

# **Further Response to Committee on the Scottish Government Handling of Harassment Complaints: Investigation of Complaints**

## **Introduction**

1. This statement supersedes the initial statement dated 30 November 2020; and reflects the position agreed between the Scottish Government and the former First Minister on documents which can be shared with the Committee without the Scottish Government breaching the undertaking given to the Court of Session at the conclusion of the judicial review. This statement is provided by the Scottish Government in response to a request from the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints ('the Committee'). In its letter of 19 May 2020<sup>1</sup> the Committee asked for a written statement from the Scottish Government about the investigation of harassment complaints against the former First Minister Alex Salmond ('the former First Minister'). The Committee wishes to establish if the steps set out in the published harassment policy were followed and asked that this statement should cover the following points:

- information on what the process was in conducting the investigation;
- who conducted it;
- who took final decisions on the outcome of the investigation;
- when contact was made with the former First Minister; and
- whether the findings were going to be published.

## **Context and Restrictions on the Provision of Documents**

2. This is the fourth written statement provided to the Committee and follows on from the written statement regarding Scottish Government Development of the Procedure provided on 19 June 2020; the written statement regarding Scottish Government Participation in the Judicial Review provided on 20 July 2020; the written statement regarding the Ministerial Code provided on 10 August 2020; and the initial written statement on the Investigation of Complaints dated 30 November

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<sup>1</sup> <https://www.parliament.scot/HarassmentComplaintsCommittee/20200519ConvenertoPermSec.pdf>

2020. This statement also includes an updated Chronology of Events at Annex A for ease of reference.

3. Following its meeting on 22 June 2020, the Committee published a 'Written Statement on Handling of Information and Evidence'<sup>2</sup> in conducting its enquiries. In that written statement, the Committee stated that it will not reinvestigate the substance of the complaints originally made to the Scottish Government. This written statement from the Scottish Government and the supporting documents which are provided, are consistent with the Committee's approach – the Scottish Government does not provide detail regarding the specific complaints and any information regarding them contained in the supporting documents has been redacted. In addition, the Scottish Government is not providing any information which could be used to identify the women who made complaints, referred to as Ms A and Ms B. Such information has also been redacted in the supporting documents. For the avoidance of doubt, 'Ms A' and 'Ms B' are designations assigned by the Scottish Government in responding to the issues raised (and also used in the Judicial Review Process) and are unrelated to any other designations used in any other proceedings. Their names and designations, past and present, were the subject of an order made under section 11 of the Contempt of Court Act 1981 during the judicial review proceedings which remains live.

4. As part of the agreed settlement of the judicial review proceedings, an undertaking was given by the Scottish Ministers and Permanent Secretary to the Court of Session that 'save insofar as necessary to comply with any lawful requirement, to cooperate with any criminal investigation, or as may otherwise be approved by the Court, the Respondents will not cause or permit the publication or dissemination to any other person of the said Investigating Officer's report or any statements or other material taken or prepared by her in the course of preparing the same'. This undertaking remains in force. The Scottish Government accepts that the 'report' (singular) referred to in the undertaking is a reference to the three Investigating Officer reports of 22 February 2018 (also referred to in some documents as the 'Initial Report'); 18 July 2018; and 23 July 2018.

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<sup>2</sup><https://www.parliament.scot/HarassmentComplaintsCommittee/General%20documents/Dataprocessingstatement.pdf>

5. Also, as part of the agreed settlement of the judicial review proceedings, the Investigating Officer's three reports were reduced by order of the Court of Session together with the Permanent Secretary's Decision Report dated 21 August 2018 and a letter from the Permanent Secretary to the former First Minister dated 22 August 2018. To 'reduce' a document is to deprive it of all legal force and effect. All references which are made in this statement to the foregoing documents require to be read in that context.

6. Correspondence by the former First Minister's legal representatives with the Permanent Secretary and officials in her office was marked at the time of sending as being legally privileged and/or confidential. The Scottish Government understands that the former First Minister has not waived his legal privilege but has disclosed some of this correspondence to the Committee.

7. Legal professional privilege also applies to communications by Scottish Government officials and Scottish Ministers on legal matters to and from lawyers falling within the subject matter of this statement. In addition, the Law Officer's Convention, as referenced in paragraphs 2.38 to 2.41 of the Scottish Ministerial Code (2018)<sup>3</sup>, means that, whilst the Government may acknowledge that they have received legal advice on a particular topic, they must not divulge who provided the advice (whether the Law Officers or anyone else).

8. As the Lord Advocate has explained in his evidence to the Committee, the maintenance of legal professional privilege and the Law Officers' Convention support good government. They promote the ability of Ministers and officials' decisions to be informed by appropriate analysis of the legal considerations (see paragraph 2.30 of the Scottish Ministerial Code). The Scottish Government asserts its legal professional privilege over all communications it holds about or in relation to legal advice to the Scottish Government. In accordance with usual practice, the Government will not disclose the internal processes of taking and receiving advice or the scope and nature of any requests for legal advice or any legal advice provided.

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<sup>3</sup> <https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/>

9. All policy teams within the Scottish Government work with lawyers, as well as other professionals and relevant agencies in all aspects of government work, including the development and implementation of government policy. An important point to note is that this statement and the chronology of events set out at Annex A do not indicate individual instances where legal advice was sought or received, this is because, as was the case in this instance, the provision of legal advice is not a single event at a single point in time—advice may be provided at various stages and can be an on-going process. The Scottish Ministerial Code (paragraphs 2.30 to 2.37) requires Ministers to ensure that their decisions are informed by appropriate analysis of the legal considerations. The Civil Service Code, which all Scottish Government officials must comply with, similarly requires adherence to the law and that expert advice is taken into account. The obligations under both Codes were complied with in this case in relation to the investigation of the two complaints made under the Procedure and by the Permanent Secretary in discharging her role as decision maker under the Procedure. This observation of the Code included taking advice regarding her decisions on behalf of the Scottish Government that 3 of the incidences should be referred to the Police and to make a limited public statement to have included basic factual information that complaints had been made and of the investigation and the decision. However, as explained in paragraph 42 of this statement, that limited public statement was not issued.

10. The information contained in this statement and Chronology of Events, taken together with the documents provided in support of both and the oral evidence given to the Committee by civil servants on 1 December, is both relevant to the Committee's inquiry and represents the Scottish Government's corporate understanding of events, as far as possible within the limitations of the undertaking to the Court and other restrictions, e.g. to avoid jigsaw identification of the complainers. It also reflects the engagement and confidential conversations with key agencies such as Police Scotland which were as a consequence of the practical application of the new complaints policy being implemented but were not specific to Ms A and Ms B's complaints.

## **Background**

11. The Scottish Government Procedure entitled Handling of Harassment Complaints Involving Current or Former Ministers<sup>4</sup> (the 'Procedure') came into effect on 20 December 2017. In support of the development of the Procedure and wider work under way at that time to raise awareness and tackle the issue of sexual harassment, the Permanent Secretary issued all-staff messages and intranet articles on 2 November<sup>5</sup>, 6 November<sup>6</sup>, and 13 November 2017<sup>7</sup>. Additionally, officials in the Directorate for People drafted a communication plan<sup>8</sup>, and published an intranet article on workplace culture on 22 November<sup>9</sup>. In line with a request from Cabinet Office to review arrangements<sup>10</sup>, including safe channels for staff wishing to raise issues, on 10 November 2017 the Director for Safer Communities was asked by the Permanent Secretary to act as a confidential sounding board for any staff who wished to have a confidential conversation with a senior official on any matter relating to an experience of harassment. This was a broad offer, not confined to historic issues or issues concerning Ministers<sup>11</sup>. The Director of Communications, Ministerial Support and Facilities was also asked by the Permanent Secretary to provide initial support in a pastoral role particularly for staff working in Private Office and Communications<sup>12</sup>.

