

## **Written Submission from Nicola Sturgeon**

I refer to your letter of 7 July. Please treat this covering reply and attached annexes as my response to the questions posed in your letter.

With regard to paragraph 5 of Annex B of your letter, noting that “the Committee and all participants must comply with the court order made by the Lord Justice Clerk, Lady Dorrian, on 10 March 2020”, I have excluded from this letter any information that, as far as I am aware, might disclose the identity of any of the complainers in HMA v AEA Salmond.

However, I do not know if my submission would pose a risk in ways I am not aware of, or if other evidence submitted would risk jigsaw identification.

Therefore, prior to publication of all or part of this submission, I would like assurance on the steps the Committee has taken to ensure that nothing in it, either on its own or taken together with anyone else’s evidence, would risk identification. The Committee previously asked me to retain all information relevant to the Inquiry. I enclose at Annex B a transcript of WhatsApp messages between myself and Alex Salmond. This is the only information I hold relevant to the Committee’s Inquiry.

I have no objection, as regards my own interests, to the publication of these messages in full.

However, I seek an assurance from the Committee that any issues relating to Alex Salmond’s data rights or legal privilege will be properly considered before publication, including whether his consent is required.

Subject to the above, I will be happy to discuss any aspect of my response with the Committee in oral session.

I have structured my response in line with your paragraph headings. Please note that any and all involvement I had in my capacity as First Minister in the Complaints Policy Development, Complaints Handling Procedure and Judicial Review - and any relevant documentation in respect thereof - will be included in the Scottish Government’s submissions to the Committee.

The information I provide in this response relates to my actions in a party/personal capacity. This includes my decision to advise the Permanent Secretary of information I acquired in my party/ personal capacity, where I considered that the interests of the Scottish Government required it. I refer in this submission to the letter I wrote to the Permanent Secretary on 6 June 2018. A copy of this should be requested from the Scottish Government.

### **COMPLAINTS POLICY DEVELOPMENT**

As a personal reflection and for context, the development of the Scottish Government’s “Handling of harassment complaints involving current or former Ministers” (hereinafter referred to as “the Procedure”) took place against the backdrop of the #MeToo

movement, which started in late 2017 in the wake of allegations extending back over several years about certain high profile individuals.

The concerns being expressed globally at that time were that too many organisations did not have procedures in place that allowed allegations of sexual harassment to be raised or properly investigated; that women's voices were often not heard or listened to; that organisations too often closed ranks in defence of men accused of inappropriate behaviour; and that it could be particularly difficult for 'historic' allegations to be raised.

The media had also reported concerns about the prevailing culture in Holyrood.

The Scottish Government was just one of many organisations across the globe confronted with these questions at that time, and considering its procedures and culture in light of them.

You will also recall that a Scottish Government minister resigned in early November 2017 over concerns about sexually inappropriate conduct.

As First Minister, I wanted to ensure that the Scottish Government had robust procedures in place to allow any concerns or complaints by those in its employment to be properly and fairly considered, without fear or favour and regardless of the seniority or political affiliation of any individuals who might be the subject of such concerns or complaints.

My role as First Minister in the development of the Procedure will be set out in the Scottish Government's submission to the Committee.

## **COMPLAINTS HANDLING PROCEDURE**

Any involvement in my role as First Minister will be included in the Scottish Government submission on the handling of the complaints. I provide further information in a personal/party capacity in Annex A.

## **JUDICIAL REVIEW**

The detail of my involvement in decisions associated with the Judicial Review will be set out in the Scottish Government's submission to the Committee.

## **MINISTERIAL CODE**

The Committee is aware that I have made a self referral to the independent panel of advisers on the Ministerial Code.

However, I address the requests in this section in Annex A to this letter.

Annex B includes communications in the form of WhatsApp messages between me and Alex Salmond.

My letter to the Permanent Secretary dated 6 June 2018 should be requested from the Scottish Government.

## **PARTY POLITICAL MATTERS**

I had no communication with the SNP relevant to the subject matter of the Committee's inquiry, other than approving the party's public comments after the matter became public in August 2018.

My husband was obviously aware of Mr Salmond's presence in our home on 2 April and 14 July 2018, but he was not present at the meetings and I did not share the detail with him.

As I outline in Annex A, when I agreed to meet with Alex Salmond on 2 April 2018, I believed that what he was about to tell me may require a public response from the SNP. Indeed, I suspected that he may be about to resign from the SNP.

