



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Committee on the Scottish Government Handling of Harassment Complaints

Tuesday 1 December 2020

Session 5



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Pàrlamaid na h-Alba

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**COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT  
COMPLAINTS  
16<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Linda Fabiani (East Kilbride) (SNP)

**DEPUTY CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**COMMITTEE MEMBERS**

\*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)

\*Jackie Baillie (Dumbarton) (Lab)

\*Alex Cole-Hamilton (Edinburgh Western) (LD)

\*Angela Constance (Almond Valley) (SNP)

\*Murdo Fraser (Mid Scotland and Fife) (Con)

Alison Johnstone (Lothian) (Green)

\*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Judith Mackinnon (Scottish Government)

Nicola Richards (Scottish Government)

Gillian Russell (Scottish Government)

John Somers (Scottish Government)

Andy Wightman (Lothian) (Green) (Committee Substitute)

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Committee on the Scottish Government Handling of Harassment Complaints

*Tuesday 1 December 2020*

*[The Convener opened the meeting at 10:16]*

#### Interests

**The Convener (Linda Fabiani):** Good morning everyone, and welcome to the 16th meeting of the committee in 2020. Before we move to the evidence-taking session, I invite Andy Wightman, who is substituting for Alison Johnstone, to declare any relevant interests.

**Andy Wightman (Lothian) (Green):** I have no relevant interests to declare.

## Complaints Handling

10:16

**The Convener:** Our public business today is an evidence session on the complaints-handling phase of our inquiry. I wish to highlight the position that the committee is in today in relation to the written evidence to inform this session. Around 300 documents were received yesterday afternoon. Given the complexity of the legal restrictions on the committee's work, parliamentary officials now require to process those documents before their publication. We anticipate around another 100 documents from the Government, and the timescale for that is to be confirmed. Those documents, too, will have to be processed before publication.

The Deputy First Minister's letter on the matter highlighted that the witnesses who are attending today are not in a position to answer questions on any matter that is not in those documents, where contempt of court is a consideration. On that basis, the committee will ask questions today in the absence of written evidence that the Government considers witnesses can answer questions on.

I speak for the committee when I say that this is not a satisfactory way to proceed in effective scrutiny, but we will persevere in the interests of progressing the task that the Parliament has set for the committee to fulfil. I appreciate that this situation is not of the witnesses' making, and I am sure that they will endeavour to answer the questions as far as they are able.

**Jackie Baillie (Dumbarton) (Lab):** We should put it on the record that it was at 4.45 last night that the Scottish Government provided the documents to the committee. By anybody's reckoning, that is the 11th hour and 59th minute. The letter from John Swinney asking us not to reference certain information is extremely difficult for the committee, on the basis that we do not have the written evidence in front of us, which makes it difficult to ensure that the committee is sticking to the strictures that are placed on us.

We know, however, that the information was returned to the Scottish Government by Levy & McRae some weeks ago, so it is beyond disappointing that it is only now being provided to the committee. I think that the committee needs to reserve the right to recall the witnesses who are before us today, once we have seen the documents.

I express my anger at the continuing obstruction of the committee's work by the Scottish Government. It is clear to me that that is part of a

wider pattern of behaviour, and it disrespects both the committee and the Parliament.

**The Convener:** Thank you, Ms Baillie. All of that will, of course, be discussed further in the committee in private session.

Today's meeting will be held in two parts, with part 1 this morning and the second part this afternoon, commencing at 3.30 pm.

I do not intend to repeat my statement from the start of our meeting on 18 August, but I remind all those who are present and watching that we are bound by the terms of our remit and the relevant court orders, including the need to avoid contempt of court by identifying certain individuals, including through jigsaw identification.

We are not here to talk about the substance of the complaints, but about the complaints handling process. We all recognise the impact that public discussion of such issues can have on people who have experienced sexual harassment.

The committee has also agreed that it is not our role to revisit events that were the focus of the trial, which could be seen to constitute a rerun of the criminal trial.

Our remit is:

"To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's "Handling of harassment complaints involving current or former ministers and procedure and actions in relation to the Scottish Ministerial Code."

The more we get into specifics of evidence, such as time, people and cases, the more we run the risk of identifying those who made the complaints. The more we ask about specific matters that were covered in the trial, including the events that were explored in the trial, the more we run the risk of rerunning that trial.

In questions, reference to specific dates and individuals should be avoided. Questions should be phrased in general terms where possible, in order to avoid the risk of jigsaw identification of complainants. I also emphasise that the committee would be content to receive written supplementary points, should witnesses be concerned that their responses might stray into that territory.

Whenever possible, can witnesses, as well as members, also avoid naming specific Government officials under senior civil service level?

With that, I welcome that Judith Mackinnon, who is head of people advice at the Scottish Government. The committee has agreed that, although members can see Ms Mackinnon, her evidence will be broadcast in audio only. I begin by inviting Ms Mackinnon to take the oath.

**Judith Mackinnon (Scottish Government)**  
*took the oath*

**The Convener:** I invite Ms Mackinnon to make an opening statement.

**Judith Mackinnon (Scottish Government):**  
My opening statement aims to set out my role and responsibilities as the investigating officer in the harassment complaints that were raised against the former First Minister.

As I explained at my previous attendance before the committee, I am a Chartered Institute of Personnel and Development qualified human resources professional with considerable experience in carrying out and advising on workplace investigations and instructing employment tribunals. I have been the head of people advice since August 2017, when I joined the Scottish Government.

In response to the permanent secretary's staff message at the beginning of November 2017, which was intended to raise awareness and tackle the issue of sexual harassment at work, a number of channels were put in place to enable people to come forward. A number of people did come forward during the following months to share their experience of harassment in the workplace. Some of those experiences were about civil servants and some about a former minister. We took a person-centred approach, with the aim of understanding the experience and respecting the wishes of those individuals, including giving them access to a formal process when required, in line with our duty of care.

In January 2018, two people decided that they wanted to make formal complaints about a former minister under the harassment procedure and, in line with our duty of care, a formal investigation commenced.

As the appointed IO, I was responsible for undertaking an impartial collection of facts from complainants and from witnesses that arose from the complainants' accounts and those identified by the former First Minister. I provided regular update information to the complainants on the progress of the investigation, and I produced interim and final reports for the permanent secretary to consider in her decision-making capacity.

As has been set out previously, I am giving evidence to the committee on behalf of ministers and not in a personal capacity. The committee will be aware that an undertaking has been given to the Court of Session that applies to my investigation reports and other documents that were created or given to me during my investigation. I must comply with that undertaking, because breaching it could constitute contempt of court.

There is a disagreement between the Scottish Government and Mr Salmond's legal representatives about the decision report. I am advised that, while that disagreement remains, I might be unable to answer some questions about that report, because answering might amount to contempt of court.

If I am concerned that I might breach the undertaking or risk at any point identifying the complainers, I will have to decline to answer at this time and will instead write to the committee, so that the impact of the contempt of court order can be considered fully. I will also write to ensure accuracy on detailed matters.

I remain a member of the FDA trade union.

**The Convener:** Thank you. We will go straight to questions.

**Margaret Mitchell (Central Scotland) (Con):** Our first theme is the process for raising a concern and support for that. Will you explain how the Scottish Government could accept in mid-December 2017 an indication that an individual wished to make a formal complaint under a policy that was not agreed until 20 December?

**Judith Mackinnon:** Will you clarify your question?

**Margaret Mitchell:** How could you accept in mid-December an indication that an individual wanted to make a formal complaint when the policy was not agreed until 20 December?

**Judith Mackinnon:** It is true that one complainer indicated on 19 December that she would be likely to make a formal complaint, but still wanted to ask questions for clarification. You are correct that the policy was not signed off at that point; it was signed off on the following day—20 December. I responded to the queries that the complainer had submitted on 19 December. At that point, she still might not have made a formal complaint—there was only an indication.

**Margaret Mitchell:** When did you provide the additional information?

**Judith Mackinnon:** On 19 December.

**Margaret Mitchell:** So, that was all considered. Was the individual who wished to move to the complaints phase told to wait until January 2018 to make a formal complaint so that it could be dealt with under the procedure?

**Judith Mackinnon:** I think that I said to her that we would speak again in January. At that point, there was still an indication—it was for her to decide what she wanted to do finally, which she did in January.

**Margaret Mitchell:** You will appreciate that that all appears to be rather convenient.

In your most recent appearance before the committee, you confirmed that you had contacted Police Scotland to seek advice on handling sexual harassment cases, and that several officers met you in December 2017. I asked whom you had contacted, and you wrote, following your appearance, to confirm that Gillian Russell had provided you with a contact in the public protection specialist crime unit. You described the meeting as

“a generic meeting about a person centred approach”

that

“did not include reference to any specific concerns, complaints or individuals.”

Will you expand on that meeting? Who else was present?

**Judith Mackinnon:** At the meeting, there were three Police Scotland officers and me.

**Margaret Mitchell:** No one else was present.

**Judith Mackinnon:** No.

**Margaret Mitchell:** How did the information that you received from the police inform the approach of human resources and of the informal confidante?

10:30

**Judith Mackinnon:** It was done very much from the person-centred perspective. It was about being open to someone who comes forward and not being judgmental, and about being able to listen to them, to understand their concerns, to understand why they had come forward, to start to understand what they would like to do, if anything, and to be very much directed by the individual. It was a very person-centred approach.

**Margaret Mitchell:** Okay. Previously, you indicated that if we wanted to know who from Police Scotland was at the generic meeting, we would have to contact it directly. Is that correct—that you are not able to say?

**Judith Mackinnon:** Yes.

**Margaret Mitchell:** I will move on. During the course of the investigation, were you involved in discussions on the referral to the police?

**Judith Mackinnon:** At the end of July 2018, after I had submitted the final IO report to the permanent secretary, who was the decision-maker, I was asked to sound out how the complainers felt about the Scottish Government potentially reporting the matter to the police. I did that. I spoke to both complainers, and they had some questions, mainly about what the next steps would be, what a police process might entail, what would be expected of them and so on.

I contacted one of the officers whom I had met previously. Again, that was not case specific, but I was asking her to help me to be able to feed back to those individuals about what they could expect as part of a police process.

**Margaret Mitchell:** Are you not able to say who that police officer was?

**Judith Mackinnon:** No.

**Margaret Mitchell:** Can you give the approximate date on which such discussions took place, and were any other senior officials involved in those soundings, when you talked to the complainants in the way that you have described?

**Judith Mackinnon:** No; it was just me. I had a telephone call with one of them, and I met one of them, and then we had some follow-up email correspondence.

**Margaret Mitchell:** Right. The referral was not considered until a little later, then. Should it have been considered at the point at which the concern was raised?

**Judith Mackinnon:** Do you mean at the stage at which the initial formal complaint came in?

**Margaret Mitchell:** Yes

**Judith Mackinnon:** I am not aware that it was considered. I think that we were very much in the fact-finding stage. I do not remember an actual conversation, when the complaints came in, about reporting at that stage to the police.

**Margaret Mitchell:** Okay—but an option to report to the police was part of the route map, was it not?

**Judith Mackinnon:** Yes, I believe so.

**Margaret Mitchell:** So, that must have formed part of the thinking and discussions as the process was developed—and certainly when the complaints were received and the investigation took place.

**Judith Mackinnon:** I think that once the facts had been gathered, and the full picture was known, that was the stage at which the permanent secretary, as the deciding officer, might have considered the appropriateness of referring the matter to the police.

**Margaret Mitchell:** Okay. Thank you.

**The Convener:** Maureen Watt has a supplementary question.

**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** Good morning, Ms Mackinnon.

You said that the Scottish Government reported the matter to the police. Do you think that that is appropriate? As an employer, should you not have

told your employees to report it to the police themselves? Third-party reporting of the matter to the police seems a bit odd.

**Judith Mackinnon:** The procedure allows for both those things. It is clearly set out that individuals can go to the police at any time, if they want to. Similarly, it states that the Scottish Government may, at some point, decide that referral to the police is appropriate.

**Maureen Watt:** Do you not think that that looks pretty bad, and looks as though the Scottish Government was encouraging the complainant to go to the police, rather than the complainer making up their own mind?

**Judith Mackinnon:** As I said, the decision for the Scottish Government to make in relation to that was clearly set out. One of the reasons for my speaking to the complainers to test out their views about potentially reporting to the police was so that their views could be taken into account as part of the consideration.

Shortly after I started having those conversations with the complainers, I handed over to Nicky Richards to continue the discussion, because I went overseas on leave. I started the conversation, and my understanding is that it continued and the complainers' concerns were responded to after I went on leave.

**Maureen Watt:** Thank you. I am sure that other members will pick up that line of questioning.

**The Convener:** Yes. Before we move on to Murdo Fraser, I have a question on the same subject.

Ms Mackinnon, you used the expression that you were asked to "sound out" the complainers about reporting to the police. Who asked you to sound them out?

**Judith Mackinnon:** That would more than likely have been Nicky Richards.

**Murdo Fraser (Mid Scotland and Fife) (Con):** I will follow up on the questions of my colleagues. Is it fair to say that the complainers were reluctant to report to the police?

**Judith Mackinnon:** You could say that. I do not think that it had been their intention to do that when they initially came forward.

**Murdo Fraser:** Is it fair to say that the matter would not have gone to the police had you and the Scottish Government not taken it to the police? The complainers would not have done that off their own bat.

**Judith Mackinnon:** I cannot say that for sure.

**Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP):** Ms Mackinnon, as you are more than



aware, the case was conceded in the end on issues around perceived bias and the involvement at multiple stages of the same individuals. To your knowledge, did anyone raise concerns about the fact that, having been involved in creating the procedure, you were then going to be the investigating officer and would implement the procedure?

**Judith Mackinnon:** No. I think that I responded to that issue during my previous attendance at the committee. Those of us who were involved were aware and had knowledge of my prior contact, which was limited and was administrative. Those involved also had the same approach to and interpretation of paragraph 10 of the procedure guide, which was that the IO would not be involved in the matters being complained about. The awareness from the outset that I had had prior contact was not raised as an issue at any point during the process.

**Dr Allan:** How many people were involved in appointing you to the role of investigating officer? I am not asking you to name people who are not at senior civil servant level. Who appointed you to that role?

**Judith Mackinnon:** Nicky Richards, who was my line manager and the director of people in the Scottish Government, appointed me to the IO role.

**Dr Allan:** I might have asked you or others this question in the past. Putting to one side the content of the policies that we are talking about—important though they are—in terms of common sense, did it occur to you at any stage that it was odd for you to be involved at multiple stages of the process?

**Judith Mackinnon:** No, it did not, from a standard human resources perspective. It felt relatively straightforward.

**Maureen Watt:** When you became the investigating officer, were you consulted by anyone, or did you consult anyone, from the Scottish Government legal directorate to make sure that there was no reason why you should not take on the role, given its importance and the potential legal repercussions if the appointment was not in line with requirements?

**Judith Mackinnon:** No, I do not recall a specific discussion about the appropriateness of my appointment. As I said, those of us who were involved were very aware of our interpretation of the procedure, the policy statement and my prior contact. Nobody raised a concern about that and everyone knew about it before I was appointed as the IO.

**Maureen Watt:** When did the concern that your appointment was not a good idea and that it may

cause problems become apparent? Whom did that become apparent to?

**Judith Mackinnon:** To my understanding, it became apparent during October 2018 as part of the judicial review process. It is my understanding that the Scottish Government's counsel had not been aware of the prior contact and had raised the matter.

**Maureen Watt:** Before that, was there no hint from anyone that they thought that it was not the brightest of ideas?

**Judith Mackinnon:** No.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** I have a small supplementary to Margaret Mitchell's line of questioning, before I move on to some more detailed issues.

Margaret Mitchell asked you about the timeline from the first disclosure by the complainers to the introduction of the policy on 20 December 2017. Had the complainer insisted on making a formal complaint in early November, when the matter first came to light, how would that have been handled in the absence of a policy covering former ministers?

**Judith Mackinnon:** If someone raises a complaint, we have a duty of care and an obligation to investigate it, whether we have a policy in place or not. It would have made life quite difficult not to have had a procedure in place, but we still would have been obligated to investigate.

**Alex Cole-Hamilton:** Was there any suggestion at the time when this person, or those people, came forward that they should hold back, or were they told that there was a policy coming that would suit their complaint, if they could just hang fire?

**Judith Mackinnon:** No, there was not, as far as I know, and certainly not from me.

**Alex Cole-Hamilton:** I will move on to a different line of questioning.

Going back to November 2017, there was a lot going on: the #MeToo movement, Mark McDonald's resignation and, through the committee's deliberations, we now understand that at that time senior members of the Government were being made aware of allegations that had been made against Mr Salmond by Edinburgh airport staff. In terms of the background to what was going on while the policy was being developed and when the complainers were starting to come forward, when did you first learn of the particular allegations against Mr Salmond from the airport?

**Judith Mackinnon:** I did not know and still do not know what the particular allegations were against Mr Salmond in relation to the airport.

**Alex Cole-Hamilton:** I am sorry. I will rephrase. When did you first learn that there were allegations coming from the airport, irrespective of whether you were sighted on the detail?

**Judith Mackinnon:** My involvement was limited to staff welfare rather than being on what was being raised. My understanding was that the former First Minister and/or his lawyers had been contacting Scottish Government staff, who raised that with their line managers. I was asked to contact the lawyers and simply ask them, if they wished to speak to any Scottish Government staff, to direct that through me. That was all.

10:45

**Alex Cole-Hamilton:** Can you give us an approximate date for that?

**Judith Mackinnon:** I think that that was in early November.

**Alex Cole-Hamilton:** Okay. Thank you.

To go back to early November, will you remind us how your first meeting with Ms A came about? Did she approach you? Was that done through an intermediary, or did you understand that she had something to say and sought her out?

**Judith Mackinnon:** My first awareness of Ms A was on 22 November. My understanding was that she had met Gillian Russell and Barbara Allison—Gillian Russell had a role as a confidential sounding board. After that meeting, Gillian Russell notified me and Nicky Richards of the meeting and the name of the anonymous individual. We agreed that she would suggest to the person that she could have a conversation with someone from HR if she wished to. Gillian Russell did that, and I think that the individual got in touch with Nicky Richards directly. Nicky Richards set up a meeting for 5 December. That was the first time that I met the individual.

That is my understanding of the sequence of events to my first meeting the individual.

**Alex Cole-Hamilton:** Can you confirm something? You said that that meeting was on 5 December, but our papers suggest that it took place earlier, in November. Document XX047 refers to Nicola Richards and you first meeting Ms A in the first week of November 2017.

**Judith Mackinnon:** No. It was definitely in December 2017.

**Alex Cole-Hamilton:** That might just be an error in our papers. Thank you for that.

When did you first become aware that it was likely that you would become the investigating officer?

