



John Swinney BPA/MSP

Linda Fabiani MSP  
Convener – Committee on the Scottish  
Government Handling of Harassment Complaints  
c/o Clerk to the Committee  
Room T1.03  
The Scottish Parliament  
Edinburgh  
EH99 1SP

6 November 2020

Dear Ms Fabiani

### **Committee on the Scottish Government Handling of Harassment Complaints**

You wrote to three Scottish Government civil servants on 29 October asking questions in connection with the Committee's work. As you know, civil servants work on behalf of Ministers, and so I am responding to your questions on behalf of the Scottish Government.

I would also note that one of the civil servants you have written to is an official below the level of the Senior Civil Service, and so in accordance with the approach we have agreed, my response does not disclose that person's name.

#### In relation to your letter to Liz Lloyd

You have asked about the nature of Miss Lloyd's role. I refer you to Miss Lloyd's written statement. As Miss Lloyd set out in her statement, her interactions as a special adviser were often in relation to the handling of and preparation for media, public and parliamentary interest in the Judicial Review as well as to provide views and input on behalf of ministers who were respondents alongside the Permanent Secretary and the First Minister who had been named as an interested party in the petition.

You asked Miss Lloyd about her involvement in the Commission. Miss Lloyd does not have information on the Commission process as she was on leave and did not receive a citation requiring her to attend it. Miss Lloyd had no involvement and has no knowledge as to why her attendance as a haver was suggested. The identification of potential havers of information was a matter for Levy & McRae.

Your question on the attendance at meetings with the complainers is addressed in the paragraphs relating to John Somers.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh [www.lobbying.scot](http://www.lobbying.scot)

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## In relation to the letter to John Somers

Mr Somers does not know the basis upon which he was asked to attend the Commission. The identification of potential havens of information was a matter for Levy & McRae

On 21 December 2018, after a search of documents Mr Somers produced (within Scottish Government) two calendar entries for the 20th and 21st November 2017 and confirmed those meetings were with Ms A. He produced these diary entries on the same day he was asked to perform the search; which was also the first time he was asked to perform that search.

At the first meeting, Ms A made a disclosure to Mr Somers. No-one else was present at either meeting. Mr Somers has never met Ms B

Mr Somers was not involved in the development of the procedure or the complaints handling process. For clarity and in relation to the development of the procedure, Mr Somers doesn't recall the meeting referred to by Mr Hynd and Ms Lloyd on the 24th November 2017. However, it would be normal for someone in his role, PPS to the First Minister, to ask for or to attend a meeting to be updated on relevant matters. Mr Somers as PPS often meets with Mr Hynd, Ms Lloyd and the Permanent Secretary's Private office as part of his role.

Mr Somers was not involved in meetings, or arrangements of meetings, that make up the Ministerial code phase of the inquiry and he had no involvement in the judicial review (other than carrying out and overseeing searches for relevant documents held by the First Minister's private office).

## In relation to your letter to the other civil servant (an official below the level of SCS)

You asked this official for information about their role in the judicial review. The official, as a normal part of the role of being a private secretary, supported the Permanent Secretary in relation to the Judicial Review. The official acted in close discussion with the Permanent Secretary and in line with her guidance and instruction. The official's involvement related to commissioning information and advice to support the Permanent Secretary's decision making; relaying her views and decisions to others within the SG involved with the judicial review; and liaison with SG colleagues which included participating in regular meetings to co-ordinate activity between various strands of work related to the case.

The official attended the Commission on 19 December 2018. The official had worked with others in SG to collate documents identified in the document recovery process during the case, including in relation to the specification of documents granted by the court on 14 December. The official was asked at the commission about the approach taken to the recovery of documents. As far as they can recall, they were not asked about any specific documents held by them. The official had no further involvement in the Commission after 19 December.

In relation to the development of the procedure, the official's involvement related to communicating the Permanent Secretary's views on drafts of the Procedure; ensuring that she was updated on progress; and liaison with other involved in the drafting process.

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The official had no involvement in the investigation of the complaints and had no personal contact with the complainers.

During the investigation, Levy & McRae directed all correspondence to the Permanent Secretary, often through the official in their role within the Permanent Secretary's office. As such the official was involved in the preparation of responses, for the Permanent Secretary to consider, to questions raised by Levy and McRae about the conduct of the investigation. The official e-mailed the final decision letter on behalf of the Permanent Secretary to Ms A and Ms B and to Levy & McRae.

In relation to the judicial review, the official's role involved providing comments and views on behalf of the Permanent Secretary in relation to the Scottish Government's formal answers to the Petition; working with the litigation team to collate documents for provision to Levy and McRae and in response to the specification granted on 14 December 2018 (as noted above); and attending meetings with SG colleagues.

The official had no involvement in discussions about (or in the decision to) concede the judicial review. Nor was the official involved in the meetings or arrangements of meetings that relate to the Ministerial code phase of the inquiry.

Finally, I would be grateful for your further assistance in addressing my continuing concerns about some interactions between civil servants and Committee members at the Committee. As we have previously discussed, civil servants play an important role in supporting Ministers who are properly held to account by Parliament for the actions of government. The rules governing civil servants' appearances are well established and understood by all parties and normally work well, in my opinion. I have two principal concerns:

1. The approach that continues to be taken by some Members is, on occasion, inappropriate. Examples include occasions on which civil servants have had their GDPR rights infringed, are not referred to the relevant documents already provided in evidence, are not given time to locate and read the documents which a Member has referenced in posing a question, or are pressed on matters which are for Ministers to answer. Similarly, given the provisions in the Scottish Ministerial Code which enshrine the Law Officer Convention, Officials are not able to answer questions about the source of legal advice provided to the Government, and specifically cannot provide the names of individual solicitors, irrespective of grade.
2. Scottish Ministers have a duty of care for civil servants employed by the Scottish Government. While the normal rules that usually govern the way we work together are not observed by all Committee Members, the ability of Ministers to discharge that duty of care for these witnesses is jeopardised.

In light of these continuing issues, I would be grateful again for your assistance in ensuring that all Committee Members follow the Parliament's and this Committee's rules for the appearance of civil servants as witnesses.

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I hope this information is of assistance to the Committee.

I acknowledge receipt of your further letter to me of 6 November and will reply separately.

Yours sincerely

**JOHN SWINNEY**

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