12. The Procedure includes a number of key steps that are required in the handling of complaints against former Ministers. These steps are summarised below:

- individual raises issue through senior manager, Trade Union representative or direct to HR, and concern is escalated to the Director for People for consideration and so sources of support can be offered;

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<sup>4</sup> <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>

<sup>5</sup> See FN05 of initial statement ([SP SGHHC - FN05 - INV310 \(Previously YY004\)](#))

<sup>6</sup> See FN06 of initial statement ([SP SGHHC - FN06 - INV311 \(Previously YY016\)](#))

<sup>7</sup> See FN07 of initial statement ([SP SGHHC - FN07 - INV313 \(Previously YY066\)](#))

<sup>8</sup> See FN08 of initial statement ([SP SGHHC - FN08 - INV312 \(previously YY036\)](#))

<sup>9</sup> See FN09 of initial statement ([SP SGHHC - FN09 - INV309 \(Previously XX022\)](#))

<sup>10</sup> See FN10 of initial statement ([SP SGHHC - FN10 - INV314 \(Previously YY006\)](#))

<sup>11</sup> See FN11 of initial statement ([SP SGHHC - FN11](#)) and FN11

<sup>12</sup> See FN12 of initial statement ([SP SGHHC - FN12 - INV004 \(Previously YY063\)](#))

- support the individual to consider how best to resolve the situation, including option for acknowledgement of concern without further action (unless Scottish Government deem action necessary due to the nature of the issue);
- if proceeding to formal complaint, Director for People to designate a Senior Civil Servant as Investigating Officer with responsibility for impartial collection of facts from the member of staff and any witnesses, and preparation of a report for the Permanent Secretary (also shared with staff member);
- if the Permanent Secretary decides, following consideration of the Investigating Officer's report, that there is cause for concern, provide details to the former Minister and give an opportunity to respond;
- invite the former Minister to provide statement;
- provide an opportunity for the former Minister to request statements are taken from other witnesses;
- Investigating Officer to revise report to include this additional information and provide to the Permanent Secretary, copied to staff member;
- the Permanent Secretary to consider revised report and decide whether the complaint is well founded (the outcome to be recorded within Scottish Government);
- the Permanent Secretary to decide what further action is required, including action to ensure lessons are learned for the future;
- if the former Minister is a member of the party of the current administration the Permanent Secretary will inform the current First Minister of the former Minister both in this capacity and as Party Leader;
- in their capacity as First Minister, they will wish to take steps to review practice to ensure the highest standards of behaviour within their current Administration;
- final report provided to staff member and former Minister;
- at all times the staff member is free to make a complaint directly to the police;
- Scottish Government will co-operate fully with any police investigation/criminal proceedings and may continue to investigate;
- Scottish Government will provide support to the individual; and
- Scottish Government may bring the matter directly to the attention of the police if it becomes apparent that criminal behaviour may have occurred.

13. These steps formed the basis of the Procedure for the investigation carried out. This included ensuring that the former First Minister, in line with the terms of the Procedure, had the opportunity to respond to any allegations and to request that statements were taken from other witnesses to feed into the Investigation Report.

### **Information on the Investigation Process for the Complaints**

14. As referenced in the separate Scottish Government statement to the Committee about the development of the Procedure, the individual who later made a complaint and was designated Ms A emailed the Permanent Secretary's Office to say that she welcomed the planned review of the Scottish Government's sexual harassment policies and that it was work she'd be keen to support, although this communication was not related to raising a concern or complaint<sup>13</sup>. The individual who was later designated Ms A also met twice with the First Minister's Principal Private Secretary on 20 and 21 November 2017<sup>14</sup> and she was referred on to the Director for Communications, Ministerial Support & Facilities and the Director for Safer Communities in line with their roles outlined in paragraph 11 above.

15. The Director of Communications, Ministerial Support & Facilities and the Director for Safer Communities met with the individual later designated Ms A and an anonymised note was taken of her concerns on 22 November 2017. This note was passed to the Director for People and the Head of People Advice<sup>15</sup>.

16. The individual who later made a complaint and was designated as Ms B made initial contact with the Director of Communications, Ministerial Support & Facilities on 7 November 2017 and subsequently had further contact with her through November 2017<sup>16</sup>.

17. The Director for People asked the Director for Safer Communities and the Director of Communications Ministerial Support & Facilities to ask the individuals

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<sup>13</sup> See FN13 of initial statement ([SP SGHHC - FN13 - INV021 \(Previously YY012\)](#))

<sup>14</sup> See FN14 of initial statement ([SP SGHHC - FN14](#))

<sup>15</sup> See FN15 of initial statement ([SP SGHHC - FN15](#)) and [FN15](#)

<sup>16</sup> See FN16 of initial statement ([SP SGHHC - FN16 - INV005](#)) and [FN16](#)

later designated Ms A and Ms B whether they would be prepared to speak to HR staff as a next step.<sup>17</sup>

18. The Director for people and the Head of People Advice made further contact with the individuals later designated Ms A and Ms B in November and December 2017<sup>18</sup> in line with the expectation that they, given their HR responsibilities, would provide access to support and guidance as well as explain the range of options that were available. At this stage, consideration was given to the potential next steps, including for investigation if the individuals decided to submit formal complaints<sup>19</sup>.

19. Following these initial contacts, the individuals were given time to consider the options. The individual later designated Ms A indicated on 16 January 2018 that she wished to make a formal complaint<sup>20</sup>. Ms A then submitted her complaint by email to the Director for People who forwarded the complaint to Head of People Advice, at the same time formally appointing her as Investigating Officer<sup>21</sup>.

20. The Investigating Officer conducted formal interviews with Ms A, followed up with further email contact to agree records of those discussions and clarify points of detail<sup>22</sup>. Potential witnesses were identified. They were individuals mentioned by Ms A as having been made directly aware of incidents at the time, or had formal roles such as line management, and through those roles, also had awareness or knowledge of the issues being raised.

21. Ms B notified the Director for People on 23 January 2018 of her decision to make a formal complaint<sup>23</sup>. The Director for People then contacted the Head of People Advice to inform her and to agree that the Director for People would notify Ms B that the Head of People Advice was conducting the investigation and that she would be in contact. The Investigating Officer contacted Ms B to let her know that the Director for People had informed her of Ms B's intention to make a formal

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<sup>17</sup> See FN17 of initial statement ([SP SGHHC - FN17](#))

<sup>18</sup> See FN18 of initial statement ([SP SGHHC - FN18](#)) and [FN18](#)

<sup>19</sup> See FN19 of initial statement ([SP SGHHC - FN19](#)) and [FN19](#)

<sup>20</sup> See FN20 of initial statement ([SP SGHHC - FN20](#))

<sup>21</sup> See FN21 of initial statement ([SP SGHHC - FN21](#))

<sup>22</sup> See FN22 of initial statement ([SP SGHHC - FN22](#)) and [FN22](#)

<sup>23</sup> See INV348 contained in FN24 of initial statement ([SP SGHHC - FN24](#)) and [FN23](#)

complaint. The Head of Branch People Directorate 3 then set up a telephone call for Ms B to speak to the Investigating Officer<sup>24</sup>. Ms B followed this call up by submitting her complaint by email<sup>25</sup>. Ms B advised the Investigating Officer that her availability would be limited in the next few weeks. It was therefore agreed that the Investigating Officer should meet with Ms B on the 26 January 2018 to conduct the formal interview. As Ms A and Ms B's complaints were closely related, the Investigating Officer brought the additional complaint into the ongoing investigation process. The Investigating Officer held one formal interview with Ms B followed up with further contact to agree points of detail and the record of the complaint<sup>26</sup>.

