



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
EH99 1SP

BY EMAIL

SGHHC@parliament.scot

22 January 2021

Dear Mr Swinney

The Committee considered its work programme again today, as it is moving towards its final evidence taking sessions and deliberations on its findings. I wanted to reiterate at this stage that the Committee's view remains the same on access to legal advice. It continues to believe that it is central to its scrutiny of the judicial review to have sight of the legal advice, including advice from Counsel. It is also imperative that this advice is published and that the Scottish Government waives legal professional privilege to enable the Committee to scrutinise the First Minister on the judicial review during her evidence session and to refer to the detail of the advice in the Committee's final report.

As you are aware the Committee has considered the former DGODO report and accompanying documents. Following consideration of the full report, and the published versions (including raising issue with the lack of detail in the paraphrasing with the Scottish Government), the Committee agreed the following motion on 12 January 2021:

That the Committee considers that in order to discharge its duties, it needs to see the legal advice from counsel and associated minutes of meetings relating to the Judicial Review with LPP waived and that this needs to be published in the interests of transparency; agrees to continue discussions with the Scottish Government including to secure access to this legal advice in a reading room to be provided by 14 January 2021; in the interim accepts the Scottish Government offer to read the former DGODO's report of 29th December 2018; subject to agreement that notes can be taken to refer to in questioning Scottish Government witnesses and that these witnesses should not refer to legal privilege in answering questions relating to the report; insists that the SG

waives LPP over the document so as to enable publication of whatever contents the Committee deems fit.

Given the Committee's unanimous agreement that sight of the legal advice itself is required, and the Committee's continued determination on this matter, I should be grateful if the Government could review its position and give serious consideration to this proposal. The Committee considers its scrutiny, and its ability to fulfil its remit in reporting to Parliament, will be directly impacted upon if the Government does not do so.

Given the restrictive timescales the Committee is working to, in order to complete its inquiry before the end of the Parliamentary session, I would be grateful for consideration of this matter and response by Friday 29 January.

Yours sincerely

Linda Fabiani MSP

Convener, Committee on the Scottish Government Handling of Harassment Complaints