OFFICIAL REPORT
AITHISG OIFIGEIL

Committee on the Scottish Government Handling of Harassment Complaints

Friday 26 February 2021

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Friday 26 February 2021

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COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS

13th Meeting 2021, 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)
*Murdo Fraser (Mid Scotland and Fife) (Con)
Alison Johnstone (Lothian) (Green)
*Stuart McMillan (Greenock and Inverclyde) (SNP)
*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

The Rt Hon Alex Salmond
Andy Wightman (Lothian) (Ind)

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Committee on the Scottish Government Handling of Harassment Complaints

Friday 26 February 2021

[The Convener opened the meeting at 12:30]

Scottish Government Handling of Harassment Complaints

The Convener (Linda Fabiani): Good afternoon, everyone, and welcome to the 13th meeting of the committee in 2021. Our public business today is an evidence session with the Rt Hon Alex Salmond, former First Minister of Scotland.

At the outset, I note for members, for Mr Salmond and for all those watching the evidence session at home that, due to the necessary mitigations that need to be in place to allow us all to meet safely under Covid restrictions in person today, the evidence session will be suspended for a short while at around 2.15 pm, so that we can allow the room to be ventilated and cleaned. I also note for those watching that every effort has been made to make this evidence session as safe as possible for all involved, including with social distancing around the table and within the committee room.

I remind all those present and watching that we are bound by the terms of our remit and the relevant court orders, including the need to avoid being in contempt of court by identifying certain individuals, including through jigsaw identification.

The committee as a whole has agreed that it is not our role to revisit events that were a focus of the trial in a way that could be seen to constitute a rerun of the criminal trial. Our remit is clear, and it 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—that is, time, people and cases—the more we run the risk of identifying those who made complaints. The more we ask about specific matters that were covered in the trial, including events that were explored in the trial, the more we run the risk of rerunning the trial. In questions, reference to specific dates and individuals should be avoided, and questions should be phrased in general terms, where possible, to avoid the risk of jigsaw identification of complainants.

In addition, do not refer to civil servants by name unless absolutely necessary, and do not refer to civil servants by name below senior civil service level. I emphasise that the committee would be content to receive written supplementary points, should Mr Salmond have concerns that a response to a question may stray into this territory.

With that, I welcome Alex Salmond, former First Minister of Scotland. I invite Mr Salmond to take the oath.

Alex Salmond *took the oath.*

The Convener: Thank you very much. I now invite you, Mr Salmond, to make an opening statement.

Alex Salmond: Thank you very much, convener. Three important points require to be made at the outset. First, this inquiry is not about me. I have already established the illegality of the actions of the Scottish Government in the Court of Session, and I have been acquitted of all criminal charges by jury in the highest court in the land—those are both of the highest courts in the land: the highest civil court and the highest criminal court.

The remit for this inquiry is about the actions of others. It is an investigation into the conduct of ministers, the permanent secretary, civil servants and special advisers. It also requires to shine a light on the activities of the Crown Office and to examine the unacceptable conduct of those who appear to have no understanding of the importance of separation of party, Government and prosecution authorities—or, indeed, of the rule of law itself. It was the Government that was found to have acted unlawfully, unfairly and "tainted by apparent bias".

I note that the First Minister asserts that I have to prove a case. I do not. That has already been done. There have been two court cases, two judges and one jury. In this inquiry, it is the Scottish Government—a Government that has already admitted to behaving unlawfully—that is under examination.

Secondly, my interest in assisting this inquiry is out of respect for our Parliament. I have made no personal public comment of any kind on these matters for 11 months—not a single television interview or press interview or statement. I have turned down hundreds of such offers, which, as committee members will know, has not hitherto been my normal policy. I have watched with growing frustration, over the past six months, as this committee has been systematically deprived of the evidence that it has legitimately sought.

Indeed, I am just about your only witness who has been actively trying to present you with evidence as opposed to withholding it. As we saw this week, even after it was published, it was then unpublished by the intervention of a Crown Office that should not be questioning the will of Parliament. I watched in astonishment, on Wednesday, as the First Minister of Scotland used a Covid press conference to effectively question the result of a jury. Still, I said nothing. Well, today, that changes.

I have no incentive or advantage for me in revisiting the hurt and shock of the past three years, from a personal perspective—nor, indeed, from the perspective of two complainants who were failed by the Government and then forced, directly against their express wishes, into a criminal process. That now-admitted action served neither the wishes of the complainants nor the interests of justice. For two years and six months, this has been a nightmare. In fact, I have every desire to move on, to turn the page and to resist talking yet again about a series of events that have been among the most wounding that any person can face. However, the reason that I am here is because we cannot turn that page, nor move on, until the decision making that is undermining the system of Government in Scotland is addressed.

The competence and professionalism of the civil service matters. The independence of the Crown Office, as acting in the public interest, matters. Acting in accordance with legal advice matters. Concealing evidence from the courts matters. The duty of candour of public authorities matters. Democratic accountability through Parliament matters. Suppressing evidence from Parliamentary committees matters—and, yes, ministers telling the truth to Parliament matters. The day that such things came to not matter would be a dark and dangerous one for Scotland.

Collectively, these events shine a light on a Government whose actions are no longer true to the principles of openness, accountability and transparency, which are the core principles on which the Scottish Parliament was founded. I remember—I was there. The failures of leadership are many and obvious, and yet, convener, not a single person has taken responsibility and there has been not a single resignation, not a single sacking, not even an admonition. Instead, we have promotions or extensions of contracts and self-serving defences.

The Government acted illegally, but, somehow, nobody is to blame. There has been delay and obstruction in making evidence available. A committee has been asked to do its job with both hands tied behind its back and a blindfold on. Witness after witness has later adjusted evidence that was delivered under oath. Were it not for the independence of the judiciary, the robust scrutiny of the Court of Session and the common sense of a jury made up of members of the public, the matters before the committee would never have come to light and, indeed, no one would have cared about this inquiry. The Scottish courts emerge from these events with their reputation enhanced. Can those leading the Government and the Crown Office say the same?

Some people say that the failures of these institutions—the blurring of the boundaries between party, Government and prosecution service—mean that Scotland is in danger of becoming a failed state. I disagree. The Scottish civil service has not failed; its leadership has failed. The Crown Office has not failed; its leadership has failed. Scotland has not failed; its leadership has failed. So, the importance of this inquiry is for each and every one of us to help put that right.

My final point is simply this: I am a private citizen. Unlike just about every other person represented at this inquiry, I have had no-one paying my legal fees and I have had to contend with the resources of the Scottish Government being used to further tarnish my reputation, just as it spent £600,000 defending its illegal policy before collapsing in the judicial review, and just as enormous time, effort and public money have been devoted to the task of refusing to give this committee the documentation that it requires. The pattern is undeniable. The Government refused to hand over documentation in the civil case; it required a commission to extract that from it. The permanent secretary was brought in to give evidence under oath just to extract documents that she had a duty to provide to the court.

The Government ignored the provisions of a search warrant in the criminal case, and, despite the impact on the administration of justice, still withheld key documents that should have been put before the jury. This committee has been blocked and tackled at every turn, with calculated and deliberate suppression of key evidence. Even Parliament—our Scottish Parliament—has been defied, despite two votes demanding the external legal advice that the public have paid for.

My evidence has been published, then subsequently censored by intervention of the Crown Office—evidence that it had previously agreed was lawful. Even today, I appear before you under the explicit threat of prosecution if I reveal evidence for which the committee has asked. Not to fulfil my oath and tell the truth, the whole truth and nothing but the truth would be a contempt, but the Crown Office says that it might lead to prosecution. People should just stop and think for a moment about that. The ability of any

witness before any Parliament to tell the truth and fulfil their oath is effectively being questioned by the Crown Office.

The truth is that those who now demand to see evidence have invested a great deal of time and public money in attempting to hide that evidence. When this inquiry ends—neutered though it may be—I will consider that I have discharged my duty as a citizen and as a former First Minister. It will then be for others to consider their own positions in the light of what this committee decides.

This inquiry, in my opinion, is a chance to assert what type of Scotland we are trying to create. Few would now dispute that our country is a better place for achieving our Parliament. However, the move to independence, which I have sought all my political life and continue to seek, must be accompanied by institutions whose leadership is strong, robust and capable of protecting each and every citizen from arbitrary authority. Such a principle is a central component of the rule of law. It matters to every person in Scotland as much as it always has done. It is the bedrock of our democracy, of justice and of fairness.

Thank you, convener.

The Convener: Thank you, Mr Salmond. I also thank you for submitting your evidence in the chronological fashion that you have. The committee has agreed that we will pursue the evidence session in that manner.

I will ask the first question. I was interested to read about the fairness at work policy in your evidence. You have said that, as First Minister, you approved the policy and were very involved in its development. Could you talk us through how that came about, including in relation to the trade unions? We have taken some evidence from the FDA about informal solutions that were used to correct potential problems and so on. What is your understanding of the development and implementation of the fairness at work policy?

Alex Salmond: Thank you, convener. I will turn to your question in a second. However, to explain to those watching the proceedings, as we have agreed, I am required under legal advice to read out a short legal statement.

I am severely hampered in making this evidence by two constraints placed upon me by the Crown Office. First, in relation to an order placed under section 11 of the Contempt of Court Act 1981, members will be aware of the unwarranted intervention of the Crown Office to ensure redaction of key passages from my evidence as they relate to meetings in March and April 2018, which have a direct bearing on the events being examined by this committee. That evidence will not now be heard fully today in this Parliament, despite its being freely available online and elsewhere.

In my estimation, that is very damaging to the work of the committee and to a public that is seeking answers. It is an intervention that has drawn widespread criticism—including, I note, this morning, from Lord Hope, the former Lord President of our Court of Session.

12:45

Secondly, in relation to the further blocking of evidence from the committee, I draw its attention to the decision of the Crown Office to prevent disclosure of evidence demonstrating the conduct of key individuals in this inquiry, under reference to section 162 of the Criminal Justice and Licensing (Scotland) Act 2010. I know—because I was First Minister when it was introduced—that that provision was not passed by the Parliament to prevent a parliamentary inquiry from getting to the truth on matters of the utmost public interest. It is being misused in its current context.

The application of these provisions, and the threat of prosecution made to me if I offer that evidence, is in my estimation both extraordinary and unwarranted.

I will now address your question, convener. Yes, I was involved in the origins of the fairness at work policy. It emerged over a period of 18 months and was the subject of detailed discussions over that period of time. It was a well-considered, developed policy. It was also original in its concept—as far as I am aware, it was the first such policy in any public Administration in these islands to effectively bring ministers under the same policy as civil servants. It was finally passed in, I think, the summer of 2010.

The Convener: Could you talk about how the policy came about? Could you also describe the trade union involvement and the concerns that, in your evidence, you have said the FDA union had raised about the lack of a coherent policy in that regard?

Alex Salmond: It was not just the FDA but the council of unions represented in the Scottish Government—all the unions jointly in the partnership board.

I supplied for the committee a minute of a meeting of the partnership board from 23 November 2009. That expresses the position very well, because—as the committee will note from that minute, if it is available to it—in it the unions express their concern, which they had raised over a number of years. That goes right back to the origins of the Scottish Government—to the Scottish Executive and the former Scottish Office, so they were going back 20 years and more. They

had expressed concerns about ministerial offices and, in particular, the behaviour of a number of ministers. The particular concern was the idea that civil servants working in the ministerial offices—private secretaries—were probably working harder and longer than anyone else in the civil service. That was the major contention. As it was explained to me, the aim and purpose of the unions was to bring ministers effectively under the same policy as civil servants. Therefore ministers were added to what became the fairness at work policy, which was passed in 2010.

I can answer that in more detail if you like, Linda.

The Convener: No—thank you for that.

Our deputy convener, Margaret Mitchell, has questions on that aspect, too.

Margaret Mitchell (Central Scotland) (Con): Good afternoon, Mr Salmond. Before I go on to phase 1, I am conscious of what you said about being here as a key witness, having been the First Minister from 2007 to 2014 and the petitioner in the judicial review that, as you have said, was found to be unlawful.

You also mentioned the frustration that this parliamentary committee, as an inquiry committee, has experienced. There has been obfuscation and, at some times, downright refusal and, at others, delay in providing material, despite the committee having met in private, way back—two years ago now—to establish our remit, to ensure that when we could meet in public we would be hitting the ground running.

I understand, and agree with you entirely, about democratic accountability and the Parliament's ability to hold to account any Government of the day if it feels that it has acted unlawfully or has abused its power—or is merely so incompetent that its behaviour is tantamount to that. You have suggested that you think that the powers are there and it is just that the present Parliament is not using them properly.

Will you explain to me where the powers are that allow us to move forward from a position in which, as you said in your opening statement, the Deputy First Minister, representing the Government, has refused, against the will of the Parliament, to issue external legal advice, which was paid for by the taxpayer, and has refused to give us—or has been very late in giving us—information that we need now?

Alex Salmond: There are a number of points there, Ms Mitchell. First, on the institutional point, the Parliament has the ability to assert itself in that position at the moment. It is not for me to tell the Parliament what to do, but motions can be lodged that affect the conduct of ministers and instruct ministers to do things on pain of further motions of whatever kind—censure motions are available within the Parliament; the question is whether there is a parliamentary majority to sustain them.

There is an understandable reason for reluctance to reveal legal advice, as a general rule, but the rules, as drawn up, provide for exceptions in the public interest. There have been a number of precedents in the past—I am thinking of the blood contamination inquiry, for example. Although every instance is going to be different, I think that most people, judging the current issue, would say that, after two parliamentary votes, that legal advice should and must be furnished. It might be that something should be written into either the ministerial code or the standing orders of the Parliament to make that clear. I am just amazed that you would have to go that far to ensure that that is done. The normal assumption would be that ministers would follow a clearly expressed will of the Parliament when they are able to do so.

Margaret Mitchell: That is helpful. Can I just ask you this further question? Do you consider that the checks and balances that are in place are robust enough to ensure the proper division of power between the Executive of the day and the Parliament of the day that holds that Executive to account, and between the people that we are looking at under our remit—that is, the First Minister, Scottish Government officials, the special advisers and our independent prosecution service? We know that in England, for example, there is a separate Director of Public Prosecutions. Here, the Lord Advocate has a dual role. Are you convinced that the system as it is—that is, the centralised Government that I think that you said you introduced and perhaps regretted having done so—and the powers are perfectly okay, and that nothing needs to be changed, regardless of whether we are holding to account a coalition Government, a Conservative Government—we live in hope—a Scottish National Party Government or some other combination?

Alex Salmond: That was fairly put, Ms Mitchell. I certainly do not regret this institution and my part in bringing it into being. I still have an ambition that this institution will go further towards independence. That is my view.

Any institution is going to learn lessons from experience. The Parliament has changed its procedures over the years, in a number of ways. For example, the independent supervision of the ministerial code is something that I introduced. That was a good thing—is a good thing—and is an example of how you can develop your procedures.

I have to say that I had not really contemplated the idea that a Government would refuse to obey two parliamentary votes. I can just about see the

argument for saying, “We’ll put it to the test again to see if that is the Parliament’s will”, but refusing to obey two parliamentary votes in terms of revealing legal advice that the public had paid for and which is pertinent to a parliamentary inquiry is not something that I would ever have anticipated; I would have thought that that would have been done.

In terms of the institutional balance, I think that there is an argument for separating the Lord Advocate’s Government adviser role from their prosecutorial role as the chief prosecutor of Scotland. There is an argument for that, and I sort of made a move towards that when I became First Minister, in that the Lord Advocate did not normally attend Cabinet, but did so only when he—or she, in that case—had advice to dispense. I thought that that was a good thing. I am not certain whether that has been fully adhered to since, but it was certainly my practice. Perhaps it should go further.

My own view, however, is that we should not confuse institutional failure with personnel. I think that the leadership of these institutions have serious questions to answer. When you get to the stage that a Government behaves unlawfully—well, that is not something that happens very often. I am on the record politically, when Governments have behaved unlawfully, as regarding that as a huge and heinous thing to have happened. It is not a slight matter. Some consequences should follow from unlawful conduct.

Margaret Mitchell: Thank you. Mr Salmond, on page 3 of your submission, you seem to suggest that, after the policy was put in place, it was as good as it gets—you can correct me if that is not a good assumption. You say that

“there were no formal complaints made against any Minister under the policy and ... it was never invoked”

Can I suggest to you that formal complaints under the policy set quite a high bar? We know from the FDA reports that, from a period of time between 2010 and 2014, complaints had to put it in writing and they had to be against someone who was very powerful, such as a minister or even the First Minister. That was a bar that perhaps should be looked at.

Perhaps you could also address the following in your answer. We know, because Barbara Allison and the former permanent secretary told us, that they tried to resolve any issues, whether they were concerns or what some people would call complaints, if not formal complaints, in an informal manner, perhaps by using mediation. Can you talk to that and confirm whether it worked well? Was it in place? If it was, it would be good to know how it worked. Who took the lead? Was it the director of human resources? We know that the Deputy First Minister had a role. Was she involved? We know that you had a role at the formal complaints stage; I do not know whether you had one at an earlier stage.

Alex Salmond: Before the fairness at work policy was introduced in 2010, there was no set personnel process for holding ministers to account or for them being on the receiving end of complaints—it did not exist. Having such a process was the aim and ambition of the unions. At the time, the unions gave the example of a matter concerning a minister in a previous Administration and how that was dealt with by the permanent secretary, but there was no set role at all. The ambition of the unions was to put ministers, in effect, under the same policy and on the same footing as civil servants.

There was an issue with that, and it was quite clear: there is a statutory basis for the ministerial code. In statute, the Prime Minister or the First Minister has a responsibility for any minister in his or her Cabinet. You cannot circumvent the statutory basis of the ministerial code by putting forward a fairness at work policy, so the task was to accommodate the wishes of the union representatives to include ministers in the policy, with the statutory basis of the ministerial code.

I would not say that what I arrived at is perfect; it is certainly capable of being revised, developed and improved. However, that is not what has happened—it has in effect been wiped out altogether, which I think is a very retrograde step. We are now in a situation where, as far as I understand it, fairness at work still applies to ministers where bullying is concerned but, as far as harassment is concerned, there is in effect no policy, because the policy that was developed in 2017 was the subject of my judicial review and has been declared unlawful, so it is now in limbo. That is a totally unsatisfactory situation. The point that I made in my submission is that it would be an improvement now to reintroduce fairness at work to cover ministers, as it previously did.

13:00

I was astonished when the permanent secretary gave evidence to the committee and said that she was not an expert on fairness at work and then said that it did not cover harassment. The first section of what the fairness at work policy covers is bullying and harassment and it is in force at the moment for the civil service. It is just not in force, as far as harassment is concerned, for ministers.

That is a totally unsatisfactory situation. Whatever people think about this inquiry or about the events of the past three years, that should have been sorted out. You cannot have a policy in

limbo, but that is where the policy most certainly is.

I thought fairness at work was a good policy. Much more importantly, the union representatives thought that it was not just a good policy; they thought it was a triumph and a huge achievement and have said so repeatedly. To cast it aside strikes me as a very unusual and foolhardy step.

Margaret Mitchell: That was useful, but what you have not addressed, Mr Salmond, is the informal resolution that we know was applied to address some of those concerns. We know that you know about that because it is on page 115 of the open record. There was a challenge to the general competency of an allegation that had already been resolved under the informal process.

Can you talk generally about how the informal process worked for resolving a complaint against any minister? Was mediation used? Who would be involved?

Alex Salmond: Can I speak generally, convener?

The informal resolution process is not only for ministers: it applies across the policy, and in fact dominates it. Barbara Allison told the committee that she thought it was a good thing and I think she is right to think that.

Mediation is not the same thing. Mediation comes in beyond informal resolution—that is as far as both civil servants and ministers are concerned. When you get to mediation, it is important for ministers that the First Minister is not the person doing that, because if the complaint is not mediated and goes forward to the end of the policy, the First Minister would be the person who has to judge the fate of that particular minister.

What was done was to make the Deputy First Minister responsible for mediation. If mediation fails, it goes to—I am testing my memory—a panel of, I think, three people: another minister, a senior civil servant and an outside person for impartiality. After that has finished, if the complaint is still sustained, the matter goes to the First Minister for final adjudication.

I checked my notes on this some time ago. When I gave approval to the policy on February 2010, John Elvidge, who was the permanent secretary at the time, made a key point. He said that it was absolutely vital not to have the First Minister at two stages in the process, as that would make the process unlawful, or potentially unlawful. That was obviously sound advice in the light of subsequent events.

It was a carefully considered, advised policy. It was strongly supported by the trade unions. It was their ambition to include ministers in that policy as it was configured. It is, of course, a policy that still applies to the general civil service because, having achieved something like that, the workforce representatives will not lightly give it up.

Margaret Mitchell: Was the Deputy First Minister aware of mediation or conducting mediation in that informal process? We want to know who knew what, and when.

Alex Salmond: Mediation is beyond the informal process. It is part of the formal process. There were no complaints—I was going to say, to my knowledge—there were certainly no complaints that required mediation between 2010 and 2017. Because there were no complaints, nothing went to Nicola Sturgeon in her role as Deputy First Minister.

In evidence—I only learned this in evidence—the committee heard that, since 2017, there have been only two complaints against ministers under, I suspect, the bullying aspect of the fairness at work policy. Under the policy, those complaints would have been dealt with, I assume, by John Swinney, as Deputy First Minister. I do not know the outcome of those complaints. I heard about them for the first time when it was given in evidence to the committee.

Margaret Mitchell: Thank you. That is very helpful.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Good afternoon, Mr Salmond. I will follow on from Margaret Mitchell's questioning. The evidence that we have received shows that there were voices who supported a robust response to the revelations of the #MeToo movement. The First Minister supported such a response, as did the Presiding Officer of the Parliament and the head of the UK civil service, who, of course, line manages the permanent secretary. MSPs of all parties in the Parliament spoke up for such a response. Do you agree that putting in place a sexual harassment procedure was not only absolutely necessary but in line with the consensus view across the political spectrum in Scotland?

Alex Salmond: As far as current ministers and civil servants were concerned, there already was one in the fairness at work policy. If it was felt that it needed additional strengthening, proper consultation with the union representatives who had spent 18 months devising the policy, back in 2009-10, should and could have been done. That would have been an appropriate response, but that is not what happened. What happened was the development of an entirely new policy at pace—as has been said a number of times to this committee—which ended up in the Court of Session, a total disaster for all concerned.

Maureen Watt: In the evidence that we have heard, people have said that it would have taken a

considerable amount of work to refit the fairness at work policy, that the fairness at work policy did not have a specific focus on sexual harassment and that the revelations of the #MeToo movement made many people think that there was a need to start afresh in how we look at sexual harassment. Was a new procedure not the best way to do that?

Alex Salmond: Give me a second—I am just looking at the fairness at work policy, as passed in 2010. It seems to me, from some of the papers that the committee has been given, that there have been some amendments that I do not understand. The policy that I knew and understood, under section 3.2, "What does the policy cover?", states:

"Most types of problems or concerns are covered ... These could include"—

point 1—

"bullying and harassment".

The policy to which you have alluded—the one applied to former ministers and current ministers—is a policy on harassment. That is the title of it. If it was felt that it was necessary to specify sexual harassment in that policy, the Government should have sat down with the trade unions that devised the policy and said that it wanted to strengthen the criteria. For the permanent secretary to say, as she did when she was before this committee, that she did not think that harassment was covered by the fairness at work policy, when it is item number 1 in the areas to be covered, strikes me as showing not only that she was not an expert on the policy but that she did not familiarise herself with the policy that she wanted to replace. I think that it would have been a reasonable assumption for the civil service, the public and everyone else to have made that, before you replace something, you at least understand the nature of what you are replacing.

I have seen the documents that have come to the committee, Ms Watt, and there is a reason why the trade unions have not accepted a new policy applying to the workforce. The reason is not that they necessarily think that the fairness at work policy is perfect; it is that they think that the fairness at work policy is an extremely strong policy, which is why it still applies to the thousands of people who work in the civil service.

What happened was that one aspect of the policy, on ministers—although, as we know from the origins of the policy, it was actually about former ministers, because the first new policy was to apply only to former ministers, not to current ministers—was taken out of virtually nowhere. That is a very bad way to develop policy. Policy has to be developed and it has to respond to circumstances—I can well understand that happening in the atmosphere of 2017. However, what should have happened is that the policy should have been looked at, and, if it needed strengthening, strengthened. Above all, the Government needed to consult, co-operate and discuss it with the very representatives who, 10 years before, had spent 18 months developing the policy.

