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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

3 August 2020

Dear Linda

### **MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL**

The Committee will wish to be aware that I am today answering a Parliamentary Question which will provide Parliament with an update on progress with the First Minister's decision to refer herself to the independent advisers on the Ministerial Code. This, of course, is an issue which forms part of the Committee's remit.

As you know, the referral was paused in early 2019 to avoid any risk of prejudice to the criminal proceedings. Responding to the current national health emergency has also had a significant impact on taking forward the referral. However, we are now in a position to proceed with the referral and I will today be publishing the remit for the referral and confirming that this will be taken forward by James Hamilton, one of the standing members of the panel of independent advisers.

I attach a copy of my PQ answer, which includes the remit. You may wish to draw this to the attention of the members of your Committee.

**JOHN SWINNEY**

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



**Government Inspired Question and Answer**  
**Monday, 3 August 2020**

**Clare Adamson [S5W: 31054]:**

to ask the Scottish Government for an update on progress with the First Minister's self-referral under the Scottish Ministerial Code which was announced on 13 January 2019.

**John Swinney MSP:**

In my response to S5W:21344 on 31 January 2019, I advised Parliament that the Ministerial Code referral had to be paused to avoid any risk of prejudice to live criminal proceedings. Since the conclusion of those proceedings, the attention of the Government has been focussed on leading Scotland's response global health emergency. In light of the progress that has been made we are now able to re-commence the referral.

The referral will be led by James Hamilton, who is a standing member of the panel of independent advisers. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

Mr Hamilton will now proceed with the referral and report as soon as he is able. The report will be published in line with the terms of the remit.

The remit for the referral is as follows:

**Ministerial Code Referral: Remit for Independent Adviser**

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

*1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.*

*1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.*

### **Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists**

*4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.*

*4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.*

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

### **Remit**

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.

5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
  - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
  - ii. whether there has been any breach of the Code and the nature of any such breach; and
  - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

### Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

### Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainer being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

### Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

### Secretariat

The Scottish Government will provide secretariat support as required.

**SCOTTISH GOVERNMENT**