

Submission Alex Salmond

Introduction

This is my fourth submission to the Parliamentary Inquiry. It should be read in addition to, and in conjunction with, the three other previous submissions. Those prior submissions relate to the application of the procedure (phase 2), the Judicial Review (phase 3) and the Ministerial Code (phase 4).

This final document accordingly includes an introduction and overview of matters linking each of the four individual submissions

It thereafter includes submissions on

1. phase 1 of the Inquiry.
2. the question of ‘conspiracy’
3. Crown Office

Documentary evidence exists to support all of the factual statements made in this submission. I have sought to provide that to the Committee where it is within my power to do so. Despite repeated requests, however, Crown Office has not provided the Committee with the critical evidence which was unable to be led in the High Court. Perhaps even more concerning is the direction from Crown Office that I face the prospect of criminal prosecution for even referring to the existence of such evidence or specifying (even in broad terms) what that evidence is. One of their letters even suggested that the Committee’s use of such documentation might also constitute a criminal offence

My hope and belief, expressed outside the High Court in Edinburgh after my acquittal, was that documents which were not put before the jury and the public would be published in the course of this Inquiry. To date, and despite the centrality of those documents to the remit of this Committee and the overwhelming public interest in their publication, Crown Office continue to veto any such publication under threat of prosecution.

Despite that deplorable prohibition, I can confirm that all of the material factual statements made in this submission are supported by documentary evidence. Where I am legally allowed to direct the Committee to such documents, I will be happy to do so.

Overview

The Committee has achieved progress in the volume of documentation supplied. However it has been fundamentally obstructed in three key areas.

First on the legal advice which the Government received from external counsel in the Judicial Review. In normal circumstances the extraordinary discovery by this Committee that both Senior and Junior Counsel to the Government threatened resignation because the case they were being asked to argue was unstateable would

have been headline news. However, despite two parliamentary votes, the full advice from Counsel hasn't been provided to the Committee. It is extraordinary that the Lord Advocate, who could sanction such advice being published, has refused to do so. The legal provision for him to publish in the public interest is clear. Inexplicably, the Lord Advocate has been able to simply refuse that request and to get away with doing so in the face of the will of the Committee and of Parliament. Despite that, it appears from what has emerged that by October 2018 external counsel advised the Government that, on the balance of probability, they were heading for likely defeat. And yet, despite that advice and the cost of hundreds of thousands of pounds of avoidable legal fees, the Scottish Government pressed on with a case they expected to lose. This submission explains why.

Second the restriction arises as a result of the failure of the Government to provide documents from when the Judicial Review started in August 2018 until the Scottish Government finally conceded in January 2019. There were 17 meetings with external Counsel, daily meetings on progress of defending the Judicial Review (according to Paul Cackette, acting Solicitor to the Scottish Government during the case) and thrice weekly meetings according to Ms Judith Mackinnon, the Investigating Officer. However, the Committee has yet to publish (or to my knowledge see) a single relevant minute, email, text message or 'One Note' from that entire period relating to those meetings despite being assured that such documents would be provided. Of particular interest to the Committee would be the extent to which various parties were informed of the progress of the case and in particular whether the Lord Advocate's expressed views on "sisting" (pausing) the Judicial Review pending the criminal case were discussed, how widely and with whom.

Thirdly, the crown response to the section 23 request has hindered rather than assisted the Committee. The information provided was neither sought nor publishable by the Committee. Those in Crown Office providing that information must have been well aware of that. However, text messages which *could* be properly considered and published and which *have* been part of the Committee's questioning and would bear directly on the veracity of evidence given under oath to this Committee have been withheld. The blocking of the Committee in this matter and others is nothing whatsoever to do with protecting the anonymity of complainants, which I support and have upheld at every stage in this process. Rather, it is a matter of the shielding of some of the most powerful people in the country who are acutely aware of how exposed they would become.

The Parliamentary Committee has already heard evidence of activities by civil servants, special advisers, Ministers and SNP officials which taken individually could be put down to incompetence, albeit on an epic scale. However taken together, and over such a prolonged period, it becomes impossible to explain such conduct as inadvertent co-incidence. The inescapable conclusion is of a malicious and concerted attempt to damage my reputation and remove me from public life in Scotland. It is an attempt which would, in fact, have succeeded but for the protection of the court and jury system and in particular the Court of Session and the High Court of Justiciary.

However, underlying all of this and perhaps the most serious issue of all is the complete breakdown of the necessary barriers which should exist between

Government, political party and indeed the prosecution authorities in any country which abides by the rule of law.

In each of the written submissions under Phases 1-4 of the Inquiry remit I have sought to explore those themes, and identify evidence to assist the Committee in doing its job holding the Executive to account.

The success, or failure, of this Committee in doing so will have a very significant bearing on public confidence in the ability of Parliament more generally to expose failures across Government. The ramifications of a Committee unable to complete its work due to delay, obstruction and refusal on the part of those under investigation are both profound and chilling.

Phase 1

In relation to Phase 1, I am asked for evidence regarding the development of the policy.

I would make the following general comments, on which I will be very happy to expand in oral evidence.

1) Fairness at Work

The Committee has heard evidence on the origins of the Fairness at Work Policy 2010 ('FaW'). As First Minister I approved the policy and, in contrast to any other witnesses before this Inquiry, I was actually involved in its development. Implementation of the policy was achieved with the co-operation of the trade unions and I was pleased to be the First Minister who sanctioned its adoption.