In the event, it was clear to me at the 2 April meeting that his approach to handling the matter was not likely to result in it becoming public at that stage.

Accordingly, there was nothing for me to alert the SNP to, and it was not appropriate for me to disclose the fact or detail of the complaints and investigation under the Procedure.

In relation to ensuring that there is a clear distinction between my role as First Minister and my role in the SNP, I have regard to the terms of both the MSP and Ministerial Codes of Conduct.

My Special Advisers abide by the terms of the Special Advisers' Code of Conduct and the Civil Service Code.

In relation to the question about Scottish Government communication and records, this is covered by Scottish Government procedures on the recording and retention of information.

The SNP communicates with its post holders in the normal ways - including meetings, emails and phone calls.

The safeguard to ensure this is distinct from government communications are the relevant Codes that MSPs, Ministers and Special Advisers are bound by.

To be clear, members of the public often email my SNP or MSP accounts about government business and I forward these to my ministerial private office.

On any other occasions when I email my ministerial private office or special advisers from my personal email - eg with diary queries or information requests - these will be to a Scottish Government email account and retained in line with standard procedures.

And all government business, no matter the platform/medium it is conducted on/through, is subject to Freedom of Information legislation.

## **CULTURE**

I had no general concerns at the time about Scottish Government culture from 2008-14, and certainly not about sexual harassment. However, government is a high pressure environment. Mr Salmond could be challenging to work for and, rightly, he demanded high standards. However, I was present on some occasions when tense situations had to be defused.

Certain matters that I have become aware of through the events of the last couple of years raise - retrospectively - some other concerns.

I have no general concerns about the culture of the Scottish Government now. However, I am not complacent about the potential for instances of inappropriate behaviour within a large organisation. That is why it is important to have clear and robust procedures in place which, subject to any views of this Committee on the Procedure, I believe to be the case.

I have no comment to make on the adequacy of the Civil Service Code. I give some personal reflection on the Ministerial Code in Annex A - however, the adequacy of it is a matter the independent panel will be able to consider.

## **CONCLUSION**

In conclusion, I would like to add the following personal reflections.

The Committee will be considering the Scottish Government's handling of complaints raised under the Procedure. That is, of course, legitimate.

However, the Scottish Government would have had nothing to 'handle' had complaints not been raised about Alex Salmond's conduct.

It was the concerns raised about his conduct - an aspect of which, by his own admission, he apologised for - that gave rise to this matter.

In my view, when these complaints were raised, the Scottish Government had a duty to investigate them and the fact that a mistake was made in the conduct of the investigation does not change that fact. To have swept them under the carpet because of who they related to would have been wrong.

As far as my personal involvement is concerned, over the last couple of years, I have faced accusations of 'conspiring' against Alex Salmond and also of 'colluding' with him.

I reject in the strongest possible terms both of these suggestions.

Indeed it seems to me that what some want to present as 'conspiracy' is in actual fact my refusal to 'collude' or 'cover up'.

In what was a very difficult situation - personally, politically and professionally - I tried to do the right thing. Whether I always got it absolutely right is something I still reflect on, and the Committee will consider, but I sought all along to act in good faith and to strike the right balance of judgment given the difficult issues I was confronted with.

In the light of the #MeToo movement, I sought to ensure that the Scottish Government developed a process that allowed allegations of sexual harassment - including allegations of a historic nature - to be fully and fairly considered.

I did not do this *because* I had a concern (as set out in Annex A) that allegations about my predecessor could materialise. But nor did I, in any way, allow such concern to lead me to limit the scope of the procedure.

I agreed to meet a friend of 30 years when I was told he was in distress and wanted to talk to me about a serious matter.

And it is certainly the case that I was anxious to prepare my Party as far as possible for an issue that, at different stages, I thought could be about to become public.

However, I did not seek to prevent or influence the proper consideration of the complaints.

For the sake of the complainers, the Scottish Government and indeed Alex Salmond himself, I acted in a way that I judged would best protect the independence and confidentiality of the investigation.

However, when I became aware of a serious risk of legal action against my government, I felt I had a duty to make the Permanent Secretary aware of it.

My view throughout was that complaints must be properly and fairly considered, no matter who the subject of them might be, or how politically inconvenient the investigations may be.

And that remains my view, even though the circumstances and consequences of this particular investigation have caused me - and others, in many cases to an even greater extent - a great deal of personal anguish, and resulted in the breakdown of a relationship that had been very important to me, politically and personally, for most of my life.

