



John Swinney BPA/MSP

Linda Fabiani MSP
Convener – Committee on the Scottish
Government Handling of Harassment Complaints
c/o Clerk to the Committee
Room T1.03
The Scottish Parliament
Edinburgh
EH99 1SP

21 December 2020

Dear Ms Fabiani

I am grateful to the Committee and parliamentary staff for their assistance in taking forward discussions following my letter to you of 1 December 2020.

I am pleased that agreement has been reached to allow the Committee to have access, in confidence, to legally privileged information, without creating a general waiver for legal privilege that could limit the ability of future Scottish Governments to request and receive confidential and candid legal advice in future litigation.

The information contained in the submission prepared at the request of the Permanent Secretary by the then Director General for Organisational Development and Operations (DGODO) in late December 2018 provides a contemporaneous and candid summary review of the progress of the judicial review up to that time. Access to the submission is in addition to the written and oral evidence already provided to the Committee about the judicial review process, including the Open Record of the pleadings by both sides in the case and over two-and-a-half hours of oral evidence by the Lord Advocate.

We are providing through the normal process, a short covering note providing brief background and context to the former DGODO's submission. For ease of reference for Committee Members, we are also providing a summary of the evidence provided to the Committee by the Lord Advocate on 17 November setting out the legal position at key stages in the judicial review process.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire
Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered
by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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We are also providing for the Committee a version of the former DGODO's submission with all privileged material redacted. The hard copy unredacted version of the submission for Members will have the legally privileged material highlighted to identify clearly which parts of the submission are legally privileged and should not be referred to or otherwise communicated. In both versions of the submission the names of staff below SCS level have been redacted in accordance with the Government's data protection obligations.

The Scottish Government is content to respond to questions that Committee members have once they have had sight of the submission, in line with the terms of the agreement.

JOHN SWINNEY

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