As Appendix 1 from a Management Board meeting of 23 November 2009 makes clear, it was not evolved as a result of specific complaints about Ministers at the time but reflected long standing trade union grievances about Ministerial Offices stretching back to the days of the Scottish Office. FaW was the first workplace policy to include Ministers and I approved it on the basis that it was made compatible with the statute based Ministerial Code in which the First Minister is the final decision maker on the fate of a Minister facing a complaint. This was done by placing the Deputy First Minister in the deliberative part of the policy. The result was that only after a recommendation had been made would the First Minister finally decide. This was aimed at avoiding him or her judging twice on the same case. The policy was negotiated over a period of 18 months, was carefully constructed, balanced and lawful. It was well received by all concerned.

In the event there were no formal complaints made against any Minister under the policy and thus it was never invoked. Specifically and to my knowledge the present First Minister was never informed about any complaints against me because there were none. Similarly I was never informed about any complaints against her or any other Minister under the terms of this policy because there were none.

In the evidence of Ms Richards (25th August 2020) she revealed that there have been two complaints under FaW against current Ministers since 2017. Presumably these will have been dealt with under the FaW provisions including the involvement of John Swinney as Deputy First Minister.

This Committee is charged with finding out what went wrong. It should also look at what can be done now to put matters right.

Fairness at Work, of which the Permanent Secretary admitted in her evidence (in response to Ms Mitchell on 18th August 2020) to “not being an expert”, is in reality a carefully considered policy which is still in operation for the civil service and for serving Ministers with regard to bullying complaints. The Permanent Secretary’s extraordinary claim in the same evidence session that it does not cover harassment can only be a result of her admitted lack of familiarity with the policy. In reality it covers this explicitly in paragraph 3.2.1. As recently as December 2017 FaW was hailed by the unions in a letter to the Permanent Secretary as an achievement “of which we all should rightly be proud and something that sets up as being more assiduous than our counterparts down south” ([Redacted] FDA Convener)

FaW is legal, not illegal. It is procedurally fair, not unfair. It was carefully considered, not rushed. It achieved the central longstanding workforce ambition of having Ministers on the same footing as civil service managers. No doubt it can be updated and improved but the current position of limbo is ridiculous.

The concept of a civil service investigation into people over which they have no legitimate jurisdiction is nonsensical and the idea of passing the results to the relevant political party for action is self- evidently ludicrous. If legal action wasn’t taken against the government it would inevitably follow against any political party which attempted to proceed with any form of disciplinary action on such an unlawful basis.

Fairness At Work should be reinstated at the earliest opportunity pending the Dunlop review.

2) The Development of the 2017 Procedure

The Committee has already clearly established that there was no discussion or information presented to either Parliament or Cabinet on the 31st October 2017 of extending work place policies to *former* Ministers. Nor was there any suggestion that this should be done in the Head of the Civil Service’s letter of 3rd November 2017. And of course it was not carried forward in any other administration in the U.K. and was opposed by [Redacted] of the UK Cabinet Office when they were briefly consulted on the proposal later in November 2017. As she wryly asked the Scottish Government at that time, was there also to be such a retrospective policy for former civil servants? Nor was the new policy signalled in any of the internal communications with staff until February 2018.

The claim of the Government is that it came about independently from James Hynd who was tasked with drafting the policy and delivered the first draft applying ONLY

to Former Ministers on November 8th 2017. However the previous day Ms McKinnon had circulated a “routemap” of a policy which also suggested applying to former Ministers. Mr Hynd reacted to that on 8th November saying that “neither of the pathways involving Ministers look right”.

It is stretching credibility to believe that this radical departure from all previous policy in the Scottish (or any other) administration was simultaneously and independently dreamed up by two separate civil servants. This is despite Mr Hynd telling the Committee on August 25th 2020 that he started with “a blank sheet of paper”. In one of the many letters to the Committee from civil servants correcting their evidence, Ms Mackinnon conceded on October 31 2020 that these things were “happening in parallel”. Indeed they were and there was a common factor. That common factor is the Permanent Secretary Leslie Evans whose office was deeply involved in directing the work of both James Hynd on his policy and Ms Mackinnon on her route map.

In addition we know now that Ms Evans went to see the First Minister on November 6th about her information that Sky News were about to run a story concerning Edinburgh airport. I am now in the position to know exactly what this issue was about and the Permanent Secretary’s fears that it was about to break as a major story were groundless. However in the febrile atmosphere of November 2017 a sense of proportion and due process was in short supply.

In reality I had spent 30 years in public life in Scotland and for most of that time was certainly the most investigated person in the country by the press. It is inherently unlikely that misconduct had remained unreported and undiscovered over such a period. Mr Murrell confirmed in his evidence to this Committee that he had never heard of any such complaint against me in my entire time in politics and the First Minister confirmed this on BBC television to Andrew Marr on 7th October 2018.

Regardless, the chronology revealed by the evidence tells us that the Permanent Secretary briefed the First Minister on 6th November 2017 on the proposed story involving Edinburgh Airport. Further, the Permanent Secretary was contacted by Barbara Allison about a separate concern from a former civil servant on November 8th 2017. Having briefed the First Minister on the first of these it might be considered unlikely that she did not brief her on the second. In that context, the notion that a policy instructed immediately afterwards which specifically, and uniquely, extended to cover allegations against former ministers is co-incidental and unrelated is hardly sustainable.

If further confirmation of the basis for the policy were needed, the Committee has evidence of two directly political interventions at this stage.