Lastly, since August 2018 I have taken care to say nothing that could compromise other proceedings, including the Committee's inquiry - even though that has meant being unable to say more about my own actions or challenge misrepresentations about them.

Yours Sincerely

**NICOLA STURGEON**  
**4 August 2020**

## ANNEX A

The information contained in this Annex addresses the request for information in the Ministerial Code section of the Committee's letter.

Reference is also made here to the information contained in Annexes B (messages between me and Alex Salmond), and also to my letter to Permanent Secretary dated 6 June 2018, a copy of which should be requested from the Scottish Government.

The account below is by necessity in summary form. Subject to the caveat in my covering letter, I will be happy to expand on any aspect of it in oral session. I also reserve the right to respond to any issues raised in other evidence.

Alex Salmond told me on 2 April 2018 at a meeting at my home that complaints against him were being investigated under the Procedure. At that meeting, he showed me a copy of the letter he had received outlining the detail of the complaints.

As has been reported already, four days earlier - 29 March 2018 - I had spoken with Geoff Aberdein (former Chief of Staff to Alex Salmond) in my office at the Scottish Parliament.

Mr Aberdein was in Parliament to see a former colleague and while there came to see me.

I had forgotten that this encounter had taken place until I was reminded of it in, I think, late January/early February 2019.

For context, I think the meeting took place not long after the weekly session of FMQs and in the midst of a busy day in which I would have been dealing with a multitude of other matters.

However, from what I recall, the discussion covered the fact that Alex Salmond wanted to see me urgently about a serious matter, and I think it did cover the suggestion that the matter might relate to allegations of a sexual nature.

Around this time, I had been made aware separately of a request from Mr Aberdein for me to meet with Alex Salmond.

The impression I had at this time was that Mr Salmond was in a state of considerable distress, and that he may be considering resigning his party membership.

However, while I suspected the nature of what he wanted to tell me - for reasons set out below - it was Alex Salmond who told me on the 2 April that he was being investigated under the Procedure - and what the detail of the complaints was. It is this meeting - due to the nature of the information shared with me at it - that has always been significant in my mind.

As stated above, I suspected the reason Alex Salmond wanted to see me on April 2 was that he was facing an allegation of sexual misconduct.

Although my contact with Mr Aberdein on 29 March 2018 may have contributed to that suspicion, it was not the only factor.

For example, in early November 2017, the SNP received an enquiry from Sky News about allegations of sexual misconduct on the part of Alex Salmond.

I spoke to Mr Salmond about this allegation at the time. He denied it and, as it happened, Sky did not run a story about it at that time. Since the identity of the individuals was not made known to us and they did not approach the SNP directly, there was no further action that it would have been possible to take.

However, even though he assured me to the contrary, all of the circumstances surrounding this episode left me with a lingering concern that allegations about Mr Salmond could materialise at some stage.

It is reasonable to ask why, if I suspected the nature of what he wanted to speak to me about on 2 April, I nevertheless agreed to the meeting.

The answer is both political and personal.

I thought Mr Salmond may be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that we would require to respond to.

As Party Leader, I considered it important that I knew if this was in fact the case in order that I could prepare the party to deal with what would have been a significant issue.

There is also the personal aspect. Mr Salmond has been closer to me than probably any other person outside my family for the past 30 years, and I was being told he was very upset and wanted to see me personally.

To return to the meeting on 2 April 2018, although others were present, Mr Salmond initially asked to see me privately.

He advised me that he was being investigated under the Procedure and showed me a copy of the letter he had received.

Notwithstanding the suspicions I had harboured going into this meeting, I was shocked and upset by the reality of what I read.

He gave me his reaction to the complaints - in the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again - and said that it was his intention to seek a process of mediation between himself and the complainers.

It was also clear - contrary to what I had anticipated - that he did not intend to resign his party membership or do anything to make the matter public at that stage.

I made clear to him that I had no role in the process and would not seek to intervene in it.

I took no action as a result of this meeting.

Mr Salmond sent me a message on 22 April 2018 asking to speak to me by phone.

As previously advised to Parliament, I spoke to him by phone on 23 April (the substantive call took place early evening after a call in the morning had to be aborted due to poor signal).

He asked me if I would make the Permanent Secretary aware that I knew about the investigation and encourage her to accept his request for mediation.