13:15

Maureen Watt: It appears, from the evidence that we have received, that complaints were handled informally when you were First Minister. Sir Peter Housden, your former permanent secretary, stated that "no formal complaints" were received when he was in post, and Dave Penman of the FDA discussed informal concerns being handled by such methods as staff being moved so that they were away from a minister or colleague about whom they had complained. Surely, you must agree that there was a need for a more robust procedure and that greater focus on formal complaints was preferable to what went on when you were First Minister.

Alex Salmond: The policy was not developed by me in terms of informal complaints. That policy was developed for everyone—not just for ministers, but for civil servants—and it was the preference of the trade unions, which signed off the policy, as did the workforce representatives. I happen to agree with Barbara Allison in this case: the vast majority of workforce issues should be dealt with by informal procedures. That is what the policy emphasised, and the Scottish Government is on the record many times as saying that.

However, times change and things change. All that I am saying, Ms Watt, is that, if you are going to change a policy, you should consider what the existing policy actually is and fully understand it. Above all, you should consult the people who developed the policy in the first place.

Mr Penman was not around in 2010 and he had no part in the development of the fairness at work policy, but the Government could have consulted the people who did. In December 2017, the current union representatives, including the FDA representative, wrote a letter to the permanent secretary, reminding her that fairness at work was a considerable achievement for all concerned and was in advance of any other workplace policy in the United Kingdom.

It seems to me that, at the very least, if the policy was to be changed, it should have been changed in a considered and developed fashion and with full consultation. Of course, one of the other issues that your inquiry has thrown up is that last-minute suggested changes were being made to the newly developed policy on, I think, the day that it was being signed off by ministers, and that it

was being considered even after that. In fact, no substantive changes were made, but that is not how you develop workplace policies. It would seem to be a prime requirement to develop a workplace policy in consultation with the workforce.

Maureen Watt: We have been shown a staff survey by the FDA that highlights a lack of confidence among civil servants in making complaints about bullying and harassment. Would you agree that there was a clear problem with the underreporting of bullying and harassment generally and sexual harassment specifically when you were First Minister? Would you agree that a fresh procedure, in the wake of the #MeToo movement, was necessary to address that?

Alex Salmond: I saw a current survey by the trade unions in the Scottish Government that said there had been a sharp rise in complaints over the past three to five years. Some people argue—I think that the permanent secretary does—that that is a good thing, because the rising level of complaints is a response to there being more robust policies. Other people would say that that indicates that the workforce policy is not working. You can take your pick. All that I am saying is that, if you are going to develop a new policy, you should do it properly, otherwise you end up in total and abject disaster, which is what has happened to the current policy, which is why the committee is sitting where it is today.

Maureen Watt: On the likelihood of women coming forward to report sexual harassment, Sir Peter Housden said that

"a formal procedure"

on sexual harassment

"is one of the safeguards that would make that more likely."—[*Official Report*, *Committee on Scottish Government Handling of Harassment Complaints*, 15 September 2020; c 15.]

Surely, you cannot disagree with that.

Are you saying that, had you been First Minister in the wake of the #MeToo movement, you would not have commissioned a review of the harassment procedure, to tailor it to deal with sexual harassment and to seek to address the problems of underreporting?

13:15

Alex Salmond: I am sure that Peter Housden would say that his advice to me over the period in which he was permanent secretary and I was First Minister tried to keep abreast of these things, and I saw nothing in his evidence that suggested otherwise.

On the hypotheticals, I do not know, but, certainly, I would not have thrown out a policy that was considered such a success by all concerned. It seems, on what I read to you, Ms Watt, that it would be a fairly simple exercise if you wanted to specify sexual harassment in the harassment section, although that is clearly what that policy is about. Then, all you would have to do is look at that section and ask, "How do we strengthen it?" If you want to change the balance between informal resolution, mediation and formal resolution, you can, of course, amend the policy to change that balance, and it may be that that would be a good thing to do.

My point is not that, Ms Watt. My point is that the last thing that you do on subjects like this is rush things through, spatchcock fashion, in a matter of days, without consultation with the trade unions and with them ending up in the Court of Session, a total disaster for everyone concerned. That seems to me to be a minimum requirement if you are dealing with an issue such as this.

It is also not clear from the documents that you have received just how much ministerial consideration was given to this. On one hand, it is argued that this was something that was done by the civil service, totally independently of ministers. On the other hand, there are areas that look like ministerial intervention. What you can certainly say, from the documents that you have, is that the policy arrived in early November, with no discussion in Parliament and no discussion in Cabinet. There was no discussion in Cabinet or Parliament of a new policy dealing with former ministers. The first ministerial aspect to it was the commissioning letter of 22 November from the First Minister, so it seems that the policy had already been well established before there was any direct political discussion of it, and that is one of the extraordinary things about it. I find that virtually inexplicable, but maybe others have an answer to that.

Maureen Watt: Was the fairness at work policy discussed and debated in Parliament?

Alex Salmond: The fairness at work policy was debated over a period of 18 months by the trade unions. There were no voices raised against it, as I know. It was regarded as a substantial major innovation in policy. Certainly, it was publicised and everybody knew about it. There was no attempt to hide it or keep it undisclosed. On the contrary, it was something that we put down as a major achievement, which the unions thought it was. I am not saying that changes could not or should not be made, but, if you are going to make changes to something as sensitive and important as that, it is really important to do it properly.

Maureen Watt: I will take that as a no, then.

We have heard evidence that one of the matters that eventually resulted in a complaint against you was resolved by your apologising to the woman in question. Was it typical for issues like that to be resolved via an apology rather than through a formal complaints procedure when you were First Minister?

The Convener: You may choose whether or not to answer that, Mr Salmond.

Alex Salmond: Ms Watt, I have had three years of two court cases, two judges and one jury. As far as such matters are concerned, I will leave it to the courts and the jury. I am not going to be drawn in further than that. I think that that is an entirely reasonable position under the circumstances.

With regard to your question, the vast majority of issues were dealt with by informal procedures. Barbara Allison made that point in her testimony, if I understood it correctly, and she gave the reasons, from a civil service point of view, why she thought that that could be advantageous.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good afternoon, Mr Salmond. I would like to ask about culture and behaviours in your time as First Minister in the Government. Before I do, I want to address one aspect of your opening statement. You talked in quite striking terms about the injury done to you by this whole process, but you made no mention of the considerable distress and misery caused to certain women at the heart of this. Laying aside the charges of which you have been acquitted and the allegations that you deny, with regard to the behaviours that you have admitted to—some of which are appalling—are you sorry?

Alex Salmond: First, on my statement, that is not correct, Mr Cole-Hamilton. I pointed out that the Government's illegality has had huge consequences for a number of people, and I specifically mentioned the complainants in my opening statement.

On the other part of the question, as I said to Ms Watt, over the past three years there have been two court cases, two judges and a jury, and I am resting on the proceedings of those cases.

Alex Cole-Hamilton: I think that the nation would like to hear—

The Convener: Mr Salmond is not on trial by the committee, so please be much more general in your comments.

Alex Cole-Hamilton: I understand that and I will move on.

Mr Salmond, the questions that I am going to ask are about culture and behaviours while you were First Minister and how they were addressed. This is not a criticism of you and I am not asking you to defend yourself or anything like that, but we heard that while you were First Minister, there was a degree of, shall we call it, water cooler discussion about behaviour on your part—not of a sexual kind, but aggressive behaviour: the sort of hairdryer treatment that people sometimes refer to. Do you recognise that description? Is that something that you—

The Convener: As I have said already, we are not here to look at Mr Salmond's actions. We are here to look at the Scottish Government's actions in relation to the complaints.

Alex Salmond: Can I add one thing to that, convener? Mr James Hynd had to write to the committee, if you remember, to correct Mr Cole-Hamilton's assumptions about his evidence. It will be noted that Mr Hynd and I are not in agreement on a range of matters, but on that matter, I very much agreed with him and I very much appreciated what he wrote.

Alex Cole-Hamilton: I do not disagree. If you will permit me, convener, I am not in any way trying to draw out the behaviours of Mr Salmond. I want to know about the informal culture of how things were dealt with at the time when he was First Minister.

This speaks to a lot of the evidence that you gave in your final submission, Mr Salmond, about things that were raised with you and things that were never raised with you. Whether it was aggressive behaviour brought about by fits of passion or whatever, did anyone in the SNP or the civil service ever address your temper with you personally?

Alex Salmond: Give me a second, convener. I was looking last night at a document that might be pertinent to that.

I will answer in general. The FDA—the civil servants association—has written on several occasions to the committee. You have been accused—not you personally, Mr Cole-Hamilton, but the committee as a whole—of intimidation, "rent-a-quote politicians", "undermining" the civil service and scapegoating individual civil servants. In effect, you have been accused of bullying behaviour.

I have not watched every session of the committee, but I have watched most of them, for obvious reasons. I would say, in the committee's defence, that I have not seen such behaviour. Maybe it was in the one or two sessions that I did not see.

I am merely saying that something being said and written to you does not make it true. I am quite sure that you would take issue yourself with the FDA. Incidentally, I am not saying that the FDA is not representing its members in the best way that

it can. I am merely saying that this is a dangerous road to go down. The convener pointed out what the issues at stake are. I think that it would be a good idea for us all to concentrate on those issues, as opposed to trying to take it into more personal stuff.

The Convener: I want to make it very clear at this point that it is my job to decide all those things. Therefore, will the two of you just think on what we are here for and take that on board? Will you start again, please, Mr Cole-Hamilton?

Alex Cole-Hamilton: Thank you for reminding us of the criticism that the committee has come under, Mr Salmond. Nevertheless, there are answers that we need today. I accept that you are right to not answer a question if you do not feel that it is within the committee's remit. That is absolutely fine. I take on board what you have said.

The Convener: Mr Cole-Hamilton, it is also about committee members not asking about things that are not within the committee's remit.

Alex Cole-Hamilton: Okay. I would dispute that. Some of this is about how the Government handles complaints and behaviours, and the development of that over time. Nevertheless, I will move on.

The Convener: Yes. Okay.

Alex Cole-Hamilton: I want to ask a specific question. Mr Salmond, you have raised this issue in your final submission, so it is pertinent to our inquiry. My question is about the fact that nobody had ever raised concerns about sexual misconduct on your part prior to 5 November 2017. There was a complaint that was handled informally around the time of the referendum. That has been discussed already today. For the record, on that complaint, did Nicola Sturgeon—

The Convener: Mr Cole-Hamilton—

Alex Cole-Hamilton: Convener, I am sorry, but—

The Convener: You said that that has been discussed already today. Can you be more specific about what you are talking about?

Alex Cole-Hamilton: Ms Watt mentioned it, and I believe that the deputy convener mentioned it.

The Convener: I think that I said to Mr Salmond that he did not require to answer that question.

Alex Cole-Hamilton: I am just trying to get to the—

Alex Salmond: Maybe I could help Mr Cole-Hamilton.

The Convener: Carry on, Mr Salmond.

Alex Salmond: If Mr Cole-Hamilton looks at my evidence, he will see that I stated explicitly, because I saw the issue asked about in a question in the committee—I am talking generally—that, to my knowledge, in relation to any minister, no complaint was put forward to Ms Sturgeon. I have not made that charge against Ms Sturgeon, and the committee would be wrong to believe that that was the case. To my knowledge, no such complaint against any minister reached the desk of the Deputy First Minister.

Alex Cole-Hamilton: Okay. You have largely covered that, and I appreciate that. However, for the record, prior to 5 November 2017, when Nicola Sturgeon asked you about the Sky News allegations at Edinburgh airport, which you have covered in your submission and which we will come on to again for other aspects of the inquiry, was there any occasion when she raised questions or concerns with you about what she would describe as sexually inappropriate behaviour?

Alex Salmond: I am going to answer that question to help Mr Cole-Hamilton, convener. However, if the inquiry is going to stick to its remit—there are huge issues at stake.

The answer to your question is no. These are not issues about any individual. I have points to make about what I believe the current First Minister has done or not done, and they will be made in response to questions that are relevant to the committee.

I have seen the issue pursued in the committee that somehow Nicola Sturgeon was covering up, but that is not the case. My charges against Nicola Sturgeon do not include that. The point that I made in my submission was that, until that event—incidentally, I hope that we go on to discuss this, because it would not have been front-page news in any newspaper if it had ever been publicised at the time, given what I know about it—that was the first indication of anything of that nature in all my years in public life. That was in November 2017. It came from a report from 10 years before of a supposed incident, and it was dealt with. It seemed to cause the permanent secretary a great deal of consternation. Perhaps we can explore that, because that may have been a factor in her thinking at that time. I cannot be sure of that.

I merely made the point in my submission that, over the 30-year period that I am speaking about, I must have been, for periods, the most investigated politician in Scotland, and perhaps across these islands. The fact that nothing came forward over those 30 years is a reasonable indication that there wisnae much to come forward. I think that you should bear that in mind.

As I said in relation to my other criticisms of the First Minister, that is not one that I hold. I also have criticism of Mr Murrell, which we may get on to later, but I think that he said that in his evidence, as well.

With that, convener, is it possible for us to get down to some of the big issues in the inquiry?

The Convener: Mr Cole-Hamilton, you have had quite a bit of time already and it has not been terribly relevant. I am looking at the clock. I am anxious to get this section, covering this element, over.

13:30

Alex Cole-Hamilton: I have a key question.

The Convener: If you have a key question, I am interested to hear it.

Alex Cole-Hamilton: It relates to the airport inquiry. This is very important, Mr Salmond, because it will lead into questions that I want to ask the First Minister next week. It is a very simple question. When she presented the allegations to you in November 2017, did you threaten to resign from the Scottish National Party in response to those allegations?

Alex Salmond: Again, we are in territory that I—

The answer is no, Mr Cole-Hamilton. Since you raised the issue, let me say again that the Sky News story, which did not amount to anything—and, without the circumstances of this inquiry, never would have amounted to anything—was not the sort of matter that I would threaten resignation over. Therefore, the answer is no.

Because of the atmosphere at the time—November 2017—perhaps people were overreacting in a number of ways. Perhaps that explains other people's actions. However, the Sky News story was never broadcast, of course, and there was a good reason for that.

Again, I would just say that there are enormous issues before this committee and there are plenty of questions that you will be able to ask my successor about areas that are fundamental to this inquiry. No, I did not threaten resignation. There was nothing to threaten resignation about. I am not sure that "threatening resignation" is the right term, anyway.

The answer is no.

Alex Cole-Hamilton: That was very helpful. It actually helps with a subsequent line of questioning, but I will pause there.

Andy Wightman (Lothian) (Ind): Good afternoon, Mr Salmond. Thanks for coming along, and thanks for all your written evidence. Can I take you back to the events of October 2017, which we have already talked about? It was, as you said, quite a heated moment, with actresses and Westminster MPs being implicated as part of the #MeToo movement. In respect of this Parliament, Aamer Anwar wrote in the *Sunday Herald* on 29 October 2017 of a

"catalogue of sexual harassment, stalking, social media abuse, sexual innuendo, verbal sexual abuse, touching, sexual assaults, requests for sex, cover up, isolation and bullying"

in the Scottish Parliament.

We know that that was the trigger for the current First Minister to write to the Presiding Officer. The Government, obviously, set in train certain procedures and the Parliament did the same. You have touched on this already, but for clarity—we know what the current First Minister did—if you had been First Minister at the end of October 2017 what would you have done in response to all that?

Alex Salmond: I do not think that the approach would have been much different until it came to looking at a change of policy. Normally, we would have a discussion or debate; that happened in the Scottish Parliament on 31 October. There was a discussion in Cabinet on the same day, and a revision of policy was called for. Up until that point, I do not think that there would have been any change at all.

I would have thought that, after hearing the variety of views that came across in that discussion, the policies that were in place would be addressed to see if they needed strengthening or improvement, and that that would be done in terms of the negotiations.

Back in 2009-10, there was obviously not the same heated discussion, but the development of the policy took 18 months. People might say that that is very slow, but it is not if a policy of that importance is being developed. I hope and believe that I would have taken the policy that we had and asked what we had to do to adjust it to meet the change in circumstances and, above all, I would have taken the workforce representatives with me on that.

It should be said that I was involved in the fairness at work policy because there was a very specific issue that had to be reconciled about the ministerial code and the balance of that with the overall policy. The negotiations that take place are negotiations on the management board. They are not negotiations that would normally involve ministers—never mind the First Minister—but in the case of fairness at work there was a particular aspect that required First Ministerial approval. That was the reason for my involvement.

In the circumstances of October and November 2017, there was a much more politically charged

atmosphere. It was therefore all the more important to take the views and feed them in. I repeat my point. I think that the fairness at work policy was a robust foundation to be building on and certainly not something that should be jettisoned. Even if it was to be jettisoned, you would not jettison it for part of the workforce and keep it for the rest of the workforce. That seems an extraordinary circumstance that has now been arrived at, and totally unsatisfactory.

Andy Wightman: Okay—thanks. Obviously, the events of the end of 2017 did bring down a lot of powerful men and I want to move on to one of the critical changes that was made in the procedure, which was the retrospective element. In the petition for judicial review, you sought at paragraph 4(b) a declarator to the effect that the procedure was

"incompetent in respect that it involves a retrospective application of the Procedure".

You amplify that in your legal arguments. Of course, as you are aware, the petition was conceded, so we never actually got a court. In hindsight, it might have been useful for that judicial review to have run as some of these issues would have been resolved, perhaps.

Did you set out that particular argument about retrospectivity because you felt that it was not competent ever to investigate complaints of historical sexual harassment as a matter of principle or because you felt that the allegations against you should not be investigated?

Alex Salmond: No. I put forward the argument on legal advice. The legal advice was that, if nothing else had been wrong with the policy—as we both know, there were many, many things wrong with it—it may well have fallen on the question of retrospectivity, not just because it was retrospective, but because there had been in place at the time a perfectly acceptable, robust policy.

Where retrospectivity has been allowed legally—again, I am straying into things, and perhaps you are as well, Mr Wightman, that we do not necessarily have expertise on. However, where there has been no policy, or no available policy, a retrospective argument has much more sway.

The second issue that is required in terms of policy is the consent of the people who it could be applied to—stretching back, presumably, to the dawn of this Parliament. Those people would normally be consulted or give their approval in some way. Indeed, there was a letter, which has emerged quite recently, that was meant to be sent to former First Ministers—myself included, presumably—but I know that it was not sent to former First Ministers. Among other things, it asked them to consult ministers in their Administrations from the past, which struck me when I saw it as a quite extraordinary thing to be happening.

Retrospectivity was very substantially in doubt—let us put it in that way—and it would have been a huge challenge for the Government to overcome legally if it had got that far but, as we both know, it fell at the very first hurdle.

Legal advice is just that, but I have given the committee a substantial part of the legal advice, because it was laid out not just to the court and the open record, but also to the permanent secretary as we sought to try to explain what was wrong with the policy, which had been developed at pace. My legal advice was that there were many grounds on which the policy would have fallen.

Of course, our first petition for judicial review—our draft petition—was drawn up in July, long before the illegal, unlawful application of the policy was known, and you are quite right: retrospectivity was one of the grounds.

Andy Wightman: Okay. You mentioned the draft letter; I have a copy of it here. To my understanding, it has not been provided to the committee as part of the disclosures of the Scottish Government, but—

Alex Salmond: Is that the letter to—

Andy Wightman: It is the draft letter to former First Ministers, either as a courtesy or to consult them over the application to them of the new procedure. Just to confirm, you never received any consultation or information, as a former First Minister, that the new procedure could be applied against former ministers. Is that correct?

Alex Salmond: None whatsoever. You beat me to the punch—

The Convener: May I intervene? Mr Wightman, the committee has not seen that letter. It has never been submitted as evidence.

Andy Wightman: Fair enough.

Alex Salmond: My reply was going to be pertinent to that, convener. It is one of the documents that I was going to offer to the committee today, since I only received it in the past few days. However, the answer to Mr Wightman's question is no. I was not consulted.

The Convener: Mr Wightman, can I ask how long the letter is?

Andy Wightman: It is two pages.

The Convener: Oh, right. Please do not read it out.

Andy Wightman: No, I will not. I did not intend to.

The Convener: I ask you to give the letter to the clerks, so that all committee members can see it, and it can be looked at as evidence.

Andy Wightman: Yes.

Jackie Baillie: I would appreciate it if it could be circulated now, convener.

The Convener: Yes. We can do that if at all possible.

Andy Wightman: I merely mentioned it because Mr Salmond mentioned it.

The Convener: That is fine. We will get it circulated during our break. Carry on, Mr Wightman.

Andy Wightman: I want to clarify something, Mr Salmond. I know that you feel uncomfortable about this, but you made the point in your fourth submission that

"there were no formal complaints made against any minister under the policy and thus it was never invoked."

However, a letter that Levy & McRae wrote to the permanent secretary on 5 June 2018 states:

"There is a particular problem in relation to allegation D. This was dealt with previously under the Procedure in place"—

that is, the fairness at work policy. It went on:

"That being so it is not appropriate to resurrect it now under a new procedure which was not in force (not even in contemplation) when the incident giving rise to the complaint occurred."

Therefore, there had been a complaint, but it had been dealt with and resolved informally. Is that correct?

Alex Salmond: The open record is the open record. I will reply to you as I replied to Maureen Watt: after two court cases, two judges and a jury, I think that I am entitled to rest on the verdicts, and particularly the verdict of a jury.

The Convener: I remind all members that, as I have said, we are here to look at the actions of the Scottish Government, so please be very careful in what we are referring to in all our questioning. We expect our witness to be careful in his responses to us, and I think that we should show the same respect to our witness.

Andy Wightman: As we have indicated, one of the key things about the new procedure was its restrospectivity. Do you think that, as a matter of principle, there should be a procedure for investigating complaints of sexual harassment against former ministers in the Scottish Government?

Alex Salmond: I do not think that you can make that argument. Legally, I have been informed that you could perhaps try that argument pre-2010 when there was no such policy, but it would be very difficult to make that argument and to make it legal or lawful. For a whole range of reasons, it is not a good idea to embark on unlawful procedures; indeed, arguably, it is a breach of the ministerial code in terms of the policy that was put forward. It is also a breach of the European convention on human rights, which of course every minister in all their actions in this Parliament has to follow and which is something that we have embraced since the start of the Parliament.

Andy Wightman: I have two further questions. Given what you have just said, and given the fact that, in the aftermath of the #MeToo movement, a lot of women came forward with historical complaints, you are basically saying that there should not be any procedures in place to help to resolve them, because they did not come forward at the time.

Alex Salmond: It would be very difficult to pursue a workplace policy while not applying the procedures that were there at the time. As I understand it, it would be possible to employ the procedures that were there at the time in a lawful fashion, but not to invent a totally new procedure that had not been in contemplation at the time and to apply it retrospectively. Of all the arguments that came forward from the #MeToo movement and the perfectly legitimate questions that you are asking about the balance between informal complaints and mediation and a formal process, which is entirely legitimate and entirely what might be thought of, the idea that out of that, out of nowhere, in fact, came the idea, "Let's have a specific policy for former ministers in the Scottish Government"—

I put to you, Mr Wightman, that if that had been an issue that was being contemplated at the time as the major issue that must come up, somebody—perhaps you, Mr Wightman, or any other person—would have mentioned it in the parliamentary debate. If I remember correctly, there was a full parliamentary statement by Mr Swinney. No one mentioned it in the parliamentary statement and no one mentioned it in the Scottish Cabinet, where of course the policy was never discussed. Therefore, wherever it was coming from, it was not something that was seen as the major issue.

I would have thought that the major issue politically would be to look at the current policies and say, "How can we make these responsive to the situation that we have now," as opposed to saying, "Let's have a policy for former ministers." I think that the origins of and reason for that came from elsewhere.

Andy Wightman: Next week, we will reach stage 3 of the Scottish Parliamentary Standards (Sexual Harassment and Complaints Process) Bill,

which allows for historical behaviour by MSPs who behaved badly to their own staff, going back to 1999, to be investigated. A legal basis can be found. I will leave it there.

13:45

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): As has rightly been made clear by the convener, we are of course not here to look at incidents; we are here to consider how complaints against you were handled, Mr Salmond.

Part of our discussion as a committee has been about workplace culture more broadly in the Scottish Government. It is not for me to rule on whether we should have been allowed to pursue Mr Cole-Hamilton's line of inquiry any further, but I noticed that, when you were asked about it, you kind of turned on the committee. I have questions about the committee and some of what it has done, too, but do you not feel that it is relevant for us to ask you about the workplace culture on which Sir Peter Housden appeared to be commenting and to ask about your part in that culture?