First, the Chief of Staff to the First Minister drafted a specific amendment on 17 November 2017 which amended the commissioning letter instructing the policy proposing the wording “*but also former Ministers, including from previous administrations regardless of Party*”. This was in an email to Leslie Evans’ Private Secretary. It is impossible to accept that such a radical expansion of the jurisdiction of the Scottish Government to cover not just former ministers of the current administration but also those of previous administrations (many of whom are no

longer even in elected office never mind in Government) was not specifically inserted to allow the complaint against me to be prosecuted.

The second political intervention was when the First Minister and the Permanent Secretary reached agreement, perhaps at their meeting on November 29th but certainly before December 5th 2017, that the policy should be recast in order that FM should be taken out of the policy proper and only consulted or even informed after the process was complete. This was a fundamental change in the policy.

The timing of this is significant. When the Permanent Secretary agreed with the First Minister that she should take over as key decision maker in terms of this new policy she was already aware of the developing complaints against me. Therefore she put herself at the centre of a policy in the full knowledge that I would likely be the first (and perhaps only given the subsequent declaration of illegality) subject of its implementation. Doing so from a position of already being tainted by bias is an extraordinary decision.

Despite her protestations to the contrary the Permanent Secretary was chiefly responsible for the pursuit of an unlawful policy which has cost the Scottish people millions of pounds.

In her letter of 21st June 2018 to Levy and McRae she describes the policy as “established by me”. She claimed ownership of it then, but not now. When asked at the Committee she said “there seems to have come into being a tradition of calling it my procedure. It is not; it is a Scottish Government procedure and one that has been agreed by Cabinet..” In fact, this procedure was never even seen by Cabinet or Parliament.

It was established by Ms Evans.

In her presentations before the Committee, the Permanent Secretary still seems oblivious to the scale of the disaster she has inflicted on all concerned or the enormity of the misjudgements she has made.

The view that she should have resigned on 8th January 2019, the day that Lord Pentland’s interlocutor judged the policy Ms Evans established and the actions taken as “unlawful”, “unfair” and “tainted by apparent bias” is widely shared not least by Cabinet Ministers. The damage she has done to the reputation of the civil service is very significant. In my view, any person conscious of the responsibility of holding high office would have resigned long ago. Instead Ms Evans’ contract was extended.

3) The role of the Investigating Officer

As the Committee has already discovered the “prior contact” of the Investigating Officer with the complainants was not “welfare”, as was indicated to Parliament, but was specifically contact about emerging complaints, weeks before the policy under which they were to be pursued was even approved.

The Committee has already established that complainants were informed that Ms McKinnon would be appointed the Investigating Officer in early December 2017,

long before complaints were actually made. The Committee has further established that the draft policy was even shared with one complainant for her comment and that Ms Mackinnon was in contact with both complainants to discuss the basis on which future complaints might be submitted under the policy.

Documentation which finally emerged at the Commission and Diligence ordered by the Court of Session at the end of December 2018 demonstrated that the Government pleadings were false in terms of the nature of this contact. This has been admitted by the Lord Advocate in his evidence to the Inquiry on 8th September 2020. Again, such conduct appears to carry no sanction. These are serious matters, especially so for a Government making statements to a public court.

For example the “OneNote” from Judith McKinnon dated January 9th 2018, and revealed as a result of the Commission process, speaks to “changing” the position of a reluctant complainant, the sharing of complaints, and of it “being better to get the policy finalised and approved before formal complaint comes in” and of not telling the FFM until we are “ready”. It is this information that was completely at odds with the government pleadings in the Judicial Review and indeed stands in stark contrast with the oral evidence presented to the Committee.

These practices are not just wrong, they are an affront to the principles which underpin workplace and human resources policy across the country. The Committee has made reference to ACAS guidance at various stages of the Inquiry. How such conduct could even be contemplated by an individual employed at significant public expense and with a string of HR qualifications remains to be explained.

Watching the evidence before the Committee, it is apparent to me that even after having conduct declared illegal in the Court of Session, those at fault in the civil service still cannot accept the fact that they did something seriously wrong. In reality behaving unlawfully is as serious as it gets for any public servant.

The repeated claim that the terminology somehow changed for the first to the final drafts of the procedure thus causing confusion for those implementing the policy is not just irrelevant (since it is only the final version that matters) it is also untrue.

In fact one of the very few unchanged provisions in the policy as it went through numerous drafts and redrafts between November 8th to the final iteration on December 20 2017 was that the Senior Officer/ Investigating Officer should have “*no prior involvement*”.

Nor is it credible that the claim that the need for impartiality of an investigating officer or equivalent was misunderstood. On the contrary, both James Hynd (10th November 2017) offering 3 names at “arms length” and Judith McKinnon (7th November 2017) seeking to engage an “independent party to investigate” recognised this at an early stage.

Whether that person came from the broader civil service or outside it is secondary. Perceived freedom from bias is an easily understood concept which is well established in common law and in workplace policy. The appointment of Judith McKinnon in this light was always wrong and is incomprehensible particularly in the

face of the fact that she has confirmed before this Committee that the nature of her prior contact with the complainants was well known and indeed sanctioned among her colleagues and line managers.

When the fact of it was discovered by the Government's external Counsel (and even after the duty of candour was explained to government lawyers by them on November 2nd and then by the court on November 6th, both 2018) the attempt was still made in pleadings to present it as "welfare" contact.

