



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
EH99 1SP

BY EMAIL

SGHHC@parliament.scot

9 March 2021

Dear Mr Swinney,

Legal advice

The Committee discussed your letter dated 8 March at its meeting today. Members are extremely frustrated that evidence the Committee has been seeking from the Scottish Government for months continues to be sourced and published in the final days of this inquiry.

The members would have asked questions of the First Minister, the Lord Advocate and the Permanent Secretary amongst others had it seen, at an earlier stage, information that has only now been published. The Committee must now focus on its report as it is the final days of the session and the Committee must fulfil the task Parliament has set it by agreeing and publishing its findings in its report.

In doing so, the Committee is not reassured it has received all relevant information. As context, the proposal passed unanimously by the Committee on 15 December 2020 is below, (with emphasis added).

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.

Your letter confirms that emails contemporaneous with two of the 17 meetings held with counsel are being processed by the Scottish Government with a view to publishing them this week. The Committee requests all records including emails and notes relating to all 17 meetings with counsel to be published as a matter of urgency. In addition, having reviewed the [unredacted version of the former DGODO's report](#) as published by the Government last week, the Committee also requests minutes, notes or records of any kind of the discussions detailed in that report from 19 December (extract below).

Later that day (following a discussion between the Lord Advocate and the Perm Sec and FM), a phone consultation took place between counsel and the Law Officers (& Director Legal Services) in which counsel repeated those concerns but agreed that, whatever view might be taken on completion of the commission, they would continue to act until 21 December when the IO gave evidence.

The Committee also seeks assurances that any phone consultations with counsel have been included in the timelines previously sent to the Committee by the Scottish Government on the judicial review and that notes or other records on these have also been shared with the Committee.

The Committee also discussed at its meeting your confirmation that minutes or notes do not exist of specific meetings in November 2018 attended by counsel. The Committee noted that your letter does not refer to whether counsel holds any records including minutes or notes of these meetings. The Committee wants to know whether the Scottish Government has sought relevant information from counsel in confirming to the Committee that no minutes or other summaries of decisions taken exist.

Finally, the Committee is concerned that Scottish Government officials, such as the instructing solicitor, were not required to produce notes of meetings with counsel including of decisions taken. In addition to the need for transparency to enable scrutiny, the Committee does not understand how in the interests of good governance, the Scottish Government would not create and keep records of such crucial meetings.

The Committee requires a response as soon as possible to ensure additional information you provide can inform its deliberations on its report.

Yours sincerely

Linda Fabiani MSP
Convener, Committee on the Scottish Government Handling of Harassment Complaints