22. In addition to the interviews with Ms A and Ms B, the investigation also included formal interviews with four other witnesses between 19 and 30 January 2018 followed by further contact to confirm statements<sup>27</sup>. These four witnesses were kept up to date as the remainder of the investigation progressed<sup>28</sup>.

23. As set out in the Procedure, following the completion of interviews, the Investigating Officer developed an initial Investigation Report dated 22 February 2018 and an extract was shared with the complainers<sup>29</sup>. A meeting took place on the 26 February 2018 between the Investigating Officer and the Permanent Secretary to discuss the investigation process and the initial Investigation Report. After considering the contents of the report, the Permanent Secretary decided that the investigation should move to the next stage under the Procedure i.e. that details would be provided to the former First Minister, inviting him to provide a statement and to propose additional witnesses<sup>30</sup>. While the Permanent Secretary had previously been made aware that individuals had come forward and raised concerns, in accordance with the Procedure, this was the Permanent Secretary's first involvement in the formal complaints process. Having made the decision that the investigation should move to the next phase, the Permanent Secretary spoke with both complainers in early March 2018 in her capacity as Deciding Officer under the

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<sup>24</sup> See FN23 of initial statement ([SP SGHHC - FN23 - INV347 - \(Previously JR016\)](#))

<sup>25</sup> See FN24 of initial statement ([SP SGHHC - FN24](#))

<sup>26</sup> See INV131 contained in FN24 of initial statement ([SP SGHHC - FN24](#)) and [FN26](#)

<sup>27</sup> See FN25 of initial statement ([SP SGHHC - FN25](#)) and [FN27](#)

<sup>28</sup> See FN44 of initial statement ([SP SGHHC - FN26](#)) and [FN28](#)

<sup>29</sup> See FN27 of initial statement ([SP SGHHC - FN27](#)) and [FN29](#)

<sup>30</sup> [FN30](#)

Procedure<sup>31</sup>. The purpose of this contact was for the Permanent Secretary to explain her role and the Scottish Government's duty of care to them, explain her consideration of the initial Investigation Report, and to inform the complainers of her decision and what this meant in terms of the next steps in the Procedure. The meeting also provided an opportunity for the Permanent Secretary to repeat the options for further support and assistance available to the complainers.

24. In her capacity as Deciding Officer and in line with the relevant stage of the Procedure as set out at paragraph 12, the Permanent Secretary wrote to the former First Minister on 7 March 2018 to inform him of the complaints that had been made against him<sup>32</sup>. The letter:

- provided a copy of the Procedure;
- notified the former First Minister that the Permanent Secretary had considered the initial investigation report;
- invited him to give a statement of his recollection of events either in writing or by speaking directly to the Investigating Officer;
- invited the former First Minister to identify additional witnesses to be interviewed; and
- set out further steps.

25. All further correspondence with the former First Minister regarding the complaints and investigation was conducted through his legal representatives Levy and McRae ('L&M'). The deadline for a response from the former First Minister was initially set at 21 March 2018, but Scottish Government initially agreed to extend to 4 April 2018 in response to a request from L&M for additional time. This was subsequently extended to 25 April 2018 in response to further requests<sup>33</sup> to allow the former First Minister opportunity to fully participate in the process following a request from L&M. L&M provided a list of further witnesses and some information in relation to the complaints on 26 April 2018<sup>34</sup>.

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<sup>31</sup> See FN28 of initial statement ([SP SGHHC - FN28](#)) and [FN31](#)

<sup>32</sup> See FN29 of initial statement ([SP SGHHC - FN29](#)) and [FN32](#)

<sup>33</sup> See FN30 of initial statement ([SP SGHHC - FN30](#))

<sup>34</sup> See FN31 of initial statement ([SP SGHHC - FN31 - INV272](#))

26. As part of the correspondence in April 2018, the former First Minister, through L&M, offered mediation as an alternative means of resolving his objections about the Procedure and/or the complaints themselves. This offer was declined by the Scottish Government on the basis that it would not have been appropriate to undertake mediation while the investigation was still at a fact-finding stage. The offer was subsequently put to both complainers when the request was reiterated by L&M and they both declined<sup>35</sup>.

27. As part of additional correspondence<sup>36</sup>, on 8 May 2018, L&M provided contact details for the four additional witnesses to be interviewed and indicated one further witness would provide a written statement<sup>37</sup>. The former First Minister did not take up the offer to be interviewed. He requested that the Investigating Officer restrict her questions to the additional witnesses to specific matters. The Investigating Officer agreed to his request.

28. Interviews were conducted with the additional witnesses identified by the former First Minister between 18 May and 6 June 2018, followed by further contact to finalise the content of statements<sup>38</sup>. One further witness identified by the former First Minister also provided a written statement on 14 June 2018<sup>39</sup>. The Investigating Officer also contacted the two complainers for further information on 28 June 2018<sup>40</sup>. Both complainers were kept up to date by the Investigating Officer and the Director for People as the investigation progressed<sup>41</sup>.

29. Once the external witness statements were finalised, the Investigating Officer compiled a final Investigating Officer report on 18 July 2018<sup>42</sup>.

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<sup>35</sup> See FN32 of initial statement ([SP SGHHC - FN32](#)) and [FN35](#)

<sup>36</sup> See FN33 of initial statement ([SP SGHHC - FN33](#)) and [FN36](#)

<sup>37</sup> See FN34 of initial statement ([SP SGHHC - FN34](#))

<sup>38</sup> See FN35 of initial statement ([SP SGHHC - FN35](#)) and [FN38](#)

<sup>39</sup> See FN36 of initial statement ([SP SGHHC - FN36 - INV615](#))

<sup>40</sup> [FN40](#)

<sup>41</sup> See FN37 of initial statement ([SP SGHHC - FN37](#)) and [FN41](#)

<sup>42</sup> See FN38 of initial statement ([SP SGHHC - FN38](#)) and [FN42](#)

30. The Permanent Secretary wrote on 18 July 2018 to L&M offering their client a further extension and final opportunity to make further representations<sup>43</sup>. This was the third time that the Scottish Government had extended the timescales for the investigation in order to enable L&M to present the former First Minister's case as fully as possible. Further representations by the former First Minister were received on 20 July 2018<sup>44</sup>.

31. The Investigating Officer's report was updated as a result of the further representations made by the former First Minister. This included the Investigating Officer seeking further information from Ms A and Ms B in relation to the further representations which had been made. A revised version of the Investigating Officer's final report was prepared on 23 July 2018<sup>45</sup>.

32. The role of the Permanent Secretary under paragraph 11 of the procedure is as decision-maker – to determine whether each cause for concern in respect of a complaint is well-founded. She completed that process and, as she confirmed in her oral evidence on 8 September 2020, compiled a Decision Report. As set out in the Government's statement on the judicial review, her report was dated 21 August 2018<sup>46</sup>.