The documents which demonstrated this to be false had to be extracted from the Government by a Commission and Diligence procedure under the authority of the court as granted by Lord Pentland. The documents then produced under that procedure emerged despite the Government being willing to certify to the Court that these documents simply did not exist. That conduct is outrageous for a Government. At the Commission itself, Senior Counsel for the Government (himself blameless for the debacle) felt compelled to apologise to the court repeatedly as new batches of documents emerged.

It is highly probable that had this documentation not been concealed from the court (and from the Governments own counsel) the falsity of the Government's pleadings would have been avoided. The fact that even after the Government case collapsed, misinformation then appeared in both a press release from the Permanent Secretary and the First Minister's statement to Parliament of 8th January 2019 speaks to an organisation unable and unwilling to admit the truth even after a catastrophic defeat, the terms of which they had conceded to the Court of Session.

The interests of the complainants

I also want to make a submission about the claims by the Scottish Government to have promoted the interests of the women who raised complaints. That is, on the evidence before the Committee, clearly false.

The Permanent Secretary claimed to the Committee that the interests of the complainants were paramount in the Government thinking. This is very far from the case.

The complainants were brought into the process by conduct "bordering on encouragement" as it was submitted by my Senior Counsel to Lord Pentland in the Judicial Review

The complainants were assured that they would be in control of the process and that any police involvement would be their choice.

This assurance has been stipulated from the earliest origins of the policy (eg Nicola Richards' email to Permanent Secretary of 23 November 2017) and remained in place until the Permanent Secretary countermanded it in her instruction to Ms Richards to send her decision report to the Crown Agent in August 2018, a move taken against the direct wishes of the complainants.

They were offered the option of making “anonymous complaints” for which there is no provision in the policy. However, when it came to actually protecting the anonymity of the complainants through a court order in the Judicial Review in October 2018 the Government was not even represented by Counsel in court. It was, in fact, me who instructed Counsel to seek that anonymity on the part of the women concerned.

The investigation was carried out against the advice of the police who pointed out that the Scottish Government were not competent to conduct the investigation. This has been made available to the Committee in the police evidence from the Chief Constable.

The reports to the Crown Office (instead of the police) were made against the express wishes of both complainants and in direct conflict with the terms of the policy at paragraph 19.

The leak of the story to the Daily Record on August 23 2018 was made with no consideration of the impact on the complainants, impact which the Permanent Secretary described in her evidence as causing considerable distress to all concerned. That, of course, was in itself in direct contravention of the confidentiality of the process promised to the complainants, and also to me.

However, it had been the Permanent Secretary’s own intention, despite police advice to the contrary, to issue a press statement confirming the fact of the complaints on Thursday 23 August 2018.

This Committee’s remit is to examine the actions of those in authority. Accordingly the conduct of the Permanent Secretary and the civil servants and special advisers involved is important. To claim, as the Scottish Government has done, that the wishes and welfare of those who had made complaints were central to the decision making is demonstrably untrue.

The leak to the Daily Record

In my view, the circumstances of the leak of the details of the complaints to the Daily Record on 23rd/24th August 2018 should be thoroughly examined. It is highly likely that the leak came from within the Scottish Government and, in all likelihood, from one of the Special Advisers to the First Minister. The background facts may assist

The Permanent Secretary instructed her staff to send her Decision Report to the Crown Agent on or about August 21st 2018

The Crown Agent, according to the police informed them of the Government’s intention to release a story of the fact of the complaints to the press and the Chief Constable and another senior officer advised against it and refused to accept a copy of the report. We know, therefore, that the desire of the Scottish Government to get these matters into the public domain is fully supported by evidence.

Despite this police advice, two days later the Government informed my legal team they intended to release a statement at 5pm on Thursday 23 August 2018. We advised

that we would interdict the statement pending our Judicial Review petition and the statement was withdrawn. On the strength of that undertaking, we didn't require to seek interdict.

We were then informed at around 4pm that the Daily Record newspaper had phoned the Scottish Government press office with knowledge of the story but had no confirmation. At 8pm, the Record phoned and then emailed at 8.16pm claiming confirmation had now been given and broke the story at 10pm. The second story they printed on Saturday 23rd August 2018 contained specific details from the complaints and demonstrates that they also had access to the Permanent Secretary's decision report or an extract from it.

This leak was (according to the ICO) prima facie criminal, deeply damaging to my interests and those of the complainants and a direct contravention of the assurances of confidentiality given to all. After I formally complained to the ICO, the conclusion of the ICO reviewer assessing these facts was that she was "sympathetic to the thesis that the leak came from a Government employee". The only reason no further action could be taken was because the specific individual could not be identified without police investigation. I intend to return to that police complaint when this Committee has concluded its review. I should say that I am confident that I know the identity of those involved in the leak.

John Somers, The Principal Private Secretary to the First Minister confirmed that her office had received a copy of the Permanent Secretary's report in evidence on 1st December 2020. However, that evidence was then corrected to say that it had not been received. However, that is difficult to reconcile with the ICO review report (paragraph 4.8) which list the PPS, and therefore The Private Office as one of the stakeholders "who has access to the internal misconduct investigation report".

It is unlikely that a leak to the Daily Record came from mainstream civil service. The overwhelming likelihood is that it came from a Special Adviser to the First Minister who had access to the report or an extract from it which was the basis of the Daily Record story of August 25th 2018.

The question of 'conspiracy'

It has been a matter of considerable public interest whether there was 'a conspiracy'. I have never adopted the term but note that the Cambridge English Dictionary defines it as 'the activity of secretly planning with other people to do something bad or illegal.' I leave to others the question of what is, or is not, a conspiracy but am very clear in my position that the evidence supports a deliberate, prolonged, malicious and concerted effort amongst a range of individuals within the Scottish Government and the SNP to damage my reputation, even to the extent of having me imprisoned.