**Judith Mackinnon:** Nicky Richards and I had discussions about that in early December. As I said previously, it was felt that four conditions were required for an appropriate investigating officer. The person had to be senior enough, have some experience of looking into such matters, be unconnected to any of the individuals who might raise issues, and have no involvement in the matters that were being complained of. We tried to keep the number of individuals who were involved limited, and the person had to have the ability to make the time to be able to carry out the investigation. On that basis, Nicky Richards suggested that it would most likely be me who would be the IO.

**Alex Cole-Hamilton:** That was contemporaneous with the first meeting in early December 2017. It was around that time.

**Judith Mackinnon:** Yes, in early December.

**Alex Cole-Hamilton:** On 6 December 2017, you received an email from Nicola Richards, which is referenced in document XX047 in our papers. In that email, Nicola Richards specifically asked you to look at the timeline. A range of events took place in November and early December. Nicola Richards suggested that the timeline

“might need testing back against the policy.”

What did you understand that to mean?

**Judith Mackinnon:** I do not have that document in front of me, and I would like to refer to it before I respond to that question, if you do not mind.

**Alex Cole-Hamilton:** It is not a long email. I can read it for you:

“Hi there

I’ve updated the timeline—and this is the final version of the policy I’ve sent to Perm Sec.

Do you want to have a look at the timeline and see what you think? It might need testing back against the policy.”

**Judith Mackinnon:** I cannot recall off the top of my head. I will have to get back to you on that point.

**Alex Cole-Hamilton:** I will fast forward to when Mr Salmond was first told about the Government investigation. The permanent secretary wrote to him on 7 March 2018. The letter invited him to suggest witnesses to be contacted and to set out his version of events. As I understand it, you were appointed as the intermediary with whom he should correspond. Did he make any such recommendations or contact you with a list of questions or concerns?

**Judith Mackinnon:** The lawyers, Levy & McRae, got in touch with me directly and provided details of witnesses for me to contact. I

corresponded with them about those witnesses and the provision of written statements.

**Alex Cole-Hamilton:** When you received that correspondence, what was the process by which you would decide what would be shared with Mr Salmond and what would not be shared? Who would you discuss that with?

**Judith Mackinnon:** What do you mean by “shared”?

**Alex Cole-Hamilton:** You were the intermediary. You were receiving correspondence from Levy & McRae. That was a bombshell moment for Mr Salmond. There was a sudden revelation that he was under investigation by the Government that he used to lead. I imagine that there would have been a range of suggestions, concerns or protestations. How did you handle any correspondence that you received from Levy & McRae? Would you take a decision by yourself or would you take it to the permanent secretary or to Nicola Richards?

**Judith Mackinnon:** It is important to distinguish what my interaction with Levy & McRae was. It was limited to the provision of witnesses, names and statements. The broader correspondence that you may be referring to, about Levy & McRae’s responses to the permanent secretary’s letter, was between the permanent secretary and Levy & McRae. Any back and forward protestations as you call them, or any disagreement about the approach that was being taken, were between the permanent secretary and Levy & McRae. I had a limited role. They gave me the names of people that I could contact, interview and engage with.

**Alex Cole-Hamilton:** Thank you for clarifying that.

There were recommendations of witnesses that Mr Salmond wanted the Government to interview. Did you act on all those recommendations? Did you seek out all the witnesses that he suggested?

**Judith Mackinnon:** He put forward five people. I interviewed three of them face-to-face. I had a telephone consultation with another one, and the fifth person provided a statement via the lawyers, which was incorporated in the report.

**Alex Cole-Hamilton:** Who else within the senior civil service or the SNP knew about the complaints and the investigation between the start of November and the public revelation of the existence of the complaints the following summer? Was it a big group or a small one? Can you name them?

**Judith Mackinnon:** We certainly tried to keep it as tight as possible. In the early days, it was limited to those individuals who have already been named as being involved: people like Nicola Richards, me, Gillian Russell, Barbara Allison and

the Scottish Government legal directorate. That was kept tight as the investigation commenced.

Once the permanent secretary had got in touch with Mr Salmond’s lawyers, and actions were taking place, that small group was again involved. A wider group of people was involved after the decision came out and the judicial review process began.

**Alex Cole-Hamilton:** To your knowledge, was anybody in the high command of the SNP, or the chief of staff or other special advisers in the SNP, aware of the existence of the complaints or the investigations into Mr Salmond prior to the turn of the year? In November and December, when the complaints were first forthcoming, were any of the people who were not necessarily career civil servants—special advisers or SNP staff—aware, in any way, of the complaints?

**Judith Mackinnon:** Not as far as I am aware.

**Angela Constance (Almond Valley) (SNP):** Good morning, Ms Mackinnon. I have a couple of follow-up questions and some questions of my own. Earlier, you told Margaret Mitchell and others that you knew that individuals with whom you were sharing the draft procedure were “likely” to make a complaint. Therefore, with hindsight, do you now think that it was inappropriate to show them draft copies of the procedure?

**Judith Mackinnon:** It would have been more ideal if the procedure had been finalised, but it was shared with only one complainer and we were clear with her that it was still in a draft state at that point, although it was nearing its final version.

**Angela Constance:** You also said that you thought that your contact with complainers was clearly allowed under previous drafts of the procedure. Do you accept that, for the purposes of the complaints and the judicial review, the only iteration that other people saw, and the only iteration that mattered, was the final draft of the procedure, not previous iterations?

**Judith Mackinnon:** I absolutely accept that the removal of more detail from previous versions of the procedure left paragraph 10 open to other interpretations.

**Angela Constance:** My point is that, at the end of the day, the only draft that matters is the final draft that is approved; in many regards, what earlier iterations did or did not mean is irrelevant.

**Judith Mackinnon:** I do not disagree with you. All I would say is that all employment and HR policies are open to interpretation in how they are applied. When we go to employment tribunals, as a matter of course, to defend a position of dismissal or whatever, in most cases the arguments between people who bring complaints and the Scottish Government centre around the

application of policy and procedure and the different interpretations of those things. It is not uncommon for us, as an organisation, to have to defend our position in relation to the interpretation of a policy.

**Angela Constance:** I will move on to some other aspects. Am I correct in understanding that your role was to gather and present information from the complainants, but also to prepare and present information that was gathered from Mr Salmond?

**Judith Mackinnon:** Yes. That is correct.

11:00

**Angela Constance:** Again, I appreciate that hindsight is a wonderful thing, but do you now consider that to be a conflict of interests?

**Judith Mackinnon:** I am not quite sure that I understand what you mean. Do you mean in relation to the two different sets of witnesses?

**Angela Constance:** With respect, Ms Mackinnon, it is quite a simple question. You had a dual role—if I can put it that way—whereby you had to collect information, in an unbiased manner, from the people who were making complaints, which you then had to present to the ultimate decision maker, and you were charged with gathering and preparing information from the individual about whom the complaints had been made.

**Judith Mackinnon:** It is common practice for an investigating officer to investigate all parties who are concerned in a complaint. The role of the IO is to prepare a report that has all the information in it—it will contain no conclusions and no recommendations; it is just a gathering of the facts, including all the unredacted witness statements—for the deciding officer to consider, to enable the deciding officer to come to a view. It is very common for investigating officers to investigate the whole situation.

**Angela Constance:** Okay. You were compiling a factual report based on witness accounts, to present to the permanent secretary. What type of information was made available to Mr Salmond, and when?

**Judith Mackinnon:** On 7 March—this was mentioned earlier—the permanent secretary wrote to Mr Salmond via his lawyers. She included what are known as causes for concern, which were details of certain issues on which she was asking him to respond.

**Angela Constance:** I see from my papers and the evidence that I have read thus far that consideration was given to the investigation process being independent. Can you confirm that?

Why was an independent process not pursued, at the end of the day?

**Judith Mackinnon:** That came up early doors in the development of the procedure. The suggestion of an independent IO was raised. I think that when I last gave evidence, I talked about the standard process that we have in the Scottish Government for investigating matters such as formal complaints. We have a pool of investigating officers, who are trained, and we ensure that they do not investigate something that they have previously been involved with—it tends not to be in their business area—so that they have that independence. That approach was already embedded in the Scottish Government, and that was what I had in mind in the early stages of the procedure's development.

**Angela Constance:** The procedure has no timescale attached to it. Do you consider that to be an omission?

**Judith Mackinnon:** No timescale in respect of what?

**Angela Constance:** The complaints procedure—or are you working to timescales?

**Judith Mackinnon:** Timescales in relation to what? How long the investigation will take?

**Angela Constance:** There are various stages and processes involved in an investigation. Is it in order for an investigation to go on for as long as it takes? I am asking you about your processes and your procedures. I cannot find timescales. Are there timescales?

**Judith Mackinnon:** No.

**Angela Constance:** There are no timescales.

**Judith Mackinnon:** No.

**Angela Constance:** You do not consider that to be an omission or problematic in any way. I am just asking your opinion. You are someone with a human resources background.

**Judith Mackinnon:** We certainly have timescales for other procedures. It is not always easy to stick to them. In my experience of investigating matters, you never really know what is going to come out in an investigation. What we are required to do is to conduct a full and fair investigation, and, until we start to hear from people and understand the number of witnesses et cetera, it is hard to say how long that will take. However, we are required to ensure that we do it timeously and without delay, if possible.

**Angela Constance:** This is my final question, convener—thank you for your forbearance. Ms Mackinnon, can you confirm whether you had contact with Ms Russell, the confidante? If you

had contact, was that before the complaints process kicked off or after, or both?

**Judith Mackinnon:** The answer is both. I spoke to Gillian Russell beforehand—and I think that I provided her with a bit of a framework to help her when staff were engaging with her—and then, afterwards, when she passed over certain things to us to deal with.

**Angela Constance:** I have a very quick supplementary question. Where are the bounds of confidentiality here, bearing in mind the fact that the role of the confidante is to be the private sounding board, separate from the organisation and from HR? Where are the boundaries?

**Judith Mackinnon:** There are very clear boundaries, and it was a matter for the confidante. If the individual had not wanted the matter to be shared, that would have been respected, so Gillian Russell would not have shared anything with me or Nicky Richards without the permission of the individual.

**The Convener:** Jackie Baillie is next.

**Jackie Baillie:** Thank you, convener. There is a lot to get through. I welcome Ms Mackinnon back to the committee. I will follow up something that you said in relation to the police. Was a copy of your investigation report offered to the police by the permanent secretary?

**Judith Mackinnon:** I do not know. I was not involved in that part of the process.

**Jackie Baillie:** Would you be surprised to hear that it was? My understanding is that a senior police officer told the criminal trial that Police Scotland did not want to see a copy of your report, because it could contaminate their investigation. You have no knowledge of that.

**Judith Mackinnon:** I did not know at the time that it had been offered.

**Jackie Baillie:** You have obviously heard of that since.

**Judith Mackinnon:** Yes.

**Jackie Baillie:** Did you think that that was a wise move on the part of the permanent secretary?

**Judith Mackinnon:** I do not know. I cannot answer that question.

**Jackie Baillie:** That is okay. Thank you anyway. You told us previously that you had been very open about your involvement with the complainants in late 2017, so I am curious to know: why did the permanent secretary and the Lord Advocate claim that it was only during the commission of documents in December that they

decided to throw in the towel at all? Had you not told them the full extent of your involvement?

**Judith Mackinnon:** As I said previously, I was up front about the contact at the time and during the process. My understanding about the judicial review decision related to our ability to evidence fully what that contact had been. Therefore, prior to December, I think, I had provided everything that was asked for, and it was considerable, and it included the substantive meeting with Ms A on 5 December and all the contact and emails in relation to that in the December.

The outstanding things that came up as a result of the information specification on 17 December identified other places in which we were expected to look for evidence.

**Jackie Baillie:** You are telling me that you were open and transparent about the matter since late 2017 and that everybody knew about that, but that the process that you went through for the judicial review was about the provision of evidence to show that you knew about it. Okay, that is fine.

You told us before that, in December 2017, you had meetings in person or by phone with the complainants. You and Ms Richards told them that you would be the investigating officer, which—I think—you confirmed to me. In November, you had sight of what was later to become a complaint from Ms A, and the emerging policy was shared with one of the complainants. All of that was before the policy was adopted, was it not?

**Judith Mackinnon:** It was before the policy was approved, yes.

**Jackie Baillie:** Okay.

**Judith Mackinnon:** The policy was approved on 20 December.

**Jackie Baillie:** I am curious, given all those points brought together, why you told us that you were shocked that the judicial review had been conceded. You recognise now that that conduct would probably be seen as incompatible with being an impartial investigator.

**Judith Mackinnon:** I was shocked about the judicial review decision because I felt that, at the end of November, I had already provided the majority of information that illustrated the level of prior contact. Those things were inserted into the pleadings, and our organisational position was still, at that point, to continue to defend the action.

I was so shocked because it felt to me that it was the finding of relatively small things—in my view, admittedly—such as a relatively minor aspect of evidence or, in one case, not really being able to evidence prior contact at all in relation to a particular meeting, that had resulted in the concession.

**Jackie Baillie:** Your prior involvement, which was substantial—as you acknowledge quite openly—showed a degree of partiality that, although it might be small to you, would have allowed the Court of Session to arrive at a judgment had the process gone to full term. It allowed for the Scottish Government to concede before such a judgment happened, because the Scottish Government understood that it would lose the case on that basis. That is not really a small thing, is it?

**Judith Mackinnon:** That is not what I meant by a “small thing”. I was really indicating that the bulk of the information about prior contact had already been passed over and was contained in the pleadings. At that point, the other side was clearly stating the bias point, so the final information that was uncovered and passed over was evidence of administrative aspects of the prior contact and nothing more than that. That is why the decision was such a shock.

**Jackie Baillie:** The permanent secretary gave us an impression in her earlier evidence that she was not really involved at all in the development of the policy. Is it not the case that you and Ms Richards briefed her almost every step of the way and that she therefore knew the role that you played during, and prior to, your time as the investigating officer?

**Judith Mackinnon:** The permanent secretary was briefed on the prior contact. Once the investigation got under way, I was not in regular contact with her at all. I had one meeting with her to give her the interim report, but that was the extent of the engagement.

11:15

**Jackie Baillie:** Was Ms Richards briefing her, then, on the development of the policy?

**Judith Mackinnon:** Ms Richards would be keeping the perm sec abreast of what she needed to know. She was in regular contact with her about a whole variety of things.

**Jackie Baillie:** Will you remind me when you were appointed as the investigating officer?

**Judith Mackinnon:** Officially, that would have been 16 January 2018.

**Jackie Baillie:** Okay. There is apparently a OneNote from you on 9 January, in which you talk about changing the position of a potential complainant and say,

“Better to get policy finalised and approved ... before a complaint comes in”

and there is mention of Ms Richards updating the permanent secretary and of not telling the former

First Minister until you were ready. All that was before you were appointed, was it not?

**Judith Mackinnon:** It was before I was officially appointed—yes.

**Jackie Baillie:** Okay. Is that compatible with being an impartial investigating officer? Perhaps that is a rhetorical question.

**Judith Mackinnon:** As I mentioned earlier, in December, in discussions with Nicky Richards, we had decided that I would be likely to be the IO and we were progressing on that basis. The formal appointment on 16 January was the result of a formal complaint coming in and the start of that investigation process.

**Jackie Baillie:** I take us on to the conduct of the investigation. After your report was concluded, did you keep in touch with the complainers?

**Judith Mackinnon:** Yes. I provided them with regular updates on progress as the situation developed until, as I mentioned, the end of July 2018. At the beginning of August, I handed that over to Nicky Richards for three weeks, because I went on leave. When I returned from leave, she handed that engagement back to me and I continued to update the complainers on progress.

**Jackie Baillie:** The committee is likely to see the legal advice that was provided to the former First Minister by Levy & McRae, because my understanding is that he has waived legal privilege. Did you share with the complainers any of the information that was provided to you about the positions taken by Levy & McRae?

**Judith Mackinnon:** No, I did not share legal advice or any documents from Levy & McRae. I just updated the individuals on progress as it would affect them—for example, I updated them about the initial delay in a response from the former First Minister. The initial timeframe that was provided by the permanent secretary was not going to be met, so I let them know that there would be no response to the permanent secretary’s letter for another however long—two weeks or whatever it was. That was the kind of update that I was providing.

**Jackie Baillie:** It is clear from what you have just told me that you did not share documents, but did you summarise the contents of documents and share them with complainers or, indeed, with witnesses?

**Judith Mackinnon:** No. I would not say that I summarised documents. I would be making the complainers aware of what they needed to know, as it would affect them.

**Jackie Baillie:** What I am trying to get at is whether you shared any information pertaining to the legal position advanced by Levy & McRae on

behalf of their client with any of the complainants or witnesses, whether it was a summary version or otherwise.

**Judith Mackinnon:** I need to check the specific documents—my updates—if you do not mind.

**Jackie Baillie:** Okay—I would be happy if you did that.

**Judith Mackinnon:** I would rather do that and give you the detail.

**Jackie Baillie:** If we do not receive the updates in the tranche of documents that we are to get, it would be very helpful if you would do the committee the benefit of providing those to us.

I move on to the judicial review, which started in August 2018. You previously told us that it was your job to report developments to the complainants. Who gave you that task?

**Judith Mackinnon:** That would have been agreed with Nicky Richards.

**Jackie Baillie:** Do you know whether she was asked to do that by someone else? Do not worry if you do not know—we can ask her.

**Judith Mackinnon:** I do not know.

**Jackie Baillie:** That is fine.

You previously told us that the meetings for the judicial review were three times a week; I think that Mr Cackette said that it was almost daily. Whatever the frequency, I am genuinely surprised, given my understanding of how the civil service likes to record things, that there does not appear to be a minute, a Microsoft OneNote or any other record of those meetings. Did you record those meetings?

**Judith Mackinnon:** I did not record them. I took my actions away from them; in effect, my action was to update the complainers. I suppose that my record of those meetings would be the update emails that went to the complainers.

**Jackie Baillie:** Fine. We will be getting a copy of those, so that is very helpful.

We heard from Mr Cackette about the prospects of sisting—that is, postponing—the judicial review. The Lord Advocate also mentioned that in his evidence a couple of weeks ago. You were aware of that possibility, were you not?

**Judith Mackinnon:** I am not sure that I was.

**Jackie Baillie:** Could you check that? I am curious to know whether you informed any of the complainants, or anyone else, that the Lord Advocate was considering the prospects of attempting to sist the judicial review behind the criminal case.

**Judith Mackinnon:** Yes.

**Jackie Baillie:** That would be very helpful.

Finally, when you were giving evidence under oath to the commission on documents, were you transparent about the extent of your contact with Ms A and Ms B before you were appointed investigating officer?

**Judith Mackinnon:** Are you referring to commission and diligence?

**Jackie Baillie:** Yes. Did you tell it about the extent of your contact?

**Judith Mackinnon:** I had never been involved in anything like that before. The process was very much about documentation; it was about referring me to documents that I had provided and checking with me whether there were any additional documents. For example, if a document said, “As per our conversation”, or “From our meeting”, I was asked, “Is there a record of that conversation or that meeting? Could you go and check whether there is?”

