

Written Submission from Duncan Hamilton

Dear Convener

Committee on the Scottish Government Handling of Harassment Complaints

1. On 1st March 2020, I received a request from the Committee for assistance in providing corroboration and confirmation of a number of aspects of the oral evidence given to the Committee by Mr Alex Salmond on Friday 26th February 2021.
2. The committee has not asked me any specific questions. Instead, I have been given sight of the Official Report for the evidence session. I have been asked to review it and identify all the matters raised by Mr Salmond which refer to me. If I have missed any references, please let me know and I will also address those.
3. I propose simply to deal with those references in the order they appear in the Official Report. I refer to the column number in each instance.

Confidentiality

4. I was, as Mr Salmond informed the Committee, instructed by Levy & McRae solicitors to act on behalf of Mr Salmond from the receipt of the letter from the Scottish Government on March 7th 2018. I was instructed as Counsel in the Judicial Review proceedings along with Ronnie Clancy QC.
5. An essential duty of an Advocate is to maintain confidentiality. It is accordingly both unique, and uncomfortable, for me as an Advocate to be offering any evidence whatsoever to this Committee. I am able to do so only because the client (Mr Salmond) has given express instruction that he is content that I do so and has waived his privilege in relation to the

information I am asked to provide. The privilege is his, however, and having made the choice to waive it, I am able to answer your questions.

6. For completeness, I would also add that I have considered the 'Guide to the Professional Conduct of Advocates' (7th edition 2019) and in particular the provisions at paragraphs 2.3.1 – 2.3.3.
7. I have further consulted with the Vice Dean of Faculty. The Faculty is also satisfied that in the particular circumstances of this matter there is no barrier to my responding to the Committee.

Declaration of Interests

8. Given the nature of the investigation and the composition of the Committee, I have considered what additional declaration of interest requires to be made beyond that which is already in the public domain.
9. I confirm that I am a former Member of the Scottish Parliament, having been elected for the Scottish National Party and serving from 1999-2003. I was a part time Special Adviser from 2007-2008. I am a current member of the SNP, and have been since 1994. Finally, I have previously contributed financially to the local election campaign of Alisdair Allan MSP.

The Statements made by Mr Salmond

10. I propose to take the statements in the order in which they were made.
 - i) Column 33

Jackie Baillie (Dumbarton) (Lab): Good afternoon, Mr Salmond. I will move us on to talk about the interests and confidentiality of the complainers, starting with an issue that was raised by both me

and Willie Rennie yesterday in the chamber. The issue arose in the context of one of the meetings that were held with the former chief of staff, Geoff Aberdein, which was a precursor to your meetings with Nicola Sturgeon. Do you know whether the name of a complainant was shared at one of those meetings?

Alex Salmond: Yes.

Jackie Baillie: Can I ask how you know that, because we are obviously interested in evidence being corroborated, at this committee?

Alex Salmond: I know because my former chief of staff told me that.

Jackie Baillie: Is anybody else party to that information?

Alex Salmond: You would have to ask the people concerned, but as far as I am aware, there are three other people who know that to be true.

Jackie Baillie: I believe that the committee has written to them, so thank you very much for that.

Comment

The clerks have drawn my attention to the following exchange and asked if I am one of the people to whom Mr Salmond was referring.

I can confirm that I am.

I can also confirm that I was told the name of a complainant by Mr Aberdein (Mr Salmond's former Chief of Staff) in the early part of March 2018.

I cannot recall the precise date, but it was very shortly after the 7th March 2018, the date Mr Salmond received his letter.

The name of the complainant had been given to Mr Aberdein by a senior government official.

I confirm that I am aware of the identity of the government official who gave the name of the complainant to Mr Aberdein.

The fact that the government official had shared that information with Mr Aberdein was reported to me, and to Kevin Pringle, on a conference call. I had never heard of the individual named, but Mr Pringle had.

ii) Column 75

Alex Salmond : '.....He told me that the meeting was going to take place on 29 March, as you know. Mr Aberdein had been approached by another official, who had brought him into the process. The meeting was taking place with a view to briefing Nicola and arranging the meeting for 2 April. As you know, my former chief of staff, Mr Aberdein, and Mr Duncan Hamilton, my counsel, attended the meeting on 2 April with me. The meeting was arranged for that purpose.'

Comment

I can confirm that statement is correct.

I was aware that Mr Aberdeen was meeting the First Minister at the Scottish Parliament on 29th March 2018 for the purpose of discussing the complaints. Mr Aberdeen made me aware of that meeting and its purpose in advance.

I can confirm that I did attend the meeting on 2nd April 2018 in the home of the First Minister.

iii) Column 77

Alex Cole-Hamilton: To confirm, neither you nor any of your lieutenants had let the First Minister or any of her private office know that there was a suggestion that that was on the table?

Alex Salmond: I know from the committee that you speak for yourself, but I had not indicated to anyone at that time that I was about to resign from the Scottish National Party.

Alex Cole-Hamilton: That is very helpful.