That includes, for the avoidance of doubt, Peter Murrell (Chief Executive), Ian McCann (Compliance officer) and Sue Ruddick (Chief Operating Officer) of the SNP together with Liz Lloyd, the First Minister's Chief of Staff. There are others who, for legal reasons, I am not allowed to name.

The most obvious and compelling evidence of such conduct is contained within the material crown office refuses to release. That decision is frankly disgraceful. Refusing to allow the Committee to see that material both denies me the opportunity to put the full truth before the Committee and the public, and makes it impossible for the Committee to complete its task on a full sight of the relevant material. The only beneficiaries of that decision to withhold evidence are those involved in conduct designed to damage (and indeed imprison) me.

From a very early stage in the Judicial Review the Government realised that they were at risk of losing. By October they were told by external counsel that on the balance of probability they would likely lose. This is the legal advice they have hidden from the Committee in defiance of two parliamentary votes.

As the Committee has heard in evidence there were 17 meetings of the Committee formed to monitor and plan the Scottish Government defence of the Judicial Review between August 2018 and January 2019. Paul Cackette in his evidence said that there were daily meetings while Ms Mackinnon suggested three times a week. Despite this information being offered at the evidence session of 1st December no information has been received by the Committee of any of these meetings. I believe there have to be such emails which show the Lord Advocate's advice on the possibilities of sisting (pausing) the Judicial Review behind the criminal case. The advantage of doing so in a context where the Judicial Review was likely to be lost was clear. Any adverse comment or publicity about the illegality of the Scottish Government actions would be swept away in the publicity of my arrest and subsequent criminal proceedings.

It became common knowledge in government, special advisers and the SNP that the Judicial Review was in trouble for the Government and the hope was that police action would mean that it never came to court, that the JR would be overtaken by the criminal investigation.

In evidence Ms Allison on 15th September 2020 specifically denied that the Scottish Government had any role in contacting potential witnesses or former civil servants **after** the police investigation had started on August 23rd 2018. This is not true.

I enclose at appendix 2 a copy of an unsolicited email sent by Ms Allison herself to an ex Scottish Government employee on August 27th who then received a further unsolicited email from Ms Ruddick of the SNP the following day (appendix 3) The individual concerned, who provided a defence statement, had never even been a member of the SNP. I believe her contact details were given to Ms Allison by a Government Special Adviser.

Another Special Adviser was in contact with the majority of people who thereafter became complainants in the criminal trial, shortly after the story being leaked to the Daily Record on August 23rd 2018.

In his evidence session of 8 February 2021 Mr Murrell spoke of the letter sent by the FM round all SNP members on 27th August 2018. I pause briefly to note that despite the email reaching 100,000 members, not one complaint about me was received in response. However, what he did not disclose was the email round SNP staff and ex staff members sent by his Chief Operating Officer from late August 2018 (enclosed as

appendix 3). This email was sent selectively. Some staff members were targeted and sent it. Others were not.

The recruitment of names to receive this email provoked opposition. Appendix 4 shows the refusal of a senior member of the SNP administrative team at Westminster to supply names to HQ. The staff member expressed the view that she was not prepared to take part in an obvious “witch-hunt” which would be incompatible with her professional responsibilities as a lawyer. At Appendix 5 I enclose the terms of an affidavit of the staff member who has agreed to have it shared with the Committee. What is clear is that even at the time of the initial trawl for potentially supportive individuals, there was profound disquiet about the ethics and legality of the approach.

In addition to advocating the “pressurising” of the police (those text messages are public and before the Committee), Mr Murrell deployed his senior staff to recruit and persuade staff and ex staff members to submit police complaints. This activity was being co-ordinated with special advisers and was occurring **after** the police investigation had started and **after** I ceased to be a member of the SNP. From the description of the material released to the Committee under section 23 it is clear that any supporting evidence establishing this point was **not** shared with the Committee by the crown office. Why?

It was clear that defeat in the Judicial Review would have severe consequences. Cabinet Ministers thought it should lead to the resignation of the Permanent Secretary. The Special Adviser most associated with the policy believed that her job was in jeopardy and accordingly sought to change press releases in light of that. The First Minister’s team felt threatened by the process as did the civil service. The documentary evidence shows that special advisers were using civil servants and working with SNP officials in a fishing expedition to recruit potential complainants. This activity was taking place from late August 2018 to January 2019, **after** the police investigation had started.

The Judicial Review cannot be viewed in isolation. The effect of it, and its likely result of a defeat for the Scottish Government led to the need to escalate these matters to the police, even if that meant doing so entirely against the wishes of the two women who had raised concerns. The Permanent Secretary’s “we’ve lost the battle but not the war” message of January 8th 2019 to Ms Allison whilst on holiday in the Maldives is not (as she tried to claim) a general appeal for equality but rather shows her knowledge that there were further proceedings to come and her confidence that the criminal procedure would render such a loss in the Court of Session irrelevant. I note in passing, that such language is, in any event, totally incompatible with the role of a professional civil servant.

The Role of the Crown Office

The Crown Office has intervened three times to deny this Committee information for which it has asked.

