



OFFICIAL REPORT
AITHISG OIFIGEIL

Committee on the Scottish Government Handling of Harassment Complaints

Wednesday 3 March 2021

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 3 March 2021

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**COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT
COMPLAINTS
15th 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:

Nicola Sturgeon (The First Minister)

Andy Wightman (Lothian) (Ind)

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Committee on the Scottish Government Handling of Harassment Complaints

Wednesday 3 March 2021

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Linda Fabiani): Good morning, everyone, and welcome to the 15th meeting in 2021 of the Committee on the Scottish Government Handling of Harassment Complaints.

Agenda item 1 is to decide whether consideration of the committee's draft report should be taken in private at future meetings. Does the committee agree?

Members indicated agreement.

Scottish Government Handling of Harassment Complaints

The Convener: Agenda item 2 is our main public business today. It is an evidence session on the Scottish Government's handling of harassment complaints, in which we will hear from the First Minister of Scotland, Nicola Sturgeon MSP.

At the outset, I note for members, the First Minister and all those who are watching this evidence session at home, that due to the necessary mitigations that are in place to allow us to meet in person today, we will suspend the meeting periodically to allow for the room to be ventilated and cleaned. Our first suspension will be at around 11 am.

I also note for those who are watching that every effort has been made to make this in-person evidence session as safe as possible for all involved, including through social distancing around the table and in the committee room. I remind members of the committee and media representatives to continue to observe social distancing when entering and leaving the committee room.

As I have said at the outset of every meeting, 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 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, which 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" 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, please do not refer to civil servants by name unless it is absolutely necessary, and do not refer to civil servants by name if they are below senior civil service level. I emphasise that the committee would be content to receive written

supplementary points, should any witness to the inquiry have concerns that their response might stray into such territory.

Given the number of documents on complaints handling, for ease of reference when asking a question please mention the document number, footnote reference and whether it is in batch 1 or 2.

With that, I welcome the First Minister and invite Ms Sturgeon to make the affirmation.

The First Minister (Nicola Sturgeon) made a solemn affirmation.

The Convener: I invite the First Minister to make an opening statement.

The First Minister (Nicola Sturgeon): Thank you. The spotlight that was shone on historical workplace harassment in late 2017 was long overdue. It was absolutely right at that time for my Government to review its processes, consider any weaknesses and gaps in them and put in place a procedure that would allow complaints, including those of a historical nature, to be investigated.

When complaints were made about Alex Salmond, it was also absolutely right that the Government took them seriously and subjected them to investigation. An individual's profile, status or connections should not result in complaints of that nature being ignored or swept under the carpet. That, in this case, it was a former First Minister does not change that.

The procedure that was adopted in late 2017 in the wake of the #MeToo concerns was drafted by civil servants, largely independent of me. However, I was kept abreast of its development, and I did sign it off. As a result of a mistake that was made—a very serious mistake in the investigation of the complaints against Alex Salmond—two women were failed and taxpayers' money was lost. I deeply regret that. Although I was not aware of the error at the time, I am the head of the Scottish Government, so I want to take this opportunity to say that I am sorry to the two women involved and to the wider public.

I also accept without any reservation that my actions deserve to be scrutinised. Two years ago, I volunteered for such scrutiny by referring matters relating to my contact with Alex Salmond to the independent adviser on the ministerial code, James Hamilton. Mr Hamilton is conducting an independent investigation, and I await his findings. His investigation is not being conducted in public, although his conclusions will, of course, be published. As a result of that, he is able to hear and consider material that, because of a contempt of court order, this committee cannot consider, including, as I understand it, material from people who were actually party to discussions that others

who were not party to those discussions are seeking to attest to. Mr Hamilton has offered no commentary on his investigation, and neither will I.

However, this committee and the public are entitled to hear from me directly on the matters under consideration, so today I will do my best to answer every question that is asked of me directly and in as much detail as I can.