Alex Salmond: I am here under oath telling the truth and that is what I will do, but I would appeal for a rational appraisal of that. A resignation from the SNP would have achieved the diametric opposite of what I was looking to achieve and hoped could be achieved.

Comment

I am not sure if that comment is intended to relate to me or not but for the avoidance of doubt, at no stage did I make any suggestion to the First Minister or any other person acting on her behalf raising even the possibility of Mr Salmond resigning from the SNP.

No suggestion of resignation from the SNP was ever made to me by Mr Salmond at that time.

It did not feature in any part of the discussion on April 2nd 2018 to which I was party. It was not raised by any of those in attendance.

iv) Column 80

Alex Salmond : ‘....However, there is no doubt. It is absolutely certain that the meeting on 29 March in the Scottish Parliament was prearranged for the express purpose of Nicola being briefed on the situation with regard to me and complaints, and that the meeting on 2 April—or, at least the final arrangements for it—arose from the meeting on 29 March. Otherwise, how on earth would I have known to turn up on 2 April? There is no other way that the invitation could be gathered.’

Comment

That is correct. As Mr Salmond notes, neither he nor I would have known to attend at the house of the First Minister on 2nd April 2018 without the invitation arising from the meeting on 29th March 2018.

v) Column 81

Murdo Fraser: Thank you, but I will press you on that point, because it is of fundamental importance to the issue of whether the ministerial code was broken by the First Minister. She has one version of events, you have a directly contrary version of events,

and she has asked you to produce the evidence. You have said to us that you have no doubt that your version of events is correct, but where is the evidence? Who can corroborate your version of events?

Alex Salmond: Well, I am not the only one who knew about the meeting of 29 March.

Murdo Fraser: Who else did?

Alex Salmond: It was known about, certainly, by Duncan Hamilton. It was known about by Kevin Pringle, I believe. Mr Aberdeen did not tell just me. Obviously, Mr Hamilton went with us on 2 April, so he knew about the meeting and the fact that it had been arranged. In terms of exact evidence, the people who turned up at the meeting knew. That is corroboration.

Comment

For my part, I can confirm that what Mr Salmond said is correct.

I spoke to Geoff Aberdeen on 29th March 2018 after his meeting in the Scottish Parliament. At that time, he intimated that a further meeting would be arranged to discuss the complaints with the First Minister. That meeting was arranged for 2nd April 2018. I was invited to that meeting and travelled to it along with Mr Salmond and Mr Aberdeen.

I would further note that the letter received from the Scottish Government was the sole focus of the meeting. Further, when we arrived, everyone in the room knew exactly why we were there. No introduction to the subject was needed and no one was in any doubt what we were there to discuss.

vi) Column 86

Stuart McMillan: Mr Salmond, you spoke earlier about the discussion that you had with Nicola Sturgeon at her home and you indicated that, at some point afterwards, she seemed to have changed her opinion. Can you remember what was actually said at the meeting—what you said to Nicola Sturgeon and what she said to you—to give you an indication that she was looking to assist or help?

Alex Salmond: There is no doubt that people at the meeting, Mr Aberdein and Mr Hamilton, were there—certainly, Mr Hamilton was there—when Nicola said that, and she said it to me in a private meeting as well: that she was anxious to assist.

Comment

I can confirm that the First Minister did offer to assist.

We discussed mediation. My clear recollection is that her words were ‘If it comes to it, I will intervene.’

From a legal perspective, that was the most important aspect of the meeting. I therefore remember it clearly. I discussed the commitment to intervene with Mr Salmond and Mr Aberdein after we left the meeting specifically because it seemed very likely that mediation would be achieved. From Mr Salmond’s perspective, that was the desired outcome.

The First Minister did later change her mind. She was entitled to do so. That change was, however, a matter of surprise. From a legal perspective, that change in position removed one of the possible alternatives to court proceedings.

vii) Column 91

Jackie Baillie: The First Minister offered to intervene, according to you. Is it—

Alex Salmond: She said she would when it was the appropriate time. As I say, the conversation was not about if she would intervene, but when. Nicola's anxiety was that she wanted to find a situation where the permanent secretary came to her, or a suitable moment to do it. However, there was no doubt—and I believed—that she was going to assist in that direction for what I believe was the perfectly proper purpose of securing mediation.

Jackie Baillie: Was that conversation just between you and her, or can anybody else substantiate it?

Alex Salmond: I am absolutely certain that Duncan Hamilton was present when we were discussing that. I cannot be absolutely certain about anybody else, but I know that Duncan was there as my counsel. When we were talking after the meeting and assessing what was happening, we were both of the opinion that the intervention was going to be made. We thought that the meeting had gone extremely well. Therefore, I absolutely know that that was then—and is now, presumably—his recollection.

Comment

I can confirm this account is accurate.

11. I can confirm that this evidence is given to the very best of my recollection. I am prepared to provide the same evidence under oath in an affidavit if that is considered necessary.

Duncan Hamilton, Advocate

2nd March 2021