This has been done by reliance on legislation which was never designed to obstruct the work of a Parliamentary Committee acting in the public interest and investigating

the actions of the Scottish Government. I know this to be true because I was First Minister when the legislation was passed in 2010. The true purpose of s. 162 of the Criminal Justice and Licensing (Scotland) Act 2010 was to prevent witness statements falling into the hands of the accused and being used to intimidate or exert retribution on witnesses and further because of instances of evidence ending up held or disposed of in an insecure fashion. The basis of the legislation was Lord Coulsfield's Report (2007) and the intent was to clarify the legal requirements of disclosure and to establish practical arrangements to prevent the misuse of disclosure. Thus section 162 (and 163) had nothing whatsoever to do with preventing relevant evidence being presented to a parliamentary Committee and its misinterpretation as such by the Crown Office is a profoundly disquieting development which strikes at the heart of the parliamentary system of accountability.

On 17th September 2020 the Crown Office said that our proposal to the Committee to identify the existence of documents which had not been provided by the Government but which had been disclosed to me in the criminal case would be covered by Section 163 of the 2010 Act that *"any person who knowingly uses or discloses information in contravention of section 162 commits an offence"*

Just in case we did not get the message he repeated the same point on 3 November 2020. On 17th December 2020 the Crown's representative went further to block information specifically requested by the Committee *"For you or your client to accede to the request of the clerk to the Committee would require both the use and disclosure of said information. As such what is proposed would amount to a clear breach of section 162 which, by reference to section 163 would amount to a criminal offence"*.

He then appears to suggest that the Committee itself would be in danger of prosecution if we had acceded to the clerk's request.

"Further, any person who received such information from you or your client would also be in breach of section 162, and consequently section 163, if they use or disclose that information. In these circumstances I do not consider what is proposed is acceptable"

This is a letter from an unelected official citing legislation passed by this Parliament for quite different reasons and using it to deny information to a Committee of elected parliamentarians. Some of the information we intended to provide included Government documents which should have been provided to the Committee in the first place. This position is extraordinary and totally unacceptable.

Given this attitude to disclosure by the Scottish Government and Crown Office, it becomes highly surprising that when this Committee exerted section 23 powers to require documents it was given irrelevant information for which it had not asked and could never be published while relevant information remained undisclosed. It is also clear that Government SPADS were briefing the media on this information before members had even seen it. This is not the behaviour of a prosecution department independent of government influence.

The Lord Advocate said in his evidence on 17th November 2020 that he thought the Committee has seen this correspondence. As far as I am aware this is not the case. Nevertheless, I am happy now to provide that correspondence if the Committee so wishes. In his latest letter of 8th February the Lord Advocate pointedly fails to answer the specific question from the Committee Convener of 3rd February seeking confirmation that all Government records had been provided.

As was glaringly clear from his evidence and his inability to address the most basic of questions, his denial of provision of the legal advice of external counsel, his costly delay in settling the case, his refusal to confirm what the Committee eventually found out that both Counsel threatened to resign from the case, the Lord Advocate is deeply compromised between his twin roles as head of prosecutions and chief government legal adviser.

However the matter goes further yet. The Permanent Secretary has confirmed in evidence to the Committee that the referral to the crown office was contrary to the express wishes of the complainants. In spite of his protestations that he recused himself from anything to do with the criminal investigation. I believe that the Committee should ask the Lord Advocate directly whether he instructed two unwilling complainants to make police statements.

Secondly the Committee has heard of the highly unusual route via the Crown Agent that the Permanent Secretary ordered her staff, against the wishes of the complainants, to present her report to the Chief Constable. Crown Agent David Harvie's line manager at that time was Leslie Evans, the Permanent Secretary.

The Crown Office under current leadership is a department simply not fit for purpose.

Summary

The procedure was devised when the Permanent Secretary, as decision maker, had knowledge of emerging complaints against me. From the outset the Permanent Secretary was compromised and should not have taken on that role.

The procedure was unsound not just in its implementation but in its genesis. It was devised "at pace", probably with the purpose of progressing complaints against me and certainly without proper care or regard to its legality or effective consultation with the unions.

The documents disclosed to the Committee demonstrate further serious abuses of process by both the Investigating Officer and the Permanent Secretary.

In a further breach of the duty of candour the Government owed to the Court, those documents were not made available at Judicial Review.

The Investigating Officer had not just "prior involvement", but subsequently regular contact with the complainants of a nature and level which was self-evidently inconsistent with that of an impartial official.

The Permanent Secretary who in her own words “established” the procedure met or spoke to both complainants on multiple occasions (including in mid process) and failed to disclose this in either the civil or criminal case.

The procedure was conceptually flawed and would have collapsed on principle even if it had been properly implemented. It is a retrospective, hybrid policy, which claims jurisdiction over private citizens who might have no connection whatsoever with the Scottish Government and shows complete confusion between the legitimate roles of Government and political parties.

It is demonstrably unfair. It transgresses the most basic principles of natural justice in not even allowing the person complained about the right to prepare their own defence. In addition, the Permanent Secretary denied access to civil servants, witness statements or even my diaries until they were pursued in a subject access request.

The Government was aware at a very early stage that they were at significant risk of defeat in the Judicial Review, and by October 2018 were advised that, on the balance of probabilities, they were likely to lose. Nevertheless they kept the clock running and the public ended up paying over £600,000 as a result.

This information on likely defeat in the JR was communicated to key decision makers – the Permanent Secretary, First Minister, the Lord Advocate, the Chief of Staff- in meetings with external Counsel through October and November 2018.