I said that I was not willing to do so. A special adviser was in the room with me during this call, though not on the line.

Mr Salmond sent me a message on 31 May 2018 asking to meet.

I did not agree to a meeting at that time.

Mr Salmond sent me a further message on 3 June 2018.

Both the tone and content of this message led me to conclude that legal action by Mr Salmond against the Scottish Government was a serious prospect.

I decided that I should make the Permanent Secretary aware of this, and I wrote to her on 6 June 2018.

At this juncture, it may be helpful to briefly set out for the Committee why I had not previously informed the Permanent Secretary of my contact with Alex Salmond or my knowledge of the investigation.

The relevant sections of the Ministerial Code (4.22 and 4.23) seek to guard against undisclosed outside influence on decisions that Ministers are involved in. It seemed to me that this was the opposite situation. This was a decision I was excluded from and it seemed to me that the risk of inadvertently and unintentionally influencing it would arise if those undertaking the investigation were aware of my knowledge of it.

The risk - even if theoretical and subconscious - would be that considerations of what I might think would influence the decisions taken.

Further, according to my reading of these sections of the Code, my contact with Alex Salmond - once notified - would have had to be made public. This could have compromised the confidentiality of the process.

My judgment, therefore, was that the best way to protect the process was not to make my knowledge of it known. This judgment changed when I had reason to believe that legal action against the government was being considered.



Having decided to write to the Permanent Secretary, I agreed to meet Mr Salmond and sent him a message to this effect on 5 June 2018.

The references in this message to 'what I need to do' and 'update' refer to my decision to write to the Permanent Secretary.

I intended to make him aware that I had done so and, in so doing, make clear again that I would not intervene in the process.

My letter to the Permanent Secretary advises her that I intended to do this. As advised to Parliament, this meeting took place in Aberdeen on 7 June 2018. No one else was present at this meeting.

My other reason for wanting to meet with him proactively at this stage was the SNP conference that was about to take place over the following days in Aberdeen. I assumed he would be there (though as it turned out, I don't think he did attend) and I didn't want to be 'cornered' by him during it.

Mr Salmond sent me a further message on 5 July 2018.

I did not respond in any way to this message.

The next contact between Mr Salmond and I was on 13 July 2018, which led to our third and final meeting being arranged for 14 July at my home.

By this time, I was again anxious - as Party Leader and from the perspective of preparing my party for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

It was clear at the meeting that he was still seeking a process of arbitration around his concerns about the procedure.

He had formed a belief that it was me who was blocking arbitration. I told him that was not the case and I was not involved in the decision.

I also suggested to him that given their seriousness, he should engage on the substance of the complaints and not just focus on procedure.

Mr Salmond sent me further messages on 15 and 16 July 2018. The message of 15 July is Mr Salmond's interpretation of me saying that I was not involved in the decision.

On 16 July, I made the Permanent Secretary aware of the meeting on 14 July 2018 and the subsequent messages. I also made her aware of Mr Salmond's belief that I was blocking arbitration.

Given the risk of legal action, I did not want any suggestion that an opinion attributed to me (which I hadn't expressed) was influencing decisions I had no part in.

I reiterated to her that she must reach whatever decisions she considered appropriate and I did not seek to influence her in any way.

As advised to Parliament, I also spoke to Mr Salmond on the phone on 18 July 2018. I wanted to draw a line under our contact. I was also about to take a two day summer break and did not want him trying to contact me during it. I have not spoken to Mr Salmond since.

However, later on 18 July, he sent me a copy of a letter he had received from the Scottish Government. I did not respond to this message.

He sent me a further message on 20 July 2018.

Again, I did not respond. I have had no contact with Mr Salmond since.

## Annex B

[22/04/2018, 20:31:29] Alex Salmond: it would be very helpful if I could call you on WhatsApp 10.30am and 12 noon tomorrow

[22/04/2018, 21:05:25] Nicola Sturgeon: I'll be in the car until 11 on way to Inverness - so 10.30 will be ok. I'll not be free again after that until 12.30/1. There will be others in car so I'll not be able to talk openly...it'll be later in day before I can be in private.

[22/04/2018, 22:03:57] Alex Salmond: In which case I will Phone just after 10.30am with update and we can perhaps speak properly later on.

[31/05/2018, 11:24:01] Alex Salmond: In Glasgow tomorrow - could we meet?

[31/05/2018, 11:39:09] Nicola Sturgeon: Tomorrow's very difficult - is it urgent?