That was the basis for the whole session—it was really about the documentation that was there. The documents had already been provided about the bulk of the prior contact. I left the process with a commitment to carry out further searches because, for example, I did not have a record of the meeting on 16 January. I could not find a record of it, and I was asked to check again. That was the main purpose of the commission and diligence process.

**The Convener:** Alex Cole-Hamilton has a short supplementary.

**Alex Cole-Hamilton:** Thank you very much for bringing me back in, convener.

I asked you whether, when the concerns first came to light and before they were made formal, you or anyone else had suggested that the complainers hang fire until there was a policy. You said, “No”. I understand and accept that. However, at that time, the complainers were given a draft policy to look at, sense check and see whether it might help their situation. Was that not in and of itself an indication that there was a policy coming down the tracks that would address their complaints and, as such, something that might induce them to hang fire from making the complaint formal?

**Judith Mackinnon:** We were certainly open with the complainers about the fact that there was a policy under way. You are right: we shared a draft. They knew that it was a draft. Those are the facts of the matter. It was not about inducing the complainers to do anything; it was just about, as part of normal process, sharing with individuals who were considering making a formal complaint what a process might look like and what to expect

as someone who would be involved in the process.

**Alex Cole-Hamilton:** I imagine that you would have told them how advanced that policy was, and the effect of that might have been that they said that they would just wait a couple of weeks until it was signed off.

**Judith Mackinnon:** I certainly never had a conversation like that with any of them. It was left to the individuals to come back and say that they wanted to make a formal complaint.

**Alex Cole-Hamilton:** This is my final final question. I asked you who knew of the existence of the complaints, and you gave a very defined list of Government officials, including yourself, Nicola Richards, and Barbara Allison. However, we now know that John Somers, the First Minister's private secretary met with a complainer on 20 and 21 November. When did you first learn of those meetings and what was his involvement in liaising with those officials who were in the loop?

**Judith Mackinnon:** At the time, I had no knowledge that that had happened. I discovered those meetings only when I was preparing for the inquiry.

**Alex Cole-Hamilton:** You are telling me that the First Minister's senior civil servant, who is attached to her office, received a disclosure but, to your knowledge, did nothing with it within the upper reaches of the civil service at that time.

**Judith Mackinnon:** I am saying that I did not know about it personally. That is all that I can say.

**Alex Cole-Hamilton:** You were the investigating officer.

**Judith Mackinnon:** I was the investigating officer when things kicked off in January. I did not know that those meetings were happening at the time. I found out only much later that they had taken place.

**Alex Cole-Hamilton:** Thank you. I have no further questions.

**Andy Wightman:** Either in your opening remarks or in response to an earlier question, you said that, following the November 2017 email from the permanent secretary to all staff, people came forward. Roughly how many people came forward? Was it a handful? Was it tens?

**Judith Mackinnon:** I think that it was about 10 or 11 people.

**Andy Wightman:** To your knowledge, how many of those were concerned with complaints against the former First Minister?

**Judith Mackinnon:** I am just pausing because I am concerned about jigsaw identification. If you do

not mind, I will come back and clarify that for you later.

**Andy Wightman:** That is fine—no problem.

One complainer came forward in mid-December. I draw your attention to document YY046, which is an email dated 14 December from Nicola Richards to Ms A, copied to yourself. It describes a number of options that are available to the complainer and says that Nicola Richards will be on leave and will return on 9 January but

"Judith is very happy to be contacted if you want to talk at any time."

None of the options includes the possibility of a complaint under the fairness at work policy. Was that intentional?

**Judith Mackinnon:** I imagine that it would have been intentional because of the appropriateness of the fairness at work policy and the subject that was being raised.

**Andy Wightman:** That is your view. We heard from James Hynd on 25 August that the fairness at work policy had a gap that he had identified in relation to former ministers. We also heard from Nicola Richards on 25 August:

"Complaints about third parties—which is, in essence, what a minister or former minister would be in this instance—are a fairly routine part of other policies and are included in our fairness at work policy."—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 25 August 2020; c 32.]

If the complainer wished to complain under the fairness at work policy, would that have been admissible, given that it was a complaint about a former First Minister, even though there was not a specific procedure for such a complaint?

11:30

**Judith Mackinnon:** No. The fairness at work policy allows for complaints against current but not former ministers. That is the gap in our processes that James Hynd and the HR team identified.

**Andy Wightman:** I want to move on to the question of prior contact because, in the same email, Nicola Richards says:

"In the case of it being a formal process then it is likely that Judith would take the role of the 'senior officer', given she had no involvement at the time and her professional experience."

Is it your understanding that the phrase "no involvement at the time" relates to involvement that you did not have when the alleged incident took place many years earlier?

**Judith Mackinnon:** That is correct.



**Andy Wightman:** That is helpful. In your understanding, and in general terms, does the term “prior contact” have the same meaning as

“no involvement at the time”?

**Judith Mackinnon:** Prior involvement in the matter being investigated and prior contact with the individuals in terms of process are two different things.

**Andy Wightman:** So

“no involvement at the time”

is clear, but how far back would prior contact with the complainers have to be for there to have been no prior contact?

**Judith Mackinnon:** I am not quite sure what you mean.

**Andy Wightman:** I am just wondering because, during your previous attendance at an evidence session, you stated:

“The initial drafting was very clear about the prior contact that could take place, and that is how I operated.”—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 27 October 2020; c 11.]

That was what you said, so what was your understanding of prior contact?

**Judith Mackinnon:** My understanding is shown through what I did, which was to ensure that the individuals were aware of the options that were open to them and of what the process might look like should they decide to make their concern a formal complaint. I think that I said previously that that is why I felt that I was acting completely in line with the policy, albeit the earlier revised version of it.

**Andy Wightman:** That is helpful. Let us move forward to the point in March 2018 when the former First Minister became aware of the nature of the formal complaint that had been made against him. From what you said earlier, I think that it was the permanent secretary who made the former First Minister aware that a complaint had been made. Is that correct?

**Judith Mackinnon:** Yes. I understand that she wrote to him through his lawyers.

**Andy Wightman:** The First Minister’s lawyers then corresponded extensively with the permanent secretary. Broadly speaking, how much of that correspondence was shared with you?

**Judith Mackinnon:** I saw all correspondence that related to the investigation or that I had to update the complainers on.

**Andy Wightman:** Did that extend to, for example, correspondence on the witnesses who were suggested by the former First Minister and on which witnesses were asked questions that he

considered relevant? Were such points drawn to your attention, because, presumably, only you would have known the answer to those questions?

**Judith Mackinnon:** I notified the complainers that, for example, the former First Minister had put forward witnesses for me to interview, and that those interviews would take place over the coming weeks. I let them know what was happening, such as that I was investigating and speaking to other witnesses who had been put forward by the former First Minister, as I said.

**Andy Wightman:** Did you speak to all those witnesses?

**Judith Mackinnon:** I spoke to four of them and I received a statement from a fifth one, and the former First Minister himself provided a statement.

**Andy Wightman:** And that was all wrapped up in the draft report that you sent to the permanent secretary.

**Judith Mackinnon:** It was the final report that went to the permanent secretary.

**Andy Wightman:** What is the relationship between your role as investigating officer and the role of the confidante?

**Judith Mackinnon:** They are completely separate. The confidante role was very much at the earlier stages of the process for people coming forward. My on-going role with the complainers was to ensure that they were aware of progress and developments. I was not providing pastoral or emotional support, but I was giving them options for where they could access that type of support. Those options included Gillian Russell in the previous confidante role, but there were other options such as external counselling support.

**Andy Wightman:** As far as you can remember, has the role of the confidante always been part of Scottish Government procedures?

**Judith Mackinnon:** I do not think so. I was quite new to the organisation at that point—I joined only in August 2017. I think that the confidante role was introduced in particular in relation to this process, and that is the role that Gillian Russell took on. I think that she is still identified in the organisation as someone people can go to, so that option is still there for staff.

**The Convener:** I have a couple of questions to wind up. One of the permanent secretary’s letters to Levy & McRae included details of anonymous complaints. Did you investigate any anonymous complaints?

**Judith Mackinnon:** Was she not referring to the two individuals who had made the actual complaints? Their names were not shared with the former First Minister at that stage.

**The Convener:** So you do not think that there was anyone beyond that.

**Judith Mackinnon:** I do not think so. I would have to check, but I am sure that it would be just the two complainers, who had asked for their names to be kept anonymous.

**The Convener:** Did either of the complainers ever express a view to you on the extent of the independence of the policy or the process as it was going forward?

**Judith Mackinnon:** Not to me they did not.

**The Convener:** You felt that they were confident with it.

**Judith Mackinnon:** They certainly did not say that they were not. They did not express that view.

**The Convener:** My last question goes back to the beginning of the session, when we spoke about discussions with the police. You were quite up front when you said that, as an HR professional, you felt that there was a reluctance by the two complainers to go to the police, and you were asked by Nicky Richards to sound them out.

In your view as an HR professional, when people raise complaints of such a serious nature, would they generally be encouraged—I do not mean that in a bad way; people have to be given the confidence—to go to the police themselves or to agree to allow their employer to do so? Would that be the case in general?

**Judith Mackinnon:** In general, absolutely—individuals always have the opportunity, or the option, to raise a complaint at any stage.

**The Convener:** I am talking about actually going to the police about a complaint. Would people be reluctant—understandably—to do that?

**Judith Mackinnon:** I cannot imagine that it would be an easy thing to do at all. I cannot speak for the individuals, but I cannot imagine for one minute that it would be easy.

**The Convener:** Do you think that there is any particular obligation on an employer to encourage people to do so?

**Judith Mackinnon:** As the policy states, the Scottish Government may consider making a referral to the police if it considers that something potentially criminal has happened. That is exactly what happened in the end. Before that decision was made, considerable information and facts were gathered about the complainers' experience. With all the evidence that was finally produced for the deciding officer's report, that decision was felt to be the right one.

**The Convener:** Those are all our questions. I thank you very much for your evidence and for the time that you have given us. We will break for a few minutes before we move to the next witness.

11:41

*Meeting suspended.*

11:49

*On resuming—*

**The Convener:** I welcome to the meeting Gillian Russell, who is director for health workforce in the Scottish Government. I invite Ms Russell to make a solemn affirmation.

**Gillian Russell (Scottish Government)** *made a solemn affirmation*

**The Convener:** I invite Ms Russell to make a brief opening statement.

**Gillian Russell (Scottish Government):** Thank you, convener. My opening statement will give some background to my career as a civil servant and the context of my role as confidential sounding board.

I have worked in the Scottish Government since 1992. In the first part of my career, I worked as a lawyer. I was promoted to the senior civil service in 2007 and then moved into policy roles in the justice portfolio in 2010. I was appointed as permanent director for safer communities in December 2015, with the safety, security and resilience brief, which included the police and fire services. On 17 March 2020, I moved to my current role as director for health workforce, which has involved working on the Covid response.

Turning back to autumn 2017, the SG, like other organisations, was reflecting on the issues that had been raised by the #MeToo movement, with extensive media reports and focus on sexual harassment in the workplace. By the end of October and early November 2017, there was both an SG and United Kingdom civil-service-wide expectation of an effective response, including the creation of a safe channel for staff. It is documented that our organisation picked up concerns from staff following the all-staff message on 2 November and the permanent secretary's blog on 6 November.

On 10 November, the perm sec asked me to take on a corporate role in relation to sexual harassment. The role was communicated to the Scottish Government through an all-staff message on 13 November. In that note, the perm sec advised that I was to act as a confidential sounding board for people who had experienced sexual harassment, whether it was current or in the past. It was made clear that my role was not to

supplant existing arrangements but was to provide another option for those who would like a private informal and supportive space.

I was very mindful that the people who might come to speak to me might be fearful about taking the step to speak to a senior official. In response, it would be important to develop a relationship of trust and confidence—in particular, they should be able to speak to me in complete confidence. It was important to understand what mattered to the individual and to support them. I considered it to be important that any issues that were raised with me would be taken seriously and dealt with promptly. I anticipated that the things that people shared with me could be distressing.

I have continued to carry out that role. My details remain on the internal SG staff pages. It was in that role that I was approached for support by the individual who became known as Ms A. I met her, took a note of the meeting and passed the note to HR anonymously on her behalf on 22 November. On 29 November, I engaged with Ms A on behalf of HR to ask her to speak to HR directly. She agreed. I had no further involvement in the steps that followed in the engagement that took place with HR.

I am giving evidence to the committee not on my behalf, but on behalf of ministers. This is complex legal territory. I am privy to information that might have been subject to legal proceedings and for which confidentiality is claimed by other parties, or which goes to the heart of the integrity of the role that I was given. I will try to answer questions as best I can, but I might need to pause for legal advice, or to follow up questions in writing with detail, to ensure accuracy and that all the Government's legal duties are fulfilled.

In line with the approach of other attendees, I declare that I am a member of the FDA union.

**The Convener:** Thank you very much, Ms Russell. I have a quick question before we move on. We heard from Barbara Allison about her role in pastoral care. Will you clarify the difference between your role as confidante and the pastoral care role that was undertaken by Ms Allison?

**Gillian Russell:** Yes. The role that the permanent secretary asked me to fill was around the confidentiality space; she described it to me as "the conduit". She said that she was looking for someone whom staff could approach, and who had experience of dealing with sensitive issues. To be honest, at the time, in November, as the documentation will demonstrate, I was not aware of Barbara Allison having that role of pastoral care. I was aware of the role that the permanent secretary asked me to do. The origin of that can be traced back to the letter that she received from Sir Jeremy Heywood at the time, which had asked

for a person who could provide that safe role within the UK civil service. That was her answer to that.

**The Convener:** Therefore, is it the case that people go to you direct, rather than being referred to you?

**Gillian Russell:** Yes. I think that it was important to recognise that the role that I had was there if staff wanted to take up that option. The role was promoted to the civil service in an all-staff message on 13 November, which the committee will have seen. That message made clear to staff the basis on which they could come and speak to me, as I set out in my introduction. There was a clear message to staff around that. Once that message had gone out to staff, I waited to see whether anyone wanted to approach me and raise any matters in relation to sexual harassment, either current or historical. I waited to see whether anyone would take up the offer that had been made to them of a senior civil servant being in that space.

**The Convener:** Thank you for the clarification.

**Margaret Mitchell:** It is still morning, so good morning, Ms Russell.

In order to clarify what you said to the convener, can you confirm that there was no interaction between you as the confidante and Barbara Allison in her role as pastoral care officer?

**Gillian Russell:** Yes. It would be helpful to articulate that a little further. After I took on the role on 13 November, there was an engagement with Barbara Allison, in which she advised me that somebody might want to come and speak to me. I advised Barbara that the text number for that purpose had been made available to staff and that, if anyone wanted to contact me, I would obviously be happy to see what I could do to support them, as had been set out in the note. The person who got in touch with me became known as Ms A.

**Margaret Mitchell:** Did Barbara Allison know that someone wanted to talk to you?

**Gillian Russell:** She said to me just that somebody might want to speak to me and I said that, if someone wanted to speak to me, please could they do so through that text number, so that I could speak to them and see what they would like to do next. That is how that started.

**Margaret Mitchell:** She did not give you any context about how she knew about that person.

**Gillian Russell:** She said that she had been approached by somebody who wanted to speak. That was all I knew.

**Margaret Mitchell:** Did anyone who came forward to raise concerns about historical sexual

harassment indicate to you that they had raised those incidents with anyone at the actual time when the incidents took place?

**Gillian Russell:** I am not sure that I am allowed to go into that level of detail before the committee.

**Margaret Mitchell:** It is a general question. Had they raised it with anyone at the time? No specifics.

**Gillian Russell:** I am being careful because of the risks around jigsaw identification. I am not trying to be unhelpful to you, deputy convener. If I am being asked, truthfully—yes, they had.

**Margaret Mitchell:** That is helpful. Are you able to say whom they had raised it with? For example, we know from the FDA evidence that a lot of people had raised concerns, but not formal complaints. We know that a lot of them raised concerns with their line manager. If you cannot name a person, are you able to say—generally—what their post was?

12:00

**Gillian Russell:** I will again be careful due to the constraints that I am under. In general terms, concern had been raised with their internal line management.

**Margaret Mitchell:** Are you able to confirm whether Barbara Allison was informed about them at the time?

**Gillian Russell:** I have no knowledge of that at all. As far as I recollect, internal line management had been fully advised.

**Margaret Mitchell:** Could you confirm how long your role as confidante to the complainant lasted? For example, once complaints were passed to HR and formalised, did your role cease or did you continue to provide support? If you did, does that include up to the judicial review and beyond?

**Gillian Russell:** I know that, unfortunately, you do not have the documents, but there is a document that includes my last email to Ms A that makes it clear that I would continue to offer her support if she wanted it. I have seen subsequent documents that have been produced for the committee, which I did not see at the time, advising Ms A that I would be available to provide support for her if she wanted it. I can confirm that she did not take up that offer of further support during the process—but if she had asked for further support, of course I would have given it.

**Margaret Mitchell:** You were obviously in contact with the complainants during the judicial review period, or you had the ability to be. Were you aware of the offer of arbitration having been made by the former First Minister?

**Gillian Russell:** Just to be clear, I say that I was not involved with the complainers during the judicial review process and did not, in fact, have any engagement with the judicial review process prior to being asked to attend court in the commission.

**Margaret Mitchell:** I understand that, but I believe that the offer of arbitration came way before the judicial review process. Were you aware of the offer of arbitration being made at all?

**Gillian Russell:** After 29 November, I did not have any knowledge other than that I would have been advised that formal complaints were going forward, but in relation to the nature of that process, there was no reason for me to be told anything about such an offer; there was no basis for me to be involved in any of that, at all. To be clear: I had no knowledge.

**Margaret Mitchell:** So, you had no knowledge at all that an offer of arbitration had been made. When did you become aware of that? We are all aware of it now, but when did you become aware?

**Gillian Russell:** I was not aware of it until the documents were presented.

**Margaret Mitchell:** That is helpful. Thank you. Without going into specifics about individuals, can you say generally whether those who contacted you had a clear outcome in mind? Were they clear that they wanted to make a complaint or did they just wish to speak to someone?

**Gillian Russell:** In relation to the role that I took, and bearing it in mind that I have the confidence of people who spoke to me, I say that people came and spoke to me about current and historic issues, and that each was unique and required its own set of discussions. My role was to see what the individual wanted, listen to their concerns and consider with them what the options might be. That might have been to move them into a formal HR process if that was what they wanted. Sometimes it was to help them to speak to a line manager and sometimes it was just to record their recollections of the culture of the organisation, so there were many different ways in which I would have supported somebody. There was no one particular route.

**Margaret Mitchell:** I understand that.

In relation to the options that might have been looked at, we know that mediation was raised. Whether that would be appropriate in such situations is another question; I am dubious about that. However, was that an option that you knew could be offered and could be considered if it was wanted? Was the option of people going to the police raised?