The interests of complainants were disregarded by the Government in refusing mediation initially without consultation, being given no consultation whatsoever on the possibility of arbitration, being given false assurances on the Government accepting their clear view against reporting matters to the police and then sending the report to the Crown Office against their express wishes. The Government didn’t even instruct counsel to attend court for the procedural hearing to address my application to guarantee the anonymity of complainants.

The Crown Office has blocked key information coming to this Inquiry by wilfully misinterpreting legislation designed for other purposes.

The Lord Advocate is manifestly conflicted in his roles as both Government legal adviser and prosecutor.

The advice of the Lord Advocate at one stage included, for example, the option of sisting (pausing) the Judicial Review to allow a criminal case to overtake the JR proceedings. A consequence of this happening would have been to protect the government from the catastrophic damage arising from losing the judicial review and a finding of unlawful conduct.

This prospect provided an incentive and imperative for the recruiting and encouragement of police complaints from others.

This was done by the closest advisers to the First Minister and senior SNP officials actively involving civil servants AFTER the police investigation had started.

The Permanent Secretary ordered her decision report to be sent to the Crown Agent, David Harvie, against the terms of the policy and the wishes of the complainants. At that time I understand that she was his line manager.

Against police advice the Permanent Secretary decided to press release the fact of complaints on Thursday 21st August 2018. That publication was only prevented by threat of legal action by my solicitors.

A matter of hours later, there was what the ICO assessed as a prima facie criminal leak of information including details of complaints to the Daily Record, in breach of my rights of confidentiality, and those of the complainants. Such action was also contrary to the express assurances of confidentiality offered to all parties and central to such workplace issues.

The Judicial Review was only conceded when both Counsel threatened to resign from the case

The policy and actions of the Permanent Secretary and the Government were accepted as and then judged as “unlawful”, “procedurally unfair” and “tainted by apparent bias”.

The real cost to the Scottish people runs into many millions of pounds and yet no-one in this entire process has uttered the simple words which are necessary on occasions to renew and refresh democratic institutions - “I Resign”.

The Committee now has the opportunity to address that position.

Rt. Hon. Alex Salmond
17th February 2021

Appendix 1

5.	23/11/09	Extract from Partnership Board minutes
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SCOTTISH GOVERNMENT – PARTNERSHIP BOARD, 23 NOVEMBER 2009

NOTE OF MEETING

Agenda item 6: Fairness at Work (F@W)

[REDACTED] referred to a history of alleged bad behaviour by Ministers in the former Scottish Office/Scottish Executive and now Scottish Government. There had been recent communications about a proposed procedure under the new SG Main Fairness at Work (F@W) policy for handling complaints about alleged treatment of staff by Scottish Ministers. [R] confirmed the unions consider the first outline proposals provided by Human Resources (HR) as unacceptable. [R] explained that whilst the unions are aware of the sensitivity over this issue, they consider it inappropriate for Ministers to investigate Ministers and suggested that there is a role for the employer as there is in cases not involving Ministers. During the subsequent discussion it was noted:

- HR will consider a possible role for one or more official in the new procedure.
- The unions receive phone calls from their members about problems in Ministerial offices but no-one has submitted a formal report. The unions reported this is frustrating for them. Also, their members perceive the unions as not doing anything about the problem.
- The unions asked for a timeline in drawing up the new procedure and that it includes not only an informal stage but also a formal stage for investigation and decisions on cases that remain unresolved after the first informal stage.
- Ministers need to be comfortable with what is proposed and the end result sought from the process is that any unacceptable behaviour changes.
- If the CSGU does not receive HR's new proposals by end January 2010, the unions will approach ACAS for a resolution. If that occurs, control over the matter passes to an outside party which is potentially more difficult for Ministers. Also, it is then likely that the press will become aware of the issue and take an active interest in it.
- [R] had asked, and is waiting for a response from, Whitehall about their process for dealing with allegations by staff against Ministers.

Action:

- *HR Policy to consider and send redrafted proposals to CSGU by end January 2010.*
- [R] *to share any information she obtains from Whitehall colleagues.*

From: Alex Salmond [Redacted]
Sent: 15 February 2021 03:07
To: David McKie [Redacted]; Duncan Hamilton [Redacted]
Subject: APPENDIX 2

From: [Redacted]
Date: August 27, 2018 at 7:46:13 AM GMT-5
To: REDACTED
Cc: [Redacted]
Subject: Personal

Hello (REDACTED)

I am not sure if you will remember me. I was Director of People/HR at the time you worked with Scottish Government. I hope that this finds you well.

You may be aware that there has been considerable media coverage here over the past few days in connection with the former First Minister. We are aware that this coverage has been quite upsetting for some people and we are keen to support in any way we can.

Your name and email address has been provided by a current employee at the Scottish Government, noting that you were someone who worked with Scottish Government previously and they were keen to ensure that you were offered any support you may require.

I would be very happy to have a chat by phone or by email and put you in touch with the various support channels if that would be helpful.

Kind regards

Barbara

BARBARA ALLISON,
Director, Communications, Ministerial Support and Facilities
Scottish Government.
Tel: [Redacted]



Sent from my iPad

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From: Susan Ruddick [Redacted]
To: Susan Ruddick [Redacted]
Subject: SNP employees and our duty of care to you
Date: Tue, 28 Aug 2018 18:57

Dear Colleague,

The past few days have seen new stories concerning allegations of sexual misconduct.

I appreciate that seeing such reports can be upsetting and distressing.

Within SNP Headquarters, I am responsible for the taking forward the delivery of measures to protect the health, safety and wellbeing of employees and other people who might be affected by Party activity.