First, on 8 January 2019, I volunteered to Parliament my contact with Alex Salmond. I stated:

"On 2 April 2018, he informed me about the complaints against him".—[*Official Report*, 8 January 2019; c 61.]

I will explain why I stand by that statement.

Secondly, I will set out why I did not immediately record the 2 April meeting within the Scottish Government—a decision that was based entirely on my desire to protect the independence and confidentiality of the process.

Thirdly, I will outline why I believe that it was right that I did not intervene in the investigation when I became aware of it, even though Alex Salmond asked me to do so.

Finally, although the mistake that was made in the conduct of the investigation meant, ultimately, that the action for judicial review could not be defended, I will demonstrate that the decisions that were taken at each stage of it were legally sound.

I am sure that we will return to all those matters in detail. However, in these opening remarks, I want to focus on the issues around my contact with Alex Salmond on 2 April, and my contact three days earlier with his former chief of staff. Alex has claimed in his testimony to the committee that the meeting in my home on 2 April took place with a shared understanding, on the part of all the participants, of the issues for discussion—in other words, that he turned up to the meeting believing that I already knew everything. It is worth noting, even just in passing, that that, in fact, represents a change in his position. On 14 January 2019, after the conclusion of the judicial review, a spokesperson issued this comment on his behalf:

"Alex has no certainty as to the state of knowledge of the first minister before then,"

by which he meant 2 April. A brief account of what happened on 2 April suggests that, as per his comment in January 2019, he did not assume full knowledge on my part, in advance.

When he arrived at my house, he was insistent that he speak to me entirely privately, away from his former chief of staff Geoff Aberdein and Duncan Hamilton, who had accompanied him, and my chief of staff, who was with me. That would have seemed unnecessary, had there already

been a shared understanding on the part of all of us.

He then asked me to read a letter that he had received from the permanent secretary. That letter set out the fact that complaints of sexual harassment had been made against him by two individuals. It made it clear that the complaints were being investigated under the procedure that was adopted at the end of 2017, and it set out the details of what he was alleged to have done.

Reading that letter is a moment in my life that I will never forget. Although he denied the allegations, he gave me his account of one of the incidents that was complained of, which he said he had apologised for at the time. What he described constituted, in my view, deeply inappropriate behaviour on his part—which is perhaps another reason why that moment is embedded so strongly in my mind. At the time when he was showing me the letter and outlining his account, Geoff and Duncan were doing the same with my chief of staff. Again, that would seem to be unnecessary, had she and I known everything in advance.

Questions have been raised about a conversation that I had three days earlier, on 29 March 2018, with Geoff Aberdeen and another individual. I have not seen Mr Aberdeen's account of that conversation. However, I obviously know the account that Mr Salmond has given of the meeting, although he also said last Friday that he had not been given a read-out of it.

Let me say up front that I have no wish to question the sincerity of Geoff's recollection. Geoff Aberdeen is somebody whom I remain extremely fond of, but it is clear that my recollection is different and that I did not, and do not, attach to that discussion the same significance as he attached to it. The purpose of the conversation seemed to be to persuade me to meet Alex as soon as possible, which I agreed to do in that conversation. Geoff indicated that a harassment-type issue had arisen, but my recollection is that he did so in general terms.

Since an approach from Sky News in November 2017—I mention this in my written evidence to the committee—I had harboured a lingering suspicion that such issues in relation to Mr Salmond might rear their head, so hearing of a potential issue would not have been, in itself, a massive shock. What I recall most strongly about the conversation is how worried Geoff seemed to be about Alex's welfare and state of mind, which, as a friend, concerned me. He also said that he thought that Alex might be considering resigning his party membership. It was those factors that led me to agree to meet him, and it was those factors that placed the meeting on 2 April firmly in the personal and party space.

Not unreasonably at all, some people have asked how I could have forgotten the conversation on 29 March, and I certainly wish that my memory of it was more vivid, but as I have stated, it was the detail of the complaints under the procedure that I was given on 2 April that was significant and, indeed, shocking. That was the moment at which any suspicions that I had, or general awareness that there was a problem, became actual and detailed knowledge.