**Gillian Russell:** I will constrain my comments here to Ms A, because that is the subject matter of

the committee's consideration in relation to the complaints. In the statement that I took from Ms A when I spoke to her on 22 November, she raised a series of very significant issues with me. I found what she said to me to be profoundly difficult; I just want to be honest about that. In response, we discussed issues that she would want to think about in taking matters forward. I do not want to go into too much detail, but you have asked specifically about the police. I recorded at the time that it potentially raised matters of a criminal nature.

**Margaret Mitchell:** Can I ask you what the reaction was to that? Was it a step too far?

**Gillian Russell:** At that time, Ms A had only just come and spoken to me. As you can imagine, it was not an easy meeting, and I just wanted to be compassionate and thoughtful about what she would want. As I think I said in my opening remarks, as somebody who had worked in the justice system for a long time, I was mindful of the need to be very careful around somebody who had revealed something of that nature to me, and of the kinds of considerations that I would need to take. It was not a decision point.

On the back of the discussion, we agreed that it would be appropriate for me to put a note of the meeting to HR anonymously on her behalf. I gave HR a relatively detailed note of the issues that she had raised with me and the discussion that we had had. Therefore, HR had that note, at that point on an anonymised basis, because that was her wish. You mentioned Barbara Allison; she attended the meeting as well. She and Ms A considered the note of the meeting, and that anonymised note went forward to HR.

**Margaret Mitchell:** What was your understanding of your role in relation to the police? Were you to contact the police in the event that a concern was raised?

**Gillian Russell:** After being asked to take on the role by the permanent secretary, I had asked for specification of the nature of the role and what it might entail, and what I might be doing in terms of people who might come to me. That specification was given; the committee will get that detail, in due course.

Separately, I also asked for a checklist, because I was concerned that people might come to me in distress. They could come to me with live issues that they were facing, and it would be important for me to have framing for such conversations. I think that that checklist can and will be made available to the committee. In that context, it was just important for me to engage carefully with the individual.

**Margaret Mitchell:** Are you able to set out what the process would be for taking a matter to the police? Were you clear on that at that time?

**Gillian Russell:** I asked at that point in time about a police liaison officer generally. Just to be clear, my role related to current and historical issues and it did not relate to ministers in particular; it was about any staff who came forward with any issues. I had to be mindful that current staff could be facing current difficult issues and I might need to intervene. I asked whether there was a police liaison officer who could be made available, so that there would be that opportunity if an individual came to me and said, "This is what's happening to me," and we talked it through, and I thought that it was significant and raised matters of a criminal nature. If they wanted to go to the police to speak about it, of course I would have supported them to do so. I have a lot of confidence in our police and their ability to engage around issues of sexual crime; they have a high level of service there. That was one option that could have been taken.

If somebody did not want to do that, that would also be fine. However, I wanted to understand what the obligation might be on me, as a senior civil servant who had that information, and what obligation might be on the organisation. In the information that you will get, there is some reference to me asking that of Judith Mackinnon. I was advised that there would be HR involvement, with further discussion and consideration around that. As far as I was concerned, advice had been given to me, and it was quite clear. The perm sec wrote subsequently to say a bit more about that generally.

For your reassurance, I was very much alive to the issue, and I was also mindful of and thoughtful about the need to be supportive of the person who had chosen to speak to me.

**Margaret Mitchell:** You did not have anything to do with the generic meeting that took place with the police liaison officer.

**Gillian Russell:** No.

**Margaret Mitchell:** So, you were not explaining anything—

**Gillian Russell:** No.

**Margaret Mitchell:** Were you involved in the discussions on the referral to the police?

**Gillian Russell:** No.

**Margaret Mitchell:** Not at all, then.

**Gillian Russell:** No.

**Margaret Mitchell:** Were you aware of which officials were involved?

**Gillian Russell:** No. I provided Judith Mackinnon with the names of people I thought of because, as a result of our role in working with the police on policy-related issues generally, I would have known the part of Police Scotland that had a public protection specialism. That name was given to Judith Mackinnon. I have looked at the documentation and the name is redacted. I have been advised that that is because there is not considered to be a need to release that name. I know the name, but I am not going to give it, for that reason, if that is okay.

**Margaret Mitchell:** That is fine.

How did you become aware that there was a referral, and who told you?

**Gillian Russell:** I did not know that until it became public knowledge in August 2018. That was the first I knew that the matter had got to that point.

**Margaret Mitchell:** Did you read that in the press?

**Gillian Russell:** I heard it in the press—that is correct.

**Margaret Mitchell:** Thank you—that is very helpful.

**Andy Wightman:** Good morning, Ms Russell. I must leave at 12.20. That is not out of disrespect; I have a meeting with a cabinet secretary.

You took on a role of confidante, as requested by the permanent secretary. Were you aware at the time when you were asked to take on that role that a review of how complaints regarding sexual harassment would be handled by the Scottish Government was under way?

**Gillian Russell:** At the point in time when I took on the role, no—I was not aware of any of that, and I had not been involved in any of that.

As I think the record will show—again, I am sorry that you do not have the documentation—Judith Mackinnon shared, for reference, a copy of the draft guidance on 24 November. That is the first time that I would have been aware of that.

**Andy Wightman:** Did that have any bearing on the confidante role that you were undertaking?

**Gillian Russell:** No. The confidante role was in relation to all staff; it just so happened that some staff who came to speak to me happened to come to speak to me about matters relating to the former First Minister.

**Andy Wightman:** You say “some staff”. Was it more than one? How many was it?

**Gillian Russell:** I will not go into any more detail, if you do not mind, but it is fair to say that there was more than one person, yes.

**Andy Wightman:** Once the complaint had been formally received by the Scottish Government in January in relation to Ms A, what was your role? Did it continue to be one of confidante?

**Gillian Russell:** Yes.

**Andy Wightman:** Did you have quite significant engagement with Ms A during that process?

**Gillian Russell:** No. As I said to Ms Mitchell, I did not have any engagement with Ms A at all. She did not choose to come back to speak to me further.

**Andy Wightman:** After the 22nd—

**Gillian Russell:** After 29 November, when I had the email exchange with her. She agreed that she would speak to HR. I removed her anonymity at that point for HR, because she had agreed to speak to HR staff. I said, “I’m here if you want anything,” but she chose not to get back in touch.

**Andy Wightman:** So your engagement with Ms A was over a relatively short period of a week to 10 days or so.

**Gillian Russell:** That is correct.

**Andy Wightman:** I turn now to the investigation that was under way. Were you told that it was under way?

**Gillian Russell:** I would not have known anything other than that. In documents from January or February that I have seen, there is a reference to a discussion between Nicky Richards and Judith Mackinnon suggesting that, out of courtesy, they might want to tell me that things had moved to a formal process. I cannot recollect whether I was told that. Certainly, I did not know about anything after 29 November. At most, they could have said to me that a formal process was now under way, but that would have been the limit of what I knew.

12:15

**Andy Wightman:** Were you satisfied with the advice that you were given about record keeping and your duties in relation to the things that people divulged to you and the extent to which you should retain a permanent note of that? Were you satisfied that you had sufficient guidance?

**Gillian Russell:** It is an interesting point, because people were coming to me as someone in a quasi-independent role with a certain expectation that I would hold things in confidence in an informal, private space but, at the end of the day, I still had obligations as a senior civil servant. I kept notes and would have disposed of them as appropriate, according to the individual matters that I was dealing with—I have had to keep some notes.

**Andy Wightman:** In your role as confidante, was it clear to people who came to you that they would have the final say on what, if anything, you did and to whom you could speak about their issues?

**Gillian Russell:** As far as possible, I tried to do that. That explains why, when Ms A spoke to me initially, I took the notes of our meeting on an anonymised basis and kept her identity separate. As I have said, I raised that issue initially with both Nicky Richards and Judith Mackinnon. Given our obligations as an employer and bearing in mind that people were raising issues that happened in the workplace, inevitably, if significant issues were raised with me that might require us as an organisation to respond, there could have been circumstances in which I would have found it difficult not to take some action, notwithstanding the duty of confidentiality. I would have done all that with the individuals and talked them through it. However, there were boundaries to the extent that I could just keep everything completely confidential.

**Andy Wightman:** Finally, you talked about anonymity. Did Ms A reveal who she was when she came to you, or did you insist that that should not be the case?

**Gillian Russell:** I met Ms A in person, but she was clear initially that she wanted to give an anonymised account, which is what I facilitated.

**Andy Wightman:** It would not have been anonymous for you. How was it anonymised?

**Gillian Russell:** It was anonymised in that she was not named in the account and some details were taken out to try to disguise her identity.

**Andy Wightman:** When you say “account”, are you referring to an account that you were keeping contemporaneously with your discussions with her?

**Gillian Russell:** It was a detailed note of the set of issues that she described to me of her experience in our organisation.

**Andy Wightman:** Did you pass that note on once the formal complaint was made?

**Gillian Russell:** I met Ms A on Wednesday 22 November in the afternoon. Given the seriousness of the issues that she raised with me, I produced the note and sent it to HR at 6.35 that evening.

**Andy Wightman:** Was she content with that?

**Gillian Russell:** Yes, she had seen the draft and was content with it, so the note was sent that evening.

**Andy Wightman:** Thank you very much.

**Dr Allan:** Earlier, Judith Mackinnon mentioned that you had appointed her as investigating officer. Can you say any more about how that appointment was made?

**Gillian Russell:** I was not involved in any of that. I had no involvement after 29 November.

**Dr Allan:** I beg your pardon. In that case, in terms of your involvement, did you report to the permanent secretary?

**Gillian Russell:** I spoke to the permanent secretary on 10 November, and she asked me to take on the role. She made it clear that, if I was to engage further on the role, I should do that with Nicky Richards and Judith Mackinnon. I duly reported, and the agreement was that I would initially review with them issues that came to me on a weekly basis, as appropriate.

Obviously, once the announcement had been made to the organisation on 13 November, a few things came to me, and I engaged as appropriate with Nicky Richards and Judith Mackinnon in that timeframe. I am aware that Nicky Richards gave a high-level note to the permanent secretary that reflected that Barbara Allison and I had received a concern in relation to a former minister. I think that that note, which I believe is in your documentation, went to her on 23 November, and I did not speak directly to the permanent secretary about any of the matters that I dealt with. Everything that I did was done through Nicky Richards and Judith Mackinnon.

**Dr Allan:** You have described the role of confidante—I apologise for referring to it earlier as “investigating officer”; that was a slip of the tongue. Did you feel that the way in which that role was formulated left it sufficiently independent to be useful?

**Gillian Russell:** I am quite an independent-minded person, and I had been given that authority by the permanent secretary, so, as far as I could, I carried out that role in an independent way. However, I was mindful that I was not independent; I was a senior civil servant. I raised that issue with Nicky Richards on 29 November and gave her some early reflections on the role—I think that that is in your documentation, too. I told her that one of the issues in my mind was whether the role was sufficiently independent and whether consideration might be given to the idea of having someone in a truly independent role rather than somebody who was a senior civil servant doing the work. That was certainly one of my reflections about the role.

**Dr Allan:** You mentioned the boundaries, as you saw them, around issues of confidence. Can you say whether you felt that those boundaries were effective, whether they allowed you to do

your job and what you considered those boundaries to be?

**Gillian Russell:** It was important for me to understand what an individual wanted, and that required me to meet, engage with and discuss issues with whoever came to speak to me. Listening and seeking to understand what the individual wanted was an important part of the role, as well as talking them through what sorts of things might be a good next step for them, what could help them where they currently were and what might make a difference. Really, that was the way in which I would have approached anyone who came to speak to me, regardless of the circumstances, I treated each person with the same level of seriousness, because I thought that it was a big step for somebody to take, to approach a stranger, essentially, whose text number they had found in a staff message.

I took every person who came to speak with me seriously. Some of them had concerns about their line management, for example, or were not sure whether they had confidence in the HR processes. Some of what I would do in such cases involved helping people and talking through things that they could do. At other times, people just wanted to offload things and talk an issue through with someone. Sometimes, I would suggest that people could speak to the trade unions, signpost them to the employee assistance programme or advise them that they might need some counselling. There were a lot of options open to people, once we started discussing things.

However, as I have said, I always recognised in the role that there might be things referred to me or revealed to me that were of significance and, bearing in mind that we were the employer in the organisation, I would have to do something more with. I would say that, with all of the people I dealt with, every step that I took was with their consent. Broadly, I did things at a pace that people felt comfortable with. I do not know whether that is helpful.

**Dr Allan:** It is. Finally, you alluded to the need for independence. One of the things that the committee is doing is attempting to find lessons that can be learned for the future. Do I take it from your earlier answer that you feel that a lesson that we should learn is on whether some of the role that you were undertaking should have been undertaken more independently?

**Gillian Russell:** I was not truly independent, was I? I was still a senior civil servant, so I think that that is certainly something for the committee to consider and perhaps something that Laura Dunlop QC might consider as well as part of the review that she is undertaking.

**Angela Constance:** Good afternoon, Ms Russell. Given that the roles of investigating officer and confidante are entirely separate, I wonder whether there is any merit in only one person having conversations with a potential complainant before a complaints process starts. I appreciate that you are not here to give a personal view, but I wonder whether that issue of process was considered by the organisation at all.

**Gillian Russell:** I would have viewed the role of confidante as separate because people were coming to me, as set out, in an informal, supportive, private space. There was no expectation at that point that those people would ever go into a formal process or necessarily even go to HR. The point to understand is that people were coming to speak to me perhaps because they did not have confidence or had lost faith in the more formal parts of the organisation. I was therefore giving people the opportunity of a safe space to step into where they felt that they would be listened to and would have a person to talk things through with who did not have any formal attachment to HR. Trade unions can often play that sort of role, so at the outset I said that I wanted the trade unions to know about the role and be happy about it and I wanted the staff notice to be clear that I was only one of a number of routes that staff could go down if they had issues around sexual harassment.

**Angela Constance:** I appreciate that the role of confidante is entirely separate but, bearing in mind that there are different routes that people can pursue, it is therefore possible for people to be pursuing different routes at the same time in parallel. I therefore wonder whether that added to the case for the confidante needing to be external to the organisation.

**Gillian Russell:** For the reasons that I have already given, I think that it is worth considering the independence of the confidante role and how compatible it is, ultimately, with some of the duties that might be on someone as a senior civil servant in the organisation.

**Alex Cole-Hamilton:** I have only a couple of questions. Thank you for coming to see us today, Ms Russell. I am interested to know who in the civil service, to your knowledge, had first contact with the complainants about their complaints. I am not talking about the fact that, as we understand it, in one case there was an informal process that was contemporaneous with the actual events themselves. In 2017, who was the civil servant with whom the complainant or complainants had first contact, and to whom they made their first disclosure?



12:30

**Gillian Russell:** I make it clear that I had no contact at all with Ms B and have never had any engagement with her. It is clear that Ms A had—I can see this from the documentation—been asking to speak to somebody about her concerns or her experience. As far as I am aware, I was the first person with whom she spoke about her experience in total.

**Alex Cole-Hamilton:** Okay. In case of jigsaw identification, you do not have to give an exact date, but roughly on what date—

**Gillian Russell:** That is fine. I think that I have said already that I spoke to her at length on 22 November.

**Alex Cole-Hamilton:** Okay. We understand from documents that came with the commission and diligence in the judicial review that the First Minister's private secretary met the complainer Ms A on 20 and 21 November, and that she might have made a disclosure to him about the complaints that she wished to make. That would make him the first contact.

**Gillian Russell:** I am aware of that, but she did not speak to me about that, and I have never spoken to him about it.

**Alex Cole-Hamilton:** So, your knowledge of John Somers's involvement in this—

**Gillian Russell:** I did not have any knowledge of his involvement until I saw it in the paperwork.

**Alex Cole-Hamilton:** Okay. That is fine.

I have a final question, before I move on to a different topic. You said in your opening remarks that you retain the role of a confidential sounding board.

**Gillian Russell:** Yes.

**Alex Cole-Hamilton:** Has anyone approached you about the conduct of former ministers since the collapse of the judicial review?

**Gillian Russell:** I said that I have retained that role, but I do not think that it has really been promoted in the organisation since August 2018. It was promoted in August 2018; I have the staff message with me. Some people came forward to me in August 2018 and in the short period after that. Since then, a couple of people have come forward on very different issues. Because of the focus in August 2018 on the matter being referred to the police and so on, some people came to speak to me at that point.

**Alex Cole-Hamilton:** I understand. Do you think that the fact that the procedure for handling complaints against former ministers remains in place in an unamended form, and could potentially be exposed to the same kind of legal challenge

that the former First Minister mounted, might have acted as an impediment or an inhibiting factor to anyone coming forward subsequently?

**Gillian Russell:** I do not have a view on that. I hope that people would have known that the role was available, that I was a trustworthy person, and that they could still come and speak to me.

**Alex Cole-Hamilton:** Okay. Thank you.

**Jackie Baillie:** Good afternoon, Ms Russell. I think that you told us that you used to be the director for safer communities from June 2015, which put you in charge of the police.

**Gillian Russell:** Correct.

**Jackie Baillie:** Excellent. Judith Mackinnon was the head of HR governance at the Scottish Police Authority from 2015.

**Gillian Russell:** Correct.

**Jackie Baillie:** So, you would have known each other reasonably well in the course of your everyday work.

**Gillian Russell:** No—I did not know Judith Mackinnon well. I can say that I knew her, because I had had one particular engagement with her in relation to, I think, the recruitment round for deputy chief constables. I think that that was the recruitment round in which Will Kerr was appointed as a deputy chief constable. Judith Mackinnon was involved in that recruitment round, and I happened to be involved in it in a very limited way. That was my main engagement with her. Other than that, I would have known that she worked for the SPA, but did not have regular engagement with her.

**Jackie Baillie:** Okay. It is very helpful to know the context.

You said that you were not the one who reported the matter to the police, but you indicated that you would provide contact with the police on complaints if it was appropriate to do so. On how many occasions have you done that?

**Gillian Russell:** I have not had to do that.

**Jackie Baillie:** Not at all.

**Gillian Russell:** No.

**Jackie Baillie:** Were the police aware of the complaint from Ms A? You did not have any contact about what she said.

**Gillian Russell:** That would have been completely inappropriate.

**Jackie Baillie:** Do you know who did?

**Gillian Russell:** No, I do not.

**Jackie Baillie:** You do not know, but clearly somebody in the organisation would have contacted the police on her behalf.

**Gillian Russell:** I was not involved in any of that part of the process, so I do not know that.

**Jackie Baillie:** That is fine, thank you.

The chief superintendent, who was the head of public protection, was named in the courts. That was Detective Chief Superintendent Lesley Boal. She was the one who told the court that Leslie Evans had offered the full investigation officer's report. Her name is obviously in the public domain, because she testified in court. Is she the point of contact that you had in the police?

**Gillian Russell:** I have been advised that the name has been redacted for a reason, so I am not going to say anything further about that. More generally, I can say that I know Lesley Boal. She was highly thought of. She had a very strong role in relation to public protection. Therefore, I did know Lesley Boal, and I would have met her in my professional role as director for safer communities.