33. Consideration was at this stage given by the Scottish Government as to whether the allegations constituted offences sufficiently serious to warrant review by Police Scotland. The views of the complainers were sought so that their wellbeing could be considered as part of the decision<sup>47</sup>. It was concluded that as the alleged conduct could have amounted to potential criminality, there was a significant public interest in referring the matter to the relevant authorities to be investigated. Having regard to all relevant advice received, in accordance with the process set out at paragraph 9 and as set out in evidence to the Committee on both 18 August and 8 September 2020, the Permanent Secretary decided on behalf of the Scottish Government that 3 of the incidences should be referred to the Police. The

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<sup>43</sup> See FN39 of initial statement ([SP SGHHC - FN39 - INV123](#))

<sup>44</sup> See FN40 of initial statement ([SP SGHHC - FN40](#)) and [FN44](#)

<sup>45</sup> See FN41 of initial statement ([SP SGHHC - FN41](#)) and [FN45](#)

<sup>46</sup> See FN42 of initial statement ([SP SGHHC - FN42](#))

<sup>47</sup> See FN43 of initial statement ([SP SGHHC - FN43](#)) and [FN47](#)

complainers were kept informed of developments throughout this period and continued to receive support.

34. The Permanent Secretary spoke with Ms A and Ms B on 22 August 2018<sup>48</sup>. She also notified the First Minister, in her capacity as First Minister and Party Leader, of the outcome of the investigation and that the matter was being referred to Police Scotland. As indicated in the letter from the First Minister's Principal Private Secretary to the Committee on 7 December 2020, the First Minister did not receive a copy of the Decision Report.

35. Following the Scottish Government's decision to refer the matter to Police Scotland, Scottish Government officials submitted a letter dated 20 August 2018 and information to Crown Office for onward transmission to Police Scotland<sup>49</sup>.

36. L&M responded on 22 August 2018 requesting confirmation of confidentiality<sup>50</sup>. On 23 August 2018 L&M notified the Scottish Government that the former First Minister would be raising a petition for judicial review of the Permanent Secretary's decision<sup>51</sup>, and on 31 August 2018 the Petition was formally served on the Scottish Ministers and the Permanent Secretary<sup>52</sup>. The Scottish Government's statement to the Committee and timelines regarding the judicial review contain further information.

37. The following paragraphs set out further detail in response to specific questions asked by the Committee.

### **Who conducted the investigation?**

38. Judith MacKinnon, Head of People Advice was appointed by Nicola Richards, Director for People, to be the Investigating Officer and conducted the investigation. She was supported by two members of staff from People Directorate.

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<sup>48</sup> See FN44 of initial statement ([SP SGHHC - FN44](#))

<sup>49</sup> See FN45 of initial statement ([SP SGHHC - FN45](#)) and [FN49](#)

<sup>50</sup> See FN46 of initial statement ([SP SGHHC - FN46 - INV255](#))

<sup>51</sup> See FN47 of initial statement ([SP SGHHC - FN47](#))

<sup>52</sup> See FN48 of initial statement ([SP SGHHC - FN48](#))

### **Who took the final decisions on the outcome of the investigation?**

39. As confirmed in her oral evidence on 8 September 2020, the Permanent Secretary made her decision following the completion of the investigation process and consideration of the Investigating Officer's final report. The role of the Permanent Secretary under paragraph 11 of the procedure is as decision maker – to determine whether each cause for concern in respect of a complaint is well founded. The Permanent Secretary's conclusions were set out in a Decision Report. As set out at paragraph 5 of this statement, this Decision Report was reduced by order of the Court of Session as part of the agreed settlement of the judicial review proceedings.

### **Contact with the former First Minister**

40. Contact was first made with the former First Minister on 7 March 2018 following the initial investigation of the complaints raised by Ms A and Ms B. This consisted of a letter sent by email from the Permanent Secretary as referred to in paragraph 24.

### **Publication**

41. The Scottish Government considered the balance between the need to maintain confidentiality and the public interest in relation to the Scottish Government's wider obligations, including in relation the Civil Service Code, and the need to respond to the Freedom of Information request that had been received at that time<sup>53</sup>. Having taken account of all relevant advice received, the Scottish Government had intended to release a limited public statement on 23 August 2018 as the investigation was complete. This would have included basic factual information that complaints had been made and of the investigation and the decision. In response to notification of this intention, L&M indicated that they would seek an

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<sup>53</sup> <https://www.gov.scot/publications/foi-18-02575/>

interim interdict order from the court to prohibit publication of the Government statement<sup>54</sup>.

42. However, late in the evening of 23 August 2018, reports appeared in online media<sup>55</sup> that the former First Minister was the subject of complaints made by members of Scottish Government staff dating back to the period of time when he had been First Minister<sup>56</sup>. That night the former First Minister issued a statement to the media about the media reports. Public statements were then made by the Scottish Government in response to those media reports and the former First Minister's statement and the intended limited public statement referred to in paragraph 41 was not issued<sup>57</sup>.

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<sup>54</sup> See FN50 of initial statement ([SP SGHHC - FN50](#)) and [FN54](#)

<sup>55</sup> <https://www.dailyrecord.co.uk/news/scottish-news/alex-salmond-reported-cops-over-131-29661>

<sup>56</sup> See FN52 of initial statement ([SP SGHHC - FN52 - INV331](#))

<sup>57</sup> See FN53 of initial statement ([SP SGHHC - FN53](#))

**SCOTTISH GOVERNMENT (SG) WRITTEN STATEMENT ON INVESTIGATION OF COMPLAINTS:  
CHRONOLOGY OF EVENTS**

Date	Event	Comments	Footnote/ document number
2 November 2017	<p>The Permanent Secretary issued an all-staff message informing staff that there was no place for discrimination or harassment of any kind in the SG. She advised staff that she had agreed with the First Minister that SG policies and procedures would be reviewed to check that they were effective.</p> <p>She also advised staff that if they wanted to help inform consideration of the SG's approach or share concerns about current cultures or behaviours, then they should get in contact. The message set out contact details along with sources of support.</p> <p>This initial message was followed up with further all staff messages on 6 and 13 November 2017 (see separate entries in this timeline for further information).</p>	The Permanent Secretary, Leslie Evans, communicated with all SG staff through an all-staff message on the SG intranet site.	INV 310
3 November 2017	The individual who later made a complaint and was designated Ms A emailed the Permanent Secretary's Office to say that she welcomed the planned review of the SG's sexual harassment policies and that it was work she'd be keen to support.	The individual who was later designated Ms A communicated with the Permanent Secretary's Office.	INV 021
6 November 2017	In her regular weekly blog dated 6 November 2017, the Permanent Secretary noted that she had written to all staff	The Permanent Secretary wrote to all SG staff.	INV 311

Date	Event	Comments	Footnote/ document number
	the previous week on the issue of sexual harassment and reiterated her position that there was no place for harassment or discrimination of any kind in the SG.		
7 November 2017	The individual who later submitted a complaint and was designated Ms B, made contact with the Director of Communications, Ministerial Support & Facilities.	The individual who was later designated Ms B made contact with Barbara Allison	INV 354
8 November 2017	The Director of Communications Ministerial Support & Facilities had a phone call with the individual who later made a complaint and was designated Ms B.	Barbara Allison spoke to the individual who was later designated Ms B.	INV 354
8 November 2017	The Director of Communications, Ministerial Support & Facilities contacted the Permanent Secretary to ask for a chat to update her about a call she had taken earlier from the individual who later made a complaint and was designated Ms B.	Barbara Allison communicated with the Permanent Secretary.	INV 673
9 November 2017	The Director of Communications, Ministerial Support & Facilities made the Permanent Secretary aware of a concern raised by – but not the identity of - the individual who later made a complaint and was designated Ms B.	Barbara Allison communicated with the Permanent Secretary.	
9 November 2017	The Director of Communications, Ministerial Support & Facilities told the individual who later made a complaint and was designated Ms B that she had had a conversation with the Permanent Secretary. The Director for Communications, Ministerial Support & Facilities suggested that she would speak to that individual later that day but this did not happen as the individual was unable to do so.	Barbara Allison communicated with the individual who was later designated Ms B.	INV 354
10 November 2017	The Director of Communications, Ministerial Support &	Barbara Allison	INV 354

