



The Scottish Parliament  
Pàrlamaid na h-Alba

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

John Swinney MSP  
Deputy First Minister

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

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26 November 2020

Dear Mr Swinney

Thank you for your letter of 13 November 2020.

I note that you are considering the implications of the Parliament's motion of 4 November 2020 concerning the application of legal professional privilege. In its letter of 10 November, the Committee requested that this should happen without further delay. We therefore expect that you will keep the Committee updated as to the timescale for updating Parliament on this consideration by Ministers, including obtaining the consent of the Law Officers.

Your letter indicates that even if a decision was taken to waive legal professional privilege, further work would be required to implement the waiver, including in relation to the un-redaction and re-redaction of documents already provided to the Committee. The Committee is seeking to advance its work in a timeous manner and has already been subjected to a number of lengthy delays. Therefore, in the interest of minimising any further delay involved in implementing the waiver, the Committee has considered whether it can narrow the scope of its request for legal advice at this stage.

During the evidence session on 17 November 2020, Angela Constance MSP asked the Lord Advocate about whether written advice was received from counsel, including on the prospects of success, and if so when. The Lord Advocate confirmed that written advice was received at various stages throughout the process. Jackie Baillie MSP asked further questions relating to this advice but no further detail was provided.

At this stage, the priority for the Committee is to receive copies of the written advice provided by counsel, in particular on the prospects of success. This advice should be clearly distinguishable and provided privilege is waived, not involve a lengthy process in order for it to be identified and provided to the Committee.

I must repeat that we are suggesting this to avoid further delays but the Committee still expects the Scottish Government to release its legal advice as previously requested.

Yours sincerely

**Linda Fabiani MSP**

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