**Jackie Baillie:** The reason why I am curious is that I want to try to identify when the police first knew about the allegations that were made. Therefore, you will appreciate why I am asking the question. Did Ms A tell you about the informal resolution that was arrived at by the former First Minister's office in December 2013?

**Gillian Russell:** I do not have the statement that she gave me in front of me. I was aware, in detail, of the circumstances—I think that it is fair to say that.

**Jackie Baillie:** Did you put that informal resolution in December 2013 of the alleged assault of Ms A in the anonymised memo that you sent to Ms Mackinnon?

**Gillian Russell:** The note was detailed.

**Jackie Baillie:** Oh. It was "detailed".

**Gillian Russell:** I do not think that I should go into any more—

**Jackie Baillie:** That is okay. I am—

**Gillian Russell:** It was a detailed note of Ms A's experiences in the organisation. I think that that is sufficient.

**Jackie Baillie:** That is very helpful. I am not pressing you for detail at all. I am just trying to follow the chain of events, and to find out who knew what and when. There is the potential, on the back of that informal note, for the police, certainly, to have had knowledge of the allegations about the former First Minister since late December 2017.

**Gillian Russell:** My note was a detailed note of what she explained to me—a detailed note.

**Jackie Baillie:** That is okay. I take the point that you are making to me, absolutely. With regard to that note, you obviously shared it with Judith Mackinnon. Did you share it with Ms Richards or Ms Evans?

**Gillian Russell:** The note was sent marked "For your eyes only" on 22 November to Judith Mackinnon and to Nicola Richards. The other people who had the note were Ms A and Barbara Allison.

**Jackie Baillie:** When you shared the note with Judith Mackinnon, were you aware that she was going to be appointed as investigating officer?

**Gillian Russell:** No.

**Jackie Baillie:** No.

When you found out that she was appointed as investigating officer, did you think to raise a question about the difficulty that was inherent in her having prior knowledge of the complainants and, indeed, the policy as you understood it?

**Gillian Russell:** I do not think that I would necessarily have been aware that she had been appointed as investigating officer. In any event, even if I had, I understood that people were taking full advice, so I would have expected them to have full advice on that matter.

**Jackie Baillie:** Did you, given your legal background, see a problem? I appreciate that you are saying that they had other people to take advice from, but I am asking whether you saw a problem.

**Gillian Russell:** I was not aware of that and I would not have had a view. I would have thought it to be not appropriate for me to have a view.

**Jackie Baillie:** Mr Cole-Hamilton asked you about the meeting with the First Minister's principal private secretary that you did not know about. Is it conceivable that Ms A was referred by John Somers to seek you out?

**Gillian Russell:** I do not think that that would matter. The note had gone out to the whole organisation. What did it matter how she decided to come to speak to me? That was not relevant.

**Jackie Baillie:** I guess that it is of interest to the committee, and you said yourself that your role, subsequently, has not been well advertised. However, Ms A had, herself, been trying to speak to you, and clearly did not know who you were in the organisation, so I am just wondering whether if, quite properly, she was routed in your direction and referred by—

**Gillian Russell:** I do not know—she never said. She texted me and said, “Could I come and meet you?” and I said yes.

**Jackie Baillie:** Fine. Thank you.

**Alex Cole-Hamilton:** I have two quick follow-up questions. The first one follows on from your last answer to Jackie Baillie. Ms A texted you asking to come and see you. On what date did you receive that text?

**Gillian Russell:** I do not have the text. Ms A would have texted me after 13 November. I explained previously that my phone became defunct in the summer of 2018. I had a BlackBerry, which broke, and I got an iPhone as a replacement. The texts that were on the BlackBerry were not kept. However, the text was in the period from 13 November. I have my calendar from 22 November, so I know that it was the afternoon of 22 November that was blocked out. When anyone contacted me, I tried to arrange to meet them as quickly as possible, at their convenience, and I think that that was the first date that suited her. She would have approached me between 13 November and my meeting with her on 22 November.

**Alex Cole-Hamilton:** But it is unlikely to have been the day before. What I am driving at is that it is interesting that she perhaps reached out to you a few days before the meeting on 22 November and independently had a separate meeting with John Somers, the First Minister’s private secretary, rather than him being the conduit of referral to say that there was a sounding board and that she could text you.

**Gillian Russell:** Ms A had obviously reached out to Barbara Allison, because Barbara Allison had spoken to me. Clearly, Ms A was looking to see whom she could speak to. We have to remember the context of the #MeToo movement. People had a different perception, and it was a difficult time for women who had previously been subjected to certain behaviour. In the context of what was going on more widely, it is perhaps not surprising that people were looking to share the circumstances in which they had found themselves.

**Alex Cole-Hamilton:** I understand and appreciate that, and I fully accept it.

I have a completely unrelated question, which is a follow-up to my earlier line of questioning. Forgive me if I have misheard you, and correct me if I am wrong. You said in answer to my earlier question that the last time you performed your role as confidential sounding board in respect of former ministers was before the news broke of the Government investigations. You said that other people had approached you, at that point.

**Gillian Russell:** Yes.

**Alex Cole-Hamilton:** Was that about the behaviour of the former First Minister?

**Gillian Russell:** Yes.

**Alex Cole-Hamilton:** Were any of those issues taken forward?

**Gillian Russell:** At that point, I was clear that it would not be appropriate, given that there was going to be a police investigation, for me to hear the substance of any issues that people wanted to raise. Instead, if people approached me who were concerned and worried and might want to speak up, the most appropriate thing to do would be to offer them a number that the police had provided, and to provide reassurance that the organisation was supportive and that the police would be supportive. That was the extent of my involvement, at that point.

**Alex Cole-Hamilton:** Is it fair to say, therefore, that when the news broke, and given everything that came with it, the Government in effect abandoned use of the procedure for handling harassment complaints in respect of complaints regarding the former First Minister, and that everyone who had a concern was directly referred to the police, rather than a new process being started in the Government?

**Gillian Russell:** Clearly, the fact that there was a criminal investigation took precedence over other things. I do not know what decisions or discussions there were in the Government, but if people had come to me specifically about issues in relation to the former First Minister at that point, I would have viewed that as being something that should be dealt with through the on-going police investigation, and it would be for those people to consider how they wanted to do that. If people had come to me about issues that were nothing to do with that, I would have continued in my role, as I did from time to time.

Does that answer your question?

**Alex Cole-Hamilton:** Yes. Thank you.

12:45

**Margaret Mitchell:** I have a couple of questions for clarification. You said that Barbara Allison indicated to you that somebody wanted to come forward and engage with you in your confidante role. Can you remember on what date Barbara Allison told you that?

**Gillian Russell:** As I said, it was after 13 November and before 22 November, because the person who she said wanted to come and speak to me was Ms A. It would have been in that short window, and probably towards the end of the week. However, I cannot be certain, which is why I

am frustrated that I do not have the text. If I had the text from Ms A, I would be able to tell you exactly when it was. It was towards the end of the week of 13 November. To be honest, I could not say more specifically than that, because that would be unfair.

**Margaret Mitchell:** Was it within the first couple of days of your appointment? You might remember that. On 13 November, the appointment was official.

**Gillian Russell:** I was appointed on 13 November, and Barbara Allison would have spoken to me after that. As I have said, the meeting took place on 22 November.

**Margaret Mitchell:** To clarify, you said that, from August 2018, your role has not really been promoted, so is it fair to say that the permanent secretary promoted it initially with her email?

**Gillian Russell:** Yes.

**Margaret Mitchell:** Is it also fair to say that it would have been her responsibility to continue to promote the role?

**Gillian Russell:** That would have been for HR and the permanent secretary. When the committee gets the papers, you will see a note from 29 November 2017 in which I suggested that it might be helpful to be clear with the organisation that people had come forward and found the role helpful, because that might have encouraged other people who had issues around sexual harassment to come forward. However, the role has not been promoted in recent times. That might be partly because Laura Dunlop has been asked to review matters more generally, and it might be thought that the role is something to be looked at in that overall review. Indeed, the committee might want to look at that as well, in its recommendations.

**Margaret Mitchell:** Certainly, when the FDA witness gave evidence, they said that they were not able to establish whether the role still existed. They thought that the role still existed, but they were not sure. It is clear that it has not been advertised.

**Gillian Russell:** Yes. Obviously, I would have spoken to the trade unions from time to time, if I thought that that was appropriate.

**The Convener:** That brings us to the end of our questions. I thank Ms Russell for her evidence.

That concludes the first part of our public evidence session for today. We will reconvene in public at half past 3, this afternoon.

12:47

*Meeting suspended.*

15:36

*On resuming—*

**The Convener:** Good afternoon, and welcome back to the 16th meeting in 2020 of the committee.

We will continue to take evidence on the complaints handling phase of the inquiry. In the interests of keeping to time, I will not repeat the comments that I made at the start of today's meeting, but I refer witnesses, members and all those watching proceedings to that statement.

With that, I welcome Nicola Richards, director of people at the Scottish Government and I begin by inviting her to make a solemn affirmation.

**Nicola Richards (Scottish Government)** *made a solemn affirmation.*

**The Convener:** I now invite Ms Richards to make an opening statement.

**Nicola Richards (Scottish Government):** I offer some brief opening words to provide context about my role in the handling of complaints and the basis on which I am providing answers today.

I am director of people in the Scottish Government, and I have been in post since May 2016.

In January 2018, two women came forward with formal complaints about sexual harassment that had to be investigated. The Scottish Government has a legal responsibility and duty of care to all employees to ensure a safe place of work and protection against harassment. The behaviour alleged amounted to potentially unlawful treatment and discrimination, contrary to the Equality Act 2010 as well as a possible breach of the employment policies and practices of the Scottish Government.

The Scottish Government had a duty to investigate those formal complaints, and a duty to ensure that we had appropriate policies and procedures in place. From our experience to date, including that of the judicial review, there has been considerable learning. We will continue to identify and apply lessons as a result of the inquiry and the external review led by Laura Dunlop QC, with the goal of ensuring that harassment has no place in our organisation.

As director of people, I had a wide range of responsibilities, which are primarily of strategic direction and management oversight across our people functions, and support for the permanent secretary and her executive team on workforce matters. During the process of handling the complaints, my role under the procedure was to

designate a senior civil servant as the investigating officer and, as Judith Mackinnon's line manager in her wider role as head of people advice, we had regular check-ins where I was updated on her work, including high-level progress with the investigation.

Today, I am giving evidence on behalf of ministers and not in a personal capacity. As the committee is aware, there is a continuing dispute between the Scottish Government and Mr Salmond's legal representatives about whether the decision report, suitably redacted, can be disclosed to the committee.

I am advised that, while that dispute continues, there may be certain questions that I cannot answer, as to do so might risk breaching the undertaking and amount to contempt of court. If I am concerned that I might breach that undertaking or at any point risk identifying the complainers, I will have to decline to answer at this time and come back to you in writing, so that the impact of the contempt of court order can be fully considered. I will also do that to ensure accuracy on matters of detail.

I remain a member of the FDA.

**The Convener:** Thank you. We will move straight to questions from the committee.

**Margaret Mitchell:** When you appeared before the committee previously, Ms Richards, I asked you whether the role of the confidante still existed, and you said that you would need to check but you suggested that it "may" still be on the Scottish Government intranet. This morning, it has been confirmed that the role of confidante still exists but has not been actively promoted since August 2018. Can you explain why not?

**Nicola Richards:** There are probably two reasons for that. Although the confidential sounding board role is a very helpful development and one that we certainly want to keep in place, there is also an employee assistance programme, with a confidential helpline that is independent of the Scottish Government and that is open 24/7 for employees to go to. There is that mechanism outside the sounding board role.

From August 2018, once the police process had begun, there was a lot of concern about doing anything that might be misconstrued or misunderstood while the criminal proceedings and police investigation were under way. Organisationally, we were very cautious about doing anything that might be seen to refer to those proceedings, even inadvertently or obliquely. That perhaps made us more cautious about promoting the sounding board specifically for things such as sexual harassment.

**Margaret Mitchell:** If you were concerned about using the confidante, would it not have been better just to remove it from the intranet so that there was no dubiety? Let us face it: it was very effective, because people came forward and discussed their concerns.

**Nicola Richards:** We did not want to remove it. Many of the people who came forward to Ms Russell did not have issues about ministers; they were relatively routine issues about other civil servants.

**Margaret Mitchell:** I will go a little further and say that the way that the issue was handled appears to be a bit of a failing on the part of HR. The very first time that the permanent secretary came to the committee, which was early on in the inquiry, she suggested that the role was good practice and should have been continued. It was a failing on the part of the permanent secretary and HR that the role was not actively promoted. It was an informal role and was not part of the process.

To go even further, does the situation not leave the impression that the role of confidante was introduced in November 2017 for a specific purpose and that, by August 2018, that purpose had been achieved and therefore the role was not considered important, despite its allegedly being put in place to assure staff that their concerns would be taken seriously and dealt with efficiently and effectively?

**Nicola Richards:** The fact that the role continued to be available to people was clear, and it remains on the intranet. I do not interpret that as a failing. There are other mechanisms by which people can come forward.

It is not the case that the role was put in place for a particular purpose. Sir Jeremy Heywood had written to the permanent secretary suggesting that that kind of mechanisms might be valuable. It was a particular moment in time—a very intense moment around the #MeToo movement—and there was an explosion of interest in people right across the board in coming forward with issues about a number of incidents, past and present. After the initial wave, that faded, but I do not think that that had anything at all to do with the specific allegations about the former First Minister.

**Margaret Mitchell:** But we are talking about two years later. Your explanation almost suggests that sexual harassment has disappeared and is no longer a problem. That is a possible interpretation of what you have just told me, is it not?

**Nicola Richards:** I do not believe so.

**Margaret Mitchell:** I do not think that that would be an accurate suggestion. We have heard what you have said about that.

Were you involved in discussions about referral to the police?

15:45

**Nicola Richards:** I was involved in a potential referral to the police in early August 2018, I think. Obviously, at that point, a lot of consideration was going on at the senior level in the organisation of the responsibilities and duty on us as an organisation to consider the matters, some of which might potentially amount to criminal activity.

It is clear that referring matters to the police is a big consideration for an organisation. It was not my decision to refer, and it would not have been a decision that I was asked to make. My role was to understand the position of the complainers so that their views could be played into those considerations and that decision.

**Margaret Mitchell:** What was the complainers' view of the possibility of referring matters to the police?

**Nicola Richards:** It was very clear that that was not their wish or preference. I do not think that that was where they had begun. I think that they fully understood and that we were always clear that our judgment as an organisation might be that we had no choice but to refer matters to the police. They fully understood that. However, my role was to accurately convey back the views of the complainers. They were concerned about the impact on them, the potential impact on witnesses and others who were brought into the process, and the potential loss of anonymity and confidentiality that might come from that.

**Margaret Mitchell:** So is it fair to say that, if there had not been in the route map the provision and option for third party referral and for the Scottish Government in particular to do that, the complaints would never have gone to the police?

**Nicola Richards:** The duty of public authorities to consider alerting the police if they become aware of a potential criminal act probably goes beyond the procedure. I remember discussions and precedents that were discussed that involved, for example, universities becoming aware of a potential sexual assault occurring between students. In that situation, they have to come to the conclusion that they will pass that information to the police, even if that is against the wishes of the individual.

For most public authorities, should they become aware of a credible risk that a criminal act may have taken place, it is very challenging to withhold that and not share it with the police. That would equally have been a very difficult thing to have done.

**Margaret Mitchell:** Would that have been the case when the incidents first happened? The procedure was not needed if the incident was criminal and had been reported to a line manager or a colleague, for example. Would that not have been the case way back when the incidents first happened?

**Nicola Richards:** I was not involved at that time, so I cannot give a sense of that.

**Margaret Mitchell:** What about from your perspective as head of HR and director of people?

**Nicola Richards:** It depends on the individual whom the information is shared with and where it goes to. If it had been shared with HR at that time, it would have potentially felt that it needed to take that action, but that is hypothetical on my part.

**Margaret Mitchell:** How was the matter raised with the police?

**Nicola Richards:** When the Scottish Government, having taken into account the views of the complainers, which we fed in, came to the conclusion that it needed to refer matters to the police, I did not at any point have direct contact with the police, and I did not share the details of a complaint or even the fact of a complaint directly with the police at any point during proceedings.

I was asked to share our information with the Crown Office, so I passed the information to it. I think that that was in late August 2018. It would then have been for the Crown Office to decide what information it chose to share with Police Scotland.

**Margaret Mitchell:** Did the discussions take place earlier than that? Would that have been at the end of July? I think that maybe Ms Russell referred to her passing on information to you about then. Did the discussions about a possible referral take place at the end of July and the referral take place later on? Is that the kind of timeframe that we are looking at?

**Nicola Richards:** Yes, but it did not involve Ms Russell.

**Margaret Mitchell:** No. She passed information to you, but that was not anything to do with the referral—it was just what the complainer had given her permission to pass on in terms of contacting you.

**Nicola Richards:** No, I am sorry. That was much earlier. It was in November 2017—

**Margaret Mitchell:** Yes, I am sorry; you are right.

**Nicola Richards:** —following Miss Russell's first contact with the complainers, that she passed that on. Therefore, no, she was not involved at the point you are referring to.

**Margaret Mitchell:** Yes, you are right. Thank you very much for clarifying that.

**The Convener:** Murdo Fraser is next.

**Murdo Fraser:** Thank you, convener. I will follow up the questions that my colleague Margaret Mitchell just asked about the issue of police involvement. When we took evidence this morning from Judith Mackinnon, she told us that you had asked her to “sound out” the complainers about the issue of going to the police. First, is that correct? If it is correct, can you tell us when that was?

**Nicola Richards:** Yes, that would have been correct. In essence, that instruction was passed to me, and I was passing that instruction on to Judith Mackinnon.

As Ms Mitchell described, in probably late July but mainly into August—I can check the specific dates—there was discussion going on at senior levels about whether consideration needed to be given to a referral to the police. We were asked to understand the position of the complainers. Before any public authority makes a referral of that nature, part of the thinking that has to go into its consideration is about the wishes of the complainers and, in particular, the impact and the wellbeing impact on the complainers.

From our perspective—for Judith Mackinnon and then for me when I picked up that engagement after Judith went on leave—that meant to faithfully play back the complainers’ views so that they could be taken into consideration. As I understand it, that was all taken in the round, but the final conclusion was that these were serious issues that were for the police to review.

**Murdo Fraser:** You say that that information was passed to you. Who gave that to you? Who gave you the instruction to bring in the police?

**Nicola Richards:** There was a discussion. I am not sure that I can give all of the details, but the instruction was passed to me by the permanent secretary’s office.

**Murdo Fraser:** From the evidence that we have heard, we know that the initial concerns were raised with Judith Mackinnon in November 2017. You are talking about these discussions around police involvement taking place in July and August 2018. I am wondering why there was a large time gap. Was it not obvious at a much earlier stage that these were very serious matters that might involve criminal activity?