Alex Salmond: Mr Allan, I was not turning on the committee. I was pointing out to Mr Cole-Hamilton that there had been a range of criticisms from the FDA about the conduct of the committee. What I said was that, in the committee proceedings that I watched, I did not find those criticisms justified, as an observer. I was not turning on the committee; I was defending the committee, if you like. I was merely pointing out that, just because people say things—I was referring in this case to the FDA's criticism of the nature of questioning—that does not make them true. A reasonable observer might come to a different conclusion.

Peter Housden made the point very strongly that, in his opinion—this is in his written evidence—the workplace culture in the Scottish Government that he led, as the senior civil servant, stood in good comparison with that of any other department across the UK. You heard in subsequent evidence that there are now more complaints in the Scottish Government civil service than there are in other departments—in departments of the UK Government. I would never describe the Scottish Government as a UK Government department; I am comparing it to other Administrations—let us put it that way.

You can take two views of that. You can either take the view that the policies employed in the past perhaps did not sufficiently encourage people to make complaints, or you can take the view that the rising number of complaints indicates that there is a problem that requires to be addressed. Who knows? It may be a mixture of both; it is certainly a subject of study. I think, however, that Peter Housden gave a very good case, and he believed that the culture and performance of the Scottish Government over his term of office, in terms of what was seen in surveys of workforce satisfaction at the time, was extremely good compared with Whitehall departments.

The permanent secretary makes the case—I saw her make it on a number of occasions—that things have dramatically improved since. The trade unions recently issued a document saying that that was not the case. That is a matter that, no doubt, the committee may wish to reflect on and include in its recommendations.

Referring to my earlier point, I believe that fairness at work was a good, sound and robust policy. The fact that it is still in play for the civil service is an indication that that is the view of the civil service unions, too. In my estimation, any changes to that policy should have been built on that policy. That would have been a good thing to do, as opposed to casting it aside for other purposes.

Dr Allan: That was very helpful, but you will have noticed that my question was about the fact that we have evidence from Sir Peter in which he comments on your personal role in the workplace culture. Do you have any comments on that?

Alex Salmond: No. I watched Sir Peter's evidence, and I merely make the point that people can observe in different ways.

I had an excellent relationship with Peter Housden. In my time as First Minister and his time as permanent secretary, he never expressed any concern whatsoever to me directly. I took his evidence and the letter that he sent to you subsequent to giving evidence as suggesting that, while he thought that policies should be improved over time—he did not dispute that—and new policies could come forward, he thought that, over the piece, in his period as permanent secretary, the workplace culture stood comparison with that in other comparable institutions, although there is certainly always room for improvement.

I can also say that at no time when Peter Housden—or, for that matter, John Elvidge—was permanent secretary did we end up in the Court of Session on the receiving end of a calamitous decision of unlawful behaviour. Perhaps both John Elvidge and Peter Housden could argue that that indicates that their tenure of office in that regard was better than more recent experience.

Dr Allan: Thank you.

I want to ask about timelines around the development of changes to the policy. In your written evidence, you have suggested that the chief of staff to the First Minister was responsible

for the inclusion of former ministers in the procedure, in her email of 17 November. Will you tell me why, one week prior to that, the Scottish Government route map—document YY023—included a paragraph on allegations

"by a current member of staff against a former Minister"

and noted that there was

"No formal process"

on how to capture that?

Will you also give me your view on how what you have said about the email of 17 November squares with the permanent secretary's statement on 8 September to the committee that

"The decision to include former ministers came from an analysis that was already under way and work that had already been undertaken on the fairness at work procedure. From the very beginning, it was agreed that the tidying-up ... or the making consistent of the fairness at work procedure would always address the issue of former ministers."—[*Official Report*, *Committee on the Scottish Government Handling of Harassment Complaints*, 8 September 2020; c 21.]

Will you offer a view on that timeline, please?

Alex Salmond: You have made a number of points there, Mr Allan.

The first indications that have been seen by the committee suggest that there were two documents—from 7 and 8 November, I think. One was from the investigating officer, as she became, and the other was from James Hynd. One was the route map, which is what I think you were referring to, and the other was James Hynd's first draft policy. It is a point of some detail. James Hynd gave evidence to say that he started with

"a blank sheet of paper" —[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 25 August 2020; c 23.]

However, that does not seem to square with the fact that there was also a route map. What you can certainly say is that the issue of former ministers was being considered on or around 7 and 8 November. As far as I am aware, that was for the first time.

The point that I made about the chief of staff's email on 17 November was not that she originated the idea of former ministers but was about the phraseology

"former Ministers, including from previous administrations regardless of party".

I am not arguing that the chief of staff to the First Minister originated the concept of former ministers, but certainly we know, because she proposed wording for the First Minister's commissioning letter—of 22 November, I think—to the private secretary of the permanent secretary, that she was aware and was proposing that on behalf of the First Minister.

The evidence before the committee that I have seen suggests that the civil service was working on the question of former ministers—whether or not that was former ministers of previous Administrations—before then, but not as explicitly as what eventually came out of the letter that was sent by the First Minister on 22 November.

My view is that, however you think of that and whether you think that it was a good thing or a bad thing, it is a significant departure from previous policy—a departure that has not been followed by any other Administration. I do not know of any Administration anywhere that has a policy on former ministers. It did seem to come out, very surprisingly, in the documents of 7 and 8 November. The clarification that the chief of staff gave—that it should apply to

"former ministers, including from previous Administrations regardless of party"—

seemed potentially to extend it back to the dawn of devolution. Certainly, it shows that the First Minister's chief of staff was very much aware of it on 17 November when she was proposing such amendments.

I think that the more interesting question is about why it suddenly emerged on 7 and 8 November, and why, of two civil servants, one said that he was starting with a blank sheet of paper while, simultaneously, the other was thinking of another document. I find that aspect of what has emerged from your inquiry quite surprising.

Dr Allan: You have referred to the issue of retrospectivity. In your written evidence, you take issue with the inclusion of former ministers in the Scottish Government's complaints procedure. As Mr Wightman has alluded to, the Scottish Parliamentary Standards (Sexual Harassment and Complaints Process) Bill is currently at stage 3. It will create a complaints procedure for Parliament that includes former parliamentarians, in the same way that the Government's procedure now includes former ministers. Do you not feel that it is right that former politicians—regardless of whether they were ministers—can be held responsible for actions, or allegations about actions, in the past?

Alex Salmond: I think that retrospectivity is a difficult question legally, but if you were to approach it, you would do so by the legislative route, which the Parliament is currently doing. There is a vast difference between the putting forward of legislation, which is carefully considered, and then enacted, by a Parliament—of course, that does not make it bomb proof legally, as we know, because legislation, too, can be challenged—and the spatchcock development of a policy at pace over a matter of weeks for

reasons that are not altogether clear. The first of those—the legislative route—has a basis in argument and reason, and gives everyone protection and some security. The second route ended in abject total disaster.

We can hypothesise about the issue all we like, but what is certain and what is factual is that, on 8 January 2019, the actions and content of the policy, and the behaviour, therefore, of the permanent secretary and the interested party, the First Minister, were judged in the Court of Session to be "unlawful", "procedurally unfair" and "tainted by apparent bias". No one involved in this—not me, not the complainants, not anybody—would have wanted that extraordinary development, which was the result of the nature of how that policy was developed.

While it can be argued that retrospectivity can be applied through legislation, that is an entirely different thing from what happened in the case that the committee is examining.

Dr Allan: Of course, it was the application of the policy rather than the policy per se that the court ruled on.

Given that the Court of Session judgment did not come to a view on the position of former ministers as an issue in principle, why would we have any reason to say that there is a legal issue or a legal difficulty with the inclusion of former ministers in a policy? I presume that you think that, as a matter of principle, it is right that employees have an avenue of complaint, even if the complaint relates to a former employer.

Alex Salmond: Well, that bears on the question of whether there was such an avenue at the time. As the first First Minister, Prime Minister or person elected who introduced such a policy in 2010, obviously, I think that that is something that should be noted, and that was thoroughly agreed with.

When I took out the petition for judicial review, it was on seven or eight grounds. My legal advice—legal advice is just that; it is only advice—was that we had a very, very high likelihood of success. That was before we knew about anything to do with the application of the policy, which was initially concealed from us, but which we learned about as the judicial review went on. I would not have taken out the petition for judicial review without the advice that said that the policy was unlawful. I think that there was a great deal of understanding on the part of the Scottish Government of the jeopardy that its policy was in.

Retrospectivity, which Mr Wightman raised, was an issue. I have made the point that there is a difference between legislation and some spatchcock thing. However, you will note that it was not just the application of the policy that was judged in Lord Pentland's interlocutor but the procedural unfairness of the policy. The interlocutor says that it was "procedurally unfair" and "tainted by apparent bias" because of its application. We can get on to the procedural unfairness now or when we discuss the judicial review, but there were many, many things wrong with the policy.

Why were many things wrong with the policy? It was developed at pace, as the civil service says, spatchcock, as I would say, over a period of six weeks, and in an apparent panic—for reasons that I hope that the committee can try and determine. However you look at it, from nobody's point of view was it a satisfactory outcome; it was an abject, total, complete disaster.

14:00

Dr Allan: You have mentioned—quite legitimately—the views of the unions and others about the original fairness at work policy. It is also clear from our evidence that the Scottish Parliament—although I appreciate that we are talking about a different policy there—the Scottish Government, your permanent secretary and the council of Scottish Government unions all thought that it was right to include former ministers, or, in the case of the Parliament, MSPs, in complaints procedures. To clarify, are you aligning with that position, at least in principle?

Alex Salmond: I have not looked in detail at the current legislation. However, if you are going retrospective, you should certainly do it in legislative form and make the argument for it; otherwise, you will end up on the receiving end of more court judgments. I would have thought, though, that the overwhelming priority in any workplace policy might be to look at what is happening at the present moment and in the future. A legislative basis for going retrospective in workplace policy would be the only way that you could possibly do it. Certainly, it is not speculation as to what happened to the policy that originated in November and December 2017—we know that from the judgment in the Court of Session.

Although the permanent secretary has been very anxious to give the impression that that judgment was about only one aspect of the application of the policy—I think that she said in one press statement that other parts were dismissed—the reality is that, as you rightly say, many aspects of the problems with the policy were not considered. They did not need to be considered, because the Government had thrown in the towel and conceded everything that could possibly be conceded, so the rest of the arguments did not have to be explored. However, to think that, as has been suggested to the committee, the rest of the arguments were robust from the Scottish Government's point of view is a

huge extension. It is certainly not the legal advice that I received and, of course, as things stand, we will never see the legal advice that the Government received, because it has kept it under wraps for so long.

Jackie Baillie (Dumbarton) (Lab): Good afternoon, Mr Salmond. I will move us on to talk about the interests and confidentiality of the complainers, starting with an issue that was raised by both me and Willie Rennie yesterday in the chamber. The issue arose in the context of one of the meetings that were held with the former chief of staff, Geoff Aberdein, which was a precursor to your meetings with Nicola Sturgeon. Do you know whether the name of a complainant was shared at one of those meetings?

Alex Salmond: Yes.

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

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

Jackie Baillie: Is anybody else party to that information?

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

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

Sticking with the interests of the complainers, I will take you to the *Daily Record* leak. How were you notified of the *Daily Record* story on 23 August?

Alex Salmond: I will go through that day in sequence, because there is a bit more to it than the *Daily Record* story. If I remember rightly, on 23 August, I had a meeting with my legal team at Edinburgh airport. We were considering what to do and, basically, when to lodge our petition for judicial review, because we had had the decision from the permanent secretary—I think—the day before. We were meeting about how to respond and when to lodge the petition.

We received a communication from the Scottish Government saying that it was going to make a press statement on the fact of the complaints at 5 o'clock, which I considered to be remarkable then, and which I consider to be even more remarkable now, because I now know that it—or at least a Crown Agent—was advised against any publicity by the police in a meeting two days previously.

However, the Government was going to make a statement at 5 o'clock. Obviously, any hope of confidentiality in the process would have gone once that statement had been made, because the idea that the press would have just said, "There have been two complaints and we're not going to report anything else", would have been extraordinary to believe.

We said, in return, that we would launch an interdict, along with the judicial review, in order to prevent that statement. The Government response was that it would withdraw the statement, therefore there was no need to launch our interdict. At roughly 4 o'clock, we were told by the Government that it had received a query from the *Daily Record* and was concerned that the *Daily Record* seemed to have knowledge of the complaints. However, the *Daily Record* did not come to us; therefore, if we had gone ahead with the interdict at that stage, given that we were interdicting a Government statement as opposed to interdicting the supposition of some newspaper, we might well have provoked the very thing that we were trying to avoid.

However, the *Daily Record* came to us at about 8 o'clock, and emailed us at quarter past 8, to say that it had substantiation of its story. The phone call came to me. I said nothing in response, apart from "Put it in writing." The *Daily Record* put it in writing and put the story out at 10 o'clock—that was its deadline.

I released a statement saying that I was going to sue the Scottish Government. I held a press conference the next day, but the press conference did not talk about the nature of the complaints; it talked about the judicial review and why I thought that the Government was behaving unreasonably and unlawfully.

What happened was that the next day there was another *Daily Record* story, which demonstrates that the *Daily Record* had either a copy of, or an extract from, the permanent secretary's decision report, so someone had to have given the *Daily Record* that document. Subsequently, it has been confirmed that the *Daily Record* had a document—the whole report, or an extract from it.

The permanent secretary was asked about that in questioning, and she said that it had caused enormous distress to everyone concerned. I am absolutely sure that it did—to the complainants, to me, to everybody. The only question that I would have for the permanent secretary is this: notwithstanding the leak, what did she think would have happened if she had gone ahead and put out the statement at 5 o'clock on that day? I find it extraordinary.

As you know, the Information Commissioner's Office has investigated the matter. The prosecutor came to the conclusion that she was sympathetic to the idea that the source of the leak was within the Scottish Government, as she said. The Government's internal review—it was not an investigation—identified 23 people who had

access to the information. The ICO said that the leak was prima facie criminal—it was a criminal leak—but it had 23 suspects and no ability to go beyond that to determine who might be responsible for the leak. However, it said that it was sympathetic to the idea that it came from within the Scottish Government. Whoever did that should answer for what is a very, very serious matter, which caused enormous distress and the implications that followed.

Jackie Baillie: Thank you for that response. Can I pursue a couple of things that you said? First, the second leak, as I understand it, contained confidential information from one or both of the complainants. You said that it has been subsequently confirmed that a copy of the report was given to the *Daily Record*. How was that subsequently confirmed? Can you tell me what the evidence is?

Alex Salmond: There is no doubt that the *Daily Record* had the report, because the language is identical in the paper's report to parts of the permanent secretary's decision report. In the Kirsty Wark documentary last year, the editor of the *Daily Record* said that he had a document. The *Daily Record* has not, to my knowledge—certainly not, I would think—said anything directly to the ICO or any investigator, but the editor said that on the Kirsty Wark documentary. There is no question, though, that the *Daily Record* had the document, or part of the document, or an extract from it.

There is one point of some confusion, which I certainly have not got to the bottom of yet, and that is that the ICO prosecutor's report lists the various interested parties who have had copies of the report. For example, it lists the complainants and it lists me, and it comes to the not unreasonable assumption that neither the complainants nor I had any interest in leaking the contents of the report. It lists the Crown Agent. The police, of course, who some people suggested might be the source of the leak, refused to accept the report from the Crown Agent, so the leak could not have come from the police.

The report lists the principal private secretary to the First Minister in that group of people. I must be absolutely correct here. I am not suggesting that the principal private secretary to the First Minister leaks things to the *Daily Record,* but when he came before this committee he confirmed first that he had—or had received on behalf of the office—a copy of the report; he subsequently wrote to the committee to say that that was not correct. My question is quite simple: why did the prosecutor for the ICO list the First Minister's office in the list of interested parties who had access to the report? I do not know the answer—I just know that that was done, and I cannot believe that the prosecutor for the ICO did it for no reason There had to be a reason for believing that.

My feeling is this. I am not saying that civil servants never leak; actually they seldom leak, and if they do leak, they do not leak to the political editor of the *Daily Record*. Therefore, I think that the leak was politically inspired—from whom it came should require further investigation. I think that the matter should not be at an end; it is a hugely serious matter.

There is one thing I want to say, finally, on this. Over the past few months, there has been a major police operation in Scotland, ordered by the Crown Office, trying to find out who leaked information to Kenny MacAskill MP, which came to this committee. I know for a fact, because Mr MacAskill told me a day or so ago, that that investigation is still on-going, and is so at the expressed wish of the Crown Office. That has been made clear by the police to everybody whom they have interviewed—including me, incidentally.

My question is this: where is the police investigation that was ordered by the Crown Office into what has been, for many of the people concerned—not least, the complainants—a hugely distressing leak to the *Daily Record* in August 2018? As far as I know, nothing has been done or said by the Crown Office in terms of trying to determine where that leak came from. There seems to be a disparity in the Crown Office's attitude to criminal behaviour, as it sees it.

Jackie Baillie: May I pursue that very quickly? I am conscious of time. In your submission to us, on page 10 of appendix D, you said:

"I am confident that I know the identity of those involved in the leak."

Do you have any evidence to support that, beyond what you have just told us? Are you suggesting that the matter requires further police investigation?

Alex Salmond: I think that the matter does require further police investigation. I believe that I know their identity, but I am not here at committee to speculate about individuals when I cannot substantiate that. For every statement that I make before the committee, I intend to have documentary evidence to support it—and to be restricted to that—but on your question about whether there should be police investigation of the matter, I think that there absolutely should be police investigation of the matter, because whoever leaked that document at that time caused enormous distress and certainly broke the law. Certainly, there have been huge consequences for all concerned as a result of that leak.

Jackie Baillie: Thank you, Mr Salmond.

Convener, I am very conscious of time. We have taken a long time to get through one theme and we have two more themes. Would it be appropriate, before we break, to ask whether Mr Salmond would be available to stay longer, to ensure that our questioning can be completed?

The Convener: I will consider that at the break. Thank you, Ms Baillie. I can run on until half past 2, and I would like to do that before we break, because I am keen to complete this theme so that we can move straight on to the judicial review after the break.

I understand that Mr McMillan has a couple of questions.

14:15

Stuart McMillan (Greenock and Inverclyde) (SNP): Good afternoon, Mr Salmond. Earlier you stated that you believe that the FAW policy was robust—you have put that on record a couple of times already today.

I would like to read out two quotes from evidence that has been provided to the committee. The first is from Sir Peter Housden, who said:

"With the #MeToo movement, we saw a very considerable time delay in women coming forward, in a whole series of different environments. In those circumstances, it seems right to enable those complaints to be made against former ministers."

He continued:

"If we were to run the tape in the other direction and say that a person can never make a complaint against a minister unless he or she is in post, that would seem highly restrictive."—[*Official Report*, *Committee on the Scottish Government Handling of Harassment Complaints*, 15 September 2020; c 15.]

Do you agree with Sir Peter Housden that it was right for former ministers to be included in the procedure?

Alex Salmond: Well, they were not included in the procedure—that is one of the remarkable things about what was done. If you were going to do that, there are two things that you would do. One is that you would have the legislative base for doing so—which, as Mr Wightman has pointed out, is what is being gone through at the present moment. Secondly—at least, this would have been my preference—you would then take that legislation and apply it to the procedure that you have, that is to say the fairness at work policy. For that matter, if it was decided that that was not good enough, you would develop another comprehensive policy to apply to all situations.

Obviously, that was not done. It was not put into the procedure that was there—it stood alone and, indeed, the issue of ministers was taken out of the fairness at work policy as far as harassment was concerned. That is a shoddy way to approach things, and we all know about the outcome.

If you were going to do it, you would do it properly. Incidentally, if Sir Peter Housden had been permanent secretary, it would have been done properly.

Stuart McMillan: Thank you for that. The second quote is from Malcolm Clark of the council of Scottish Government unions, who said:

"Hindsight is a great thing and, if more could have been done around former ministers, we would probably have introduced that earlier as well."—[*Official Report*, *Committee on the Scottish Government Handling of Harassment Complaints*, 1 September 2020; c 21.]

Do you not agree with his sentiment that former ministers should have been included in the procedure?

Alex Salmond: I do not think that Malcolm Clark, Sir Peter Housden or anyone else would agree with the policy that was defeated in the Court of Session so resoundingly. No one I can think of would ever want that circumstance to arise, with—I remind the committee—the £630,000 of public money that went on court proceedings, not to mention the innumerable amounts of internal civil service legal time that were spent on it. Perhaps if more time had been spent on devising the policy and less on attempting vainly to defend it we would all be in a much better place.

All that I would say about the fairness at work policy is that it was developed with the unions over an 18-month period. It was carefully considered and, above all, it was lawful. The policy that the committee is examining as part of its inquiry was the exact opposite—it was rushed through, it was unlawful and it was an abject disaster.

If you are going to apply a retrospective policy, you should get a legal base for it. If you are going to apply any policy, you should do so in comprehensive, full discussion with the trade unions. As the committee has found, that did not happen in this case. In my experience, it happened with every workplace policy, but somehow not with this one.

Stuart McMillan: Certainly, you have cast doubt on whether former ministers should have been included in the procedure. Surely it is quite clear from the two quotes that I have read out that there are many good reasons to include former ministers, and that in all likelihood those reasons were responsible for their inclusion. Do you not think that former ministers should have been included in the policy?

Alex Salmond: Well, they certainly should not have been included in the way in which it was done, Mr McMillan. That way ended in abject

defeat in the Court of Session. If you are going to do something, do it properly. I accept that there is a good debate to be had about retrospectivity, but if you are going to do something, you should do it properly and from a legislative base. You should not do it and go down in defeat.

The question, perhaps, for this committee is why it was done in the way that it was done. What was the extraordinary rush to get a policy for former ministers through in November and December 2017, but not to develop it or extend it to any other aspect of the process? If I remember correctly, when the Cabinet Office was consulted in mid-November 2017, the response was, "Does this apply to former civil servants?" Of course, answer came there none.

On introducing something like that, in relation to the whole concept of fairness at work—which, I remind you, for the first time, brought ministers into the workplace policy—the prime aim of the unions was that people would be, as far as they could be, on an equal footing. However, what has happened to date is that former ministers—and now ministers—have been separated from the workforce policy and are considered in an entirely different way. The unions' ambition was to have a considered policy that included everyone and which was properly developed and legal. That was what was done. What was done in 2017 has been an abject disaster for all concerned.

Stuart McMillan: With regard to the formation of the procedure, do you believe that the #MeToo movement was the genesis of that new procedure?

Alex Salmond: I think that it would be difficult to understand why, coming out of the #MeToo movement and the range of huge issues that were discussed in Parliament on 31 October, anyone would think or believe that what was absolutely required in the Scottish Parliament was a policy on former ministers. That strikes me as very, very difficult to believe.

You would have thought that the issues that were at stake and being discussed would have applied to a range of policies that would then be developed.

As evidence for that, Mr McMillan—as I said to Mr Wightman—I note that no one in that parliamentary statement raised that issue. They raised many issues, some of which might have been suitable to look at, in terms of policy, but not that one. Therefore, it strikes me that the argument that the policy came about just because of the #MeToo movement is difficult to understand.

Stuart McMillan: Okay. You have stated in your written submissions that you hoped that the First Minister would intervene in the procedure under which you were being investigated at the time. According to the evidence that we have received, the procedure was intended to be entirely independent of ministerial involvement. Would the First Minister intervening on behalf of her predecessor or any minister from the same political party not have looked like an attempt to potentially tamper with an independent investigation?

Alex Salmond: The difficulty is that the First Minister had a role in the policy, along with the permanent secretary, up until 5 December. I have not counted the number of iterations of the policy up until then, but we are well into double figures. In each and every iteration up until 5 December, the First Minister is there in the policy to be informed at the same time as the permanent secretary. Thereafter, the permanent secretary assumes the dominant role in the policy as decision maker, and the First Minister is to be informed at the end of the policy, from a party basis. Incidentally, something else that would have gone down legally is the idea that you can develop a civil service policy and hand it across to a political party; that is obviously a great difficulty in legal terms.

However, the point is that that is not how the policy was being developed. At some point, there was a decision to exclude the First Minister. As I have already explained at some length, the policy in terms of fairness at work, including where the Deputy First Minister and the First Minister came in, was part of the argument that had to be had, because of the statutory base of the ministerial code.

What you might find more interesting is why, if it is all a question of making things independent, the First Minister still has a role in the policy as it applies to current ministers and is informed at the same time as the permanent secretary in that policy. Does it not strike you as somewhat curious that the First Minister is informed about current ministers but not about past ministers? That development on 5 December came out of no precedent that I can think of, in terms of putting the permanent secretary in that position of determination in that policy, and just that one aspect of the policy.

