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Dear Convener,

**Scottish Government Handling of Harassment Complaints  
Evidence session 2 March 2021**

I refer to the above meeting of the Committee at which the Crown Agent and I gave evidence. We agreed that we would write to you on certain matters of detail which were raised during that evidence session. This letter deals with matters which were raised both with the Crown Agent and with myself.

Andy Wightman MSP asked me whether the Crown had raised any concerns with The Spectator magazine further to its correspondence with the magazine on 15 January 2021. I indicated that I would follow up on this in correspondence.

The position is that on 27 January solicitors acting for The Spectator wrote to the Crown in response to the letter of 15 January to The Spectator. There followed an application by The Spectator to vary the Section 11 order made by Lady Dorrian in the criminal proceedings. That application was determined by Lady Dorrian on 11 February. Lady Dorrian made a textual amendment to the order in terms which are set out in her judgment, which is available to the public on the Scottish Courts website. That was the position when the Crown Agent and I gave evidence to the Committee.

On 3 March 2021, the Crown wrote to The Spectator's solicitors, advising them that, having given further consideration to The Spectator article of 8 January, the Crown considered that there were parts of the article, additional to those which had been raised by the Crown in the letter of 15 January, which breach the terms of the section 11 order, and requesting The Spectator to take action to address



these concerns. The Crown has also written to other publishers advising them of the Crown's view that articles published by them are in breach of the section 11 order and asking them to take remedial action. As I explained in evidence to the Committee, it is for publishers to decide, in light of their own legal advice, what they may lawfully publish.

Stuart McMillan MSP asked me whether the Crown was in receipt of any complaints about The Spectator or any other publisher about what it has published. I can confirm that the Crown has received complaints and has acted on those.

Jackie Baillie MSP asked when I was first told about the complaints and who told me about them. I took her to be referring to the complaints made to the Scottish Government. To the best of my recollection, I was made aware in general terms, in a telephone call from the then Solicitor to the Scottish Government, of the existence of a complaint or complaints against the former First Minister, that the matter was being dealt with under conditions of strict confidentiality and without reference to Ministers, and, as I recall it, I was asked whether, in these unusual circumstances, if it were thought necessary to instruct counsel, that could be done without reference to me. I cannot now identify the date of that telephone call, although I believe that it is likely to have been around the time the complaints were received.

Jackie Baillie MSP also asked me whether there was an inquiry into an article which appeared in the Sunday Post on 26 August 2018. I am advised that the inquiry undertaken by the Scottish Government's Data Protection Officer encompassed alleged unauthorised disclosure of official information which appeared in the press between 24 and 26 August 2018, and specifically included alleged unauthorised disclosure to the Sunday Post. I am also advised that the ICO investigation, completed on 6 March 2020, likewise concerned information published in articles that appeared in the media between 23 August and 26 August 2018.

Jackie Baillie MSP asked the Crown Agent about his meeting with the police on 21 August. The Crown Agent explained that, following this meeting, it was his expectation that, as and when any announcement were to be made about the matter (which was a matter for Scottish Government), any such announcement would not mention the referral to the police. Jackie Baillie MSP asked the Crown Agent about the identity of the person in Scottish Government with whom he communicated about publicity and the Crown Agent said that he would check the position. I am now able to confirm that the Crown Agent communicated with Colin Troup, the Legal Secretary to the Lord Advocate, who passed on his views to the Interim Director of Legal Services, Paul Cackette.

Murdo Fraser MSP asked me questions about the search warrant which was served on Scottish Government and the Government's response to that warrant. I should explain that failure to produce documents in response to a search warrant could, depending on the circumstances, amount to an attempt to pervert the course of



justice. COPFS has now received correspondence from the former First Minister's solicitors, identifying eight documents which they contended should have been produced in response to the search warrant. I can confirm that one of those documents had, in fact, been produced in response to the search warrant. The Crown has considered the other seven documents and is satisfied that they do not fall within the scope of the search warrant. COPFS has advised Mr Salmond's solicitors of its position in this regard by letter dated 11 March 2021 and a copy of that letter has been forwarded to the Clerk to the Committee for its information.

Margaret Mitchell MSP asked me who appoints the Inspector of Prosecution in Scotland and to whom she reports. I explained that the Inspector reports to me, as the office holder with constitutional responsibility for putting in place arrangements for the prosecution of crime in Scotland, and that her reports are laid before the Parliament. I can confirm that, in terms of the Criminal Proceedings etc (Reform) (Scotland) Act 2007, the Inspector of Prosecution is appointed by the Lord Advocate. The current Inspector was appointed following a public sector recruitment process organised by the Scottish Government.

I trust this is helpful to you.

Yours sincerely

**Rt. HON W. JAMES WOLFFE, QC**  
**LORD ADVOCATE**