**Nicola Richards:** I think that Gillian Russell might have referred to that earlier today. I think that in her early conversations with Ms A—her very first conversations, I think—Gillian raised the question of the potential for police engagement.

The opportunity for individuals to raise the matter directly with the police, if they wished, was also always there.

I suppose that the difference between November 2017 and July and August 2018 was that, by that stage, an investigation had taken place, so the allegations had been tested. By that point it was a case of saying, “We’ve been through an internal process, we’ve tested these allegations. Can we, credibly, not act on these now?” For us, I think that that was the difference between those two dates.

**Murdo Fraser:** This is my final question. When I put it to Judith Mackinnon this morning that there was reluctance on the part of the complainers to go to the police, she did not disagree with that. Is that your impression too?

**Nicola Richards:** Yes, absolutely.

**The Convener:** Angela Constance is next.

**Angela Constance:** Thank you, convener. Throughout our investigation, the committee has been confronted with the same names over and over again. It appears that the same close group of civil servants was tasked with developing the procedure, investigating the complaints under the procedure and, of course, in the case of the permanent secretary, co-ordinating the judicial review. Could some of the issues have been avoided if different people had been involved at the different stages?

**Nicola Richards:** That is the nature of our roles, which is probably part of the difficulty. Inevitably, in my role, lots of roads come to you and you have to take a view and provide support over a range of issues. Obviously, for the permanent secretary, it is even more intense in that everything eventually flows in that direction, albeit that her day-to-day involvement may not be so close.

There are certainly things for us to reflect on, and following this inquiry and the Laura Dunlop review, I am sure that there will be opportunities to think about whether there should be an independent process, whether we want to do things externally, and whether we should look at things from a different perspective. I think that we would be open to that kind of learning.

There are, however, other views. The importance of confidentiality to everybody involved was incredibly intense and the situation had to be kept tight and close to make sure that that confidentiality could be maintained. Sometimes, as we have seen from other research and reports, individuals can be quite reluctant to go beyond their organisation to an external body and that can dissuade people from raising issues, rather than making them feel safer. It is not always

straightforward, but I absolutely accept that the process should be reviewed.

**Angela Constance:** The committee is wrestling with the evidence that there was a rush to put the procedure in place but, with respect, there appears to be less of a rush to implement learning. Perhaps I will put the same point in a slightly different way. Did the fact that a small group of civil servants undertook the bulk of the work, whether that was developing the procedure or handling the complaints, create a real risk of mistakes, or mean that the risk of mistakes was not appreciated? Is there not a danger that it could appear that a small group of people who thought that they were doing their best or that they knew best undertook the largest part of the work with little outside influence? Where were the checks and balances? Where was the governance in all this?

**Nicola Richards:** I reiterate that we took legal advice throughout, so there were many moments when we stepped back and sought advice and reflected on what should be done.

Obviously, we remain open to views and recommendations about different ways of going about things, but it is quite challenging to work through how that would work in practice. If someone raises a very sensitive issue, it does not feel as though we could have a gateway review. It is about thinking about what would happen. The question is genuine, because we are all keen to keep working through what might be done differently in similar circumstances. Generally, such cases involve only a small number of people and it is part of the requirement that they are kept restricted in that way.

**Angela Constance:** I think that people appreciate that the utmost consideration has to be given to confidentiality but I want to pick up on what you said about all roads leading to a small group or all roads leading to the permanent secretary, given her role in the development of the procedure, oversight of the complaints and the judicial review. Do you not think that there is a risk that there is therefore too much control in the hands of one person?

**Nicola Richards:** Personally, no. That is the way that organisations operate. The person who is ultimately responsible for an organisation has to set the direction. They are not necessarily closely involved at every step of the way but, as the permanent secretary has said here, she has never shirked that responsibility. It is just in the nature of any organisation that there is someone who is in that kind of position. Again, if were deemed preferable that complaints of this nature were handled entirely independently, I do not think that any of us would disagree with looking at that suggestion.

**Angela Constance:** What consideration has been given in the past to an independent process, particularly for complaints investigation? That would surely have guaranteed that the investigating officer was not involved in the development of the policy or in other aspects of the journey. Was there any serious consideration of an independent investigation process?

16:00

**Nicola Richards:** When the procedure was being developed, that was a consideration. However, all the advice that came together at the time, including the legal and other views, was that there are things such as employment tribunals for people to go to for independence in an employment process. In most circumstances, the expectation is that people will have exhausted all internal routes for resolving issues before going externally and, given the risk to confidentiality, the view was that an internal process was needed. As I say, it might be that practice has moved on and that the thinking around having a fully independent process is now in a different place, but that was not the view that was reached at the time.

**Angela Constance:** Is there merit in having an independent process that means that the investigating officer has had no previous involvement with complainers, the procedure or the matters that are being investigated?

**Nicola Richards:** That could be argued either way. There was clarity and confidence for complainers, who understood the process that they were embarking on, and there were advantages in being able to assure confidentiality for not just the complainers, but the other party. That was a key consideration.

As we have tried to set out—I know that it is challenging—the role of the investigating officer was not a concern at the time. For us, the different roles that Judith Mackinnon had played were just different aspects of her professional HR role, and they were not a concern at the time. The Cabinet Office guidance from that time was clear that if the issues that you were trying to review were complex and historical, it might make sense for the investigation to be handled within the HR department. It was not an unusual process but, as I said, we will continue to review that practice.

**Angela Constance:** I am sure that this has been stated already—if so, please forgive me. You are Judith Mackinnon's line manager, but, with respect to the investigation, did Ms Mackinnon report directly to you or to the permanent secretary?

**Nicola Richards:** Judith produced a report for the permanent secretary as part of the



investigation, but she did not report to the permanent secretary in a line management sense.

**The Convener:** I understand that Maureen Watt's questions are on the same theme.

**Maureen Watt:** In reply to Angela Constance's questions, you said that you took legal advice throughout. Was that throughout developing the procedure and investigating the complaints? If so, from whom was the legal advice taken?

**Nicola Richards:** I am unable to say from whom. We took legal advice throughout the development of the procedure, and Judith Mackinnon, rather than me, took legal advice throughout the investigation.

**Maureen Watt:** Was the legal advice from the same team or people who were involved in the judicial review?

**Nicola Richards:** The advice would have been from SGLD.

**Maureen Watt:** As Angela Constance said, those involved in developing the procedure and investigating complaints seems to have been a small cabal of civil servants. Who thought that it was a good idea to share the procedure with people who might become complainants?

**Nicola Richards:** I would not call it a "cabal"; I would call it a group of senior colleagues.

As we covered in previous evidence sessions, the discussion at the time was that the procedure could and should be shared with Ms A. There were two reasons for that. First, it was so that she understood the procedure that was likely to be followed—you would do that for anyone who might be considering bringing forward an issue, so that they understood what the next steps would be. Secondly, it was out of interest to know whether it would have made a difference if such a procedure had been in place at the time. We wanted to know whether it would have helped matters and given people confidence to raise matters at the time. Our reasons were twofold.

**Maureen Watt:** This morning, we heard that the Scottish Government went to the police, and that the complainants were quite nervous about that, thinking—as I presume that most people would—that the person who was involved should be the person going to the police, rather than an organisation or the employer. Who took the decision that the Scottish Government should lodge a complaint with the police or let the police know what was happening?

**Nicola Richards:** I think that that decision was taken by the permanent secretary, having taken all advice.

**The Convener:** I have a question before we move on to Andy Wightman. You confirmed to

Angela Constance that you are Judith Mackinnon's line manager. Will you refresh my memory as to who your line manager was at that time?

**Nicola Richards:** It was Sarah Davidson.

**The Convener:** Ms Davidson gave us evidence about the judicial review, and we heard about the report that she was asked to submit to the permanent secretary. As your line manager, did she have any role to play in the complaints handling process?

**Nicola Richards:** She had no official role in that. Similarly to the engagement that I had with Judith Mackinnon, I would have talked to Sarah Davidson in my regular catch-ups with her, in broad terms but not in detail, about the progress of the investigation. We did not particularly touch on it at the time.

**The Convener:** Would she have been the decision maker about anything that you had concerns about?

**Nicola Richards:** No.

**The Convener:** Would that decision maker have been the permanent secretary? How much of it was autonomous to you?

**Nicola Richards:** Sorry, how much of what?

**The Convener:** For the major decisions, how much of the decision making was autonomous to you? For example, you said that involving the police was a decision that was taken by the permanent secretary. What about the decision on sharing the draft policy with the complainers? Did you speak to the permanent secretary about that, or was that a decision that you felt able to take?

**Nicola Richards:** I see what you mean. Some decisions have more weight in hindsight than they might have had at the time. The permanent secretary was certainly aware of the sharing of the procedure and she felt that that was of value, because it would inform matters and, in particular, it would inform whether we were doing the right things to shift the culture of the organisation. That was not in any way related to the specific complaint; it was a more general thing. I had no decision-making role in the investigation; all those decisions were for the permanent secretary.

**Andy Wightman:** In an email that you wrote to Judith Mackinnon on 6 December, which is in footnote 10 of document XX047, you said:

"I've updated the timeline—and this is the final version of the policy I've sent to Perm Sec.

Do you want to have a look at the timeline and see what you think? It might need testing back against the policy."

Will you explain what the final sentence means?

**Nicola Richards:** I have the document in front of me so I have been able to review that.

At that time, we were starting to project into the planning, in case that person decided to come forward with a formal complaint. We were trying to sketch out the stages that we would need to work through.

There is an error in the original document, which I corrected in earlier correspondence to the committee. The dates are wrong—they should flow from November into December, but they all say November. The bit that should be the 8 December entry sets out that process. In the email, I think that I was saying, “Can we check back in terms of the policy that this would be the right kind of flow or process? Have we missed any steps?”

**Andy Wightman:** What is “the policy”?

**Nicola Richards:** Sorry—the procedure.

**Andy Wightman:** What do the words “the policy” mean here?

**Nicola Richards:** They mean “the procedure”.

**Andy Wightman:** In hindsight, you would probably have rephrased that as “against the procedure”. “Policy” sounds wider.

**Nicola Richards:** Yes, it sounds wider. Again, these were passing emails between colleagues, and if I had known that I would be explaining it three years later, I would have drafted it more clearly.

**Andy Wightman:** That is well understood—thank you.

I want to move on to the 14 December email, which is in footnote 46 of document YY050. The email was from you to Ms A, with Judith Mackinnon copied in. I will come back to it in a minute.

You told the committee on 25 August that not having a formal process

“does not prevent somebody from raising a complaint”.

You went on to say:

“Complaints about third parties—which is, in essence, what a minister or former minister would be in this instance—are a fairly routine part of other policies and are included in our fairness at work policy.”—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 25 August 2020; c 32.]

On the same day, James Hynd told the committee that he had identified “a gap” in the fairness at work policy, whereby there was no explicit provision for complaints against former ministers. However, what you said in the meeting is that ministers or former ministers would, in this instance, be third parties, so the fairness at work

policy could apply to a former minister, notwithstanding the fact that the policy did not explicitly say so.

That option was not given, or you did not suggest it as an option, to Ms A in the email on 14 December. Was that just because you took the view that the procedure that was being developed and was soon to be in force would be much more robust?

**Nicola Richards:** That was because the procedure was close to completion and the fairness at work policy would not have been the relevant policy to deal with a harassment complaint of that nature. Perhaps both positions are correct. If there had been no process at all, we would have had to construct something that drew from the approaches that are taken when dealing with a third party and we would have applied the kind of legal requirements that you need to work through in such instances. Having a process that had been explicitly thought through in relation to former ministers was helpful in that regard, because it meant that the thinking had been done. It was not explicitly part of the fairness at work policy. If we had not had the new procedure in place or anything of that nature, we would have had to have looked at fairness at work and the employment law around complaints against third parties, and come to a view on that.

In essence, most employment policies, including that one, are fairly unremarkable. They involve similar sets of stages from receiving the complaint, conducting the investigation and coming to a decision. The basic structure remains the same.

**Andy Wightman:** In that email, you also say:

“I hope all is OK with you. We wanted to follow up on our conversation of last week. We have now spoken to two other people who are also considering their position.”

Can I take it that one of those “two other people” is the other of the two complainers?

**Nicola Richards:** Yes.

**Andy Wightman:** However, there is a third person in this story. Presumably, they did not take things any further. Is that correct?

**Nicola Richards:** They decided not to pursue a formal complaint.

**Andy Wightman:** Was that a complaint against the former First Minister?

**Nicola Richards:** Yes, it was.

16:15

**Andy Wightman:** In the same email, in the fourth paragraph, you talk about it being

“helpful to set out the options around these next steps for you to consider. These draw upon our policy”

and

"In the case of it being a formal process then it is likely that Judith would take the role of the 'senior officer', given she had no involvement at the time and her professional experience."

When you said that she had

"no involvement at the time",

what time were you referring to?

**Nicola Richards:** The time when the events took place.

**Andy Wightman:** So that is 2013 or 2014—five years before.

Obviously, the judicial review was conceded because of the court's interpretation of paragraph 10 and what the words "prior contact" in that meant. We heard from Judith Mackinnon that she was behaving in all respects as she understood it to be her role, as it had been written in the previous procedure, but that the new procedure was more sparse in its terms. Is it your understanding that having "no prior contact" is the same as having

"no involvement at the time"?

Is that synonymous?

**Nicola Richards:** Certainly—that was absolutely the interpretation of paragraph 10 by everybody involved at the time of the development of the procedure. It is the way in which the Advisory, Conciliation and Arbitration Service guidance lays those things out. It talks about prior involvement with the matters being raised—the matters of the complaint—so it is about the timing of the complaint. It was absolutely our interpretation and understanding of that paragraph, in line with other employment policies, that it was about the time when the events took place.

The difficulty has potentially been that we were interpreting things based on employment law and practice around these kinds of processes. When you arrive at a judicial review setting, you are into the realms of public law, in which different requirements and standards apply. I think that that is where the different interpretation came through.

I also highlight, as I think that the Lord Advocate did in his evidence, that prior involvement was not the reason for the concession of the JR. The Scottish Government was content to argue that prior contact in this instance meant prior involvement during the time when the matters being raised took place, not immediately prior involvement in setting out options to complainers at the time of the investigation.

**Andy Wightman:** In the same email, you said in the third last paragraph:

"Thanks for your engagement with this so far and for stepping forward – this is a moment when we can take action to reset the culture and expectations of behaviour in the workplace and we're grateful to you for helping inform and shape that response."

What does "shape that response" mean?

**Nicola Richards:** In the broad terms that we have set out in the rest of the note, responding to the #MeToo movement and to creating an environment in an organisation in which people could expect a safe environment, free from harassment. As you will see in other parts of that email, one of the other options was that the complainer

"may conclude that"

she did

"not wish to submit a formal complaint".

What I was trying to convey at that time was that we would still be able to learn lessons and move forward, whatever decision she chose to take. The fact that she had stepped forward would not be without purpose, even if a complaint was not pursued.

**Andy Wightman:** Finally, I want to ask about your role during the formal investigation. You obviously had an on-going role as line manager of the investigating officer, as you would routinely, regardless of what she was doing at any one time, but what was your role aside from that? What was your role in the formal complaint phase?

**Nicola Richards:** Once the investigation was taking place, I did not have a formal role in the process of the investigation. I had an on-going role in terms of providing support and advice—alongside Judith, as a kind of sounding board along the way, and alongside the permanent secretary, particularly as the process moved into the later stages, making sure that she had all the advice that she needed in order to come to a decision.

**Andy Wightman:** So when you say "sounding board", that is just your role as the head of people.

What was your final point of contact with either of the two individuals who went on to make a formal complaint?

**Nicola Richards:** I would need to confirm that. Do you mean during the investigation?

**Andy Wightman:** I mean, when was your final point of contact with any individual during 2017-18? When was the final point during that time period that you had contact with either of the two complainers?

**Nicola Richards:** I would need to confirm that. We certainly continued to provide them with updates. They had a factual update on developments during the judicial review.

Generally, that was done by Judith Mackinnon, but there were times when I picked up that engagement so that they were kept up to date. That might have been through to the later stages of 2018 during the judicial review, but I would need to confirm that.

**Andy Wightman:** That is fine.

**The Convener:** Angela Constance has a specific supplementary and then we will go to Alex Cole-Hamilton.

**Angela Constance:** Ms Richards, you talked to Mr Wightman about the various iterations of the procedure and the grounds for the judicial review being compromised or giving way—whatever the term was that you used. Can you confirm that you accept that, for the purposes of the complaints investigation process and the judicial review, the only iteration of the procedure that mattered was the final one and, at the end of the day, irrespective of why the judicial review was ceded, the Government has to apply its own rules and it is the role of the civil service to follow those rules?

**Nicola Richards:** Absolutely. The final version of the procedure was the one that mattered; I agree with that. As I have tried to set out, we thought that we were following the rules. We were interpreting them in line with all other employment policies, in which prior involvement means involvement with the matter being raised and not any contact ever with the complainers. Often, people in HR roles would know the complainers and people who have come forward. In smaller organisations, that kind of separation would not be conceivable. We thought that we were interpreting the procedure in line with the intent.

**Angela Constance:** Which version?

**Nicola Richards:** The final version.

**Alex Cole-Hamilton:** Good afternoon, Ms Richards. Thank you for coming back to see us. In an answer to Murdo Fraser, you talked about Gillian Russell's first contact with complainer Ms A. I am keen for the committee to understand who in the Scottish Government received the first disclosure from any of the complainers in respect of the concerns about Alex Salmond. Do you believe that Gillian Russell had the first contact with Ms A or had another individual in the Scottish Government heard about it beforehand?

**Nicola Richards:** I can speak to my state of knowledge at various points in time. In November 2017, my clear understanding was that Ms A had come to Gillian Russell and spoken to her and Barbara Allison. Gillian Russell notified us.

**Alex Cole-Hamilton:** What knowledge, if any, did you have of the meeting that John Somers, the First Minister's private secretary, had with Ms A on 20 and 21 November?

**Nicola Richards:** I had no knowledge of that at all.

**Alex Cole-Hamilton:** When did you first learn of that?

**Nicola Richards:** Very recently.

**Alex Cole-Hamilton:** Did it surprise you to learn that somebody so senior had known about the situation but you did not know of their knowledge?

**Nicola Richards:** I suppose that I understood that it was a confidential conversation.

**Alex Cole-Hamilton:** I appreciate that.

I would like to take you back to the email that Mr Wightman referred to, which is in document XX047, and was sent on 6 December, which is the day after you and Ms Mackinnon met Ms A about her concerns and handed her the proposal. There is a note attached to the email that contains a table that has a range of dates, and I think that that is the timeline that you referred to in the email. There is also a list of points 4, 5 and 6.

Point 6 poses the hypothetical question,

"What would we say if asked: have you had any complaints about former ministers?"

to which you reply, "Yes".