It is also worth saying that, even if I had known on 29 March everything that I learned on 2 April, my actions would not necessarily have been different. Given what I was told about the distress that Alex was in and how it was suggested to me that he might be intending to handle matters, it is likely that I would have still agreed to meet him, as a friend and as his party leader.

As I also set out in written evidence, my decision not to record the meeting on 2 April immediately was not about the classification that I gave it; it was not about it being a party, rather than Government, meeting. It was because I did not want to compromise the independence or the confidentiality of the process that was under way.

All that begs the question why I would have gone to great lengths to conceal a meeting that had taken place a mere three days earlier. Let me turn to my decision not to immediately report the contact. Sections 4.22 and 4.23 of the "Scottish Ministerial Code" seek to guard against undisclosed outside influence on decisions that ministers are involved in, and are likely to have an influence on, such as changes in policy or the awarding of contracts.

The situation was, as I saw it, the opposite of that. The terms of the procedure excluded me from any investigation into a former minister. I had no role in the process and should not even have known that an investigation was under way.

In my judgement, the undue influence that section 4 is designed to avoid would have been more likely to arise had those who were conducting the investigation been informed that I knew about it. I did not want to take the risk that they might be influenced—even subconsciously—by any assumption of how I might want the matter to be handled: their ability to do the job independently would be best protected by my saying nothing.

It is also my reading of the code that, had I reported it, the fact of my meeting with Alex Salmond would have had to be made public, potentially breaching the confidentiality of the process.

It is for those reasons that I did not immediately record the meeting on 2 April, or the subsequent phone call on 23rd April, in which Mr Salmond

wanted me to tell the permanent secretary that I knew about the investigation and to persuade her to agree to mediation.

It is worth noting that the ministerial code places a number of obligations on ministers. Respect for the impartiality of civil servants and the confidentiality of Government business are also obligations that are imposed on me by the code.

My judgment changed when Alex Salmond made it clear to me that he was seriously considering legal action. I felt then that I had no choice but to inform the permanent secretary, which I did on 6 June 2018. I also confirmed to her that I had no intention of intervening in the process—and I did not intervene in the process. Mr Salmond's anger at me for that is, I think, evident, but intervening in a process that I was expressly excluded from, and trying on behalf of a close associate to change the course that it might take, would have been an abuse of my role.

The committee is also rightly interested in the judicial review, and the Government has now published legal advice that inform the decisions that we took. It is clear from that advice that although the Government had very strong prospects of defending Mr Salmond's initial challenge, that changed over a two-month period from late October to late December. The concerns raised by counsel, caused by emerging evidence regarding the role of the investigating officer, undoubtedly caused me and others to pause to check whether we should continue to defend the case.

However, as late as December 11, the view of law officers, following consultation with counsel, was as follows:

"Very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard"

and

"Senior counsel made clear that his note was not intended to convey that he didn't think we have a stateable case."

They concluded that, including on the appointment of the investigating officer,

"we have credible arguments to make across the petition."

It was when that changed that the decision was taken to concede.

In any legal challenge that a Government faces, there is a balance of risk. That risk cannot be eliminated, but the task of ministers is to consider carefully all the advice that we receive and the broader public interest. The test in the ministerial code is not the view of external lawyers, but of law officers.

09:15

Finally, convener—and, you will be glad to hear, briefly, although I hope to say more as we get into questions—I feel that I must rebut the absurd suggestion that anyone acted with malice or as part of a plot against Alex Salmond. That claim is not based on any fact. What happened is this, and it is simple. A number of women made serious complaints about Alex Salmond's behaviour. The Government, despite the mistake that it undoubtedly made, tried to do the right thing.

As First Minister, I refused to follow the age-old pattern of allowing a powerful man to use his status and connections to get what he wants. The police conducted an independent criminal investigation. The Crown Office, as it does in prosecutions every day of the week, considered the evidence and decided that there was a case to answer. A court and a jury did their jobs, and now this committee and an independent investigation are considering what happened and why.