Date	Event	Comments	Footnote/ document number
	Facilities and the individual who later made a complaint and was designated Ms B, exchanged texts with each other and arranged to speak the following day.	communicated with the individual who was later designated Ms B.	
10 November 2017	In line with broader Cabinet Office guidance regarding safe channels for staff wishing to raise issues, the Permanent Secretary asked Gillian Russell, the Director of Safer Communities, to act as a confidential sounding board for any staff who wished to have a confidential conversation with a senior official on any matter relating to an experience of harassment.	The Permanent Secretary appointed Gillian Russell, an SCS member of staff at director level, to act as a confidential sounding board for any member of staff who had experienced harassment.	INV 003, 007, 008 352
10 November 2017	The Permanent Secretary asked the Director of Communications, Ministerial Support & Facilities to provide initial support in a pastoral role particularly for staff working in Private Office and Communications.	The Permanent Secretary asked Barbara Allison (the Director of Communications, Ministerial Support & Facilities) to provide initial support in a pastoral role particularly for staff working in Private Office and Communications.	INV 004
11 November 2017	The Director of Communications, Ministerial Support & Facilities spoke by phone to the individual who later made a complaint and was designated Ms B.	Barbara Allison spoke to the individual who was later designated Ms B.	INV 354
13 November 2017	The Permanent Secretary's message to staff dated 13 November 2017 included an offer that staff could raise related issues with herself, with staff in the Directorate for People, or with a named Director (Gillian Russell, Director of Safer Communities), outside People Directorate, who	The Permanent Secretary wrote to all SG staff.	INV 313



Date	Event	Comments	Footnote/ document number
20 and 21 November 2017	The individual who later made a complaint and was designated Ms A, met with the First Minister's Principal Private Secretary and was referred on to the Director of Communications, Ministerial Support & Facilities and the Director for Safer Communities in line with their roles to provide a safe channel for staff wishing to raise issues.	The individual who was later designated Ms A met with John Somers.	INV 022, 257
22 November 2017	The individual who later made a complaint and was designated Ms A met with the Director for Safer Communities and the Director of Communication, Ministerial Support & Facilities and a note was taken of her concerns. It was agreed with the individual that the anonymised note would be passed to the Director for People and the Head of People Advice.	Ms A met with Gillian Russell and Barbara Allison and a note as taken of her concerns.	INV 355
22 November 2017	The Director of Communications, Ministerial Support & Facilities and the individual who later made a complaint and was designated Ms B, exchanged texts with each other in which the Director of Communications, Ministerial Support & Facilities advised the individual that she had met with one other person to hear of their experience. She also offered to write down and agree a note of the individuals story and offered the individual the opportunity to speak to her again or the Director for Safer Communities if that would be helpful. The individual said she'd be happy to talk with her again and suggested this could take place on 24 November. However, the call did not take place on that date.	Barbara Allison communicated with the individual who was later designated Ms B.	INV 354
23 November 2017	The Director for People provided an update to the Permanent Secretary on where things stood on the SG's response on sexual harassment.		INV 315

Date	Event	Comments	Footnote/ document number
27 and 28 November 2017	The Director for People and the Head of People Advice considered what the organisational response and next steps should be with the individuals who had come forward to raise concerns with the Director for Safer Communities and the Director of Communications, Ministerial Support & Facilities.	Nicola Richards and Judith Mackinnon consider next steps.	INV 009
28 November 2017	The Director for People asked the Director for Safer Communities and the Director of Communications, Ministerial Support & Facilities to ask the individuals who were later designated Ms A and Ms B if they were prepared to speak to her or the Head of People Advice to allow them to respond from a more formal organisational perspective and discuss and agree next steps with them.		INV 010 INV 012 INV 293
29 November 2017	The Director of Communications, Ministerial Support & Facilities contacted the individual who later made a complaint and was designated Ms B by text. They exchanged text messages in which they agreed to a phone call which took place that day where the Director of Communications, Ministerial Support & Facilities updated the individual as requested by the Director for People.	Barbara Allison communicated with the individual who was later designated Ms B.	INV 354 INV 010
29 November 2017	The Director for People advised the Head of People Advice by text that the individual who later made a complaint and was designated Ms B had been in touch with her.	Nicola Richards advised Judith Mackinnon that the individual who was later designated Ms B had been in touch with her.	INV 015
29 November 2017	The Director for Safer Communities advised the individual who later made a complaint and was designated Ms A that she had shared the write up of their meeting with the	Gillian Russell communicated with the individual who was later	INV 350

Date	Event	Comments	Footnote/ document number
	Director for People and the Head of People Advice. She asked the individual if she would be prepared to speak to the Director for People and the Head of People Advice to discuss and agree next steps with them. The individual who was later designated Ms A said she would be happy to speak with them and would text the Director for People.	designated Ms A.	
30 November 2017	The individual who later made a complaint and was designated Ms A contacted the Director for People and a meeting was arranged for 5 December.	The individual who was later designated Ms A contacted Nicola Richards.	INV 645
5 December 2017	The Director for People and the Head of People Advice met with the individual who later made a complaint and was designated Ms A.	Nicola Richards and Judith Mackinnon met with The individual who was later designated Ms A.	INV 135, 161
5 December 2017	The Director for People advised the Head of People Advice by text that the individual who later made a complaint and was designated Ms B was content to be contacted by her. The Head of People Advice advised that she had texted the individual to make arrangements to speak in order to discuss the options available.	Nicola Richards told Judith Mackinnon that the individual who was later designated Ms B was content to be contacted.	INV 015, 016
5 and 6 December 2017	The Head of People Advice made contact with the individual who later made a complaint and was designated Ms B to set up a phone call. The call was initially planned for 6 December and then confirmed for 7 December 2017.	Judith Mackinnon communicated with the individual who was later designated Ms B.	INV 016, 017
7 December 2017	The Head of People Advice spoke with the individual who later made a complaint and was designated Ms B.	Judith Mackinnon spoke with the individual who was later designated Ms B.	INV 017

Date	Event	Comments	Footnote/ document number
8 December 2017	The Head of People Advice emailed the individual who later made a complaint and was designated Ms B. The email set out options in terms of next steps.	Judith Mackinnon emailed the individual who was later designated Ms B.	INV 113
14 December 2017	The Director for People contacted the individual who was later designated Ms A to set out options by way of a follow up to their initial conversation on 5 December. The latest version of the draft Procedure was included in the email.	Nicola Richards emailed the individual who was later designated Ms A.	INV 287
14 December 2017	The Head of People Advice contacted the individual later designated as Ms B.		INV 016
19 December 2017	In response to the email she received on 14 December as outlined above, the individual who was later designated Ms A, responded to the Director for People (copied to the Head of People Advice) to say that she thought she would likely proceed with making a formal complaint but would like some further information. She agreed with the suggestion in the email of 14 December that it would be helpful to set up a meeting in January to pick up on next steps.	The individual who was later designated Ms A communicated with Nicola Richards and Judith Mackinnon.	INV 071
19 December 2017	The Head of People Advice responded to the individual who later made a complaint and was designated Ms A (in the absence of the Director for People who was on leave) confirming that she would arrange for them to meet in early January, having taken time to consider further.	Judith Mackinnon emailed the individual who was later designated Ms A.	INV 071
16 January 2018	The Director for People met with the individual who later made a complaint and was designated Ms A. She indicated that she wished to make a formal complaint against the former First Minister and submitted her written	Nicola Richards met with the individual who was later designated Ms A. After the meeting, Ms A	INV 015, 019, 121