The next question is, "What did you do?" There is then a list of actions, including

"Encouraged people to come forward as part of a wider campaign

Gathered evidence

Reviewed our policy and followed it"

and

"Perm Sec informs FM as party leader."

Could you explain the sequencing of that? I take it that that is an analysis of what best practice looks like and what the steps are that would need to be taken in the process, rather than what has already happened. In that process, when would you normally expect the permanent secretary to inform the First Minister as party leader?

**Nicola Richards:** That document sets out the hypotheticals for what might come forward should we receive a formal complaint. It is trying to set out, as the procedure does, that there is a point in time in the procedure once you have been through an investigation when the permanent secretary would notify the First Minister if they were the party leader. If the complaint was about a former minister from another party, the permanent secretary would then notify the leader of the relevant party. The document sets out the process at the very end, after the investigation.

**Alex Cole-Hamilton:** The reason why I specifically ask about that is that the point before it says:

“However raised the allegations to the individual and ...

Perm Sec informs FM as party leader.”

That would suggest that that was going to be a synchronised event, or that it would be happening around the same time. Mr Salmond was informed of the allegations about him in a letter from the permanent secretary on 7 March, yet we have heard many times that the first the First Minister heard about that was from an approach from a source of Mr Salmond’s on 29 March. Should the process have seen them informed at the same time, or were things followed correctly to your knowledge?

**Nicola Richards:** Again, those were rough notes at a point in time, so I would not read too much into them. I think that the “However raised the allegations” point is trying to indicate that there is a whole investigation process. It is a bit of a shorthand. However, I have no knowledge of when the First Minister was or was not informed, beyond the final stage of the process. I would not indicate that those points were bringing those steps closer or further apart. The document was just trying to narrate some of the stages.

**Alex Cole-Hamilton:** That is absolutely fine.

To go back to who knew about the complaints in addition to the four main protagonists in the upper echelons of the Government at the time of the investigation—yourself, Barbara Allison, Gillian Russell and Judith Mackinnon—notwithstanding the permanent secretary, to your knowledge were there any other civil servants or any senior members of the SNP or special advisers who were aware of the existence of the complaints or the investigation as it was being undertaken?

**Nicola Richards:** Not as far as I was aware.

**Alex Cole-Hamilton:** Finally, at the end of the session with Gillian Russell this morning, she intimated to the committee that, with the publication or the revelation of the investigation and the subsequent media attention around it in August 2018, she received a number of other complaints or concerns from other individuals, which she then referred to the police. Were you aware of those at the time and were you involved in any discussions as to how those might be handled?

**Nicola Richards:** I am not sure whether I was involved with any discussions with Ms Russell. I do not recall that. Similarly, if people came to me, I also passed those complaints directly to the police at that stage. The concern was not to muddy the waters at that point. If the police were looking at

matters, it was important that people went directly to them.

**Alex Cole-Hamilton:** Could you quantify the number of people who came to you at that time?

**Nicola Richards:** I am not sure that I could. I could go away and check that.

**Alex Cole-Hamilton:** Was it fewer than 10?

**Nicola Richards:** Yes.

**Alex Cole-Hamilton:** So it was just a small handful of people.

**Nicola Richards:** Yes.

**Alex Cole-Hamilton:** I understand.

**Jackie Baillie:** Thank you and welcome back to Ms Richards. Is it correct that you were fully aware of the contact between Ms Mackinnon and the complainants before she was appointed as the investigating officer?

**Nicola Richards:** Yes.

**Jackie Baillie:** I believe that you also told Ms A that Ms Mackinnon would be appointed as investigating officer weeks before the policy was adopted. Is that also correct?

**Nicola Richards:** I think that it may have been a week.

**Jackie Baillie:** Okay—a week, then. You were involved in the development of the policy and you knew that the investigating officer was meant to have no prior involvement with any aspect of the matter being raised and that the investigating officer was to make an impartial collection of the facts. How was that prior contact that you knew about compatible with the policy, which you also knew about?

16:30

**Nicola Richards:** As I have tried to set out, our interpretation and understanding of the policy, and the way in which such employment and workplace policies are typically interpreted, is that that aspect refers to engagement and involvement with the matter being raised and not to the involvement that a person may have had in an HR professional role to set out options for somebody.

**Jackie Baillie:** But that was still the matter being raised, and the courts found against you.

**Nicola Richards:** As I think the Lord Advocate set out, the reason why the Scottish Government concluded and conceded the judicial review was not the matter of prior contact per se. The Scottish Government was prepared to argue that point.

**Jackie Baillie:** But it was about the independence of the investigating officer, was it not?

**Nicola Richards:** No, I do not think that it was; I think that it was about the Scottish Government's capacity to fully evidence the nature of that prior involvement and to be clear that it was legitimate. It was the inability to put that whole picture together and set it out very clearly that—

**Jackie Baillie:** So, basically, you are saying that, in the volumes of paper that you eventually disclosed to the Court of Session, there was not enough to justify your view and interpretation of paragraph 10 of the policy. Is that right?

**Nicola Richards:** The decision to concede the judicial review was not my decision.

**Jackie Baillie:** Okay—let me move on.

The permanent secretary suggested to us that she was not really involved in the development of the policy and that it was delegated to people such as you. However, that is not strictly accurate, because Judith Mackinnon told us that you updated the permanent secretary on a very regular basis. How did you do that, and to whom did you report?

**Nicola Richards:** I sent regular update notes to the permanent secretary, and I think that the committee has had all of those.

**Jackie Baillie:** I am not sure that we have seen them yet.

**Nicola Richards:** I think that you have. I think that they were part of earlier evidence.

**Jackie Baillie:** Oh—okay, I must go back and look.

**Nicola Richards:** I can check, but I think that you have had those.

We updated the permanent secretary across the whole range of activity—again, this goes back to the #MeToo movement. It was about staff communications and procedural updates, not just on our ministerial policy but on our fairness at work policy and other procedures. It was about making sure that people felt able to speak and to come forward, and about connecting with other organisations to share good practice. We updated the permanent secretary on a range of topics. The updates that we gave about people coming forward were at a very high level.

**Jackie Baillie:** On the same occasion—I think that it was 8 September—the permanent secretary told the committee that, as the decision maker, it would be inappropriate for her to know who the complainers were. That is obviously right, is it not? That was what she said to us on 8 September.

**Nicola Richards:** If that was her view, yes.

**Jackie Baillie:** Therefore, if that was accurate, there would be no question of her meeting the

complainers before, say, the former First Minister was advised of the procedure.

**Nicola Richards:** I do not know. I am not sure why, once the process had got to a particular stage, that would be—I do not think that that was set out as not being part of the policy.

**Jackie Baillie:** Sure. Do you know whether the permanent secretary had a meeting with the complainers and, if she did, when?

**Nicola Richards:** I would need to check that fact.

**Jackie Baillie:** If you could do that and let the committee know, that would be great.

I return to the issue relating to the police. You said that, in early August 2018, there was an attempt to persuade the two complainers to make complaints to the police. That was initiated first by Judith Mackinnon and then you would have come in after that.

**Nicola Richards:** Our intent was not to convince the complainers to go to the police; our intent was to understand the view of the complainers, should the Scottish Government need to take that step.

**Jackie Baillie:** So the permanent secretary asked you to speak to the complainers on that basis.

**Nicola Richards:** Yes—it was to seek their views.

**Jackie Baillie:** Did you alert the permanent secretary to their reluctance?

**Nicola Richards:** Yes.

**Jackie Baillie:** When they demonstrated their reluctance, did you ask them to support the Scottish Government in making the complaints?

**Nicola Richards:** We did not ask them to support the Scottish Government. I think that we went back to them to understand whether they would co-operate with an investigation if we referred the matter to the police. If we referred it to the police, they could still have chosen not to co-operate with the police. I do not know whether they gave a specific view on that, but there were certainly a couple of iterations on that point.

**Jackie Baillie:** Could you go back and check whether they gave a specific view on that?

**Nicola Richards:** Yes.

**Jackie Baillie:** Thank you. That would be helpful.

Whose decision was it to report the matter to the police?

**Nicola Richards:** That was a decision for the permanent secretary and senior advisers.

**Jackie Baillie:** Who were the senior advisers?

**Nicola Richards:** I am not sure that I can specify that.

**Jackie Baillie:** I am sorry. I thought that, as you had said that they were senior, you could specify who they were. If you can, that would be good.

Was there any informal contact with the police before that?

**Nicola Richards:** No, not by me.

**Jackie Baillie:** Was there any contact by anyone else?

**Nicola Richards:** I think that Ms Mackinnon has set out that she spoke to the police during the development of the procedure to understand the processes that one might take when dealing with potential victims of sexual harassment. I think that she sought views in order to answer some questions that the complainers had asked about what a police process might look like. However, that was done hypothetically without any specific information being shared.

**Jackie Baillie:** Given that it was the permanent secretary's decision—I stress this because she could not recall this when asked by my colleague Alex Cole-Hamilton in the committee on 8 September—do you know whether she picked up the phone herself or whether she delegated that to someone else?

**Nicola Richards:** To do what?

**Jackie Baillie:** To contact the police.

**Nicola Richards:** I cannot speak to what the permanent secretary did. I was asked to pass information to the Crown Office, not directly to the police.

**Jackie Baillie:** You reported matters to the Crown Office. When was that?

**Nicola Richards:** That was at the end of August.

**Jackie Baillie:** Thank you.

This is my final question, convener. Ms Richards, I believe that you were aware of the hope of sisting the judicial review so that it did not come to court. Is that correct?

**Nicola Richards:** I can recall some discussion about whether it was appropriate for the judicial review to continue while there were live issues being reviewed by the police.

**Jackie Baillie:** Can you say who was involved in that discussion?

**Nicola Richards:** I am not sure. I was very much on the edges of that.

**Jackie Baillie:** Even being on the edges of that you would know who was involved in the discussion. Was the permanent secretary involved?

**Nicola Richards:** I do not know. It was mainly a legal discussion, as I recall.

**Jackie Baillie:** Was the Lord Advocate involved in the discussion?

**Nicola Richards:** I do not think that I am able to answer questions relating to the law officers.

**Jackie Baillie:** Oh—I am just asking you who was in a meeting.

**Nicola Richards:** I do not know whether there was a meeting.

**Jackie Baillie:** So there could have been emails.

**Nicola Richards:** There could well have been.

**Jackie Baillie:** You are telling us that there was a discussion in some shape or form about the sisting of the judicial review.

**Nicola Richards:** I am sure that the law officers and others were considering issues and whether there were potential difficulties between the parties.

**Jackie Baillie:** You were on the edge of that suit, so you knew about it.

**Nicola Richards:** It is always quite hard to know why you know things, and when from, when you have been poring over papers. I recall having concerns, personally, about potential witness statements and so on being shared as part of the judicial review when they were also being reviewed by the police.

**Jackie Baillie:** Were you aware whether the potential for sisting was communicated to the complainants by Ms Mackinnon or anyone else?

**Nicola Richards:** I am not aware of that.

**Jackie Baillie:** Did you get any of Ms Mackinnon's update notes to the complainers?

**Nicola Richards:** On occasion, I may have been copied in, particularly if we were handing over contact at a particular point.

**Jackie Baillie:** So you would have been aware if anything in relation to sisting was raised with the complainers as a consequence of that.

**Nicola Richards:** Not necessarily.

**Jackie Baillie:** Thank you, convener.

**The Convener:** Thank you, Ms Baillie. I must have imagined that I heard you say about seven or

eight questions ago, “This is my last question, convener”.

**Maureen Watt:** We have heard in previous meetings about the impetus that was given to developing a procedure by the #MeToo movement, which was felt across the civil service in the United Kingdom. Was any draft or iteration of the procedure shared with colleagues in Whitehall?

**Nicola Richards:** It was not shared by me, but James Hynd may have referred to that in his evidence.

**Maureen Watt:** That is fine. Thank you.

**The Convener:** This is definitely the final question. I want to go back to what we were talking about earlier about the decision that was taken jointly by you and the permanent secretary that the draft policy would be shared with the complainers. Who initially suggested that that should happen?

**Nicola Richards:** I cannot immediately recall that. I think that, initially, it would have come from the permanent secretary as a desire to test matters as widely as possible.

**The Convener:** I said that that was the final question, but I understand that Mr Wightman has one final, final question.

**Andy Wightman:** Thank you, convener. I have one specific question. Going back to the email YY050, you say:

“There is a risk that your name”—

that is the name of the complainer, Ms A—

“could find its way into the public domain – the SG would not comment or confirm (but would offer you support and protection within our power).”

When you say that there is a “risk” that Ms A’s name could find its way into the public domain, is that just a general statement to cover unknown futures or had you evaluated the procedure and identified specific risks therein that might lead to the complainer’s name finding its way into the public domain?

**Nicola Richards:** It was a wider risk rather than a specific concern. However, if the initial part of the investigation identified that there were potential causes for concern that needed to be shared with the accused party, at that point the information would be outwith the bounds of the organisation and no longer in our control. Although we could do everything in our power to ensure confidentiality while the matter remained within the Scottish Government, as soon as it moved outside the Government, we could not offer the same level of protection and control. It was important to be open with the complainers about the limits of

action and the limits of protection that we could offer at any point in time.

**Andy Wightman:** Were you satisfied that the risks of a complainer’s name finding its way into the public domain were negligible while the matter remained within the Scottish Government?

**Nicola Richards:** Certainly. That is why we did everything in our power to maintain and respect that confidentiality at every moment.

**Andy Wightman:** Was the risk mitigated by limiting the number of people who had access to the information and thereafter it was a matter of trust and the professional integrity of those people?

**Nicola Richards:** Yes.

**The Convener:** I thank Ms Richards for her evidence today. We will take a short break before moving on to the next witness.

16:43

*Meeting suspended.*

16:51

*On resuming—*

**The Convener:** I welcome John Somers, principal private secretary to the First Minister.

**John Somers (Scottish Government)** *made a solemn affirmation.*

**The Convener:** I invite you to make brief opening remarks.

**John Somers (Scottish Government):** Thank you, convener. I thought that it might be useful to the committee if I briefly outlined my current role as the principal private secretary to the First Minister and deputy director of ministerial private offices.

I have been a civil servant working in the Scottish Government since June 2004. I was appointed to my most recent role as the PPS in February 2017. I have responsibility for more than 150 staff and I have oversight of all ministerial private offices. Specific to my role as PPS, I have responsibility for leading a team of private secretaries in the FM’s office, I attend Cabinet as an observer and I have oversight of Bute house, the official residence. I also share responsibility for ministerial security.

In relation to the remit of this committee, I reiterate the response of the Deputy First Minister on 6 November—that is, that I had no involvement in the development of the procedure. Nor did I have any involvement in the investigation of any complaint brought under that procedure. Other than carrying out and overseeing the requested



searches of the First Minister's private office, as part of the commission and diligence, I had no involvement in the judicial review.

On the JR, and specifically the commission, I was asked on 21 December 2018 to search for any documents, emails, text messages or notes, using a number of suggested search terms. Neither I nor the private office held any documents that fell within the suggested parameters. However, the request also specified that I should not limit my search if I felt that any further term might produce something of relevance. On that basis, I declared two calendar entries for 20 and 21 November 2017, when I met Ms A at her request. For clarity, in both those meetings, the only people in the room were myself and Ms A.

There has been some suggestion that I have not been forthcoming about my two meetings with Ms A in November 2017. I would appreciate the opportunity briefly to address that. On 20 November 2017, with the permission of Ms A, I shared the disclosure that she had made to me with my line manager, on that same day. On 21 December 2018, when I was asked for the first time to search for and disclose any documentation relevant to the commission and diligence, I disclosed those meetings on that same day. On 29 October this year, in response to the committee's letter to me, I again declared both those meetings, on that same day, for inclusion with the DFM's response to the committee.

Other than that, I have not discussed with anyone the identity of Ms A. Nor have I discussed the disclosure that she made to me in the three years since those two meetings took place. I am clear that at no point did I have Ms A's permission to share that information with anyone else, so I did not do so.

Finally, I confirm that I had no involvement in the meetings or arrangement of the meetings that make up the ministerial code phase of the inquiry.

I give evidence to the committee on behalf of ministers and not in a personal capacity. I may be privy to information that is the subject of a contempt of court order. Like all civil servants, I am also required to respect the Government's legal privilege and law officers convention. Therefore, I might have to stop to seek advice or follow up questions in writing in detail, to ensure accuracy and to comply with restrictions on the Government's evidence.

I declare that I am a member of the FDA union.

**The Convener:** Thank you very much, Mr Somers. We will go straight to questions.

**Margaret Mitchell:** Good afternoon, Mr Somers. Can you confirm who your line manager is, for the avoidance of doubt?

**John Somers:** My line manager at the time was Barbara Allison. I now have a new line manager, because Barbara has since retired.

**Margaret Mitchell:** Can you give a flavour, in general terms, of your role as principal private secretary to the First Minister? You have given a clear explanation of the people for whom you are responsible and so on but, more specifically, what does your role entail in terms of being PPS to the First Minister?

**John Somers:** I think that it is accurate to say that I am not involved in the day-to-day running of the office. However, I attend Cabinet meetings, for example. I am involved in any interactions with the UK Government or with the heads of the devolved Administrations; in any issues of national security; in any interaction with the royal household; in any issues around the First Minister's security and Bute house, as I said in my statement; and in the staffing and smooth running of her office.

**Margaret Mitchell:** Do you sometimes attend meetings in her stead?

**John Somers:** No.

**Margaret Mitchell:** Do you have responsibility for her diary?

**John Somers:** No.

**Margaret Mitchell:** Is one of your responsibilities to have regular meetings with the permanent secretary?

**John Somers:** I used to meet the permanent secretary just before Cabinet meetings started on a Tuesday, but, given the Covid pandemic, we do not meet in person anymore. That was the only time that I would regularly meet the permanent secretary.

**Margaret Mitchell:** Did those meetings happen regularly before the pandemic?

**John Somers:** Yes—every Tuesday.

**Margaret Mitchell:** Did those meetings involve the permanent secretary providing an update to you, or you relaying an update from the First Minister to the permanent secretary, on various issues or on what had happened since you had last spoken to her?

**John Somers:** The meetings tended to vary. They were fairly short and informal. We might talk about the week ahead, what the FM had planned to do or anything that had happened in the past week. They varied, but they were usually focused on the business of that week and what would be discussed at Cabinet.

**Margaret Mitchell:** Did you discuss the development of the procedure, the complaints or

the judicial review with the permanent secretary at those meetings?

**John Somers:** No—they were not discussed with me.

**Alex Cole-Hamilton:** Good evening, Mr Somers. Thank you for coming to see us.

I would like to take you back to the two meetings with Ms A. I accept that you might not be able to answer all my questions, on the basis of avoiding jigsaw identification. Did you get an understanding of the catalyst for Ms A approaching you in the first place?

**John Somers:** I can perhaps give a little background. My personal assistant contacted me to say that Ms A wanted to meet me. When he had asked why, she had said that it was a personal issue, so I had no idea beforehand why I was meeting her. To be frank, I thought that it was about a job.