[31/05/2018, 11:45:01] Alex Salmond: Next few days. I could do tomorrow evening or Monday from lunchtime onwards.

[31/05/2018, 11:46:29] Nicola Sturgeon: The only time I could possibly do tomorrow is around 4. Is it about what we spoke about before?

[31/05/2018, 11:56:46] Alex Salmond: Yes

[31/05/2018, 11:56:59] Alex Salmond: 4 is fine - same place?

[31/05/2018, 17:07:08] Nicola Sturgeon: Tomorrow is actually proving tricky given other stuff I've got on. I'm trying to juggle a couple of things - will confirm later/in morning if 4pm possible and if not suggest alternative.

[31/05/2018, 19:23:01] Alex Salmond: I suggest just two of us - I can leave you with some material to digest over weekend - Meeting itself need not take long but tomorrow would be best if poss.

[01/06/2018, 07:51:32] Nicola Sturgeon: Sorry but I just can't do today - I don't have time to get home given other stuff. Happy to speak on phone over weekend and see what else is possible.

[01/06/2018, 09:36:59] Alex Salmond: Phone not appropriate - there is material you need to see and assess privately. Can I come to you Sunday or very first thing Monday?

[01/06/2018, 13:37:54] Nicola Sturgeon: I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend.

[03/06/2018, 10:15:00] Alex Salmond: My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight

of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!). If you want to discuss privately then I can come to you in the North East on Monday.

[05/06/2018, 14:02:58] Nicola Sturgeon: Hi - I have been considering your message and what I need to do in light of it. If you still want to meet, I can do tomorrow evening in Edinburgh and update you then. N

[05/06/2018, 19:24:32] Alex Salmond: Happy to meet - soonest I can get to Edinburgh is around 8.30. I take it this is totally informal, one to one.

[05/06/2018, 19:42:38] Nicola Sturgeon: Ok - happy for it to be one to one - will have to be either parliament or Bute, whatever you prefer. The alternative if its easier is Aberdeen on Thursday night - I'll be there from around 8, staying in hotel somewhere near beach ballroom I think.

[05/06/2018, 20:08:30] Alex Salmond: Yes Thursday much better, thanks. I'll be there for 8.30 to give you time to settle in.

[05/06/2018, 20:12:37] Nicola Sturgeon: Ok. It's the Hilton hotel at the beach.

[05/06/2018, 20:17:58] Alex Salmond: Grand

[07/06/2018, 19:00:28] Nicola Sturgeon: You should go to the Platinum reception at the back of hotel later. There's a private room arranged there for us to meet in.

[07/06/2018, 19:07:45] Alex Salmond: OK thanks. Traffic was bad but now well on the way. Should arrive c 8.40 and will give 5 minute warning on approach.

[07/06/2018, 19:09:23] Nicola Sturgeon: I'm running late too - but should be there just before you

[07/06/2018, 19:14:01] Alex Salmond: OK shall we make it 8.50 so we are not rushing

[07/06/2018, 19:25:49] Nicola Sturgeon: I'm ok for as soon as you get there

[07/06/2018, 19:36:24] Alex Salmond: Grand

[07/06/2018, 20:46:30] Alex Salmond: Now in Aberdeen 5 minutes or so

[05/07/2018, 21:18:40] Alex Salmond: Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration. The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens. Secondly, the PS has now intimated that an FOI has been submitted. The SG response to that request is of the utmost importance. Confirmation of even the existence of a specific complaint will be sufficient to start a process which leads to the near certainty of these matters becoming public. My legal advice is that a "neither confirm or deny" response which avoids acknowledging the existence of any documents can be issued under section 18 of the FOI Act which covers S38 (1) (b) {personal information}. It is critical that this happens. There remains a way to resolve this but it requires the PS to be encouraged to accept that confidential arbitration offers the best solution and to ensure that the FOI is carefully handled. I hope you will do so but time is now very short.

[13/07/2018, 11:01:08] Alex Salmond: Grateful for your message via [REDACTED]. Happy to meet privately. Understand you are away from Monday so given developments presumably this weekend best? I have material which it is important for you to see. I will happily come to you.

[13/07/2018, 11:22:38] Nicola Sturgeon: I'm supposedly on leave from Monday but not going away - I'll be at home so could do next week if that's easier (except Thursday/Friday). Weekend is a bit busy with one thing and another - late tomorrow afternoon probably only time that works. Let me know what you prefer.