As such, I wanted to write to let you know that this support is also available to you.

We take our responsibility, whether you are current staff or a former employee, extremely seriously.

Even though you may not have worked directly at SNP Headquarters, I am here to help and can provide advice, counselling and, if needed, access to mental health support services.

If you wish to talk to me about any of these matters, please contact me at: [Redacted] or [Redacted].

The wellbeing service I manage is confidential and independent of any official reporting mechanisms.

In terms of the communication channels for reporting concerns, the SNP is firm in its belief that allegations of bullying and harassment must be taken seriously and that anyone who considers that they have been subject to such behaviour must feel able to come forward.

Our procedures are aimed at ensuring anyone can raise concerns directly and in confidence, including the option of choosing to do so to someone completely outside the immediate Party structure. The external route is [Redacted], a solicitor with Kennedys Scotland. Her contact details are: [Redacted] and direct dial [Redacted].

Alternatively, individuals can report any matter on a confidential basis, either formally or informally, using the internal route. The point of contact at SNP Headquarters is Ian McCann, who may be contacted at [Redacted] and direct dial [Redacted].

With thanks

Sue

Susan Ruddick

Chief Operating Officer

Scottish National Party

From: HARVEY, Anne

Sent: 28 August 2018 16:54:32

To: [REDACTED]

Subject: RE: WIM Staff Contacts

Appendix 4

So it's part of the witch hunt, then. I'd rather not be associated with something that is so clearly in breach of human rights legislation and natural justice, as I'd prefer not to find myself having to answer to the Law Society and jeopardise my membership. I'm also not sure I can answer this question without breaching Data Protection Protocols.

We need some clarification on what constitutes an employee [REDACTED] did some work between 2015 election and summer recess. I'm not sure he was an employee, more likely a contractor, as probably was [REDACTED]. If he was, then so was [REDACTED] (who worked from [REDACTED] and possibly [REDACTED]).

I am also unsure what was the employment status of [REDACTED] who carried out the recruitment admin for [REDACTED].

Anne

Affidavit of Anne Harvey, c/o Levy & McRae Solicitors, 70 Wellington Street, Glasgow

At Cherwell, Oxfordshire, on the Fifteenth day of February, Two Thousand and Twenty One, in the presence of DAVID ROBERT McKIE, Solicitor (who conducted this Affidavit by use of video technology from a remote location – in accordance with Schedule 4, Part VII of the Coronavirus (Scotland)(2) Act 2020) COMPEARED Anne Harvey, who being solemnly sworn, depones as follows:

1. I am 61 years of age and I work as the Principal Assistant to the Chief Whip, SNP Westminster Group

2.

3.

4. My awareness that one or more members of SNP Headquarters staff was engaged in a cynical attempt to construct a disingenuous and totally unwarranted case against Mr Salmond crystallised on 28 August 2018, when I received an email from the Westminster SNP Leadership office asking me to peruse and add to a list of staff who had worked at Westminster between 2015 and 2017. I enquired as to the purpose and was told that "HQ asked for a list". The content of conversations, and the demeanour of SNP HQ staff I had encountered at the Western House Hotel, Ayr on Friday 24 August led me to characterise this request in my response to that email as being 'part of the witch hunt'. I was therefore appalled when later that evening I received an all-staff email from Sue Ruddick headed *SNP employees and our duty of care to you*, which promoted a 'wellbeing service' managed by Mrs Ruddick which was 'confidential and independent of any official reporting mechanisms', as it was clear to me that such a service was unlikely to be characterised by fairness or impartiality, but was – in effect – cover for a fishing expedition, where the destination had already been clearly mapped out.

[Redacted]

..Deponent

[Redacted]

lic

5.

[Redacted]

[Redacted]

I now view those elipses as somewhat portentous, and believe that the roots of what I confirmed to the police in my statement in August 2019 I had come to view as a conspiracy were being planted at that time. I had already raised the issue of the troubling recruitment, even suborning, of witnesses at the SNP Westminster Group meeting on Tuesday 8 January 2019.

6.

[Redacted]

7.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

.....Deponent

[Redacted]

Public

8. I am by background a solicitor admitted in Scotland, and although non-practising, remain on the roll of members of the Law Society of Scotland. I offer this statement because I take my duties as an officer of the court extremely seriously, [Redacted]
[Redacted]

ALL OF WHICH IS TRUE AS THE DEPONENT SHALL ANSWER TO GOD

Declared by way of video conference

This: Fifteenth Day of February 2021

At: Cherwell

before me David Robert McKie, via Zoom video conference which I attended from my home address.

[Redacted]

deponent

[Redacted]

otary Public

Media statement issued by the Deponent on 8th February:

Statement by Anne Harvey Principal Assistant to the Chief Whip, SNP Westminster Group

I am the Principal Assistant to the Chief Whip with the Scottish National Party, based at Westminster.

I am by background a solicitor admitted in Scotland, and remain on the roll of members of the Law Society of Scotland. I have been actively involved with the SNP since February 1974.



[Redacted]

[Redacted]

More generally, there have been discussion again today about whether there was a conspiracy against Mr Salmond. I have believed for some time that there was what I described in writing on 28 August 2018 as a 'witch-hunt' against him after receiving what I considered to be an improper request from SNP HQ seeking to damage Mr Salmond.

I have offered to provide a detailed affidavit along with the contents of this statement to Mr Salmond's lawyers.

Anne Harvey 8 February 2021

[Redacted]

Deponent

[Redacted]

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