Incidentally, because I know that there is interest in this, one of the other things that certainly would have been problematic, and which Lord Pentland commented on, although there was no requirement for him to do so, is that there is a mediation proposal in the policy for current ministers, but no mediation proposal in the policy as it applies to past ministers. As I say, Lord Pentland noted that when delivering his interlocutor on 8 January 2019. If the committee can find an explanation for that, we will all be interested to hear it.

Stuart McMillan: My final question is, again, on the point about intervening. Have you ever heard of any Government minister intervening in an independent Government procedure at the request of a friend or colleague? Did you ever do that as First Minister?

Alex Salmond: Any previous policy would have allowed for the First Minister role, because it affects ministers. You just need to check the fairness at work policy. For that matter, if the SNP continued in office and you became a minister, Stuart, and you were the subject of a complaint, the First Minister would have a role, as specified in that policy. She would be informed that that had happened. It cannot be that unusual, because it would apply to you if you gained ministerial office.

The point that I made in the WhatsApp messages to the First Minister that you have seen is that the reverse is true. When the inquiry into the First Minister was established, many of the Opposition parties—and I can understand this—said, "Is this about the First Minister intervening?" Actually, there is nothing to prohibit the First Minister from making an intervention. Indeed, if you read the ministerial code, you will see that the First Minister is duty bound to act if she has a reasonable belief that her Government is in danger of behaving in an unlawful fashion. Therefore, it was entirely legitimate for me to ask the First Minister to do so. Whether she did or not is matter for her, but to allow an unlawful policy to continue is, arguably, a breach of the ministerial code. The First Minister made her choices, but the argument that there is somehow a difficulty in that regard when the policy would not apply to current ministers is difficult to understand.

Secondly, in the circumstances of the time, I had no idea where the policy had come from. There had been no publicity about the policy; there had been no debate in the Parliament. As I subsequently found out, everyone else in the civil service was informed about it only after the policy had been applied. I naturally assumed that there must have be some error, for example in not having a mediation element in the policy, that the First Minister would be entitled to point out—as she would be for current ministers.

The Convener: I am keen to wind up this part of the meeting, under our Covid obligations, but I understand that Murdo Fraser has a short question.

Murdo Fraser (Mid Scotland and Fife) (Con): I have a lot of questions to ask about both the judicial review and the ministerial code, but I have just one follow-up question in this section. It follows up on the question that was put to you at the start by Margaret Mitchell, who asked you about the role of the Crown Office. You referred to the fact that the Crown Office had asked the Parliament to redact part of your written evidence to the committee.

You have been not only First Minister of Scotland: you have twice been a member of the House of Commons for substantial periods and you are a member of the Privy Council. In your experience, would the Crown Prosecution Service in England ever have asked a committee of the House of Commons to redact evidence that it had published in the same fashion? If it had, what do you think would have been the response of any Speaker of the House of Commons to that request?

Alex Salmond: The straight answer is no, it would not. The normal response from the House of Commons and, I would argue, from any Parliament would be to reject any such overtures and to say that Parliaments are there to serve the people and that the prosecution service—whether that is the Crown Office or the Crown Prosecution Service in England—is there under the same obligation. Obviously, the Parliament should not interfere in the independence of the prosecution services, but neither should the prosecution service presume to interfere in the legitimate business of the Parliament.

14:30

To say these things, as Lord Hope did this morning—I listened to him on the radio—is not to undermine the position of the Crown Office. On the contrary, to say these things is to say that that institution should not be doing that and to ask, therefore, what it is in the leadership of the Crown Office that is deficient and why it is drawing itself into what is properly the political arena. To say these things is to protect the institutional framework, to make it more robust and to say that things have to be properly done, not improperly done.

Before I came to the committee, I received a letter with what I was and was not allowed to talk about, and the convener kindly allowed me to read a statement into the record. According to that letter, I am not allowed to talk about areas of my written evidence that were submitted in good faith to the committee and are easily available online in reputable journals for anybody to see, are a wide part of political debate and are accepted as that.

The idea that the only place where that evidence cannot be discussed is a parliamentary committee is the direct opposite of what should be true. Parliamentary committees should actually be able to discuss things that cannot be discussed elsewhere, because of proper exercise of parliamentary privilege and the duties of members of Parliament. Therefore, it seems to be an extraordinary position, and clearly something is

wrong. Whether it is institutional, as Ms Mitchell suggested, or whether it is about personnel, as I suggest, is a matter for the Parliament to decide, but the situation is clearly intolerable and should not be allowed to continue.

Murdo Fraser: Thank you. We will need to consider these issues in due course. They are not necessarily for this inquiry, but it is very helpful to have your response.

The Convener: Mr Fraser is quite right. The matter is for the Scottish Parliamentary Corporate Body to consider.

Before we come to the end of this session, I would like to pick up a couple of things with you, Mr Salmond, having listened to you. You will be aware that the Parliament is about to go through the final process—you have noted that it is a legislative process—in relation to former MSPs. I understand that the Senedd in Wales is also considering such a thing, and that the Westminster Parliament has agreed that former MPs can come within the scope of a policy. Do you feel that there is a difference between MPs and MSPs and ministers? Why should Governments not be doing that if other public institutions are?

Alex Salmond: I do not think that that was the point that I made. Of course, in 2017, the Parliament did not do that for MSPs. If it is now being done on a legislative basis, that is a reasonable argument that no doubt the Parliament will judge on. However, as far as I know, the Parliament has not embarked on an unlawful policy and got itself into deep trouble. From what you describe, the Parliament is going about things in a responsible way, and no doubt debates will be had. That is not the case that the committee is examining; it is examining something that was done in an irresponsible and unlawful fashion.

The description that is most commonly made in the press about the Government's policy and what happened is "botched". Your committee is examining, as is often said, the "botched" policy. The policy was not "botched"; it was unlawful, unfair and tainted by apparent bias—"botched" does not cover it.

I am quite certain that, whatever the Parliament decides in terms of retrospectivity and past MSPs, it will act in a lawful and orderly fashion and with due regard to all the arguments that are put forward as sensible propositions.

The Convener: We will look at your statements about the policy when we discuss the judicial review and the application of the policy.

You were obviously involved in the policy that was in place and feel that it was a very workable policy. As First Minister, what would you have done if you had received a complaint about a former minister?

Alex Salmond: You cannot proceed when there is no policy and no lawful way to do it. You would have to ask huge questions on the basis of the complaint. The primary one would be, "Was there a policy in place at the time of the supposed or purported incident?"

You would have to consider that, but you cannot proceed on the basis of there being no policy to proceed on. You certainly do not construct one or bring one into being in a matter of weeks and say, "We'd better get a policy in place so that we can do something about that." I would have thought that these would be the primary questions.

Any time that you are proceeding on such a matter, it should be done with careful consideration and with proper argument and development. The policy that came into being is deficient in innumerable ways and has questions to answer across innumerable ways. Therefore, whatever you do, you certainly would not do what was done in November and December 2017. You would take the argument in principle and see whether there was a policy, but you would not invent a policy to meet a complaint. You most certainly would not do that.

The Convener: I have a final quick question about the fairness at work policy, with the First Minister as the ultimate arbiter of what happened with this. Was there any provision should the complaint be against the First Minister?

Alex Salmond: As I recall it, if the complaint was against the First Minister, the Deputy First Minister would be the person responsible. I can check the record, but I am pretty certain that that is the case. There were two aspects of that, with regard to the fairness at work policy. The other aspect was that there was some debate at the time, I think, about whether it should go outside the Scottish Government. No such complaint was made, so it never came to pass, but I think that it was finally agreed that it should be the Deputy First Minister.

On fairness at work, we looked at a range of possibilities, but the structure that we arrived at—to try to balance any workforce policy with the ministerial code, which will have to be done, incidentally—was the informal resolution that would apply to all of the civil service, across the fairness at work policy, and then mediation, which would be effected by the Deputy First Minister. If that was not accepted, it would go to a panel of three people and a report would be given to the First Minister. As I have said, I have subsequently learned from the proceedings of this inquiry that there have been two complaints under the fairness at work policy since 2017. I assume that those

have been dealt with in terms of the policy—that is to say, through the various procedures that I have just outlined.

The Convener: We are ready to suspend, later than I had planned. We will suspend for a short break and reconvene in 20 minutes. I should have said that formally, for the benefit of our broadcaster—I hereby suspend the session.

14:38

Meeting suspended.

15:03

On resuming—

The Convener: Good afternoon everyone and welcome back to the 13th meeting of the committee in 2021. This is an evidence session with former First Minister of Scotland, Alex Salmond. I confirm that Mr Salmond took the oath at the start of this morning's evidence session.

I will open with an issue that we did not quite cover this morning and that moves us on to the judicial review. Could you, without taking too long over it, give us a fairly short view of your feelings on how the complaint process was run?

Alex Salmond: The judicial review, of course, was not only a challenge to the application of the procedure, it was a challenge to the basis of the procedure itself. In terms of how it was run and what I know now, it should be said that we were well into the judicial review before documents were revealed to us—they were extracted from the Government—that told us that there had been significant problems in the application of the procedure as well as significant problems with its legal base.

I cannot think of anything that could be worse handled in terms of how it was approached. Clearly, the application of the policy went against one of the tenets of the policy, in terms of the fact that there should have been "no prior involvement" by the investigating officer, Judith Mackinnon.

I have heard it said at this committee that that had crept into the policy late on—that there had been some sort of change. In fact, if you go back to the very first draft of the policy, from James Hynd, on, I think, 8 November 2017 or somewhere thereabout, you will see almost exactly the phrase, "no prior involvement". I think that in one draft it is

"in any aspect of the case"

and in the other it is

"in any aspect of the complaint".

One of the very few things that are consistent through innumerable drafts is the question of no prior involvement. No prior involvement is not an esoteric thing; it is obviously a cardinal principle of perceived impartiality—of the impartiality of somebody who is doing an investigation. The application of the procedure was obviously deficient, but the procedure itself was also deficient, and, in my estimation, it would have fallen even if it had been properly implemented.

There is one more significant thing, if I may, convener. It emerged only in the vast data dump of documents that the committee received in November and December last year that there was another hugely significant matter, which we had no idea of, and I had no idea of, until I saw those documents. The permanent secretary, as the deciding officer—the person who was making the decision—actually met one of the complainants and phoned the other one, in mid-process. That was actually before I was even informed that there were complaints against me. Let me just say that, if it is a very bad thing for an investigating officer to have prior involvement, it is a really difficult thing legally for a deciding officer to have "during" involvement—in the middle of a process—in terms of perceived bias.

Perhaps the most significant thing about it is that that was the first time that my legal team, I, the committee or anybody knew about that. It was not disclosed across the judicial review, despite the duty of candour, which was explained to the Government by its own counsel and by Lord Pentland. It was not even disclosed in the criminal process, and I will not stray into that, but a specific search warrant was applied on the Government, a year past October or November, that specifically asked for contact between the permanent secretary and complainants, and that contact was not disclosed even to a search warrant by the Crown Office.

I know that the committee has been hugely frustrated by the lack of information, but you can see that the pattern of non-disclosure goes right through the judicial review, right through the criminal case and right into this committee. It is not that an odd document that has been missed out. It is a sequence of deliberate suppression of information that is inconvenient to the Government.

The Convener: We will move on to questions from the committee.

Murdo Fraser: I have a number of questions, Mr Salmond, about the judicial review. That is very relevant to the work of the committee because the loss of public funds—not least in paying your legal costs—were a substantial driver of the committee inquiry being established. The misuse of public funds is clearly a very serious matter.

We know that the award of expenses that was made to you, conceded by the Scottish

Government, was at the highest level possible, which is only made, in the words of Lord Hodge, where a defence has been conducted "either unreasonably or incompetently". That in itself would suggest, given that it was conceded by the Scottish Government, that it accepts that there were substantial flaws in the way that it conducted the case.

You have also referred to the fact that we as a committee have asked on numerous occasions for sight of the Scottish Government's legal advice, and it has not been granted to us. Twice I managed to persuade the Scottish Parliament to vote for motions in my name calling for that legal advice be produced, but the Scottish Government has resisted those demands. Therefore, we are in the dark, to an extent, as to the Scottish Government's exact legal position with respect to the arguments that they put forward.

I would, however, like to explore with you your legal position. You say in your evidence that when you became aware in March 2018 that a complaints process was being implemented against you, you took legal advice, which said that

"the process was defective in a number of ways".

I am a lawyer, and you will know many lawyers. Legal advice very seldom comes in an unequivocal fashion. It is usually some shade of grey, not black or white. How would you characterise the legal opinion that you received, in terms of the strength of the argument?

Alex Salmond: I am not a lawyer. I have some experience of receiving legal advice while in ministerial office, but I have very limited experience as a private citizen. However, I know that all legal advice, in terms of counsel advice, will come on the balance of probability, or some phrase like that. I was told—this was long before the application of the process made it clearly unlawful—that I had a very high probability of success. Indeed, I was in the unusual circumstance—I think it would be unusual for most people—that my counsel were suggesting that decisions should be made to take legal action. I was reluctant, not for any legal reasons but because I was the former First Minister of Scotland, to sue the current Government of Scotland, with all the political implications that that would have, regardless of how it turned out.

I believe that anybody else who was in those circumstances and getting the legal advice that I got would have gone to judicial review much earlier in the process, given the balance of probability of success, which was high—and that was before the questions of the application of the procedure came to prominence in late October and early November 2018.

Murdo Fraser: I will come on to that point in a second. Just so that we are clear about this, according to your written evidence, you shared your legal opinion with the First Minister initially and then with the permanent secretary. Did you ever receive a substantial, argued response to the legal position that you put forward?

Alex Salmond: I should say, in fairness, that at the meeting in July, I gave what was a draft petition for judicial review to the First Minister. She did not want to read it, so she glanced at it and handed it back to me. I did that to indicate that the legal advice was strong. Given that it was coming from Ronnie Clancy QC and Duncan Hamilton, who it is well known were my advocates, that is probably not surprising. They are highly esteemed in the profession.

The letter of 5 June 2018 set out the various grounds to the permanent secretary, which were substantial. What we got back—the committee has the correspondence, so you can judge for yourself—was not arguments saying, "No, you are wrong on that point, because we have had advice to the contrary," or any detail or argument. What we got back was, "We are satisfied that the process is lawful"—full stop. That may be a tactic that is used in litigation between private citizens, but we are talking here about a Government that is fully conscious that I, the former First Minister, was seriously contemplating a major civil action, and therefore we would have expected to get a substantive supply telling us where we were wrong. Perhaps the Government was going to say, "Well, we're about to legislate for this anyway," or do something remotely legal, but no. All that we got was a letter from the permanent secretary saying, "This process is fair basically because I say it's fair."

At that stage, there was a very firm view in my counsel that we should go ahead, but again I was reluctant, and therefore we offered legal arbitration. There was a method, as I saw it, for settling those legal arguments—nothing to do with the substance of the complaints, but settling the legal parameters with a retired judge, for example. I introduced the Arbitration (Scotland) Act 2010, so I know how it works. You can do it quickly and in private, so that there is no breach of confidentiality for any party. It could be used to set out the legal position, then we could go forward. I made it quite clear that if the policy was found to be legal, I would submit to the policy, but that was rejected as well.

15:15

You asked about cost. My total legal bill for everything, including advice, was £591,689.73. The amount recouped from the Scottish Government was £512,250. I have not worked out

what that is as a percentage of the total, but it is a very high percentage. Normally, as you will be aware, the percentage that you recoup in costs—because this is not money for me; it is for legal bills, court bills and all of the other things if you take out a petition—is much, much lower than that. It was at the very highest level. The reason for that, which was conceded by the Government, as you heard in evidence, was that we had to go through a whole commission and diligence procedure to extract documentation.

I saw Paul Cackette, one of the Government's lawyers, give evidence to the committee. He, very honestly, came forward and said that in his view that was unprecedented. He had never heard of having to have a commission to extract documentation, but a commission we had to have, and without that commission we would not have got the documentation. The Government would have managed to hide it.

If you can just about understand one last point: the Government was prepared to go before the court and say that there were no more documents. That was not the fault of its counsel, because he apologised repeatedly at the commission and made it absolutely clear that it was the fault of his client, i.e. the Government. Those on whom a duty of candour was placed had been withholding documentation not only from the petitioner—myself—and the court, but from its own counsel. That cannot happen very often and is a totally extraordinary position.

Murdo Fraser: You referenced Mr Cackette's evidence. When we took evidence from him, he indicated that on, I think, 31 October 2018 it was established that there had been prior contact and that—in his words—

"everybody who was involved realised that it was a potentially significant issue."—[*Official Report*, *Committee on the Scottish Government Handling of Harassment Complaints*, 3 November 2020; c 21]

That is what he told us. When did your team become aware of that?

Alex Salmond: We became aware that something was wrong because a whistleblower in the Scottish Government told us in October, by means that were sent to us, that there was something seriously wrong with a Government press statement that had been released in late August, when I held a press conference to say that I was taking legal action against the Government.

That press statement—I know you have it, because it has come up on the record—published the policy for the first time and said that it had been approved in December 2017 and published at that time on the Scottish Government intranet. Very recently—just a couple of months ago—that press statement was revised because, of course, the policy was not published at the time: it was published in February. Why is February 2018 important? Because that was after the complaints came in.

Obviously, when we got that information, there was a question: how could complaints have come in in January under a policy that was not publicised internally to Scottish Government employees until February? That does not make sense. It was for that reason that we started to ask questions about the contact between various people in the civil service and the complainants prior to the formal complaints coming in.

Remarkably—this has been said very often, so it is obviously something that the permanent secretary thinks is a strong point—the permanent secretary has said on various occasions that the reasons why the petition was conceded were not in the original petition. They obviously were not in the original petition because it was not known about, and it was not known about because the Government, totally contrary to any duty of candour, chose not to tell us. As I have just mentioned, that was about the investigating officer's prior involvement. The first that I learned about the permanent secretary's prior involvement was just before Christmas, when documents were obtained by this committee. That is remarkable and unprecedented.

On the award of costs, although I cannot speak for the court, I think that it understood that the award of costs was agreed on an exemplary and punitive scale because of the conduct of the case by the Government, whose counsel—let me repeat—were totally innocent. Indeed, as this committee knows—and I think that it was the thing that eventually forced the concession—both counsels to the Scottish Government said that they would resign from the case unless it was conceded, because it had become unstateable. It was not that the Government was likely to lose or that the case had a high probability of failure, but that the Government's case was unstateable. It was only when the Government received that ultimatum from its own counsel—who, I imagine, were not best pleased at not having had the documentation given to them—that it finally collapsed and conceded the case.

Murdo Fraser: We have put that specific point to the Lord Advocate, as you know, but he pleads legal privilege and declines to respond to the particular point as to whether counsel offered to resign.

Let us continue on the emergence of documents. At the end of October, the Scottish Government became aware that there was a problem. However, even then, was it still the case that it was not assisting your own legal team? Is

that what led to the commission and diligence having to proceed?

Alex Salmond: Yes. We began to get documentation in answer to our questions because—as I now know but did not know then—the counsel to the Government told the Government lawyers in early November about the importance of the duty of candour in disclosure. That is in your documents. Of course, when we went to a preliminary hearing, in November, Lord Pentland did not grant the commission at that stage but issued a reminder to the Government that, as a public authority, it had a duty of disclosure. The specifications should not have been necessary in a case like this, because it was against a public authority; therefore, that public authority had to provide the court with all the information.

We then found that, although more documents were provided, it was quite clear that there were documents missing. We had documents, then a gap, and then another document. We went back to the court on 13 December 2018—I think, but you would have to check the date—and asked for the commission, and, that time, it was granted. Paul Cackette said in evidence that he had never experienced a precedent like it. The reason that it was granted was the exceptional circumstances, in which it was clear to everyone that there were missing documents and that information was missing.

We then went into the commission and diligence—I have brought some of the papers along with me, because the Government did not want us to give them to this committee—and the counsel for the Government apologised profusely, on several occasions, for the position that he was in. Documents were literally coming in in batches as the commission was on-going, each document more incriminating in the sense of strengthening our case and weakening the Government's case. That was happening in live time as the commission was going on, just before Christmas in 2018. By then, given what was being revealed in the documents, I think that my legal team had removed the bit about the balance of probability and just said, "Look, this is only a matter of time now. They have to concede or we will certainly win when it comes to court in January."

I do not want to get too technical legally—I am not qualified, for a start—but the documents showed—and the Lord Advocate conceded this—that the Government's own pleadings to the court were wrong, inaccurate and misleading. The Scottish Government's pleadings to the Court of Session were misleading. I cannot put myself in the shoes of Roddy Dunlop or Christine O'Neill, but I can imagine that they were none best pleased in that circumstance, because that obviously potentially reflects on their professional reputation.

The one thing that I would say is that everything that I have seen indicates that the Government counsel behaved perfectly honourably. Although the Lord Advocate refused to confirm it on numerous occasions, I think you will find in Sarah Davidson's report the information that both counsel said they would resign the case. I do not know much of the report you have actually seen, under redaction, but it is certainly there, and I assume that the committee has been given that information.

As I said, I am not legally qualified, but I know a wee bit about Scots law. It is not unprecedented for counsel to resign from a case because they cannot continue it because of their professional obligations. However, I think that it must be unprecedented for it to happen when counsel are representing the Government, and for them to have to threaten to do it or—let us put it in more even language—to say that they are going to do it in order that the Government face reality. That is an unprecedented, extraordinary position.

Murdo Fraser: This will be my final question on this subject, because I know that other members want to come in. What you have outlined—indeed, not just what you have outlined, but what the committee has discovered—is an extraordinary catalogue of failures in the handling of a legal case by the Scottish Government. Indeed, witnesses from the Scottish Government have effectively conceded that to us in the course of the inquiry. You have been First Minister of Scotland. If this had happened on your watch, who would you have held responsible?

Alex Salmond: Well, principally the Government's principal legal adviser, whom I would have expected to be guiding the case. If we are talking about the specifics of this case, James Wolffe is an eminent lawyer and I can only believe that there were other considerations. There cannot just have been legal considerations. Nobody continues a case that they are going to lose. The Lord Advocate sort of said, "It would be quite interesting to find out the result," but this is not an academic matter. This is not some interesting case that will inform people for years to come. It is people's lives that we are talking about here—the lives of the complainants, myself and the other people involved. You do not have some legal debate in order to find that out.

As you rightly mentioned, there is a cost to the public purse because of all the delay, certainly from October and, I believe, from before that. The decision not to accept arbitration when the Government must have known how weak the case was; the decision not to follow external counsel advice in October when it knew that, on the

balance of probability, it was going to lose; the decision to continue on—all those things ran up the clock. Extraordinary bills were run up: the £512,250 paid for my legal fees, the sum of £130,000 or so paid direct to the Government counsel, and the huge bill for internal occupation of civil service and legal time. The clock was running as the Government was refusing. It cannot have been just down to the Lord Advocate, because, if it had been a legal matter, he would surely have said, "Well, it's time to settle." It has to have been a decision of the permanent secretary and, presumably, a decision of the First Minister.

Murdo Fraser: Thank you.

The Convener: Margaret Mitchell has a short supplementary question on what she has just heard.

Margaret Mitchell: It is specifically on the Scottish Government signing a certificate confirming that there were no further documents. After you had successfully petitioned for more documents, it said that there was nothing relevant. Who signed that on behalf of the Scottish Government?

I have three parts to this. It will not take long, convener.

The Convener: Ms Mitchell, everybody else wants to come in as well. Will you ask your question all at once?

Margaret Mitchell: Who signed that? Was it the respondent, who was the permanent secretary, or the interested party, who was the First Minister? Who was responsible, even if they did not sign it, for what was a really serious matter, if not a criminal offence?

As the convener is only allowing me to get in once, I will also ask my other question. Given what we have heard about the checks on Government if it is allowed to behave like that without sanction, what kind of deterrent is there? Has there been any sanction? Who would you expect to take that sanction, having looking into this unlawful—if it was unlawful—behaviour?

The Convener: I do not know whether you are able to answer that, Mr Salmond, or whether you have an opinion.

Alex Salmond: On the first part of the question, my legal team will certainly know that, and we will write to you, Ms Mitchell. I am not even sure whether we got to the point of decision. The undertaking was prepared to be signed, but when we then said, "No, we're going ahead anyway," I think that they withdrew objection on about 13 December. However, I can get the precise detail on that for you from my legal team.