[13/07/2018, 14:03:32] Alex Salmond: Great - can we make it tomorrow late afternoon then - I am just rearranging something and will confirm asap.

[13/07/2018, 15:13:10] Alex Salmond: Tomorrow confirmed for late afternoon. - give me your best time and place. Thanks.

[13/07/2018, 15:56:10] Nicola Sturgeon: It'll have to be my house - I should be home by 4 so that's best time. Just so you know, I have to go out again around 6.

[13/07/2018, 15:58:44] Alex Salmond: 4 it is then

[13/07/2018, 15:59:27] Nicola Sturgeon: Ok

[14/07/2018, 15:45:59] Alex Salmond: Ten minutes away

[15/07/2018, 22:42:44] Alex Salmond: Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone's satisfaction.

[16/07/2018, 14:57:50] Alex Salmond: [Message content redacted by the Parliament on basis of legal professional privilege of Alex Salmond]

[18/07/2018, 20:50:37] Alex Salmond: T: [Redacted]  
E: [Redacted]

Mr Callum Anderson Levy and McRae Pacific House  
70 Wellington Street GLASGOW  
G2 6UA

Private and Confidential 18 July 2018

Dear Mr Anderson

Thank you for your recent letters, in which you have raised your concern about the fairness of the Scottish Government Procedure. I want, first of all, to assure your client that I am approaching these important issues with the greatest of care and with an open mind. It remains the view of the Scottish Government that our Procedure is fair and legally sound. We have ensured from the outset that your client had every opportunity to provide a statement of his recollection of the events described in the "causes for concern" set out in my letter of 7 March. We granted a number of extensions to the initial deadline for such a statement to be provided. Your client was also offered the opportunity to speak to the Investigating Officer directly but he declined to do so.

Your client has chosen not to provide a substantive response to the complaints made by Ms A and Ms B (causes for concern A – I) although he has made clear his denial that any harassment took place. Your letter of 26 April included quotations "in short none of the allegations are admitted" and "I categorically deny that I have ever harassed any civil servant".

Although you continue to express concern about the overall fairness and legality of the Procedure your letter of 26 April did include a substantive response to causes for concern J – K. That letter also identified 5 witnesses to be interviewed - limited to those causes for concern only. Contact information for those witnesses was provided by you on 8 May. Witnesses were interviewed by the Investigating Officer and their statements were finally agreed by all parties by 28 June after a number of postponements and delays.

You have proposed arbitration in relation to the Procedure and explained why you consider it to be appropriate. The Scottish Government has explained in previous letters and in exchanges between legal representatives why we do not agree. However, for completeness and to ensure our position is understood we make the following points.

First, we consider that we have given your client a fair opportunity to address the complaints, and that the procedure which we have followed is a fair one.

- We do not consider that arbitration would be appropriate to the circumstances. This is an investigation of serious complaints made by civil servants involving a former Minister. Submitting the process to an external decision maker would not be appropriate.

- As the decision maker, I have to balance a range of interests, and to ensure a Procedure which is fair both to your client and to the complainers. Arbitration of the SG process would not involve the complainers.

- As decision maker I have a duty to bring the investigation to a conclusion as efficiently and timeously as possible. Arbitration would cause unavoidable further delay.

- However tightly a remit were drawn, it seems unlikely that it would be possible to separate the procedural points which you have raised from issues of substance or content in a way which would allow those procedural concerns to be addressed.

Your client has provided a substantive response to causes for concern J – K. However, it remains my view that his interests and those of the investigation as a whole would best be served by him providing a substantive response to each of the causes for concern – and it is a matter of regret that he has chosen not to do so.

Consequently I am offering your client, even at this late stage, a final opportunity to provide any further representations about the complaints made by Ms A and Ms B.

Given the time that has elapsed since first notifying your client of the investigation you must confirm if your client wishes to take up this opportunity no later than 11 am on 19 July. Any further representations must be received by 3 pm on Friday, 20 July if they are to form part of my consideration.

Should your client choose not to take up this final opportunity I shall proceed to consider the report on the basis of the information he has already provided and will write to you again to inform you of the outcome.

Yours sincerely  
LESLIE EVANS

[18/07/2018, 20:52:21] Alex Salmond: As you see the time allowed is tomorrow morning at 11am

[20/07/2018, 22:37:18] Alex Salmond: A full rebuttal of all complaints went in by the deadline today. Let us see how it is judged.