For my part, I am, if not relishing the prospect, relieved to be finally facing the committee, but given all that has brought us to this moment, being here also makes me really sad. In all the legitimate consideration of this, sometimes the personal and human elements of the situation are lost. Alex spoke on Friday about what a nightmare the last couple of years have been for him, and I do not doubt that. I have thought often about the impact on him. He was someone I cared about for a long time. Maybe that is why, on Friday, I found myself searching for any sign—any sign at all—that he recognised how difficult this has been for others, too; first and foremost, for the women who believed that his behaviour towards them was inappropriate, but also for those of us who have campaigned with him, worked with him, cared for him and considered him a friend, and who now stand unfairly accused of plotting against him.

That he was acquitted, by a jury, of criminal conduct is beyond question. It is beyond question, but I know just from what he told me that his behaviour was not always appropriate, and yet, across six hours of testimony, there was not a single word of regret, reflection or even simple acknowledgement of that. I can only hope that, in private, the reality might be different.

Today, though, is about my actions. I have never claimed, in this or anything else, to be infallible. I have searched my soul on all this many, many times over. It might very well be that I did not get everything right—that is for others to judge—but in one of the most invidious political and personal situations that I have ever faced, I believe that I acted properly and appropriately and that, overall, I made the best judgments I could make.

For anyone—or, at least, anyone willing to listen with an open mind—that is what I will seek to demonstrate today.

The Convener: Thank you, First Minister. We will now go to questions. Our committee inquiry, and therefore our report, is split into various sections. It is about the development and implementation of the policy, the judicial review, and, of course, the ministerial code. We will attempt to go through those chronologically for ease of the session, although there will be crossovers, which is understandable.

I will ask the first question about the new policy that was put in place. Will you give us an outline of the development process for that policy?

The First Minister: The genesis of the new policy was of course the #MeToo revelations of late 2017. I do not need to go into detail on that for people around the table. It was something that rocked the United Kingdom and many parts of the world. It began with very serious historical allegations about people in the entertainment and media business, and it quickly became something that gripped the political system here in the UK. There were allegations about sexual harassment, including historical sexual harassment, at Westminster. Then, in late October—I am sure that everybody around the table vividly remembers this—there were allegations, which I think were mainly in the *Sunday Herald*, about sexual harassment in this institution. There was a concern that there were not proper processes in place to allow complaints to come forward and that people—women—did not have the confidence to bring complaints forward. That is the backdrop.

I wrote to the Presiding Officer, I believe on the Monday after that story, to suggest cross-party discussions, which took place the following day, as I recall. That morning, the Cabinet had a discussion about the matter—as, I believe, the UK Government was doing or had been doing—and decided that we should review our processes. We did not decide what the outcome of that review should be, but we decided that it was right, given the concerns that had been raised about the lack of processes, or at least the lack of processes that people had confidence in, that that should happen.

The Cabinet gave that commission to the senior civil service, and the Deputy First Minister indicated that to Parliament that afternoon, I believe. I think it was that afternoon when I took part in discussions in the Presiding Officer's room here with representatives of other parties. It is fair to say that, at that time, all parties were reviewing their processes, too. I know that my party was, and it did that.

I know that you have heard evidence from senior civil servants who were very involved in that

work. They did an assessment of the gaps. There has been discussion about a route map that they had prepared, and early drafts of the procedure were prepared.

On the inclusion of former ministers, one of the gaps that was identified was the inability, under our existing processes, to investigate or address historical complaints. The inclusion of former ministers was there from the outset. That had not been expressly requested by me or by the Cabinet; it was included because there was perceived to be a gap.

The procedure then went through an iterative process of drafting, redrafting and changes. I would summarise three key policy changes that took place over that period, from early November 2017 to my signing off the policy on 20 December. First, current ministers came to be added in, the view being—as I understand it—that it made sense to have all ministers dealt with under the same procedure.

