the evidence taking session never took place but would appreciate insight from you on the basis for your invitation to attend, including whether you were required to provide any documents to inform your appearance and, if so, what these included.

I would also be grateful if you could confirm whether these meetings took place, the basis for the meeting, and confirmation of whether anyone else was present beyond

you and the complainer. Please do not include any information on the substance of the concerns or any information that could contribute to the identification of the complainer.

Finally, I would be grateful if you could also set out your involvement in the development of the procedure, the complaints handling process, the judicial review and the meetings, or arrangements of meetings, that make up the ministerial code phase of the inquiry.

The Committee would appreciate a response by Friday 6 November. If a full response by this date is not possible please provide a response on the judicial review elements of this letter by that date and your further written evidence can follow.

Yours sincerely etc

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

# 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>1</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 the identity of the complainers in the case of HMA v Alexander Elliot Anderson Salmond<sup>2</sup>.

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

<sup>2</sup> The order was made under section 11 of the Contempt of Court Act 1981 and has indefinite effect.

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>3</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>4</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 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.

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<sup>3</sup> <https://www.parliament.scot/msps/code-of-conduct-for-msps.aspx>

<sup>4</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.

- 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**