Date	Event	Comments	Footnote/ document number
	<p>complaint to the Director for People that day.</p> <p>This meeting was the subject of documentary material, produced late in the Commission that detailed prior contact between the Investigation Officer and one of the complainers. The SG subsequently acknowledged as part of the judicial review process that it was not able to evidence definitively who attended this meeting.</p>	submitted her formal complaint by email to Nicola Richards.	
16 January 2018	The Director for People appointed the Head of People Advice as Investigating Officer (IO).	Nicola Richards appointed Judith Mackinnon as IO.	INV 103 INV 112
16 January 2018	The IO made contact with Ms A to arrange a meeting.	Judith Mackinnon emailed Ms A.	INV 112
17 January 2018	The IO wrote to Ms A formally inviting her to a meeting on 17 January 2018.	Judith Mackinnon wrote to Ms A.	INV 243
17 to 24 January 2018	The IO held the first formal interview with Ms A on 17 January 2017. During the period from 17 to 24 January the IO conducted further interviews with Ms A as well as further contact to agree records of those discussions and clarify points of detail.	Judith Mackinnon interviewed Ms A.	Footnote 22
23 January 2018	The individual who was later designated Ms B notified the Director of People of her intention to make a formal complaint. The Director for People informed the Head of People Advice and agreed that the Director for People would notify Ms B that the Head of People Advice was conducting the investigation and that she would be in contact.	The individual who was later designated Ms B contacted Nicola Richards and was passed to the IO.	INV 015
23 January 2018	The IO contacted the individual who was later designated Ms B.	Judith Mackinnon contacted the individual	INV 016

Date	Event	Comments	Footnote/ document number
		who was later designated Ms B.	
23 January 2018	The Head Branch, People Directorate 3, phoned the individual who was later designated Ms B to arrange a call with her and the IO the following day.	Head of Branch, People Directorate 3 phoned the individual who was later designated Ms B.	INV 347
24 January 2018	The IO had a telephone call with the individual who later that day made a complaint and was designated Ms B. During that conversation, the individual notified the IO that her availability was limited over the next few weeks.	Judith MacKinnon contacted the individual who was later designated Ms B.	INV 347
24 January 2018	Ms B submitted her written formal complaint by email to the IO.  The IO communicated by email with Ms B to make arrangements to meet on 26 January in order to conduct the interview whilst she was still available.	Ms B emailed Judith MacKinnon.	INV 087 INV 113
26 January 2018	The IO, conducted a formal interview with Ms B. After the interview there was email contact to agree points of detail and the record of the complaint.	Judith Mackinnon interviewed Ms B.	INV 131, 156
Between 19 and 30 January 2018	As part of the overall investigation and in addition to the interviews with Ms A and Ms B, the IO undertook formal interviews with four other witnesses between 19 and 30 January 2018 followed by subsequent email contact to finalise the content of statements.	Judith Mackinnon interviewed four other witnesses.	Footnote 27
22 February 2018	As set out in the Procedure, following the completion of interviews, the IO prepared an initial Investigation Report dated 22 February 2018.	Judith Mackinnon prepared an initial investigation report.	
22 February 2018	The IO provided Ms A and Ms B separately with extracts of	Judith Mackinnon	INV 095, 298

Date	Event	Comments	Footnote/ document number
	her initial investigation report.	provided Ms A and Ms B with a copy of her initial report.	
26 February 2018	<p>In accordance with the procedure, a meeting took place on the 26 February 2018 between the IO and the Permanent Secretary to discuss the interim investigation report.</p> <p>After considering the contents of the report, the Permanent Secretary decided that the investigation should move to the next stage i.e. that details would be provided to the former First Minister, inviting him to provide a statement and to propose additional witnesses.</p>	<p>The Permanent Secretary met Judith Mackinnon.</p> <p>The Permanent Secretary decided that the investigation should move to the next stage.</p>	INV 249, 299, 300
26 February 2018	The IO emailed Ms A and Ms B separately to update each of them on the outcome of her meeting with the Permanent Secretary that day had gone; and to inform them that the Permanent Secretary's office would be in touch with them to set up meetings.	Judith Mackinnon emailed Ms A and Ms B.	INV 140, 141
27 February 2018	The IO emailed the witnesses to inform them about her meeting with the Permanent Secretary.	Judith Mackinnon emailed the witnesses.	INV 431, 456, 511, 663, 658,
Early March 2018	<p>The Permanent Secretary spoke separately to Ms A and Ms B in early March 2018 to discuss the investigation of their complaints in the context of the new Procedure, and to allow the Permanent Secretary to explain her role and the SG's duty of care.</p> <p>The Permanent Secretary explained her consideration of the initial Investigation Report, and informed Ms A and Ms B of her decision and what that meant in terms of the next</p>	The Permanent Secretary met with Ms A and spoke with Ms B.	INV 270, 333, 533, 657

Date	Event	Comments	Footnote/ document number
	<p>steps in the Procedure.</p> <p>The meetings also provided a further opportunity for the Permanent Secretary to repeat the options for further support and assistance available to the complainers.</p>		
7 March 2018	<p>The Permanent Secretary wrote to the former First Minister on 7 March 2018 to inform him of the complaints that had been made against him. The letter:</p> <ul style="list-style-type: none"> <li>• provided a copy of the Procedure;</li> <li>• notified the former First Minister that the Permanent Secretary had considered the initial investigation;</li> <li>• invited a statement of the former First Minister's recollection of events and offered him the opportunity to be interviewed by the Investigating officer;</li> <li>• invited the former First Minister to identify further witnesses to be interviewed; and</li> <li>• set out further steps including that if no response had been received by 21 March 2018 it would be assumed that the former First Minister did not wish to cooperate with the Procedure.</li> </ul> <p>All subsequent correspondence with the former First Minister regarding the complaints and investigation was conducted through his legal representatives Levy &amp; McRae (L&amp;M).</p>	The Permanent Secretary wrote to the former First Minister.	Footnote 32
16 March 2018	L&M responded to Permanent Secretary's letter of 7 March advising that their client was taking legal advice and would require reasonable time to engage properly with the process which he was keen to do. They also sought	L&M wrote to the Permanent Secretary.	INV 089

Date	Event	Comments	Footnote/ document number
	reassurances around confidentiality.		
20 March 2018	The Permanent Secretary wrote to L&M extending the date for responding to the points in her letter of 7 March for a further 2 weeks to 4 April.	The Permanent Secretary wrote to L&M.	INV 119
30 March 2018	L&M wrote to the Permanent Secretary seeking a further extension of 8 weeks to the date by which the former First Minister could respond.	L&M wrote to the Permanent Secretary.	INV 125, 126
4 April 2018	<p>The Permanent Secretary wrote to L&amp;M extending the deadline for his response by a further 3 weeks from 4 April – i.e. 25 April. Her letter indicated that if no substantive response had been received by that date, she would move to the next stage in the process as set out in her letter of 7 March.</p> <p>She also made clear that while it was not her intention to allow access to SG staff or documents, it was open to the former First Minister to suggest the names of any potential witnesses that he would like the IO to include in the process.</p>	The Permanent Secretary wrote to L&M.	INV 273
23 April 2018	L&M wrote to the Permanent Secretary setting out that they did not think that in the circumstances of the case it would be possible to apply the Procedure in a manner which was consistent with the principles of procedural fairness. They also advised that they had been instructed by their client to offer mediation on the Procedure and / or complaints which had been made against him.	L&M wrote to the Permanent Secretary.	INV 146, 342
24 April 2018	The Permanent Secretary wrote to L&M stating that as the investigation was still in the fact finding stage, mediation would not be appropriate at that time. She also stated that	The Permanent Secretary wrote to L&M.	INV 292