15:30

On your other question, people in the civil service make mistakes, just like anybody else, including Government ministers and politicians. It happens all the time. However, on the Richter scale of mistakes, this is right up there; it is a very big one.

Under the circumstances, when the Government must have known that its legal position was, if not untenable, very difficult, and the choice was between not conceding and winding up its expenses over that period, you would have hoped and believed that someone would have accepted responsibility.

When I walked out of the Court of Session on 8 January 2019, I pretty clearly did not say, "Leslie Evans should now resign." I used the normal language and suggested that perhaps the permanent secretary should now consider her position. I did that because I knew that she had claimed ownership of the policy. In a letter of 21 June to my lawyers, she said that the policy was "established by me". Those were her words. Therefore, I thought that she had responsibility for the policy, for not conceding timeously in the judicial review and for a range of other things that could have been done.

Somebody has to accept responsibility for a calamitous occurrence and defeat. As I said in the earlier session, it was not a botched policy but an unlawful and unfair policy "tainted by apparent bias", according to the court ruling.

The Convener: I am aware of the time. I am not trying to hurry up anybody and I know that everybody has kindly said that they are happy for the session to go longer. However, that does not mean that we should let it go on indefinitely, because we have a lot of business to get through. I ask everyone to bear that in mind, please.

Dr Allan: I want to pursue a point that Mr Fraser raised just before the break about the difference between the concept of privilege in Westminster and Holyrood. I do not intend to pursue you for an answer on that, and I appreciate that you will know a lot more about it than I do, but I think that the practical consequence of it is that you seemed to be surprised that the Crown Office took an interest in the question of whether the Scottish Parliament and its committees were, in its view, in danger of breaking a court order—in this instance, one relating to the protection of the identity of complainers who had made allegations of sexual harassment. I am quite content for the Crown Office to take whatever view it wants to take on the matter and to act independently. I am just curious about why you would be surprised. Should Scotland's Parliament not be subject to the same court orders and have the same liability for

consequences from the Crown Office as anyone else in the country?

Alex Salmond: I think that there are very good reasons for Parliaments having privilege in a range of ways. Without parliamentary privilege, some of the major scandals of the age would never have been revealed and some of the major issues of the age would never have been tackled, because, at some point, a parliamentarian had to use that privilege in the public interest, which could not have been done outside Parliament.

I think that the Scottish Parliament should very much be using that privilege. It should not be used irresponsibly or in a cavalier fashion, but parliamentarians should accept the responsibility to be able to do things that other people cannot. That privilege is given to the parliamentarians because this Parliament is to represent the people, who, in Scotland in particular, as we both know, are the ultimate authority. It may be the Crown Office that acted, but the Parliament representing the people is the ultimate authority.

You asked me why I was surprised, Dr Allan. I was surprised because the Crown Office had said the diametrically opposite thing two weeks ago in relation to the evidence that had been submitted and published in *The Spectator* magazine. It is somewhat of a surprise to find out that the Crown Office adopted a different view to the evidence before this committee from the one that it adopted two weeks ago to the evidence that was published in a magazine. That requires explanation to and exploration by this committee.

I resent the idea that anything in my evidence, legalled by my lawyers and legal team, with the intent that we had, would ever transgress on the order from Lady Dorrian. I have a number of reasons for saying that.

Dr Allan: I did not say—

Alex Salmond: Let me finish. I did not say that you said it; you asked me about my attitude of surprise to the Crown Office. The reason is quite simple. We are talking here about the civil case. On 4 October 2018, in front of Lord Pentland, my legal team moved an order to protect the anonymity of the two complainants in the Scottish Government in the civil case.

The Scottish Government did not turn up. It was not even represented at that hearing. When I hear some people say that this is all about protecting the anonymity of a complainant, when I know that that was not the view of the Crown Office two weeks ago and when I know that the Scottish Government did not turn up for the civil case on 4 October 2018, you should allow me an element of surprise and an element of disquiet that an argument is being used for totally different reasons.

The last point that I will make to you is this. That evidence has been widely shared. Everybody in the committee has read it, I presume, even though they are not allowed to discuss it in detail. Is there anyone who seriously thinks that that evidence prejudices the identity of complainants or in any way breaks the anonymity that has been given to complainants? I have not met anybody who says that who has read the evidence. Therefore, it is passing strange that the Crown Office should have adopted the attitude that it has. It is not for me to speak for the committee or the Parliament, but I would hope that the Parliament, if it feels that it does not have the powers, soon gets the powers to exert its authority over such things.

That surprise is shared not just by me but, as I said earlier, by Lord Hope, the former Lord President.

The Convener: Can I interrupt here? As convener, I want to make it plain to everyone here and to everyone listening that it is the Scottish Parliamentary Corporate Body that is the publisher here, not the committee. All these questions are for the SPCB. I refer anybody who is interested to the explanation that it made by answering a written inspired question about this the other day. As far as this committee is concerned, we operate within the legal parameters that are set out in our committee's handling statement, and that is what we will continue to do.

The evidence that we are considering today and asking questions on is the evidence that has been published by the committee in that matter.

Dr Allan: On another theme, I want to ask about some of the proposed solutions that you had in mind on the situation that arose in terms of alternative dispute resolution. They are all different, and we are aware that they are all different, but they include, in totality, conciliation, arbitration and mediation. Those all have different levels of formality and different repercussions in terms of binding the parties and so on. Taking them in their generality, do you have a view about whether such alternatives are appropriate for a public law matter, given that only a court of law can hold that a decision of a Government—such as the decision of a permanent secretary—is unlawful?

Alex Salmond: Of course, a court of law has held it to be unlawful.

The question of mediation is a fairly obvious one, and I do not even know the answer to it yet. Perhaps it was just because the policy was being so rushed that someone forgot to include the paragraph. Mediation, as a proposal, is not a difficult concept. It is, in some form or another, in every personnel policy that I have ever heard of. I know that there are some people who are much

better qualified to speak about that. It is not an unusual concept.

In terms of this policy, the fact that mediation is included for current ministers but not for former ministers would lead me to believe that the word processor was not working properly—or whatever happened—but I certainly cannot believe that it was a deliberate act to exclude mediation. Mediation is missing from the policy for no understandable reason whatsoever, so it was not unreasonable to suggest that it should be looked at.

As far as arbitration is concerned, I think that a bill on arbitration was introduced in 2010. It was designed to provide a much cheaper and more private and confidential way of addressing certain disputes. There is no reason whatsoever that it should not have been applied to this particular dispute. As has been said—I know that the committee understands this—this is not about the substance of the complaints; it is about the legality of the policy. I made it clear when we put forward the proposal that, if my legal advice had been wrong, I would have submitted to the policy. However, the Government seemed less confident about its legal position than we were. The idea that arbitration would not have been a better way—not just with the benefit of hindsight—to approach the matter than what has transpired over the past three years would be an extraordinary position to adopt. Clearly—and, as I say, not just with the benefit of hindsight—arbitration would have been a much better means of trying to find a satisfactory resolution than what subsequently happened.

Dr Allan: I understand that you feel very strongly about that issue. The committee has heard copious evidence as to why others take a different point of view on it. Can you understand, or do you have a view on, the point of view that it would be fundamentally inappropriate to try to resolve behind closed doors a public law matter involving accusations of sexual harassment? Would it not be inappropriate to do that rather than resolve it in open court? In terms of perceptions, do you have a view on whether that might look like sweeping the matter under the carpet?

Alex Salmond: I will say two things on that. First, mediation as a concept is not sweeping matters under the carpet. I have heard that phrase many times over the past couple of years. Mediation is part of a properly constructed personnel policy.

As far as arbitration is concerned, I cannot speak for others who are directly involved in this process, but I cannot think that anyone would not think that that would have been a better way to approach things than what subsequently happened. To have the idea that the people at the centre of this, whether they are the complainants or me, wanted things debated in a public court is to misunderstand being in the eye of that particular storm. Confidentiality in debating not the substance of complaints but the policy under which they were being applied to see whether it was legal would have been an infinitely preferable way to proceed.

I know that, because the committee is examining the behaviour of the civil service and of ministers and special advisers, by definition you tend to interview more people who are being examined than people who are commenting but, with respect, the people who you say have supported the rejection of arbitration are the people who rejected arbitration. It would be great if people came along and said, “Well, perhaps on reflection we could have avoided this abject disaster and saved the Scottish people £600,000.” That might be a good thing for people to say, but people who took a decision might be expected to defend it, however disastrous it subsequently turned out to be.

Dr Allan: Of course, some of the people who, from the evidence that we have had, seemed to express a lack of enthusiasm for those alternative routes seem to include the complainers themselves.

Alex Salmond: The difficulty with that argument is that—I know that you will know this, because you study your papers, Mr Allan—the mediation offer was rejected by the permanent secretary before it was put to the complainants. That is in your papers. They were presented with it later as a fait accompli, and told that it had been done. Again, if you examine your papers, you will find that one complainant said that she might wish to consider mediation at a later stage. However, the offer was rejected by the permanent secretary before it was even put to the complainants.

Arbitration was rejected without putting it to the complainants at all; they were not even consulted. Therefore, Mr Allan, the people who you say are defending the position of not going to legal arbitration are the very people who took that decision not to accept legal arbitration.

15:45

Dr Allan: I just want to ask as well about the point that you make about distinguishing the substance of the complaints from the nature of the policy. The Scottish Government’s former director of legal services told us that arbitration would not be appropriate in this situation, first, because it would not have been possible to

“separate out the substance of the complaints”—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints,* 3 November 2020; c 7.]

from the procedural issues and, secondly, because arbitration is inappropriate where there is a significant degree of dispute over factual issues, as there was in this case.

For all those reasons, can you understand why there were some difficulties about separating the two issues out in the way that you suggest?

Alex Salmond: No difficulties whatsoever. We were not aware, when we were offering arbitration, that there were any procedural difficulties in the implementation of the policy; we did not become aware of that until several months later, because the Government was concealing the evidence.

As far as the question of setting the ground rules for settling a dispute, in terms of law, is concerned, that is what arbitration is about. If you could not separate the ground rules from the detail of the dispute, there would never be any arbitration. All that the arbitration was designed to do was to see whether the policy was proper and legal—not to apply it to any particular case, but to see whether the policy in itself was constructed in a legal fashion.

You are perfectly entitled, of course, to ask any questions that you can. Many of the people who are watching this—the people who have paid the £630,000 that the Government wasted—will find it surprising that anyone is seriously arguing that the judicial review in the full public court was worth the public expenditure that the Government wasted on it.

Dr Allan: You will notice, Mr Salmond, that I did not offer any opinion about whether it was good value for money; I am asking you about whether you have views about some of the points of law that have been raised.

On that subject, the Lord Advocate said about the appropriateness of arbitration:

"As a general rule, where an allegation is made that the Government has made a decision that is not valid because it is in breach of some public law or rule, that is, generally speaking, not an issue that it is appropriate to submit to a private arbitration."

He also said:

"Given the nature of the dispute here, which was about whether the Government had gone wrong in law in relation to its handling of the harassment complaints ... very serious questions would arise as to whether that was something that should be dealt with by a private procedure. An arbitration might simply give rise to further legal issues, so it might not necessarily result in finality".—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints,* 17 November 2020; c 8-9.]

Do you have a view on the Lord Advocate's assessment of the situation?

Alex Salmond: I think that one of the key phrases that you have just read is "might not necessarily". That sounds very much like you are reading out from his evidence. Would it not be wonderful if we could have the opinion of external counsel on what they thought about it? One thing that we can absolutely say is that the Lord Advocate's learned account and advice on those matters was subsequently found not to stand the test of the Court of Session. If that is the case, in terms of the arguments about the overall policy, it might be the case that he was wrong on arbitration as well.

The record of the Government in this case is not one that anyone would have a great deal of confidence in, in terms of the legal advice that it had been getting from its internal lawyers and the Lord Advocate. I think, from what we have seen, that we might place more stress on the external advice that it was getting but is not willing to give to this committee or the public.

Finally, I was not actually expressing the view of being surprised to yourself; I was thinking much more of the people watching this—your constituents, and the people who paid the bills.

Dr Allan: Thank you, convener.

Andy Wightman: I have just five relatively quick questions.

First, in an answer to Murdo Fraser, you said that you have documents in your possession that were disclosed in the commission. My understanding is that there is a bar under the 2010 act—I know that you dispute the application of the 2010 act—on revealing documents that you attempted to admit to the criminal trial that were inadmissible. Can I invite you to consider whether you were able to hand over to the committee any documents that were revealed to the Court of Session?

Alex Salmond: I think that we have already done so in—

Andy Wightman: Oh, you have done.

Alex Salmond: No—we have not handed them over. In correspondence, we indicated our willingness to do that. We then had correspondence with the Government, which would only agree—in fact, it did not agree—that, if we gave the documents to it, it could make suitable redactions, as it put it.

My view is that, if the committee wishes to see those documents, we shall hand them over. The committee has, of course, had leave already from the Court of Session in terms of other documents in the civil case. A committee request to have the full transcript of the commission and diligence would be well received by my legal team, and we would be very happy. Of course, the committee could then make whatever redactions it felt were necessary. I think that you would find the documents most informative.

Andy Wightman: Thanks. I will certainly follow that up with my committee colleagues.

Secondly, in any civil petition, such as you drafted for the judicial review, a competent lawyer would tend to include a whole suite of complaints and a range of remedies sought in order to maximise their chances of success. What you sought is set out in paragraph 4 of your draft petition for declarator, some orders of reduction of the decision and so on. You have a number of grounds for alleging that the procedure was unlawful. Given that none of those was ultimately tested in court, can you say anything more about which of the grounds for judicial review you were advised gave you the highest chance of success?

Alex Salmond: Yes. We have already dealt with retrospectivity, the absence of any legislation, the presence of a proper, valid previous policy, and the absence of any consent from those it is being applied to. The procedural unfairness is, you may remember, in the interlocutor. It has been put to me that one of the strongest arguments—I am not competent to judge the strongest argument—was the nature of the investigating officer. I am not talking about the prior involvement that was subsequently discovered; I am talking about the nature of how the investigating officer conducts his or her activities.

In the procedure, which is totally different from the fairness at work procedure and procedure elsewhere, the investigating officer basically presents the case for the prosecution before the defendant is even informed about the procedure. Instead of the person who is being complained about being able to present their own case, they have to give that case to the same person—to the investigating officer—to present on his or her behalf. My legal team told me that that is not something that the courts take kindly to.

There is another question, which is about the permanent secretary's decision not to allow me any contact with civil servants or even to have documents such as my own diaries at that stage. That was spelled out boldly in a letter that said, "I have decided not to allow you contact with civil servants or documents." It was felt that the court would regard that as an unreasonable position.

There is also access to witness statements. In any case, people are normally given access not necessarily to the names of witnesses but certainly to the content of witness statements—what witnesses were saying—so that they can have their own witnesses prepared by the defence to give their account. The two things can then be judged by someone in an impartial manner. These are procedural difficulties about being able to present their own case with information that should be available to someone on the receiving end of a complaint. They are certainly things that are in the fairness at work policy, as I am sure you are well aware.

Lastly, of course, the hybrid nature of the procedure has been pointed out, as, again, you will be aware. The civil service takes the procedure so far, then hands it over to a political party to implement a sanction. That is highly questionable. If a political party wants to sanction someone, it has its own procedures to do that, and should have its own procedures to do that. It should not rely on a civil service procedure that is somehow handed over to it to make a decision.

In every conceivable way, the policy was badly thought out, rushed through without consultation and badly implemented. It would have fallen on innumerable grounds. You rightly say that most of those grounds were not tested. They were not tested because they did not have to be tested, because the Government collapsed; it collapsed on the expenses that were to be awarded as well.

That was not the view of the permanent secretary. On 8 January 2019, a day that you would have thought would have been calamitous from the permanent secretary's perspective, given that it was the day when the Government's enormous defeat in the Court of Session occurred, with massive publicity and massive cost, she put out a press release in which she said that all other grounds were dismissed. You and I both know how misleading that was. You have put it correctly. The other grounds were not tested, because the case had already been lost by the Government.

Why did the permanent secretary put out a press release? We are talking about a press release that was put out not by a politician, whether myself or any member of the committee, under pressure, but by the permanent secretary of the Scottish Government. That press release said that all our grounds were dismissed apart from one narrow ground. Whatever view we take on those grounds, as you and I both know, there were very substantial problems that would have had to be addressed, even if the investigating officer had not transgressed the policy.

Andy Wightman: Thank you for that very full response.

I turn to my third question. In paragraph 24 of your submission on the judicial review, you say:

> "We have a witness precognition (statement) which recounts that in late November 2018 a Special Adviser told the witness that the Government knew they would lose the JR but that they would 'get him' in the criminal case."

Can you say anything more about who that witness is, who the special adviser is or, indeed, whether you can supply the committee with a copy of the witness precognition statement?

Alex Salmond: It certainly happened, and we have got the statement. I would have to consult the person concerned. The reason for it being there is that it demonstrates that, in November 2018, the hope on the part of that special adviser and others was that the judicial review would be overtaken by the criminal case.

What substantive evidence for that we have beyond that statement lies in the whole question of sisting, which—as I know you will appreciate, but very few people who are watching are likely to understand—relates to the idea that if the criminal case had been advanced, the civil case would not have gone ahead, pending the outcome in the criminal case. Many people seemed to invest a great deal of hope that the criminal case would ride to the rescue, like the cavalry over the hill, and that somehow the civil case would never be heard. Given that they were in a situation in which they had a high degree of expectation that they were about to calamitously lose a civil case, that was obviously a pressing concern for many people.

Andy Wightman: Yes, you say that in your fourth submission as well. The committee would welcome it if you were able to provide any further evidence that the Government was considering sisting. That would be useful to the committee.

Alex Salmond: That brings us on to one of the essential difficulties. There has been a lot of talk about section 162 and the case. You will know what that is; it is the prohibition on my supplying evidence. Much of that has been around text messages, which I know that the committee has been very exercised about. You realise that it also applies to Government documents. There are Government documents that I have seen that were disclosed as part of the disclosure in the criminal case that should have been provided to the committee. Under its remit, the committee should have seen those documents. They were disclosed during the criminal case, but they are not about the criminal case; they are about the judicial review.

Sisting has been mentioned by a couple of the committee's witnesses. The committee has one single document on the question of sisting. You know that there were 17 meetings with external counsel. You know that Paul Cackette told you that there were "daily meetings", as he put it, to discuss how the case was going, and you know that Judith Mackinnon told you that she had thrice-weekly meetings about it, yet the committee—barring that one single document—does not have an iota of that evidence, whether an email, a text message, a OneNote document or any other piece of information on a question that I can tell you was a huge preoccupation of the Government in September and October 2018. I think that it would be a wonderful reason for the committee to ask why, and I would dearly love to supply you with that—

The Convener: Excuse me, Mr Salmond. It is up to the committee to decide what it is going to ask and where it is going to go.

16:00

Alex Salmond: Convener, I am in the hands of the committee and have no observation on whether you should or should not ask to have the evidence. I am merely pointing out that, even if you did, the Crown Office would forbid me, on pain of a criminal penalty, from giving you those documents. Perhaps that pertains to Alasdair Allan's question. I do not think that that is the right balance between the Crown Office and a parliamentary committee.

Andy Wightman: [*Inaudible*.] I have only one more question now, because you have pre-empted one. In paragraph 29 of your judicial review submission, you said:

"On January 8th 2019 Lord Pentland ... issued an interlocutor",

which you enclose at appendix D and which

"reduced the Investigation and Permanent Secretary's Decision Report. The Government provided undertakings not to distribute documents. Those undertakings were recorded in the Minute of Proceedings."

Forgive me—there is a lot of evidence in the inquiry, and I joined the committee only in December—but I am not aware as to whether we have the minute of proceedings. If we do not have it, is that a document that you would you be able to provide to the committee, were we to wish that?

Alex Salmond: Yes, as far as I understand it, and I would be very willing to do that. I am sort of surprised that you do not have it. If you do not have it—and I know that we have it—of course we will hand it over to the committee.

The Convener: I think that we do have that. However, we shall double check.

Stuart McMillan: I have one question for a bit of clarity, probably more so for people who are watching this session as compared with what has been discussed thus far. The Lord Advocate commented to the committee:

"The petitioner in the judicial review challenged the lawfulness of the Government's harassment policy, and its application in his case, on a number of grounds. For the reasons set out in the Government's statement to the committee, the Government accepted that one of those grounds of challenge was well founded, and it conceded the case."—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints,* 8 September 2020; c 30.]

For clarity, do you agree that it was on only one ground that the Government conceded the case?

Alex Salmond: I agree with Lord Pentland's interlocutor—his judgment—that the Government was found to have behaved unlawfully, procedurally unfairly and in a manner "tainted by apparent bias". That was the interlocutor from the Court of Session.

The Government collapsed the case. When you are petitioning for judicial review—to set aside a procedure that is unlawful—if the Government comes to you and says, "We'll collapse the case and we'll agree to expenses on the highest scale because of our behaviour during the case," I doubt whether any lawyer on earth would not say, "You've won." To go ahead further and to win on all—or many, perhaps—of the other grounds would just have cost people more money, when the case had been dealt with.

The reduction was not just of the decision, but of the documents. We moved to have the undertakings that we were given by the Government, to which Mr Wightman referred, and the interlocutor as well, just to make sure that it was understood that the court was behind the reduction—the destruction, effectively—of the decision and of the documents. The victory was as comprehensive as you could possibly get, in legal terms. The point that I was making earlier was that the permanent secretary's portrayal of it was at variance with reality.

Jackie Baillie: I have four questions and I do not require long answers.

The duty of candour requires full disclosure of information by the Scottish Government. You described a search warrant to the permanent secretary from the Crown Office for material in relation to the criminal trial; we also know that there was a commission and diligence to recover documents and that those came forward in various tranches; yet, when the committee asked for information in the complaints handling phase, am I correct in saying that were there still documents that you, or your legal team, had not previously seen? If so, what did those relate to?

Alex Salmond: I think that I specified—or we specified—a number. Late last year, we went through the many documents that came, or are about to come, to this committee. We went through each and every document and cross-compared it with what had been disclosed in both the civil case and the criminal case. I think that we found 40 or so documents that we had never seen before; I would not hold myself to an exact number, but it was substantial. That is spectacular, because it concerns both the duty of candour—we should have seen those documents, regardless of the exact specification, because the whole point about such a duty is that you are meant to hand over things that are important—and the criminal case, in which the documents were specified in the search warrant that was applied to the Government a year past October, or thereabouts, in 2019.

The most spectacular of those—but by no means the only example—was a series of documents that demonstrated that the permanent secretary had met one complainant and had telephoned the other on, I think, 6 March 2018. That was the day before I was informed that there were any complaints against me, and after she had received the investigating officer's first report—in mid-process.

As I made the point earlier, there are two aspects to that. One is that that is an extraordinary thing to happen. In the views of at least some people, the investigating officer meeting complainants mid-process is even more serious than meeting them before the process starts. However, even if you disregard that, the question is one of disclosure. Why was that information, which was clearly pertinent to the judicial review, not disclosed in the civil case, despite the instruction of the court and the advice of the Government's own counsel that it was really important to follow that?

Secondly—and even more spectacularly—the search warrant in the criminal case specifies meetings between the permanent secretary and the complainants. In this case, I believe that the Crown Office did not receive that document—or, if it did, it certainly did not disclose it to us. I believe that it did not receive it, which is almost beyond imagination. That is not about the duty of candour; it is a refusal to produce information in the face of a search warrant, which is obstruction of justice. There are consequences for such things.

Jackie Baillie: That is a pretty serious charge. I want to explore with you, just briefly, the role of the permanent secretary. From what I can see, she oversaw the development of the policy; she was the final arbiter on complaints; as you have just outlined, she met complainants; and she was responsible for leading the Government in the judicial review process. Do you think that she has discharged her responsibilities in line with the civil service code?

Alex Salmond: No.

Jackie Baillie: Thank you. I move us on to the independence of the investigating officer. On 17 October, the investigating officer was interviewed by junior counsel, and she was open about her contact with the complainants. On 31 October, there was a written opinion from counsel. A freedom of information request tells us that, on 13 November, there was a meeting between counsel,

the First Minister Nicola Sturgeon, the permanent secretary and the chief of staff. As a former First Minister, would you say that carrying on legal action in the Court of Session while knowing that you had acted unlawfully would be a breach of the ministerial code?

Alex Salmond: Yes.

Jackie Baillie: Do you believe that that was the case in this instance?