Secondly, at a later stage, which I think was around mid to late November, my role, a First Minister's role—effectively a gateway part of the process of deciding, with the permanent secretary, whether an investigation should be triggered—was removed so that it was something that the permanent secretary could decide on her own, and a First Minister would not have any role in that decision. Given that it was a procedure about politicians or former politicians, I thought that that was appropriate. Finally, the change that was made towards the end of the development of the procedure, closer to my signing it off, was that, in the case of former ministers, a First Minister should not be told about the investigation or the outcome until the end of that process.

I noted that Alex Salmond said on Friday that he could not understand why that was the case for former ministers and not current ministers. I confess to being quite astounded that a former First Minister would not understand that distinction. To be frank, my preference, given that this was about politicians or ex-politicians, would have been for that to have been the case overall. For current ministers, it is important that a First Minister knows of any concerns that are being raised, because you have an on-going duty to decide whether somebody continues to be fit to hold office. That is the reason for that distinction.

That is a summary account, but I am happy to go into detail on any of those aspects if members wish.

The Convener: Thank you—I am sure that that will be the case.

Margaret Mitchell (Central Scotland) (Con): Good morning, First Minister. I will take you back

to when the inquiry was announced in January 2019, when you said:

“I say that I will answer any question to the fullest extent possible and that my Government will co-operate fully with all and any inquiries.”

You went on to say:

“The inquiries will be able to request whatever material they want, and I undertake today that we will provide whatever material they request.”—[*Official Report*, 17 January 2019; c10, 14.]

Why did that not happen, First Minister?

The First Minister: Ms Mitchell, I consider that that has happened. I concede at the outset that the committee has been frustrated about being unable to access certain information that it wanted to access, and I readily acknowledge that. Some of that information and material is not within the control of the Scottish Government or in its gift to provide. I will not go into that, because the committee knows about the different categories. The Scottish Government has made available to the committee copious amounts of written information, documents and material, and, of course, civil servants have given oral evidence and, now today, I am giving oral evidence.

The main issue of difference between the Government and the committee—I recognise this and the different views that exist—is around legal advice. There is a long-standing convention that Governments do not release publicly their legal advice. It is not a convention that is in place for no good reason. I know as a minister of some long standing now that it is really important for the governance of the country and to ensure that ministers are able to base their decisions on the best advice possible—open and frank advice. Otherwise, if you had a situation where legal advice was routinely published, lawyers might start to fashion their advice with that in mind. It is an important convention and one that not just the Scottish Government but, as I understand it, many Governments adhere to. That is the basis for that decision.

The Lord Advocate has sat before the committee and shared very openly the decision-making process around the judicial review and the factors that were taken into account by the Government at different stages of consideration. The Deputy First Minister also reached an agreement with the committee about sharing some information privately as well as some information that was allowed to be shared publicly, which was, in effect, a summation of the legal advice. We have sought, within the constraints of that convention, to make that information available to the committee. I appreciate that the committee was not satisfied with that, and for that reason, coupled with some of the, in my view, completely unfounded allegations that have been made about

the basis for decisions that people were taking and, in particular, allegations that were being made about motives and factors in the consideration of the judicial review, we decided yesterday to release the legal advice.

A substantial amount of legal advice has been released, and I think that the committee has been told that there might be other material that we can release later. The committee can now look at counsel's opinions, which were given to the Government and track the changing prospects of the Government, but also, crucially, as I said in my initial remarks, the committee can see that, up until well into December 2018, the view of law officers was that it was appropriate that we continued to defend the case. I am sure that, as we come on to the judicial review later, I can go into more detail about why exactly that was the case.

Margaret Mitchell: Openness, transparency and accountability are essential for any Government to maintain trust, but the Deputy First Minister has refused to allow the calculation of the costs of the Scottish Government legal department for the judicial review. The total cost is likely to be much nearer to £1 million than the £500,000 or £600,000 often quoted. He refused, as you have already explained, to release external legal advice that it was clearly in the public interest to release and did so only as late as yesterday when he faced a vote of no confidence.