Date	Event	Comments	Footnote/ document number
	she was satisfied that the Procedure was fair and offered their client an appropriate opportunity to respond to her letter of 7 March.		
25 April 2018	L&M wrote to the Permanent Secretary advising that they intended to provide a detailed response the following day.	L&M wrote to the Permanent Secretary.	INV 271
26 April 2018	<p>L&amp;M wrote to the Permanent Secretary responding to her contention that mediation would not be appropriate at that stage in the investigation; seeking confirmation that the offer of mediation had been made to the complainers; and asking her to reconsider the offer which remained open.</p> <p>They also reiterated the view that the Procedure was unfair and reserved their client's right to raise all of the points raised in their letter of 23 April in relation to the fairness of the Procedure.</p> <p>The letter stated that most of the content of the allegations against their client was disputed.</p> <p>L&amp;M provided names of 5 further witnesses to be interviewed and requested that the Investigating Officer restricted questions to specific issues.</p>	L&M wrote to the Permanent Secretary.	INV 272
30 April 2018	The Permanent Secretary wrote to L&M advising that the offer of mediation had been put to Ms A and Ms B who had both declined it. She also advised that the IO would arrange to interview the witnesses identified by their client.	The Permanent Secretary wrote to L&M.	INV 117, 128, 129, 638
8 May 2018	L&M wrote to the Permanent Secretary providing contact details for the 5 witnesses they had identified. They	L&M wrote to the Permanent Secretary.	INV 253

Date	Event	Comments	Footnote/ document number
	<p>indicated that 4 of the 5 were content to be interviewed by the IO and 1 witness would provide a written statement.</p> <p>L&amp;M reiterated their view that their client was being denied proper access to the evidence against him, that the Procedure was unfair and incompetent and sought assurance that their witnesses would only be interviewed about specific matters.</p>		
10 May 2018	The IO made contact with the 4 witnesses identified by the former First Minister to make arrangements to take their statements.	Judith Mackinnon emailed the witnesses identified by the former First Minister.	Footnote 38
18 May to 6 June 2018	Witness interviews were conducted with the additional witnesses identified by the Former First Minister between 18 May and 6 June 2018 followed by further email contact to finalise and agree the content of statements.	Judith Mackinnon finalised statements with the witnesses provided by the former First Minister.	Footnote 38
5 June 2018	L&M wrote to the Permanent Secretary restating their objection to the proceedings as a whole	L&M wrote to the Permanent Secretary.	INV 275
13 June 2018	L&M wrote to the Permanent Secretary seeking an assurance that confidentiality would be preserved whatever the outcome of the matter was.	L&M wrote to the Permanent Secretary.	INV 196
14 June 2018	One witness identified by the former First Minister provided a written statement on 14 June 2018.		INV 615
18 June 2018	FOI request received regarding complaints against the former First Minister.		Footnote 53
19 June 2018	L&M wrote to the Permanent Secretary suggesting a lawyer to lawyer discussion in order for them to offer what they considered to be a mutually beneficial proposal. The	L&M wrote to the Permanent Secretary.	INV 277

Date	Event	Comments	Footnote/ document number
	offer was not taken up and L&M were asked to make representations direct to the Permanent Secretary given a formal process was underway.		
21 June 2018	The Permanent Secretary wrote to L&M in response to their letters of 5 and 13 June. She stated that she remained satisfied that the SG Procedure was fair and legally competent and she confirmed that while she could not provide an absolute guarantee at any stage given the SG's statutory obligations including those relating to Parliament and Freedom of Information legislation, the Government would continue to take all reasonable steps to maintain the confidentiality of the investigation.	The Permanent Secretary wrote to L&M.	INV 278
26 June 2018	L&M wrote to the Permanent Secretary saying it was clear there was a fundamental dispute between the parties and set out a new proposal for arbitration on the competency and illegality of the Procedure as distinct from their earlier offer of mediation of the substance of the complaints made by Ms A and Ms B. The letter also set out their view that any disclosure by the SG of the outcome of any determination made by the Permanent Secretary on the allegations made against their client would be an actionable breach of his rights of confidentiality and privacy and would be defamatory.	L&M wrote to the Permanent Secretary.	INV 279
28 June 2018	The IO wrote to Ms A and Ms B to clarify a few points in their statements.	Judith MacKinnon contacted Ms A and Ms B.	Footnote 40
4 July 2018	The Permanent Secretary wrote to L&M stating that she remained satisfied that the Procedure was fair and competent and, therefore, she did not consider the offer of	The Permanent Secretary wrote to L&M.	INV 280

Date	Event	Comments	Footnote/ document number
	arbitration was appropriate. She also made L&M aware that the SG had received an FOI request on 18 June 2018 for “any information relating to complaints about the conduct of Alex Salmond whilst he was First Minister”.		
9 July 2018	L&M wrote to the Permanent Secretary seeking agreement that the SG would respond to the FOI request by saying the information was exempt under section 38 of the FOISA legislation. They also renewed their proposal of arbitration and stated that should an adverse determination be made without further recourse to arbitration, or if the SG released information in relation to the FOI request it had received, they reserved the right to raise proceedings at the Court of Session.	L&M wrote to the Permanent Secretary.	INV 218
11 July 2018	L&M wrote to the Permanent Secretary restating the offer of confidential arbitration and setting out the willingness of their client to engage in the totality of the process and to answer in detail each of the specific complaints against him should the SG position on the legality of the process be upheld by the arbitrator. Their letter also included a subject access request for a copy of all personal information held by the SG for a specified period of time whilst their client was First Minister.	L&M wrote to the Permanent Secretary.	INV 219
12 July 2018	<p>The Permanent Secretary wrote to L&amp;M explaining that she was not yet in a position to set out how the SG intended to respond to the FOI request but confirmed that in line with the SG’s normal practice, their client would receive advance notice of the proposed response.</p> <p>The letter also restated the SG view that the Procedure</p>	The Permanent Secretary wrote to L&M.	INV 220, 284

Date	Event	Comments	Footnote/ document number
	<p>was fair and legally competent. It stated that L&amp;M's letter of 9 July was not clear if the proposal of arbitration was in relation to the Procedure alone or to the Procedure and the substance of complaints and since arbitration was commonly used to resolve contractual disputes and to seek a compromise between parties, it would be inconsistent with the purpose of the Procedure, and the SG did not intend to enter into an arbitration process.</p> <p>The letter recorded that a number of extensions to the deadline for their client's response to the complaints made against him had been given and he'd had ample opportunity to provide further information to the IO. It further set out that the information he had provided to date would be considered by the IO who was concluding her investigation and was likely to submit her final report to the Permanent Secretary by 16 July.</p> <p>The letter also confirmed that the information their client had requested in his subject access request had been delivered under separate cover to L&amp;M that day.</p>		
13 July 2018	L&M wrote to the Permanent Secretary indicating that they had never suggested that arbitration should include the substance of the complaints. They stated their disagreement that arbitration was inconsistent with the purpose of the Procedure and asked the SG to give further consideration to their proposal of arbitration.	L&M wrote to the Permanent Secretary.	INV 290
18 July 2018	The Permanent Secretary wrote to L&M stating that she was approaching their concerns about the fairness of the	The Permanent Secretary wrote to L&M.	INV 123