Alex Salmond: Well, we cannot be sure, because—like the committee—I have not seen the external legal advice of October 2018. As I think was said to the committee in evidence, it was clearly a highly significant moment when counsel realised that there had been prior contact. Everything about that legal advice—even how it has been described in terms—suggests that, on the balance of probabilities, it indicated that the Government was about to lose. If that is the case—if the legal advice says that—and the case was continued in the knowledge of the First Minister against that legal advice, that would be a breach of the ministerial code. If we could just see the document, we would all be better informed.

Jackie Baillie: Well, indeed. The Parliament has asked twice and we have still not seen it, so good luck with that one.

I move us on—finally—to the judicial review and sisting. You said that the sisting of the judicial review was about delaying the process in the Court of Session so that it would be overtaken by the criminal trial. In your submission, in paragraph 24 of annex B, you said:

"We have a witness precognition (statement) which recounts that in late November 2018 a Special Adviser told the witness that the Government knew they would lose the JR but that they would 'get him' in the criminal case."

Would you share that precognition statement with the committee?

Alex Salmond: That is what Mr Wightman asked me—

Jackie Baillie: Ah. Excellent. I missed that.

Alex Salmond: My answer was, obviously, with the permission of the witness. I am anxious to share all documentation I can that establishes this point, if we are able to share the documentation on sisting, and the Government documents as well. There is no question that there was a belief that the criminal case might overtake the judicial review.

Sisting was being examined by the Lord Advocate because, quite clearly, you would expect him, as the Government's legal adviser, to be looking at that—and not just Mr Cackette and others; it would be very important for those to see it. I am not suggesting for a second that the Lord Advocate was engaged in thinking, therefore, "We should accelerate the criminal case in order to avoid defeat in the civil case." I am not suggesting that for a second. I am merely suggesting that there was widespread knowledge by November 2018 that the judicial review was going to fail, on the part of the Government, and that there was a prospect of it being sisted if the criminal case came to a moment before the judicial review hearing in January 2019.

The reason why I am saying this is that I can think of no other reason why you would postpone taking a decision on a case that you knew that, on the balance of probability, you were highly likely to lose, unless you thought that something else was going to happen that would avoid that. There is no point in saying, "Okay, we won't concede, and we'll put it off until January, when we'll lose cataclysmically"—remembering that the clock is ticking all the time in terms of expenses, so the case in January will be much more serious than conceding in October. Conceding in October would be embarrassing and difficult, but it would not be as cataclysmic as an open court case in January. Perhaps we will hear what other motivation there could possibly have been other than the belief that something might happen to intervene that meant that the judicial review never came to court.

As I said, if the judicial review had never come to court at that stage and had been postponed or sisted behind the criminal case, and—let us be frank here—if I had been convicted of anything at all, this inquiry would have been moot. Nobody would have cared about the civil case, the judicial review or anything like that. This inquiry would not be sitting and would have been entirely overtaken by events. Fortunately for me, and, I believe, fortunately for justice in Scotland, that did not happen, and this inquiry is taking place. Hopefully, the lessons that come from this will improve the Scottish institutions, so that people can have more confidence in them, whether they believe in devolution or independence.

Jackie Baillie: Thank you.

Maureen Watt: May I go back to the timing of the concession of the judicial review? Of course, the judicial review was conceded on the basis of only one issue, which was the contact between the complainants and the investigating officer. When the committee talked to Paul Cackette, he said:

"It took time to work out what the circumstances really meant. It was not a slam-dunk moment. Work required to be done as we tried to establish what the full factual circumstances were and then work out ... whether the combination of the wording of paragraph 10 of the procedure with the facts that were emerging, and continued to emerge as we found out more, had that effect.—[*Official Report*, *Committee on the Scottish Government Handling of Harassment Complaints*, 3 November 2020; c 17-18.]

When the Lord Advocate gave evidence to the committee, he said:

"When the issue was identified in late October, people immediately went to paragraph 10 of the procedure. That was not considered to be fatal. It was identified that there was a debate to be had—any lawyer who is involved in litigation understands that many issues may arise that one may have to defend and argue in court—but the Government was content that its interpretation of that sentence was one that was capable of being argued and defended in court, and one that it would be right to submit to the determination of the court.

The issue of apparent bias depends ultimately on close knowledge of the facts. Regrettably, at the point where matters had been investigated in November and things were reviewed in the light of that, the full factual picture was not known."—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints,* 17 November 2020; c 32.]

16:15

Was it not therefore quite in order that the Government took time to concede the case? The Lord Advocate has been an advocate and a QC for some 30 years. He has also been a dean of the Faculty of Advocates, which is a post to which the dean is elected by his peers. Laying aside what external counsel says, are you really questioning the ability within Government to decide when the case should have been conceded?

Alex Salmond: You said, "Laying aside what external counsel says", Ms Watt. Is that not the exact point that Parliament has voted for on two occasions? Why do we not know what external counsel says? You said that the present Lord Advocate is a past dean of the faculty. The external counsel is the present dean of the faculty. I would have thought that it would be of extraordinary interest to see what Roddy Dunlop and Christine O'Neill were saying in October 2018. Given that the public have paid dearly for the mistakes of the Lord Advocate and others, they are entitled to see that legal opinion, which would answer your question and the questions of many other people.

In terms of the Lord Advocate's hopes, I sat in the Court of Session where Lord Pentland delivered his interlocutor. Although the case had been conceded and there was not much to be done, it was patently obvious from what Lord Pentland said—to my hearing at least—that he knew exactly what the problem was. He commented on the nature of the "no prior contact" stipulation. He looked back and saw that almost exactly the same phrase was used in the very first iteration of the policy on 8 November and that it had not changed in any material sense. It was still "no prior contact". The name of the investigating officer had changed.

I do not think that the Lord Advocate would have done very well if he had been in Roddy Dunlop's shoes and was having to argue the case. I suppose that the practitioner who was having to argue the case in court probably recognised the essential difficulties.

I have two further points. First, why was the information only becoming available? Ms Mackinnon has said that she discussed her role openly with her superiors. It does not seem to me to be a particularly difficult thing to do to find out what the prior contact was. It does not require a massive investigation. From everything I know, Ms Mackinnon was perfectly open about what she had done—it was not a secret. Therefore, I cannot see why it would have taken any length of time to do that. Why did there have to be a major consideration, taking weeks and months, in order to establish the inevitable result?

Maureen Watt: I have just one other point. You said that mediation could have been pursued, or that arbitration could have been a much better means.

Any human resources professional would say that, in a sexual harassment case, both mediation and arbitration are totally unsuitable.

Alex Salmond: It obviously cannot be the case that both are totally unsuitable because mediation is in the policy with regard to current ministers, which I know that you as an HR professional will know and will have recognised. It cannot be thought to be totally unsuitable, Ms Watt, because it is actually in the policy, but it only applies to current ministers and not to past ministers. That was the point that I was making.

As far as arbitration is concerned, anybody else who was facing what I was facing would have taken their counsel's advice and gone to court and exposed the Scottish Government much earlier. The only reason that I did not go to court and was looking for another means of trying to settle the issue is because I was a former First Minister and was aware of how cataclysmic it would be for the current Scottish Government.

Margaret Mitchell: Mr Salmond, you have already referred to two text messages that are in the public domain and that the chief executive of the SNP was asked about when he gave evidence on 25 January. Is that right? No, they were sent on 25 January 2019, which is the date that you first appeared in court on criminal charges. The *Official Report* lists the text messages in full and it is worth reading them out so that you can respond. One says:

"Totally agree folk should be asking the police questions ... report now with the PF on charges which leaves police twiddling their thumbs. So good time to be pressurising

them. Would be good to know Met looking at events in London."

The second text, which is again from Mr Murrell, said:

"TBH the more fronts he is having to firefight on the better for all complainers. So CPS action would be a good thing."—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints ,* 8 December 2020; c 13.]

The explanation for those texts has been the subject of some incredibility. Mr Murrell said, as the First Minister did when she spoke in Parliament on the issue, that

"Reflecting on those messages now, they seem quite out of character."

Mr Murrell went on to say:

"To me, that suggests just how upset I was at the time."—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints ,* 8 December 2020; c 14.]

Is that your reading of the texts and is that a credible response?

Alex Salmond: Ms Mitchell, I do not want to be rude, but I have a small chest infection just now.

The Convener: I was about to ask whether you would like to have a little break, Mr Salmond.

Alex Salmond: If that is alright. I am anxious to answer that question, but it might be better if I see if I can sort my chest out and then come back.

The Convener: Please do. Could one of our clerks make sure that Mr Salmond gets over to his committee room?

I hereby suspend the meeting.

16:22

Meeting suspended.

16:40

On resuming—

The Convener: Good afternoon, everyone, and welcome back to the 13th meeting of the committee in 2021. This is an evidence session with former First Minister of Scotland, Alex Salmond. I confirm that Mr Salmond took the oath at the start of this morning's evidence session. I also confirm that all necessary mitigations have been taken to allow us to meet safely under Covid restrictions in person today. We have just had a short sanitation break.

Before we had that break, Margaret Mitchell asked a question. I ask her to repeat it.

Margaret Mitchell: The question was about two text messages that are in the public domain; they are in the *Official Report* of 8 December and I asked Peter Murrell about them when he last came before the committee on 8 February 2021. The text messages were sent by him on 25 January 2020. That was the date that you first appeared in court on criminal charges. Do you wish for me to repeat them in full?

Alex Salmond: Yes.

Margaret Mitchell: The first text says:

"Totally agree folk should be asking the police questions ... report now with the PF on charges which leaves police twiddling their thumbs. So good time to be pressurising them. Would be good to know Met looking at events in London."

The second text says:

"TBH the more fronts he is having to firefight on the better for all complainers. So CPS action would be a good thing."—[*Official Report*, *Committee on the Scottish Government Handling of Harassment Complaints*, 8 December 2020; c 13.]

Mr Murrell's explanation for those texts was

"Reflecting on those messages now, they seem quite out of character. ... To me, that suggests just how upset I was at the time."—[*Official Report*, *Committee on the Scottish Government Handling of Harassment Complaints*, 8 December 2020; c 14.]

Given that both Mr Murrell and the First Minister—when she spoke to the Parliament about them—seem to accept that as a reasonable explanation, I wonder whether there was some doubt in your mind about its credibility?

Alex Salmond: Thank you, Ms Mitchell, and excuse me for the delay.

On 22 January last year, the preliminary hearing of the criminal case, we were presented with a memory stick by the Crown Office, under disclosure. We were not able to use it in the preliminary hearing, which was extremely unfortunate.

The next day, in the offices of Levy & McRae, we went through a series of messages. It was one of the most extraordinary days of my life. I am not allowed to describe the messages in any detail, but let us say that I recognise the one that you have just read out. There are many other messages, and what they speak to is behaviour that I would never have countenanced from people I had known, in some cases, for 30 years.

In my opinion, there has been behaviour that was about not only pressurising the police—like the one that you read out—but about pressurising witnesses and collusion with witnesses. We are talking about the construction of evidence, because the police were somehow felt to be inadequate in finding it themselves.

The point is that on, I think, 25 August 2018 a police investigation started. When a police investigation starts, those matters are for the

police. They have the investigatory function and do not need assistance from Inspector Murrell, Sergeant Ruddick, Constable McCann or Special Constable Allison. Whether people are in the Scottish Government or the SNP, they have no investigative function. It is a matter for the police. Not only should they not be doing anything other than supporting the police in their activities, but they should certainly not seek to pressurise them.

In July of last year, because rumours about such messages had been current in the SNP for some time, Kenny MacAskill wrote to the Crown Office—I have a copy of the letter, which I will give to the committee—asking if there was any evidence of Mr Murrell pressurising the police, and he got a reply saying that there was no such evidence. The reply said that the messages had been inspected and there was no evidence that Mr Murrell had pressurised the police. It was not, "There are messages to that effect, but it didn't happen"; it was just, "The messages have been looked at," and a blank "No." As you know, Mr MacAskill subsequently made the messages available to the committee and to the Crown Office and, as you say and as I understand it, they have now been confirmed as genuine. I am not surprised that they have been confirmed as genuine.

16:45

That is rather similar to the committee's experience with the lost-the-battle-but-not-the-war text message from the permanent secretary to Barbara Allison on the day that the Government lost the judicial review. Barbara Allison told the committee that the message was not sent to her, and then the message was revealed and was accepted as fact, which is similar to what happened with Mr Murrell's message.

There are a number of other messages in the public domain, and I can go through them if the committee wishes. There are many other messages that I am prohibited from sharing with the committee. When a police investigation starts, all other activity should stop. It is not for the SNP or the Scottish Government to supplant the police in its investigatory function; it is for everyone to accept that that is the due process of law and that it should be allowed to continue without impediment.

Margaret Mitchell: That has been very helpful in establishing the veracity, I suppose, of the explanation, and setting it in context. It raises very worrying issues, especially as Mr Murrell was on oath when he gave us that explanation. Thank you—that is helpful.

The Convener: I will move on to Mr Cole-Hamilton. I can hear that Mr Salmond's chest is sore, so if we could try to avoid huge long questions and responses, that would be useful.

Alex Salmond: I think that it is the answers that should be shorter.

The Convener: I did not like to say.

Alex Cole-Hamilton: Welcome back, Mr Salmond—I hope that you are feeling a bit better. We would like to put a pin in the offer that you just made, because we might like to see those messages—I certainly would. Perhaps other colleagues will pick that up with you.

I have a lot of ground to cover, but you will be glad to know that a lot of this will be looking for yes/no answers. It is about two meetings that we are aware of. One was on 29 March between your former chief of staff Geoff Aberdein and the First Minister, in the Parliament. The other was on 2 April in the First Minister's house. We understand that, on learning of the investigation, you asked Mr Aberdein to try to broker a meeting with the First Minister. In her evidence, she said that she agreed to meet with you on 2 April. Is it your position that the First Minister was aware of the arrangement to meet with you on 2 April before she met Geoff Aberdein on 29 March?

Alex Salmond: No. My position is that the meeting of 2 April was arranged on 29 March. I know that because Geoff Aberdein phoned me on 28 March—the day before the meeting—to tell me that it was going to take place, and he phoned me the day after that meeting to tell me that a meeting had been arranged for 2 April, which I think was Easter Monday, in Glasgow. Self-evidently, the only person who can invite you to the First Minister's home is the First Minister.

I heard Mr Murrell say several times that I was regularly popping in; I just point out that I stay 200 miles away from Glasgow and, as far as I can remember, I have been to Nicola and Peter's home six times in my life. It might be slightly more, but it is not a question of just popping in.

Alex Cole-Hamilton: I understand that your relationship with the First Minister had begun to deteriorate anyway, so it was not like you would just be popping in for a friendly cup of coffee.

Alex Salmond: Even when my relationship with the First Minister was extremely good, I did not pop in, because she stayed in Glasgow and I stayed in Aberdeenshire. This was an arranged meeting. That was the purpose of the meeting on 29 March. I can answer anything else that you would like me to.

Alex Cole-Hamilton: That is great. I would like to unpack the particular arrangement for the meeting on 29 March, because this is very important. In her evidence, the First Minister is quite vague about it. That tallies with her

suggestion that she forgot about it. She suggests that she forgot about it because, she also suggests, nothing of consequence was discussed, other than the arrangements for the meeting and the fact that you had something serious to talk to her about—potentially about allegations that you were facing.

I want to ask about Geoff Aberdein. He told you that he was going to meet the First Minister the day before you got the call from him confirming that that meeting was going to happen. Did he explain where the meeting was going to take place and what time it was going to take place?

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

Alex Cole-Hamilton: Very good.

On the conclusion of the meeting on 29 March, did Mr Aberdein give you a read-out of what was discussed in detail?

Alex Salmond: No. He told me the next day that the meeting on 2 April was on. He did not have to give me that, because the purpose of the meeting was to brief Nicola on what was happening and to make sure that the meeting on 2 April was taking place.

Alex Cole-Hamilton: Was it your understanding that the First Minister already knew about the complaints and the investigation, or did Mr Aberdein break that news to her on 29 March?

Alex Salmond: As I have said a number of times, I have documentary evidence, or other evidence so there is no dubiety about it, for anything that I have said today. I know that Nicola Sturgeon knew about the complaints process at the meeting on 29 March, because I was told so by Geoff Aberdein, who told her at the meeting that was arranged for that purpose. I cannot say whether she had any prior knowledge of that, but I know that she knew on 29 March.

Alex Cole-Hamilton: If the First Minister, as somebody who has described herself as being as close to you for 30 years as she was to anyone outside her family—a strong personal ally of practically a generation—learned about this huge news about your personal life and her Government's investigation into you, as she suggests, at that time or on 2 April, do you not think that the reaction would have left a mark? Would she not have remembered those occasions?

Alex Salmond: That is a question that you should direct to Nicola when you see her next week. All I can say is that the meeting on 29 March was not impromptu, accidental or a case of popping your head round the door; it was a meeting that was arranged for that purpose. The meeting on 2 April was not a case of popping in to Nicola and Peter's home; it was a meeting that was arranged for that purpose.

Alex Cole-Hamilton: Thank you. That is very helpful.

I turn to the meeting on 2 April. The First Minister says in her written evidence to the committee that she agreed to meet you for two reasons. The first was personal and the second was political. The first was that she understood you to be in a state of profound distress because of the news that she thought you were going to give her at the meeting. The second was that she thought you were going to resign your party membership and that she would have to prepare the party for that eventuality. She had that belief.

I asked you about resignation earlier in respect of the Edinburgh airport meeting, because if that is not a reaction that you are given to—if that is not a normal way for you to react to that kind of allegation—why would she believe that you were going to resign from the party because of a set of allegations that she professes not to have even heard about? What do you think she believes?

Alex Salmond: I do not know. My own view is that, in so far as the Edinburgh airport thing was important, it was important because of the impact that it may or may not have had on the permanent secretary. It was not, as I now know and can confirm, a matter of any consequence. I do not think that anybody was thinking about it by the time we got to the following April—I certainly was not.

As far as resignation from the party goes, let us consider the circumstances. On 7 March, I had received indication from the permanent secretary that there was an investigation launched against me. With my council of advisers, I was looking for a way that could be done properly, amicably and, certainly, confidentially—not just in my interests but, as was said before, in the interests of complainants and everybody else with an ounce of sense.

What possible purpose could resignation from the SNP have contributed to that situation? My public resignation from the SNP at that stage would have been regarded as astounding news and would have been the diametric opposite of what I was trying to achieve, so I had no thought of resignation whatsoever. It never entered my

mind at that stage—why should it have? It was the diametric opposite of what I was trying to achieve. I was trying to find a proper and considered response to a situation, some of which I could not understand, because I had no idea where that policy had come from. It was, in that sense, a bolt from the blue. However, resignation from the SNP certainly never entered my head.

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

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

Alex Cole-Hamilton: That is very helpful.

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

Alex Cole-Hamilton: I will move to 2 April, which is critical. The First Minister's version of events is diametrically opposed to your and other people's version of what happened at that meeting in relation to, first, whether it was the first time that she learned of the fact of the investigation and, secondly, whether she was going to help you or not. This is critical, because it speaks to a possible breach of the ministerial code; if that is found to have happened and she has misled Parliament, she would be required to resign.

When you attended the meeting, you met with her in private for a period. Would you please give us a brief summary of how that discussion went?

Alex Salmond: We discussed the situation and what I had been sent, which was not comprehensive, but which had some detail in it. There was no suggestion that she was surprised and astounded at what the meeting was for; the meeting was for that purpose. We went through that and I was looking at the options that we had. As we have already discussed, the one that we centred on as being proper and reasonable to suggest—and, incidentally, proper for the First Minister—was a mediation policy, which was absent from the policy that we had seen, for no apparent reason. For the reasons that I detailed in my submission, that was something that I thought that Nicola could and should go ahead with. The indication that she gave me was that she was willing to do that, but that she wanted an appropriate time.

Her difficulty was not in intervening but that she did not want to initiate it with the permanent secretary as opposed to waiting until the permanent secretary came to her. That was the distinction that she was drawing, but—as I would have expected from somebody who I had known over that period of time—she gave me every indication that, if it was proper to assist, she would do so. I felt that the mediation proposal was a proper thing to ask for for two reasons. One, because it should have been in the policy and was not and, two, because—as I have explained in my submission—over and above any other duties, a First Minister has an obligation to make sure that their Government is acting lawfully. Obviously, my counsel came with me for that purpose; in order to, even at an early stage, point out the manifest difficulties with the procedure that we were undertaking. It should be said that Nicola did not show a great knowledge of the procedure itself at that meeting; she was quite vague about where it had come from.

Alex Cole-Hamilton: You have already said to Ms Baillie that the name of one of the complainers was intimated to you and three other people. Did the name of that complainer come up during that discussion?

Alex Salmond: I think that it did, but it was not introduced into the position, because it had been told to Mr Aberdein before then.

Alex Cole-Hamilton: You think that it did come up in the discussion with—

Alex Salmond: I think that it did, but it is not something that I have tried to recollect. The reason for not trying to recollect it is that, as we discussed earlier, I know that the name of the complainer was given to me—offered to me—by Mr Aberdein, who had got it from a senior Government official two weeks previously, or slightly more than that. It did not come up as an issue because it was already known.

17:00

Alex Cole-Hamilton: That is surprising because, yesterday, in Parliament, during First Minister's questions, the First Minister said that she did not believe that you had been passed the name of a complainer, so I find that surprising. We will take that up with the First Minister.

You clearly indicate in WhatsApp messages exchanged on 1 and 3 June 2018 that you had left the meeting on 2 April with the impression that the First Minister was going to assist you. Also in those messages, it is clear that she changed her mind. How did she communicate that to you? What did you think was going to happen, which she then withdrew, with regard to an offer?

Alex Salmond: I did not have any communication with Nicola beyond the phone calls

and the WhatsApp text messages, which are detailed to you, so you have everything that there is to have, apart from the phone calls. As you can see from the messages, it was something of a surprise to me when she said, "I said I'm not going to intervene," and I said back to her, "That's not my recollection of what your position was." That was a surprise and a disappointment, and it obviously felt to me like a substantial and disappointing change in her position. Why that changed, I was not sure. It certainly was a change in her position—

Alex Cole-Hamilton: It was a change in her view—absolutely.

I will go back to another aspect from 2 April. While you were there, do you remember Peter Murrell arriving home?

Alex Salmond: No, I was not aware of that. I was on my way to America and I got dropped off at Glasgow airport. I think that we were in a taxi—it definitely was a taxi, actually. On the way to Glasgow airport, we discussed that Peter had arrived, but I had not seen him, so I did not know that that had happened. I was told on the way to the airport.

Alex Cole-Hamilton: My final question on this—

Alex Salmond: I am sorry, but I should say that it was no surprise to me that Peter was not there, because of the nature of what we were discussing.

Alex Cole-Hamilton: That is because you believed that it was Government business.

Alex Salmond: I knew that it was about the complaints that had been made against me. There was no other agenda or business that I was aware of. As I said, the geography, apart from anything else, dictated that I was not just popping in.

Alex Cole-Hamilton: If it had been a meeting to help the First Minister to prepare herself and the party for the impact of the investigations, the revelations around them and/or your resignation, as she suggests that it was, would you have expected Peter Murrell to know about that and to have some involvement in that, or even to join the meeting?

Alex Salmond: Yes, but it was not about that, so it was not a surprise to me that he was not there. Peter's non-attendance was not a surprise, because I knew what the meeting was about.

Murdo Fraser: I will follow up a couple of the points that Mr Cole-Hamilton put to you and then, perhaps, ask you something else briefly. I want to be clear about the version of events, particularly in relation to the meeting on 29 March, which Mr Cole-Hamilton has referred to. You have set out your position. In your written evidence, you refer to the First Minister's version of events. In fact, referring to the meeting on 2 April, you say that the First Minister's claim is "wholly false." Nicola Sturgeon is somebody whom you worked with very closely over a long period of time. She was your deputy when you were First Minister, and she succeeded you as First Minister and leader of the SNP. This week, she has said—you will have seen her public statements on the matter—that the claims that you are making are untrue and that you have no evidence to support them. In effect, she is denouncing you as a liar and a fantasist. Are you?

Alex Salmond: Well, given some of the things that have been said about me this week, I do not think that you have to add more—plenty has been said.

The key thing is the evidence. I have already expressed my—and, I assume, your—frustration that some evidence is not available to you. However, there is no doubt. It is absolutely certain that the meeting on 29 March in the Scottish Parliament was prearranged for the express purpose of Nicola being briefed on the situation with regard to me and complaints, and that the meeting on 2 April—or, at least the final arrangements for it—arose from the meeting on 29 March. Otherwise, how on earth would I have known to turn up on 2 April? There is no other way that the invitation could be gathered.