In the course of that disclosure, Ms A said to me that there had been an experience in the past that she wanted to share, and that she wanted to share it in a way that would improve the organisation and ensure that no one else would have to go through that experience again. She was not making a complaint, but she wanted to assess her options as to how she may best share that. One of the options was to potentially speak to the First Minister about her experience. Although I cannot speak for her, I assume that that is why she came to me.

**Alex Cole-Hamilton:** She came to you, given your professional proximity to the First Minister and because you would potentially have the FM's ear on a daily basis.

**John Somers:** I think that she came to me more to assess various options, one of which was a discussion with the First Minister, and to find out what I thought about that.

**Alex Cole-Hamilton:** How did you respond when she asked whether she could have a discussion with the First Minister?

**John Somers:** I asked whether I could first take advice from my line manager. I am very happy to say to the committee that I was quite overwhelmed in that meeting; I had never come across anything like that in my career before. I asked whether she would allow me to quickly—on that day—share the disclosure with my line manager and no one else, in order to take advice and then come back to her the following day. I came back to her the following day and we agreed that she would speak directly to my line manager, who was Barbara Allison.

At the end of the second meeting, I said that, if she felt that she was not being taken seriously and that no one was listening to her, she should come

back to speak to me and that, if she wanted to meet with the First Minister, I would set that up.

17:00

**Alex Cole-Hamilton:** Given that that meeting never happened—an arrangement was never made with the First Minister—I take it that she was satisfied with the process as it was adopted or taken forward.

**John Somers:** After that second meeting, I never heard from her again. The only assurance that I sought from my line manager, I think that week, was whether she was receiving the support that she needed and whether I had any further role in that; my line manager said no, I did not, and that she was receiving the support that she needed.

**Alex Cole-Hamilton:** You said—thank you for your candour—that it was an overwhelming meeting. I can imagine that it was very distressing to hear some of those things. Did it occur to you at any point in that meeting that, if these allegations were true, Mr Salmond, who was still a private citizen, free and not in any way under suspicion, might pose a threat to other people? As such, did it occur to you that you might communicate it to somebody in the SNP to suggest that they might have to look at their own protocols for protecting women around him?

**John Somers:** No. That is a good question. It did not occur to me. I think that my focus and priority were protecting her anonymity and confidentiality. I was clear that I did not have her permission to share her disclosure with anyone else.

**Alex Cole-Hamilton:** Therefore, the meetings that happened on 21 and 24 November with Liz Lloyd had no relevance to your meeting with Ms A—

**John Somers:** They had no relevance whatsoever to that, no.

**Alex Cole-Hamilton:** Therefore, there was never a disclosure of Ms A's concerns to Liz Lloyd by you.

**John Somers:** There was never a disclosure of Ms A's concerns to anyone else other than my line manager.

**Alex Cole-Hamilton:** I think that that is it for now, convener. I might want to come back in at the end.

**Murdo Fraser:** Mr Somers, in response to my colleague Margaret Mitchell you said that you are not responsible for the First Minister's diary. Can you tell us who is responsible for that? Is there a dedicated civil servant who is responsible for that?

**John Somers:** We have a diary team: there is a diary manager supported by a deputy private secretary and an assistant private secretary.

**Murdo Fraser:** In your role, would you normally have access to that diary, to see what the First Minister's engagements were?

**John Somers:** Yes, I would look at it daily.

**Murdo Fraser:** We have had evidence from the First Minister about a meeting that took place on 29 March with Mr Geoff Aberdein, the former chief of staff to the former First Minister. Were you aware of that meeting taking place?

**John Somers:** No.

**Murdo Fraser:** Were you aware of whether that meeting was in the First Minister's diary?

**John Somers:** I was made aware of that meeting only by the media reporting during the trial.

**Murdo Fraser:** If that meeting had been in the First Minister's diary, would you have seen it? Would you have been aware of it?

**John Somers:** I would have been aware of it, I assume, because, although we do not keep any logistical, political or constituency appointments in the First Minister's diary, we use them for scheduling, and they are usually taken out of the diary every three or four months, so I would have seen it. However, my understanding is that it was not a meeting. It was an opportunity, I think. Mr Aberdein was on the fourth floor meeting a colleague and took the opportunity to meet the First Minister, so there would have been no reason for it to be in the diary.

**Murdo Fraser:** If it had been a political meeting, as you say, it would not necessarily have been in the First Minister's ministerial diary.

**John Somers:** If a meeting had to be scheduled for any time during the FM's working week, we would have it in the diary.

**Murdo Fraser:** We know from the First Minister's evidence that there were meetings with Mr Salmond on 2 April, 7 June and 14 July. Do you have any knowledge of those meetings?

**John Somers:** My first knowledge of those meetings was when the First Minister told me in June 2018. She then followed that up with a formal note to the permanent secretary.

**Murdo Fraser:** Were those meetings in her ministerial diary?

**John Somers:** No.

**Murdo Fraser:** If they had been meetings on Government business, you would expect them to be in the ministerial diary.

**John Somers:** If they were anything to do with Government business, I would expect them to be in the diary.

**Jackie Baillie:** Having been a minister previously, I understand how important a private secretary is, and, indeed, a principal private secretary. You would know most of everything that was going on and, indeed, in your role, you would have been close to the permanent secretary too. Is that a fair assessment?

**John Somers:** No, I do not think so. I do not think that I am particularly close to all the detail. I think that I said in my opening statement that I have 150 staff spread over 16 teams and my job—I will keep this brief—feels more like two jobs than one. I am the PPS, but I am also the head of, I think the third-largest division in Government. Although I tried to strike a balance, it is near impossible, and it probably edges more towards the deputy director role. Therefore, it would be impossible for me to be in amongst the detail.

**Jackie Baillie:** I accept that you would not be "in amongst the detail". I will put it in a different way. I think that most private secretaries would agree with your description of trying to juggle too much, but somebody once described it to me as being almost like a relationship between a husband and wife—that you would know what was going on. Is that fair?

**John Somers:** I would not describe the relationship between myself and the First Minister, much as I admire her, as "husband and wife"—[*Laughter.*]

**Jackie Baillie:** I did not mean you personally, but in general terms. However, it is interesting that you went there.

**John Somers:** It was not me who went there, Ms Baillie.

**Jackie Baillie:** It was not me, either.

The committee was not told about your contact with one of the complainers until, I think, we received a letter from the Deputy First Minister. Why did it take a commission and diligence for the contact to be disclosed to the Court of Session?

**John Somers:** I did not know to whom Ms A, or my line manager, would have disclosed that she had met with me. Until that point, there would have been no reason for me to proactively give that information. As I said to Mr Cole-Hamilton, my sole focus was on protecting her anonymity and confidentiality.

**Jackie Baillie:** You have said that there were two meetings: one on 20 November and one on 22—

**John Somers:** No; sorry—one on 20 November and one on the day after, the 21st. It was on the Monday and the Tuesday.

**Jackie Baillie:** I am sorry; that was my error. You said that you told your line manager, Barbara Allison, about those meetings.

**John Somers:** Yes.

**Jackie Baillie:** What was the purpose of the second meeting?

**John Somers:** It was for me to revert to Ms A to say that I had spoken to Barbara Allison, and to ask her whether she would meet with her and share her disclosure, after which we would take it from there—or rather, Barbara Allison would take it from there. Ms A agreed.

**Jackie Baillie:** Was there a referral to Gillian Russell from you or Barbara Allison?

**John Somers:** I was not involved in that.

**Jackie Baillie:** We know from a freedom of information response that you had regular meetings with the permanent secretary's PPS and Liz Lloyd. I understand that you are friends as well as colleagues.

**John Somers:** Yes; that is fair.

**Jackie Baillie:** On 24 November, you met James Hynd.

As the First Minister's PPS, you will have been aware that they were all involved in the drafting of the policy. Are you telling us that you made no mention at all to the permanent secretary's PPS, to James Hynd, or to Liz Lloyd, of the meetings with Ms A?

**John Somers:** First—I know that this is unsatisfactory—I do not recall that meeting on the 24th. Secondly, I can definitively and categorically say that I made no reference to the meetings with Ms A, at that meeting, or to anyone other than my line manager.

**Jackie Baillie:** We know that when the permanent secretary heard about an alleged incident at Edinburgh airport, she went directly to the First Minister to discuss that. As the First Minister's PPS, you are her most trusted civil service adviser. Did you say nothing at all about that meeting with Ms A? Did you keep it totally to yourself? Did you not tell even the First Minister?

**John Somers:** I did not tell the First Minister because it was not my experience to share. That would have been my first priority. Secondly, had I done so, I would have put the First Minister into a state of knowledge about something on which she could not have taken action at that point.

When the First Minister told me in June that Alex Salmond had been in contact, and that she

wanted to do a formal note to the permanent secretary, for which I would transmit confidentiality, I told her that someone had approached me at the end of 2017 and made a disclosure, that I had not told her because I did not have that person's permission to tell her, and that I hoped that she understood that. She said that she did, and that we should not speak about it further.

**Jackie Baillie:** I will touch very briefly on diary meetings. I understand that the meeting with Geoff Aberdein was in the diary for 29 March, but was subsequently removed. Do you have any knowledge of that?

**John Somers:** I am as confident as I can be that there was no entry in the diary for that date for Geoff Aberdein.

**Jackie Baillie:** Do you know where the meeting was held?

**John Somers:** According to the First Minister's note, it was in Parliament.

**Jackie Baillie:** Was it in her office, or in a meeting room?

**John Somers:** I was not there, so I cannot say definitively. I imagine that it would have been in her office.

**Jackie Baillie:** Okay; so it was in her office. Did somebody collect Mr Aberdein from reception?

**John Somers:** Again, I am sorry, I do not know. In her note, the FM said that he was already meeting a colleague.

**Jackie Baillie:** I was just being curious.

I refer to the events of 23 August 2018. That was the occasion on which you, as PPS, would have received for the First Minister a copy of the permanent secretary's decision report. That document, or at least part of it, was leaked at the time to the *Daily Record*. What were the circumstances of the leak and, as far as you are aware, who among the civil servants and special advisers had access to the report?

**John Somers:** I cannot comment at all on the leak. I do not know anything about it. An investigation was taken forward by the Scottish Government, in which we were all asked to disclose any information that we had. I have never seen the decision report. I have seen the letter to the First Minister—I think that it was dated 22 August, not 23 August—but I cannot comment any further.

**Jackie Baillie:** Do you know who received a copy of the report? Which civil servants and special advisers—

**John Somers:** I would not have been involved in anything to do with that.

**Jackie Baillie:** Would you not be copied in to a minute saying, “Here is a copy of the report”?

**John Somers:** I would be copied in only to anything that was to be transmitted to the First Minister.

**Jackie Baillie:** But that report was to be transmitted to the First Minister, was it not?

**John Somers:** Is the letter of 22 August the permanent secretary’s decision report?

**Jackie Baillie:** Yes. That is my understanding.

**John Somers:** I beg your pardon. Yes—I have seen it.

**Jackie Baillie:** So you were copied in to that report, as other people would have been. Who else was copied in?

**John Somers:** I do not know. I could go back and check my records.

**Jackie Baillie:** Could you? That would be helpful, just to know who had access to the report.

**John Somers:** Of course; certainly.

**Andy Wightman:** Welcome, Mr Somers. Is Ms A the only person who has ever approached you in your capacity as PPS in relation to any sexual harassment complaints in the Scottish Government?

**John Somers:** Yes.

**Andy Wightman:** Okay. What was the state of your knowledge about the formal complaint that was made by Ms A in January 2018?

**John Somers:** I did not have any knowledge of it.

**Andy Wightman:** You had no knowledge that the complaint had been made. That is fine.

What was the state of your knowledge of the development of the new procedure whereby there was explicit provision for complaints to be made against former ministers?

**John Somers:** I was obviously aware that it was commissioned by the Cabinet on the 31st. I do not recall what I knew contemporaneously, but I know from James Hynd’s testimony that the inclusion of former ministers was in the procedure from as early as 7 November.

**Andy Wightman:** Did you have any role in development of the procedure?

**John Somers:** No.

**Andy Wightman:** In footnote 31 of document YY057 we have an email to you from private secretary 1 with an attachment called “Complaints against ministers”, which is the document.

**John Somers:** What date is that from, Mr Wightman?

**Andy Wightman:** It is from 20 December 2017, at 15:55.

**John Somers:** Ah.

**Andy Wightman:** The email contains a Word document that is work in progress on the new procedure for handling of harassment complaints against current or former ministers.

**John Somers:** Yes.

**Andy Wightman:** Why was that sent to you?

**John Somers:** I recall that 20 December was the date when the First Minister approved the procedure and that the document includes tracked changes from the unions. I do not recall why I asked for it, but I may have been asking the permanent secretary’s office whether the unions had finalised their input into the guidance. That would probably be the most logical reason.

**Andy Wightman:** That strikes me as odd. On that day, on 20 December, the new procedure was approved by the First Minister.

**John Somers:** Yes.

**Andy Wightman:** So why were you sent a document that is full of tracked changes and is quite a mess?

**John Somers:** I do not recall, so I can only refer to my previous answer. I assume that I was perhaps double-checking that all the “i”s had been dotted and the “t”s had been crossed.

**Andy Wightman:** Do you recall going through that document at all—having a look at it and considering any matters within it?

**John Somers:** I did not have any remit to do so, nor expertise that would offer any value.

**Andy Wightman:** It sounds as though it just came into your inbox as a routine matter. Someone felt that you should have it.

**John Somers:** Yes—or I had asked for it.

**Andy Wightman:** But you do not recall asking for it.

**John Somers:** I do not recall that—I am sorry.

**Maureen Watt:** Good afternoon, Mr Somers. You have reached the dizzy heights of PPS to the First Minister. Will you tell us a bit about your roles in the civil service before that? When did you join the civil service, when did you join a private office and how many ministers have you served?

**John Somers:** I joined the civil service in 2004. Initially, I worked in housing under the supporting people brief. I then moved on to the fast-stream graduate programme and held a number of posts.

After that, I was head of drugs policy in relation to recovery. I then moved on to become the first secretary for Scottish affairs to the People's Republic of China. I did that job for four years before returning, and two months later I became the PPS to the First Minister.

**Maureen Watt:** Have you served any other minister as private secretary?

**John Somers:** No, I have not served any other minister in the capacity of private secretary.

17:15

**Angela Constance:** I will follow up on that. Ms Baillie referred to her ministerial experience. There are five former ministers on the committee, but none of us has ever been First Minister. Will you provide an overview of how private offices now operate? In terms of functions, for example, what is the average size of the team in a junior minister's office in comparison with that of a cabinet secretary and that of the First Minister? You indicated that there is a diary team that looks after the First Minister's diary, so there may well be teams for other functions.

**John Somers:** I will talk in terms of civil service grades, but I am happy to provide more information if you would like.

A junior minister normally has a private secretary who is a B2—a mid-level civil servant—who leads a small team including an assistant diary secretary and a correspondence secretary. A cabinet secretary has a more senior civil servant, at C1 level, leading their office. If the cabinet secretary has a large remit, they potentially have a deputy private secretary, as well as a diary secretary and a correspondence secretary. The First Minister has a private secretary and four deputy private secretaries. One of the deputy private secretaries leads the diary team. There is also a correspondence team of two individuals who deal with all the First Minister's correspondence. We also have a visits and events team that lead on any events that the First Minister attends.

**Angela Constance:** Is that about 10 individuals?

**John Somers:** For the First Minister's team?

**Angela Constance:** Yes.

**John Somers:** Yes—it is between 10 and 12 people.

**Alex Cole-Hamilton:** I want to go back to the meeting with Ms A, which I understand was difficult and traumatic. During the meeting, did you ask her whether she had told anyone else what she was telling you?

**John Somers:** I do not recall asking her that question.

**Alex Cole-Hamilton:** Did she volunteer whether she had told anyone else?

**John Somers:** She said that she had reported her experience at the time.

**Alex Cole-Hamilton:** I am sorry; I will be more specific. Did she intimate to you that she had had the same conversation with anyone else around the same time, which was in November 2017?

**John Somers:** She did not, that I recall.

**Alex Cole-Hamilton:** Did you suggest that she contact somebody else?

**John Somers:** Other than referring her to my line manager, I did not.

**Alex Cole-Hamilton:** At any point, did the First Minister ask whether you were aware of the allegations? Did she ask whether Ms A had ever approached you?

**John Somers:** I am sorry—would you repeat that?

**Alex Cole-Hamilton:** Did the First Minister ever ask whether Ms A had ever approached you?

**John Somers:** No.

**Alex Cole-Hamilton:** We know that you referred Ms A to Barbara Allison. As we heard in earlier evidence today, Ms A went independently to Gillian Russell. Is it reasonable to assume that, having tried two routes—one that was an attempt to bring the matter to the attention of the First Minister, which is an understandable thing to do, and one that was to tell the organisation that it was an organisational problem—it is possible that she might have taken it to someone in the SNP or someone, such as a special adviser, who was a bridge to the SNP? She clearly had something that she wanted to say and to get into people's consciousness. Is it possible that she might have done that?

**John Somers:** I cannot comment on speculation and I cannot speak for her. I can talk only about the engagement that she had with me. However, as far as I understand things, at that point she had not said that she wanted to discuss it with anyone else and she had not done so.

**Alex Cole-Hamilton:** That is fair.

Was it the first indication that you had ever had of concerns about the behaviour of Alex Salmond?

**John Somers:** I was aware of the Edinburgh Airport allegation.

**Alex Cole-Hamilton:** We have established several times in the committee that there was low-level water-cooler scuttlebutt about bullying

behaviour by Mr Salmond. Were you aware of that?

**John Somers:** I was aware that he had a reputation for being forceful and, at times, intimidating. The only interaction that I have ever had with the former First Minister was when I was working in China. I worked with him for five days, and I did not encounter any such behaviour or have any problems or issues.

**Dr Allan:** I want to follow up on what you said about the document search that you were in charge of undertaking. Will you provide a picture of what that involved? What criteria or principles lay behind it?

**John Somers:** The perm sec's office, with the support of the Scottish Government legal directorate, gave us a number of broad terms, including "permanent secretary" and "First Minister", and asked us to search all the documentation that we held. The private office does not hold a lot of documentation, because we are always clear with policy leads that they are the holders of records.

We did a full search of all our paper records and all the records in our H drive. I asked the staff who were present—the staff at that time were different to those who had worked there earlier—to check their phones and all other relevant devices. They came forward to me with a number of papers, which I submitted to the lawyers.

I obviously knew about my two diary entries that I had marked as private. I thought that they were of relevance, so I sought advice directly from a member of the SGLD. I said that I wanted to disclose the entries, but not the name of the individual, and I asked how to do that.

**The Convener:** That seems to be the conclusion to our questions. Thank you very much for coming, Mr Somers. It is much appreciated.

That concludes the public evidence session.

17:21

*Meeting continued in private until 18:16.*





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