Date	Event	Comments	Footnote/ document number
	<p>Procedure with the greatest of care and an open mind. The letter restated the view of the SG that the Procedure was fair and legally sound.</p> <p>In the letter, the Permanent Secretary stated that the former First Minister had not provided a substantive response to the complaints made by Ms A and Ms B. She stated that the witnesses he had provided had been interviewed by the IO and their statements had been agreed by all parties after a number of postponements and delays.</p> <p>The letter restated the SG's view and reasoning why it did not agree that arbitration was appropriate.</p> <p>In the letter the Permanent Secretary also made an offer to L&amp;M's client to make any further representations about the complaints made by Ms A and Ms B.</p>		
18 July 2018	The IO compiled a final Investigation Report on 18 July 2018.	Judith Mackinnon finalised the Investigation Report.	
19 July 2018	L&M wrote to the Permanent Secretary acknowledging her letter of 18 July and advising that their client would make further representations about the complaints made by Ms A and Ms B by 20 July 2018.	L&M wrote to the Permanent Secretary.	INV 115
20 July 2018	L&M wrote to the Permanent Secretary. The letter set out L&M's observations on the SG's reasons for rejecting arbitration. It also set out in detail why their client's position was that the Procedure was manifestly unfair. The	L&M wrote to the Permanent Secretary.	INV 523

Date	Event	Comments	Footnote/ document number
	letter also provided their client's response to the specific incidents identified in the complaints made against him.		
23 July 2018	The IO wrote to Ms A and Ms B separately asking them to respond to the information the former First Minister had provided on 20 July. Ms A and Ms B both responded that day.	Judith Mackinnon wrote to Ms A and Ms B.	INV 211, 214
23 July 2018	The IO's report was updated as a result of representations made by the former First Minister.	Judith Mackinnon updated the Investigation Report.	INV 324
31 July 2018	The IO met with Ms A and (separately) spoke to Ms B to seek their views on reporting matters to Police Scotland, should they wish to do this or should SG conclude that it had to take this decision.	Judith Mackinnon met with Ms A and spoke to Ms B.	INV 070, 074, 101, 102, 106, 111
1 to 2 August 2018	<p>The IO emailed both Ms A and Ms B following up on their conversations the day before. The IO had sought clarification from Police Scotland in generic terms, in response to a question raised by Ms B about the process for reporting a potential criminal act.</p> <p>Ms A and Ms B both responded to set out their views and the IO shared this information with the Permanent Secretary's office.</p>	<p>Judith Mackinnon emailed Ms A and Ms B.</p> <p>Judith Mackinnon emailed the Permanent Secretary's office.</p>	INV 076, 171, 534, 650
3 August 2018	As the IO was going on leave, the Director for People emailed Ms A and Ms B to let them know she would be their contact during the IO's period of leave. She also responded to the views they had each provided to the IO about referral to Police Scotland. Ms A asked to meet to discuss referral and a meeting was arranged for 7 August. Ahead of the meeting, the Director for People shared		INV 130, 136, 179

Date	Event	Comments	Footnote/ document number
	advice on referral to the police with Ms A and separately with Ms B.		
7 August 2018	The Director for People met Ms A to discuss the issues around referral of matters to Police Scotland.	The Director for people met Ms A.	INV 136
13 August 2018	The Director for People provided a note for the Permanent Secretary's office summarising Ms A and Ms B's views on reporting to the police.	Nicola Richards emailed the Permanent Secretary's office.	INV 320
16 August 2018	Ms A sought an update from the Director for People.	Ms A emailed Nicola Richards.	INV 184, 229
17 August 2018	The Director for People emailed Ms B to provide her with an update on progress.	Nicola Richards emailed Ms B.	INV 179
20 August 2018	The Permanent Secretary's private office sent an email to the First Minister's private office advising that the Permanent Secretary had informed the former First Minister's legal representatives and the complainers that she intended to write to them the following day about the outcome of the investigation and of the next steps to be taken by the SG.	The Permanent Secretary's private office sent an email to the First Minister's private office.	INV 675
20 August 2018	The Director for People prepared a letter for issue to the Crown Office to refer the matter to Police Scotland.	Nicola Richards prepared a letter.	INV 325
20 August 2018	The Director for People spoke to Ms B on the phone to update her about the timing of the police referral.  She also emailed Ms A to make an arrangement to phone her later that day to update her.	Nicola Richards phoned Ms B.  Nicola Richards emailed Ms A.	INV 172  INV 184
21 August 2018	As the Permanent Secretary confirmed in her oral evidence on 8 September 2020, following careful consideration, she compiled a Decision Report. As set out in the Government's statement on the judicial review, her report	The Permanent Secretary compiled a Decision Report	

Date	Event	Comments	Footnote/ document number
	was dated 21 August.		
21 August 2018	The Director for People emailed Ms A and Ms B to let them know that the referral to Police Scotland would likely happen later that day and, therefore, that the police were unlikely to be in touch with them that day.	Nicola Richards emailed Ms A and Ms B.	INV 172, 229
22 August 2018	The Permanent Secretary spoke to Ms A and Ms B on 22 August 2018.	The Permanent Secretary spoke to Ms A and Ms B.	INV 048, 345
22 August 2018	The Permanent Secretary notified the First Minister of the outcome of the investigation and that the matter was being referred to Police Scotland.		
22 August 2018	The letter prepared on 20 August was sent by follow-up email from the Director for People to the Crown Office on 22 August 2018 for onward transmission to Police Scotland.	Nicola Richards emailed the Crown Office.	INV 325,
22 August 2018	L&M wrote to the Permanent Secretary and the First Minister on 22 August 2018 stating that they (L&M) were in receipt of the purported findings of the investigation of complaints against their client. The letter restated their view that the process was unlawful and the offers their client had made for arbitration. The letters also sought assurances of confidentiality.	L&M wrote to the Permanent Secretary and the First Minister.	INV 255
23 August 2018	<p>The Permanent Secretary wrote to L&amp;M. The letter restated the SG view about the legality of the Procedure and stated that the SG had explained its position on the proposal for mediation and arbitration in previous correspondence.</p> <p>The letter also stated that the SG had been considering the public interest test in determining its response to an</p>	The Permanent Secretary wrote to L&M.	INV 234

Date	Event	Comments	Footnote/ document number
	<p>outstanding FOI request and, additionally whether the fact and outcome of the investigation should be made public.</p> <p>The letter stated that, having concluded that the balance between maintaining confidentiality as the investigation was now complete, and the public interest in relation to the SG's wider obligations including in relation to the Civil Service Code lay in favour of limited public disclosure of the facts of the complaints, the SG intended to issue a short statement later that day. The letter included a copy of the statement and stated that the answer to the outstanding FOI request would refer to the text of that statement.</p>		
23 August 2018	L&M wrote to the Permanent Secretary stating that their client had instructed senior counsel to draft judicial review proceedings against the decision and interdict preventing publication of the process. The letter also sought assurance that no statement would be issued by the SG until the question of interdict had been determined.	L&M wrote to the Permanent Secretary.	INV 305
23 August 2018	Reports appeared in online media that the former First Minister was the subject of sexual harassment complaints made by members of SG staff dating back to the period of time when he had been First Minister.		INV 221, 331
27 August 2018	L&M wrote to the Permanent Secretary setting out their client's concerns about the apparent breach of confidentiality of the process given the level of detail reported in the media.		INV 252
31 August 2018	The Petition for Judicial Review against the Permanent Secretary and the Scottish Ministers was formally served.	The former First Minister raised a petition for	INV 132, 201

<b>Date</b>	<b>Event</b>	<b>Comments</b>	<b>Footnote/ document number</b>
		judicial review against the Permanent Secretary and the Scottish Ministers.	