As to why the meeting on 29 March was, for a substantial period of time, effectively written out of history, I know that some people say, "Well, what difference does four days make?" The difference is, of course, that if the meeting of 29 March is admitted, and, indeed, if the subject matter of the meeting is admitted, it makes it very difficult to argue that the meeting of 2 April was on party business as opposed to Government business. All I would say is that that meeting was, in Nicola's terms, "forgotten" about, but in evidence to the committee, she said that she was reminded of it in late January or early February 2019. If that were the case, under the ministerial code, the correct thing to do would have been to correct the record as timeously as possible, as opposed to waiting 18 months until Sky News broadcast it, which is what actually happened. I am here under my oath, and I am giving you the explanation under my oath. That is what happened, in my belief.

The one thing that I would add, and I will be quite clear about this, is that many of the attacks on Nicola in regard to this were about how she was trying to intervene in my favour or whatever. As I have said in my evidence, I think that nothing would have been improper with the intervention that I was asking her to make. I am well aware of what the ministerial code says. I was hoping that she would report to the permanent secretary what

I had said, as the ministerial code would indicate, because I could not believe that arbitration—or, rather mediation; I beg your pardon—would not properly be part of the policy and I thought that that might be a route forward. I do not share the view that it would have been improper for Nicola to intervene. On the contrary, if a First Minister hears of a substantive danger that the Government might be drifting into illegality or that something significant has been left out of a policy, my view is that that would be a perfectly proper intervention to make.

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

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

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

Murdo Fraser: Who else did?

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

In terms of a breach of the ministerial code, I would have thought that either explanation breaches the ministerial code. Either the meeting on 29 March was not forgotten about and Parliament was deliberately misled, or, alternatively, it was forgotten about and Parliament was not informed when Nicola was reminded of it. My submission says that those are, to me, clear breaches of the ministerial code. What happens as a result is not for me; it is for this committee, for Mr James Hamilton and for others. All I can do is come here and tell you the truth, the whole truth and nothing but the truth, with the frustration, of course, that we all know that there is evidence in relation to March 2018 that the committee is prohibited from hearing.

Murdo Fraser: We can, of course, ask Mr Hamilton, Mr Pringle and Mr Aberdein for their version of events, and we may well pursue that. Convener, can I ask a couple more questions?

Alex Salmond: As I understood it, you had Mr Aberdein's version of events in evidence.

Murdo Fraser: Yes, we did. Perhaps I should move on.

You allege in the written evidence that you have given us that there is a conspiracy. You do not use the term conspiracy, but you say that

"the evidence supports a deliberate, prolonged, malicious and concerted effort amongst a range of individuals within the Scottish Government and the SNP to damage my reputation, even to the extent of having me imprisoned."

As part of that conspiracy, you name Peter Murrell, Ian McCann, Sue Ruddick and Liz Lloyd. Why would those people conspire against you?

Alex Salmond: I believe that the motivation for furnishing complaints to the police was initially to defeat the judicial review by having it postponed. I think that it came to be believed among some people that the loss of the judicial review and the loss of a court case would be cataclysmic, not just for Leslie Evans, senior officials in the Scottish Government and special advisers, but for Nicola Sturgeon. Unfortunately, I think that people came to the belief that the police process would somehow assist in, first, not losing the judicial review and, thereafter, making sure that the loss of the judicial review was swept away in the inevitable publicity of the criminal trial. If I had been convicted of any offence in the criminal trial, that would have been the case.

You ask for evidence. In this committee, making the point about the investigatory function, Barbara Allison was asked whether it would be proper for the Scottish Government to contact people—whether you describe it as contact or a fishing expedition or whatever—after the police investigation started. Ms Allison quite rightly said no. That would be totally improper because, once the police investigation starts, it is a matter for the police. However, in the document that I provided to you, there is an email that shows that that was happening, and the name at the bottom of that is Barbara Allison. Incidentally, I do not believe that Barbara Allison was a witting part of a malicious plan. I think—I know—that she was given that information by a special adviser to write, unsolicited.

A day later, Ms Ruddick writes a letter, which I have also provided, from the SNP. The person concerned had never been an SNP member. We have a statement from that person, which was given to us for the purposes of my defence.

You have the evidence that Anne Harvey put in, and the significance of her evidence is twofold. The email that she has provided is contemporary. As a senior official in the SNP whips' office at Westminster, a lawyer and an officer of the court, she is asked for names, but refuses to provide them because she says, in terms of her professional responsibilities, that she is not going

to participate in a "witch hunt". That is not something that she is describing now, after the event; it is something that she was describing in late August 2018. Those things were going on after the police investigation started.

In terms of what is in the public domain, I point out that, in the criminal trial, my counsel read out a message from a complainant, who was refusing to go to a meeting with a senior official, because she was beginning to feel pressurised rather than supported. On Sky Television, I saw an account of a text message about the importance of getting another complainant "back in the game", from Ms Ruddick. I have seen reported—and in the public domain—a text message that says that, if the police cannot find the evidence, and they felt like telling them what they need, "I will get it for them".

At the trial, a text message was read out that said:

"I have a plan"

by which

"we can remain anonymous".

17:15

Those things are material that is in the public domain. As I mentioned earlier, there is also material that, it was said, before it came into the public domain, did not exist—or its bona fides were questioned—which was of course the first response to the messages about "pressurising" the police and about "the more fronts" to fight on. That was the first response—that those things cannot possibly be true—but they are true: the messages are real. These messages are in the public domain. The evidence from Anne Harvey and the emails that I provided you with are before this committee.

There is much more evidence that I would dearly love to provide to the committee if I was not under an injunction, under the terms of section 162 of the Criminal Justice and Licensing (Scotland) Act 2010, whereby I am not allowed to provide to a parliamentary committee evidence that was disclosed to me as part of the criminal proceedings.

Like in all things, I have abided by the legal advice, and I must follow that stricture—even though, as I noted earlier, speaking as the First Minister who introduced section 162, it was never designed for that purpose: it was designed to stop witness statements being used by drug dealers or whoever to pressurise witnesses; it was designed to stop witness statements being discovered in skips across Scotland. It was part of Lord Coulsfield's report of 2007 about the handling of information. It was never, ever designed to prevent information coming to a committee of this Parliament, and its use in that fashion by the Crown Office is beyond belief and totally and utterly disgraceful.

Murdo Fraser: I have two more brief questions, convener, if I may.

The Convener: Mr Salmond, I ask you not to go back to the criminal trial, please, but to stick to the remit of this committee. I understand that you think that a lot of these things are peripheral, and I let you answer that question in full, because it is obviously important to you, and it is important to members of the committee, but could we just bear it in mind from now on that we should be sticking within the remit? Thank you.

Alex Salmond: I will of course follow your advice, convener—I will follow your orders in terms of the position.

The evidence coming to the committee is relevant to the committee. The origins of the evidence may be outwith scope, but the evidence, if it is relevant to the committee, is relevant: that is the point that I am making.

The Convener: Yes, Mr Salmond—

Alex Salmond: Clearly and obviously, you are correct: the committee's remit is not to rerun the criminal trial or to question the verdict of a jury.

The Convener: Yes. Mr Salmond, I understand what you are saying, but we have a policy on taking evidence, which is that the evidence comes in and we decide our publication policy. That is what we do. To talk beyond some of the evidence that we have published can become problematic in terms of our remit. As I said, I was content to let you finish answering that question, because it was important to you to get it on the record, and it is important to committee members to hear that. I just want to give a warning as to where we go from here.

Alex Salmond: Then I will follow your guidance, convener.

The Convener: Thank you.

Murdo Fraser: To go back to my previous question, Mr Salmond, in your evidence you name four senior figures within the SNP, including the chief executive, who is of course married to the First Minister, and the First Minister's chief of staff. Do you believe that the First Minister herself played any role in this?

Alex Salmond: As I have said, Mr Fraser, everything that I have said in the evidence that I have submitted to you can be backed up by documentary evidence—every statement that I make. Therefore, as I do not have documentary evidence that suggests that the First Minister has text messages or any other piece of information that involved the First Minister, I have not made

that accusation. That is because I decided, quite properly, I think, only to make statements that could be backed up by documentary evidence.

You said earlier, "Look—you've never mentioned the word 'conspiracy'." That is for the same reason. It is the easiest thing in the world—it has been done over the past few days—to say that something is a conspiracy: that is a conspiracy theory. The reason that I have described this in the way that I have done as a malicious scheme or plan or campaign over a prolonged period of time, involving the people I have named, is precisely because there is documentary evidence that substantiates that.

That is not a theory or a point that cannot be established. It is a point that can be established from the documentary evidence, so it is about more than just terminology and people's ability to dismiss it. It is saying what can be verified by documentary evidence. The only question is how much documentary evidence this committee is allowed to see.

Murdo Fraser: This is my final question. Mr Salmond, you conclude your written evidence to us of 17 February by saying:

> "The real cost to the Scottish people runs into many millions of pounds and yet no-one in this entire process has uttered the simple words which are necessary on occasions to renew and refresh democratic institutions - 'I Resign'."

Who should resign?

Alex Salmond: The people responsible for the disaster of the judicial review should. In terms of the Scottish Government, the Crown Office and the overall approach, the people who are responsible should resign. The people I have named, as I have the evidence for their behaviour, should all be considering their positions.

Murdo Fraser: The permanent secretary?

Alex Salmond: As I have said, and I think that I say it in my evidence, to my knowledge, Cabinet ministers thought that she should have resigned on 8 January 2019. I cannot think that many people would not have thought that that would have been an appropriate thing to do. Yes—she should have considered her position then. No doubt she can await the findings of this inquiry, but if you are asking my opinion—yes, she should.

Murdo Fraser: The Lord Advocate?

Alex Salmond: I think that the Lord Advocate should be considering his position for this and a range of other issues.

The issue here is that there is an argument as to whether there has been an institutional failure. Many people whose opinions might be much closer to yours, Mr Fraser, than to mine have been using this argument to say, "Ah—the institutions. There is something wrong with them. Scotland is almost a failed state." That is not a view that I take. I take the view that the institutions are fundamentally sound, but there has to be some form of political responsibility.

Institutions have to be refreshed from time to time, and one of the things in public policy is that, when an issue of such an extent arises, people have to take the consequences. If they do not take the consequences, the institution itself comes under question. The Scottish Government, in terms of the administration of the civil service, needs new leadership. So does the Crown Office. The people I name because I have the documentary evidence to establish what they were involved in should be facing the consequences as well.

I think that the institutions of Scotland are absolutely sound. What it needs is public accountability and a facing up to the extent of what has been demonstrated by this extraordinary affair.

Murdo Fraser: If the First Minister has broken the ministerial code, should she resign?

Alex Salmond: That is not for me. I believe that the First Minister has broken the ministerial code, but that is a finding that can be discussed, at least by this committee and by Mr James Hamilton. It is not the case that every minister who breaks the ministerial code resigns. Your party would have an example of that relatively recently. It depends on what is found and the degree to which the ministerial code has been broken.

I have no doubt that Nicola has broken the ministerial code, but it is not for me to suggest what the consequences should be. It is for the people who are judging that, including this committee.

Murdo Fraser: Thank you.

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

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

Of course, I do not have to remember it. It is in the WhatsApp messages that you have as a committee. I am surprised by Nicola's response, and I say to her, "Look, that's not my recollection",

because, obviously, I was looking for her friendship and assistance, quite properly. In my message—you have it before you—of 3 June 2018, I said:

"My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different."

That is when we go on to the judicial review.

I believe that that was a substantial change, as the message indicates, in Nicola's position, and I was extremely disappointed. However, I thought that there were other possibilities—obviously, we discussed arbitration; that came later in the discussion. That was the purpose.

I was extremely disappointed because I thought that, at that stage, mediation was an entirely proper thing to suggest, and I thought that Nicola could entirely properly support that for the reasons that I have already given. I simply do not have any time for the idea that, in terms of the ministerial code, it is impossible for First Ministers to make proper interventions.

The first thing that you should do when contacted on an issue of Government policy is contact the civil service and tell it—in this case, that would be the permanent secretary. My assumption is that not only was I suggesting that Nicola should do that, but that that was the right thing for her to do. She obviously took a different opinion. She changed her mind.

Stuart McMillan: Thank you for that. Can you remember exactly what was said at the meeting that indicated to you that Nicola Sturgeon would have intervened as you had requested her to do?

Alex Salmond: She wanted to assist. She said, "I want to assist". There was a discussion about how she could do it. The discussion was not about whether she wanted to help; it was about the circumstances that would enable her to do so. She wanted the discussion with the permanent secretary to come to her, or to find an occasion by which they could do it. I found that rather puzzling, because that is not the relationship that I had with my permanent secretaries.

The discussion on 2 April was not about whether she was going to help; it was about how she could best do that. That is why I was so disappointed in the message that I have just read out to you.

Stuart McMillan: I have one more question but it is on a different area, convener.

The Convener: Just go now.

Stuart McMillan: Thank you.

Earlier today, and in your written evidence, you discussed a number of employees and associates. Certainly in your written evidence, you seem to consider instances of people reaching out to employees and associates to offer support on the subject of sexual harassment as evidence of a fishing exercise. Do you think that it is perfectly reasonable—that it is imperative—for political parties, as employers, whether the SNP, the Labour Party, the Lib Dems, the Conservatives or the Greens, to reach out to their current and former staff members? They certainly would have a duty of care for them. Bear in mind what was going on in society at the time. Do you not think that the right thing was for the SNP to engage with its staff?

Alex Salmond: Yes, I do, but that is not what I am suggesting, Mr McMillan. I made the point that the police investigation started—if I remember correctly—on 25 August and was publicly announced. At the point at which a police investigation starts, the police are the investigatory authority. I am not talking about reaching out to people. In his evidence, Peter Murrell provided the committee not with an impression but with the email that went out from Nicola Sturgeon to all party members in late August 2018. However, he did not give the committee Susan Ruddick's email, which went not to all party members but to selected members of staff and former members of staff. I could produce for the committee many members of staff who did not receive that email. It did not go to people who were known to be close to me or who worked in my office. If you had a duty of care, you would think that those would be exactly the people you would send an email to. The primary point is that that took place after the police investigation had started.

Secondly, the response from Anne Harvey, who, as I said, is a solicitor and officer of the court, had no misunderstanding or appreciation of that being anything other than what she described at that time—these are her words—as a "witch-hunt".

There is nothing more important than the understanding that once the police are doing their job they should be left to get on with it. They should not be pressurised. They do not need anybody else doing the investigation; they are the competent, lawful authority for doing it. Unfortunately, as these emails substantiate, there were people who did not believe that it should be left like that.

17:30

You do not need my word for this, because when Barbara Allison was asked, before this committee, whether it would be proper for the Scottish Government to be doing that after the police investigation started, she said no. The problem is that it was done, and the email that you have before you demonstrates that it was. I also

know that the former member of staff she is talking about in that email happened to be a special adviser; I also know that that special adviser was given the details—which, in itself, is a question—of the person concerned by a significant person in the Scottish National Party.

That should not be happening, Mr McMillan. That is totally out of order—but let me tell you that the information that I would like to bring to this committee goes way, way beyond that.

Stuart McMillan: Thank you.

Jackie Baillie: Mr Salmond, have you covered in your response to Murdo Fraser all the text messages that are in the public domain?

Alex Salmond: Yes. The reason I covered those ones was precisely because they are in the public domain. That is because, as you know, section 162 has further clauses that exclude things that are in the public domain. For example, this committee was able to consider the messages that were mentioned earlier precisely because they ended up in the public domain, and, once they were in the public domain, they could be properly considered. The same provision applies.

I am restricted, under legal advice and under pain of prosecution by the Crown Office, not to tell you about messages that are not in the public domain, but, equally, as I pointed out—never mind the ones that are not in the public domain—there is a substantial body of evidence that we can speak about.

Jackie Baillie: Thank you very much. Can I just check that I have got my timeline right? You were told by the permanent secretary on 7 March 2018 that there were complaints against you. You were then told by Geoff Aberdein, following a meeting that he had about complaints against you, on 9 March. Was that also the date on which you were told the name of one of the complainants? Then there was the meeting between the First Minister and Geoff Aberdein on 29 March, which you are saying was pre-arranged. Have I got all that right?

Alex Salmond: The one thing that I would say about the telephone conversation on 9 March with my former chief of staff is that I was in a car with other people and I did no talking whatsoever. I cannot be absolutely sure—because I spoke to him again four days later, on 13 March—whether it was on 9 March or 13 March that he told me the name of one of the complainants, because he had been told by a Government official. However, what I can be absolutely certain of is that he told me, whether it was on 9 or 13 March. Geoff Aberdein told me the name because he had been given it by the Government official.

Jackie Baillie: Clearly, before 2 April, when you were going to visit the First Minister in her home, you knew that there were complaints against you and you knew the name of one of the complainants. You have already established, in response to committee colleagues, that you were not resigning from the SNP. So, when Peter Murrell said that it was a Government matter and Nicola Sturgeon said that it was a party matter, it would appear that Peter Murrell was right on this occasion.

Alex Salmond: It was a Government matter. It was about the complaints against me—there is no doubt about that.

Jackie Baillie: Okay. I ask you again: as a former First Minister, if you had been approached by a political colleague as you approached Nicola Sturgeon on 2 April, would you have notified the civil service?

Alex Salmond: In the circumstances, I would have gone to the permanent secretary. That is obviously what I was urging, or asking, Nicola to do—or to seriously consider. I was obviously disappointed that she could not see that that was the way forward.

I would not have asked her to do it if I had not believed that it was totally legitimate. You can see from the WhatsApp messages that I tried to argue that it was the legitimate thing to do. I was not asking her to do anything outwith the ministerial code, because I did not see that there was anything in the ministerial code that would have prohibited Nicola from doing what I asked her to do. What I think there is in the ministerial code is a great deal of information that, if you are told seriously that your Government may be drifting into illegality, you are meant to do something about it. That is specific.

Jackie Baillie: Let me drive home my point. Whether she intended to help you or not, by the conclusion of the meeting there was no doubt about what you were there for and what you were discussing. At that point, was there a requirement, under the ministerial code, that she should report that to the permanent secretary, because there was potentially a conflict of interest on her part?

Alex Salmond: Well, yes. She certainly should have reported the matter to the civil service. In this case, I would say that it should have been reported to the permanent secretary, because of its nature.

Jackie Baillie: So, failure to report it would have been a breach of the ministerial code.

Alex Salmond: I think that that is in my evidence. In my view, it would not have been the intervention that was a breach. I think that the intervention would have been perfectly proper, had it taken place; it was the failure to report—the non-intervention, if you like—that was a breach.

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

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

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

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

Jackie Baillie: There was contact by telephone on, I think, 23 April; there were messages from the First Minister to you on 1 June; you messaged her on 3 June; and on 7 June you had a meeting in Aberdeen. Why did the First Minister wait until June before reporting that contact to the civil service?

Alex Salmond: That is a question that you should direct to the First Minister.

Jackie Baillie: As a former First Minister, when would you have reported the contact to the civil service?

Alex Salmond: Obviously, I am not an impartial observer in this, but let me put it this way. If Nicola had come to me in similar circumstances—hopefully, we would not have had the problem of a policy that was misdirected for some reason, but these things happen—I would have intervened in that direction, because I could see from the ministerial code that it was perfectly proper to do so.

My view is that there are times in life when, as First Minister, you cannot assist your associates because that would be diametrically opposed to something that you have to abide by, because, like all ministers, you have pledged allegiance to the ministerial code. However, if, within that code, there is a proper reason for doing something, you would do it. Certainly, I would—and I suspect that you would, as well.

Jackie Baillie: It is a long time since I was a minister—I can remember it, though.

Let me ask you one last question, given your knowledge of the ministerial code. Is it not the case that, if you are misleading Parliament and you do not take the opportunity to correct it, it is automatic that it is a resignation matter?

Alex Salmond: The two things are a bit different. There have been very few occasions when it has been established that somebody has misled Parliament and they have not resigned. For other breaches of the ministerial code—which would probably include the timing of a correction—there would still be a breach but it would not be an open and shut case of it being a resignation matter. These things are moveable goals.

The generally applied position is that, if you have knowingly misled Parliament, you will resign. It is not as clear if it is inadvertent, but, certainly, not reporting an inadvertent misleading would be as serious. Whether that is a resignation matter, as I said to Mr Fraser, is for others to judge.

Dr Allan: As you know, Mr Salmond, we have been looking at mountains of evidence about this over the past few months. There is probably, although I do not want to speak for the whole committee, quite a lot of agreement about the shambolic nature of some of the ways that parts of the whole story were handled. However, your written statement to the committee and some of what you have said today goes a great deal further than that and names a large number of people, including the Crown Office.

I appreciate that you have set out some of the reasons why you feel frustrated about evidence being publishable and so forth, but I wonder whether you appreciate our predicament, which is that in our report we will have to rely on evidence. Do you understand why evidence is required for some of the statements that you have made?

Alex Salmond: Any statement that I have made is evidenced by evidence that you have. I have brought forward evidence that demonstrates that after the police investigation had started, others in Government and the SNP were taking on—interfering with, if you like—that investigatory function.

The email from Ms Allison is quite specific about me, so that is pretty strong evidence. I have brought forward evidence from Anne Harvey, which is strengthened by the fact that it is contemporary, and an affidavit, which has been much redacted but nonetheless you have, which supports that in a contemporary sense from August 2018 and because it includes her reaction now. You can see that; that is evidence that has been brought forward.

There are six text messages that we have referred to that are in the public domain, some of which you have in evidence before the committee; you have the text messages that were read out earlier and you have the

"We may have lost the battle but we will win the war."

text message. I make the point that both of those were denied until they came into the public domain and before the committee, and I have read out for you today another four messages that are elsewhere in the public domain, including two that were heard at the criminal trial. That is a substantial body of evidence.

On section 162 and what is being applied, I am afraid that I do not think that the committee is helpless and I do not think that it should be helpless. That is a misapplication of a section in an act. I was First Minister, Kenny MacAskill was the justice secretary and Frank Mulholland was the Lord Advocate and between the three of us we must know what the purpose of that section was. I have pointed out exactly what the purpose was and it was never, ever to prevent a parliamentary inquiry receiving evidence.

As I pointed out in answer to questioning from Andy Wightman, this is not only about text messages in the SNP; it is about Government documents that the committee should have seen. I am not talking about just the external legal advice; I am talking about documentation that you do not have for around a four-month period between late August 2018 and early January 2019. All the documentation that you have is virtually silent on that entire period.

I do not think that a parliamentary committee on these terms is helpless to say to the people who are not giving it the evidence, "We want to have it." Of course, I think that it was offered in an evidence session by the investigating officer; she was asked that question and said that she would have a look and see if she could find it. Unless you have it and have not published it, I certainly do not see it. I do not think that you are helpless in this matter.

Dr Allan: When you mention section 162, you have said that the Crown, specifically the Lord Advocate, has more discretion than has been used on some of those matters, which would allow material to be disclosed to the committee that you obtained as part of the criminal trial.

17:45

I think that you have mentioned the Criminal Justice and Licensing (Scotland) Act 2010. As you said, that was introduced while you were First Minister. There is material in your written evidence that relates to that. If that discretion exists, is it not the case that, during the introduction of the Criminal Justice and Licensing (Scotland) Bill, the Government seemed to rule out introducing a power that would give it such discretion? When that act was in draft form, it included a provision in section 100 that explicitly allowed exactly what you seem to be suggesting: the disclosure of evidence to a third party. However, on 4 May 2010, during stage 2 of the bill, the Government removed that section from the bill.

Without getting drawn too far back into history about all of that, do you understand why some people do not feel that the Crown has the kind of discretion that you are setting out and suggesting that it has?

Alex Salmond: I compliment you on your research, Mr Allan. What I can tell you absolutely definitely is that that legislation was constructed on the back of Lord Coulsfield's report of 2007. If you read Lord Coulsfield's report, you will see exactly what the concern was. The concern was that witness statements were not being kept properly by solicitors; I presume that, in those years, their filing cabinets were full up, and statements were appearing in skips all over the country. There was also a concern that witness statements might be used for pernicious purposes by people to get revenge on people who had given them.

This committee is not a third party. You are a parliamentary committee. You are a committee of the Scottish Parliament. You are not Joe Soap or Joe Bloggs. You are a committee that is there to find out, investigate and do it in terms of the duty that you have to the people of Scotland. You are not people who are not entitled to receive that information.

You say that the Crown has not exercised discretion. That has not been the attitude of the Crown. I have with me three letters that were written to me and my lawyers. The first was provoked by our offering the clerks that we would, as opposed to giving you the evidence, set out what evidence you did not have before you as a committee at that stage. What we got from the Crown Office was a letter that said that, if we did that, it would prosecute, effectively. We got a second letter just in case we had not appreciated the content of the first letter. Finally, we got a letter that said that, even if we responded to a request by the clerk, not only would it consider us for prosecution but anybody who used that information would be prosecuted. The only way to read that is that that was this committee. If you think that that would happen in reality, I suspect that it would not. However, the degree of effort of the Crown Office to prevent this committee from seeing evidence that it requested—not just SNP text messages—goes beyond any imagination.

When the committee was provided with messages, it was provided with messages that no

committee could ever have published. That is because they were outside your remit. No evidence that I have ever asked to be produced would involve divulging the identity of complainants. The people from whom the evidence could come from the SNP were not complainants, and the committee should have had by right the Government documents concerned when it established its proceedings and was promised the full co-operation of the Government.

Andy Wightman: Thank you for your patience, Mr Salmond. Time is moving on.

I do not want to turn this inquiry into a debate about the meaning of legislation, whether that is the Arbitration (Scotland) Act 2010 or the Criminal Justice and Licensing (Scotland) Act 2010. However, I have section 162 in front of me, and section 162(2) states:

"The accused must not use or disclose the information or anything recorded in it other than in accordance with subsection (3)."

There is nothing in subsection (3) that allows you to disclose that information to a committee of the Scottish Parliament. We can have a debate about the intention of that, but the act as passed seems to be very clear.

Alex Salmond: I was only saying that it is very unusual to have the person responsible for the act sitting in front of you, so it is not just an observation. I am sure that, if you wanted to check the matter with the then justice secretary and the then Lord Advocate, they would be able to inform the committee about what the intention was.

Andy Wightman: I do not doubt that that may well have been the intention. All that I am doubting is that the intention ever made its way into an enactment. I also do not deny the fact that the information that you are talking about—Scottish Government documents—should be with the committee. I do not doubt that at all. They should be.

I want to go back to the affidavit of Anne Harvey that you mentioned. You have a view on the purpose of the email from Sue Ruddick. I do not want to rehearse that. You have made it clear what you believe the purpose is. I want to clarify a matter of principle. If I were the victim of an alleged crime and the police were investigating what I had reported, do you agree that it would be legitimate, as a matter of principle—setting aside the exact circumstances of this case—for me to contact people who I thought might be victims of the same crime because a police investigation was under way and this would be a good opportunity for those people to bring any complaints that they had to the attention of the police? Would that not be, in principle, a perfectly legitimate thing to do?

Alex Salmond: Yes, it would—although I suspect that, in that case, you would not be the person who was responsible within the organisation for doing that. There is a crossover between someone pursuing complaints and someone who is responsible for providing that information in the organisation.

Andy Wightman: I understand the specifics; you have a different interpretation of them. That was an in-principle question.

On page 2 of your fourth submission to the committee you say:

"The Parliamentary Committee has already heard evidence of activities by civil servants, special advisers, Ministers and SNP officials which taken individually could be put down to incompetence, albeit on an epic scale. However taken together, and over such a prolonged period, it becomes impossible to explain such conduct as inadvertent co-incidence."

You say that

"The inescapable conclusion is of a malicious and concerted attempt to damage my reputation and remove me from public life in Scotland."

You have said that you can back up everything that you say in your written evidence to us. I put it to you that nothing that we have heard proves that that is the "inescapable conclusion". Although such a conclusion may be consistent with those facts, there is nothing that actually proves it. Would you agree?

Alex Salmond: No. There is a reason why I set it out like that, and I can go through various things if you would like me to.

If I was to highlight six things to you that you know, the first would be the timing of the policy on former ministers and the fact that, as has already been said, there was a query about Edinburgh airport two days before the policy began to be constructed. I have already said that that query came to nothing, understandably so, but I do not think that that was the reaction of the permanent secretary at the time. That was on 6 November. On 8 and 9 November there were the first iterations of any sort of policy from two different civil servants, one who said that he was starting with a blank sheet of paper but there was another civil servant who also, presumably, had a blank sheet of paper.

Secondly, I would have thought that the open record meeting between the permanent secretary and the First Minister on 29 or 30 November is significant, basically because, until then, every iteration of the policy placed the First Minister in the policy at an early stage. By 5 December, the policy had changed dramatically so that the permanent secretary became the key decision maker. The committee knows that the permanent secretary had knowledge of the emerging

complaints, certainly by 22 November, and actually before then. Therefore, the very least you could say is that the permanent secretary put herself at the centre of a policy, as a decision maker, with the knowledge that complaints were coming forward. That is the minimum conclusion that you could draw from that, and it was a radical departure in Scottish Government policy.

Thirdly, there is the Crown Agent. I think that it was you who pointed out that the policy says that, under certain circumstances, the Scottish Government would refer to the police. It does not say that the Government would refer to the Crown Agent. I think that that is significant, and it is highly significant that the Crown Agent's attempt to give the chief constable and the lead officer a copy of the permanent secretary's report was declined by them, because they said that it might influence their investigation. There was also the fact that, despite the information that was offered by the police that they would be opposed to matters becoming public in case it contaminated their investigation, it was the intention to release a press statement on 23 August, two days later. That was, of course, stopped by the threat of interdict.

The fourth point that I would put, which is well known to the committee, concerns the question of the external legal advice, which, as we know, was probably provided on 31 October, and the extraordinary lengths that have been gone to to prevent that advice from being shared with the committee and the Parliament. We know that the content of that advice was strong. We do not know the full extent of it, but we can certainly conclude that the external legal advisers were telling the Government at that stage that the prospects were not looking good, to say the least, for the judicial review. Therefore, what possible reason could there be for extending that action—which would be much more difficult when it came to court than it would be in an earlier concession, never mind the hundreds of thousands of pounds that were being wasted—unless there was a hope of the review perhaps being sisted and never coming to court? That is why it comes to be a major point in terms of the non-provision of sisting information.

My fifth point, which we have been discussing, concerns the question of the integrity of the investigative function. My belief is that, once the police start an investigation, it is not for other agencies to conduct parallel investigations. That is quite wrong. It is one matter to assist the police with their inquiries, which every responsible citizen should do, but you should not try to assist them with their inquiries to the extent of producing the evidence that you are frustrated that the police cannot find, or creating the evidence, or suborning witnesses, or pressurising witnesses, or pressurising the police—on all of which the committee has information.

Finally, although the full extent of neither the Government information nor the text messages is known to the committee, between us, Ms Mitchell and I have already read out half a dozen such messages that are in the public domain and which can be considered by the committee, because the one exemption that section 162 provides is for information that is in the public domain.

I think that those six instances give you pretty substantial justification for what you have just read out to me. We can look at those instances individually, but if we look at all six—there are perhaps another dozen that I could mention as well—and take those as the main themes, that is not an unreasonable conclusion. Obviously, my conclusion is informed by other material that I have seen.

Andy Wightman: Thank you very much for that.

I have four or five points on your fourth submission that should be dealt with a little more briefly. On page 11 of your fourth submission, you say:

> "From a very early stage in the Judicial Review the Government realised that they were at risk of losing. By October they were told by external counsel that on the balance of probability they would likely lose."

You have said that everything that you write here can be backed up by evidence. What is your evidence of that? Given that we have not seen that advice, how do you reach that conclusion?

Alex Salmond: How do you prove advice that has not been produced?

Andy Wightman: You say quite clearly:

> "By October they were told".

How do you know that?

Alex Salmond: I am saying that that is the case, and I have every reason to believe that that is the case, and I believe that that is the reason why you have not been shown the external counsel legal advice.

Andy Wightman: Have you seen it?

Alex Salmond: No, but I would not be here saying that that was the case unless it absolutely was the case.

Andy Wightman: Because you are speaking under oath.

Alex Salmond: I am speaking under oath, yes. That is whole point of speaking under oath. You will not be getting a correcting letter several days hence to correct that statement. I have absolute reason to believe that the legal advice on 31 October, as I understand it—it was certainly

provided about then—indicated that, on the balance of probability, the Government was going to lose the judicial review.

Andy Wightman: Is it on the same basis on which you have just answered that question that you write on page 15 of your fourth submission:

"This information on likely defeat in the JR was communicated to key decision makers—the Permanent Secretary, First Minster, the Lord Advocate, the Chief of Staff—in meetings with external Counsel through October and November 2018"?

Is it on the same basis that you believe that to be true?

18:00

Alex Salmond: I believe it also on the basis that you have seen from the freedom of information request—the list of 17 meetings, and the sequence of meetings with external counsel. Paul Cackette indicated, as was read out earlier, that nobody was under any illusions about the significance of the information; he did not explain why it had not come forward but, nonetheless, no one was under any illusions. That sequence of meetings with external counsel was set out in the FOI response. You will have seen that, at three meetings running, the First Minister's chief of staff and the permanent secretary were there; and the permanent secretary and the First Minister were there in early November 2018. You have that evidence plus the evidence from the FOI and the sequence of meetings.

What you do not have, of course, is anything from those meetings—apart from the external legal advice itself—or from any of the daily meetings that were spoken about by Paul Cackette or from any of the three-times-a-week meetings that were spoken about by Judith Mackinnon. I think that you should go and get them.

Andy Wightman: It is not for want of trying, Mr Salmond. We have tried, I think.

I come to my second-last question. The report of the Information Commissioner's Office that you helpfully provided us with is an investigation—I understand that it is on an appeal or review of a decision but, nevertheless, it is a detailed analysis of the attempt to ascertain why information in the decision report got into the public domain. At paragraph 4.3, the author of the letter—forgive me, I do not recall who it is but that does not matter—says:

"I have also considered the statement of Detective Chief Superintendent [Redacted], helpfully provided by Levy & McRae. The statement confirms that at a meeting on the 21 August 2018, the police were offered a copy of the internal misconduct investigation report but refused to take it. Furthermore, at that meeting, DCS [Redacted] voiced concerns about the"

Scottish Government

"making a public statement about the outcome of their investigations."

Have you seen that statement?

Alex Salmond: The proposed statement of two days later?

Andy Wightman: No; sorry—the statement of Detective Chief Superintendent "Redacted".

Alex Salmond: Yes, and you have just raised a very interesting point, because that is an exemption from section 162. The reason we were able to give the ICO a copy of that statement is because the Crown Office permitted us to do so.

We have just had a discussion to pinpoint whether this committee was entitled to see information under section 162. That statement was provided for the ICO with the permission of the Crown Office. In itself, that was an exemption to section 162. The idea was put forward a few seconds ago that the Crown Office has no discretion on such matters; clearly, it found discretion as far as the ICO was concerned. I have no complaints about that. Providing that information to assist the ICO in its investigations was exactly the right thing to do. My argument is that it would also be the right thing to do to assist a committee of the Scottish Parliament.

Andy Wightman: My reason for asking the question was due to my own ignorance as to whether the committee has that statement. To your knowledge, has it been disclosed to the committee?

Alex Salmond: No. It was disclosed to the ICO as a—

Andy Wightman: Do you have a copy of it?

Alex Salmond: Levy & McRae has a copy.

Andy Wightman: If the committee were to ask Levy & McRae, would it be able to provide it?

Alex Salmond: Not according to the Crown Office.

Andy Wightman: Okay, thanks. That is fine.

Alex Salmond: We can certainly say that we will get a fourth letter telling us what we can and cannot provide to a parliamentary committee.

The ICO investigator's report is, as you know, very revealing. Earlier, I raised the apparent discrepancy between what is said in that report about who had access to the information—in terms of the principal private secretary in the First Minister's office—and what has been said to this committee and then corrected. I think that that is worth pursuing.

Andy Wightman: Thanks. Finally, I go back to questions from Jackie Baillie about whether meetings on and subsequent to 2 April, for example, involved the First Minister in a party capacity or on Government business. I put it to you that there is a third possibility. Actually, the subject matter of the meetings was complaints by civil servants against a former minister as part of an employment process—a process that you disagree with and all the rest of it. The subject was a complaints procedure in the civil service. That is not really a party issue and nor is it really a Government issue. Government issues are about the policy on housing, independence and so on. I put it to you that there is a third possibility—that it was an internal employment matter—and that it is not quite as stark as being either a party or a Government matter.

Alex Salmond: You can put that to me, but that is not the point that I have been making about the meetings. What I have said about the meetings is that there was never any doubt about what the subject matter was. It is for others to explain, as they have been trying to do in front of the committee, whether they think that it was a party meeting or a Government meeting. My point is that there was never any dubiety about what the meeting was about. In my view, there is no dubiety about the meeting on 29 March, which set up the meeting on 2 April, and there is no dubiety that the 29 March meeting somehow disappeared from the public record for an extended period until the fact of it was broadcast on Sky television in July last year.

Those are the questions that I am asking. You could put any construction on whether that is a meeting of one type or a hybrid meeting, or whatever it might be, but that has not been my point. It is maybe a point that others have developed, but not me.

The Convener: We are almost at a close. I have Maureen Watt and then Margaret Mitchell, both with short contributions.

Maureen Watt: Mr Salmond, you said in your written evidence that you support protecting the anonymity of complainers and that you have upheld that at every stage in the process, yet you have provided material directly to committee MSPs, some of which was then leaked into the public domain. There is a process that evidence goes to committee clerks so that it can be scrutinised by committee lawyers. It is not up to you or your lawyers; it is up to committee clerks and lawyers to decide what should go to MSPs and whether there is a risk that the material could lead to identification. What was your motivation for not following the correct procedure, which was designed to protect the identities of complainers in a criminal trial?

Alex Salmond: Let me first refute absolutely the suggestion that anything that we have done, published or sent brings into question the anonymity of complainants. I have already given you the example that is under your purview in terms of the remit of the committee in relation to the civil case and the efforts to which we went to protect that anonymity in the Court of Session hearing, when the Government did not bother to turn up.

I do not accept the argument that we should not send stuff to members of a parliamentary committee and that that is somehow an irresponsible thing to do or not the right thing to do. Every single member of the committee has their duties and responsibilities as a member of the Scottish Parliament. They are equal before the committee, and that is not sending information to a parliamentary committee. It was interesting that, when Kenny MacAskill sent the committee information that he had received and sent it to the Crown Office, nothing happened with that information. It was not until it was published in the press that it became public. To me, that was an extraordinary situation to develop.

To answer your question, I do not think that it was a wrong or irresponsible thing to do. I refute absolutely the suggestion that anything that we have submitted to anybody puts a question mark on the anonymity of complainants. Furthermore, the one paragraph that the Crown Office objected to—I know that you follow these things closely—was objected to not on the basis of its being jigsaw identification in itself but on the basis that information that had been previously published by the committee led to the jigsaw identification.

The arguments can get technical, but it is beyond argument that, two weeks ago, the Crown Office did not consider anything in the submission that was made to the committee to be in danger of breaching anything. For some reason, earlier this week, on the very point of my coming before the committee, there was a change in the position. Anybody—and everybody—who has seen that evidence cannot understand why anything in it would give rise to a risk of identification. These things are there—correctly—to protect the vulnerable, not to shield the mighty.

The Convener: I remind members again that that will be an issue for the Scottish Parliamentary Corporate Body, rather than for this committee.

Margaret Mitchell: These are my final questions, Mr Salmond.

I do not know whether you are aware that the committee wrote to Police Scotland and that we received information about the contact that was made with it as the policy was developed in that three-month period. Police Scotland told us that

there were six meetings between the first contact on 5 December 2017 and 3 August. Hypothetical questions were put to the police, who, without knowing any details, advised that if

"criminality was suspected, individuals should be directed to support and advocacy".

The submission goes on to say that

"This advice was reiterated on several occasions".

It concludes by saying that, if the Government sought to investigate itself, it should note that it was not qualified to do so and did not have the training.

That was before the final policy was concluded. My question, which goes back to Stuart McMillan's question, is on the duty of care to the women who came forward. We know that they did not want to go to the police; that has been substantiated in evidence. We would absolutely want a sounding board and duty of care put in place, but there was an intensity of contact with the women. It might have been your solicitors who said that it might have bordered on encouragement. If that is the case, and if the malicious plan to discredit you and remove you from public life that you have outlined was in place, the big question is: what was the motivation? That is what everyone is asking. Why did they do it? It just seems so bizarre. Do you have a reason why the process started and, perhaps, got a bit out of hand?

Alex Salmond: I think that the motivations changed over time. For clarity, I have never suggested for a second that the original complaints and complainers had anything to do with a motivation in regard to me and politics, or anything like that. The complainants were incredibly poorly served, as you outlined, by being forced into a criminal process against their direct wishes and against every assurance that they had been given for months that that would not happen. I think that it was Judith Mackinnon who was asked:

"Who asked you to sound them out?"—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 1 December 2020; c 8.]

She said that she thought that it was Nicky Richards. It was not; it was the permanent secretary. The consequences of that for the people concerned are huge. That was totally wrong—completely and utterly wrong.

The motivation for what I have said of the people who I have named in the document is quite different. It came to be believed that the solution to a huge, looming, enormous difficulty and problem was not just to consider, as I am sure the Lord Advocate did, sisting as an academic exercise or something that might have to come into play, but to use it as a means of preventing something unfortunate—more than unfortunate: disastrous—happening in terms of a defeat in the judicial review.

18:15

The two things became combined. It became very important that the criminal case overtook the judicial review. The messages that I have seen indicate that that was a prime motivation. When I saw them on 23 January last year, or maybe earlier, I found them extraordinary—probably the most shocking thing that I had ever seen in my life. If they had not been there in front of me, I could not have possibly believed it.

If these people ever come before a committee, they should be asked about their motivations. What they revealed of themselves in these text messages indicates that the prime concern was defeat in the judicial review and the idea that, somehow, the criminal case would overtake it or, alternatively, after the judicial review was lost, the criminal case against me would, of course, blanket out all other publicity and be the most enormous story. As I said earlier, if I had been convicted of anything, we would not be having these hearings. That is what I would point to as motivation.

Margaret Mitchell: So there would be no motivation with the thought in mind that you were a private citizen but you might have been contemplating a return to public life. The Government was told so many times that the procedure was unlawful and that people were not qualified to carry it out, it was told that serious concerns should be directed to advocacy, and Government staff were not trained, but the Government persisted with the judicial review to a point that defies comprehension. Was that just the result of absolute incompetence from well-qualified civil servants with gilt-edged pensions who are meant to be impartial—if so, that is deeply worrying—or was there something else behind it? What was your relationship with the First Minister over the years?

Alex Salmond: First, I do not think that civil servants had a political motivation; I think that motivations lay elsewhere. In the case of the permanent secretary, I have seen previous evidence sessions and documents that suggest that her motivation was to be seen to be in the vanguard of events perhaps, but you would have to ask the permanent secretary exactly what her motivation was.

In relation to not conceding the judicial review, I think that you are absolutely correct. If the judicial review had been conceded in October, for example, the bill to the public would have been very small compared to what it became. The huge bills came from having to go to the commission

and diligence two days before Christmas, as it sat and as people gave evidence under oath. If any calculation said that the Government would lose the judicial review, it would have to ask, "What's the best thing to do?" It would be to settle it as quickly as it could and to minimise the damage, unless, of course, it was believed that, for some reason or another, the judicial review might never come to court and that it might be sisted into the ever after by the events in the criminal case. My strong belief is that, unfortunately, some people were not willing to let matters take their course and wanted to give the criminal case a big shove forward. The day I read those messages was one of the most distressing days of my life.

Andy Wightman: I have one very short question. Do you have full confidence in the independent advisers on the ministerial code, and, therefore, can we rely on Mr Hamilton's findings, when they are published, as an authoritative statement of the facts and circumstances that he has been asked to look at?

Alex Salmond: One, I set up the system; two, I appointed Mr Hamilton. I should say that I have never met him in my life, and I have corresponded with him only recently. I am being interviewed by him on, I think, Monday or Tuesday—certainly in the very near future. I have every reason to believe that he is a man of great integrity and experience. I appointed him to the panel.

Of course, the panel was introduced by me. Before that, there was no independent supervision of the ministerial code at all. I think that the panel has been a good innovation. The one thing that I would say from recent experience—you have seen the correspondence—is that I think it is heavily unsatisfactory that the remit should be confined in any way. The remit should be determined by the independent panellists, not set in strict terms. I hope and believe that that problem has been overcome. I have every confidence that Mr Hamilton will discharge his duties in a proper way, and I think that it is fundamentally a good system.

The Convener: I am going to be very strict from now on. Jackie Baillie assures me, with great intent, that she has a tiny question. Can I have a tiny answer please, Mr Salmond, if at all possible?

Jackie Baillie: It is, indeed, a tiny question, convener—I promise.

Mr Salmond, you have been very, very careful not to call for Nicola Sturgeon to resign. Does that mean that you have forgiven her for her handling of this?

Alex Salmond: No. It means that, in relation to the people I have named in the evidence that I have put forward, I believe there is documentary evidence for the reasons why they should consider their positions. Whether you call it being careful or anything else, I do not think that it is for me to judge what happens to someone who may have broken the ministerial code. If they have broken the ministerial code—if Mr Hamilton or this committee finds that—I suppose that the next question is, what is the breach? That will then be determined. However, I am in the fortunate position, as a former First Minister, that that is no longer my responsibility. It is partially the responsibility of this committee, substantially the responsibility of Mr James Hamilton and fully the responsibility of the Scottish Parliament.

The Convener: I will ask one final little question, following on from what Margaret Mitchell was talking about. There has obviously been a lot of discussion and the word "conspiracy" has been used a lot, although I note that you said that it is not a word that you want to use, Mr Salmond; you talk about a "malicious plan". From what I have picked up today, you have spoken repeatedly about your concern about this starting after the police investigation started. Can you confirm that that is when you believe that any plan started that was—what could we say?—"malicious" towards you in its intent?

Alex Salmond: Yes. That is my view on the nature of what I have seen, and it came about because of the circumstances that I have described around what was going to happen in the judicial review and the hope that the police investigation would come to the rescue of that. I have many pieces of information.

I would say to you that that almost happened. That was very, very close to happening, not just in terms of the timing of the police interview, but because the original date for the police interview came before the judicial review was due to hear. It was only through the great work of my legal team that we were able to argue that that should not happen. That almost came to pass. We are now in a position where the court and jury have decided; therefore, the matters that are before you are now very pertinent in the public interest again.

The broad answer to your question is yes—that is correct.

The Convener: Thank you. Do you wish to make any final comments, Mr Salmond?

Alex Salmond: I will make only one, which is that, beyond the individual detail of this, there is an underlying issue about the powers of the Parliament, the powers of a parliamentary committee, the obstruction from the civil service, the obstruction—as I see it—from the Crown Office, and the leadership of the Crown Office in terms of the parliamentary committee doing its job. I believe, hope and know that there would be a desire in this committee to discharge that function if it was clearly able to do so.

We have examined the issue of section 162, whether there can be exemptions from it, whether that presents difficulties, and the behaviour of the Crown Office with regard to it. I think that there is a solution; I will offer it to the committee and leave it in your hands. Hitherto, you have been serving orders, as a Parliament, on people who have been unwilling to give you information. I suggest that you use your powers under the Scotland Act 1998—it is a matter for this committee—to serve an order on my solicitors, who are extremely willing to give you information. It is a matter for this committee, but, if you do so, I am sure that you will get full co-operation under the law from my solicitors.

Furthermore—if we are on a roll here—the information of the letters from the Crown Office that have prevented me from furnishing you with that information hitherto is something that you might also like to request under the same powers of the Scotland Act 1998, along with any other information that Mr Wightman has come up with today that would also be of assistance to the committee—for example, the official record of the commission and diligence, of which I think I have all the documents here, as it happens.

If you decide, as a committee, that you would like to go down that course—clearly, you have to deliberate—and you serve that order on my solicitors, you will have the documentation on Monday morning, in time for your sessions with the Lord Advocate and, as I understand it, the Crown Agent, Mr David Harvie. It is a matter for you, convener.

Other than that, I thank all committee members for their courtesy and forbearance—and particularly you, convener, for allowing the break earlier. That was much appreciated. I wish you well in your deliberations.

The Convener: Thank you, Mr Salmond. There may be some other things that the committee feels it would like information on. If there are, we can write to you via your solicitor. It may be that you will wish to send us further information when you have looked over the *Official Report* of today's meeting. Please send that to our clerks, as previously requested and as per our publication policy. Thank you very much for your evidence and for volunteering to come today.

We will now move on to the next agenda item, so I close the public part of the meeting.

18:27

Meeting continued in private until 18:46.

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