Most frustrating for the committee is that, despite the fact that we have been meeting for two years—while we could not meet in public we did all the groundwork in private to ensure that when we met in the summer of 2020 the Government knew exactly the information that we required and had already provided some of it—on 23 December 2020, 288 complaint handling documents were sent to the committee, which had been asked for at least six months before.

More generally, we have faced delay, obstruction and obfuscation. There is still some information that we have not received that is crucial to us in carrying out the remit of our inquiry. Is that acceptable, First Minister?

09:30

The First Minister: In the terms that you have just put it, Ms Mitchell, it would clearly not be acceptable. However, you will not be surprised to hear that, although I understand the frustration—and I will come on to the way in which I share some of that frustration—I do not accept the characterisation. I say that as a statement of fact and it is not in any way an attempt not to answer the question. As members will be aware, at the outset of the investigation, I recused myself from

the Government's handling of it because I thought that that was appropriate given that I am the subject, at least in part, of the investigation.

The Government has made available substantial amounts of written and oral evidence. I am not aware what material you are referring to that is within the Government's control that the committee still feels that we have not handed over. If that has not already been made known to the Government and if it can be, I am sure that attempts will be made to rectify that, within the constraints within which we operate. I have already talked about the position in relation to legal advice, but there are also court orders in place as well as the substantial and elaborate process that the Government has had to go through in order to release information in line with all of its legal obligations—I know that the committee understands that because the committee has had to go through that, too.

There are other elements of information that it has been claimed the committee has not had when it should have done. That is a matter for the committee to address. That material is not within the control of the Government. There is material that is restricted in relation to what can be published, although I am not sure that it is restricted in relation to what the committee can consider, because of a contempt of court order, and there is the matter of information that was handed over in the course of the criminal trial. I know that the committee has had extensive deliberations with other witnesses about that. As First Minister, I have to take the committee's comments seriously, but there is no intention on the part of the Government to withhold relevant information from the committee.

The final point is the part where I share some of the frustration. I understand why this is the case—I say that in case there is any suggestion that this is a criticism of the committee, which it is not intended to be—but I have waited a long, long time to be sitting here while allegations and claims have been swirling around about me, without me having the ability to address them. As information that it has been claimed would be devastating to the Government's position and would prove all sorts of things has come to light, including information that the committee has seen, it has proved to be nothing of the sort.

There is also frustration on my part. When there is information that is not known to the committee, often what is suggested about it bears very little relation to the reality of it. Therefore, within all the legal constraints, which none of us can magic away, I want as much of this to be known and to be out there in public, because while the Government made mistakes—and I will come on

to those—there is nothing here that the Government has to hide.

Margaret Mitchell: You mentioned that you have been frustrated in having to wait two years to give evidence. Most of us have been in exactly the same position; in fact, we have been more frustrated, because the delay has been fairly and squarely because the Government has not provided the information that it could have provided when it could have done so.

I turn to your submission, in which you say:

“As First Minister, I wanted to ensure that the Scottish Government had robust procedures in place to allow any concerns or complaints by those in its employment to be properly and fairly considered”.

That has not happened, First Minister. Why do you think that that is the case?

The First Minister: It did not happen in the case of the two complaints that we are considering here because the Government made a mistake—a very serious mistake—in how it applied the procedure to the investigation into Alex Salmond. As I said—in Parliament, I think—on the day on which the judicial review was conceded, and as I have said again today, I deeply regret that. Those words do not do justice to how I feel about that. I feel sorry for it and I feel very angry about it, and I am not going to try to suggest otherwise. That is what went wrong.

I have no doubt that we will come back to this when we talk about the judicial review, but one of the reasons why the Government wanted to continue with the judicial review, even when the prospects were not as strong as they had been at the outset, was that a number of legal attacks and challenges had been made on the procedure itself—on its lawfulness and appropriateness. We thought—and think—that the procedure is lawful and sound. The procedure itself has never been declared unlawful, despite what Mr Salmond was trying to suggest to you on Friday. Given the challenges that had been directed at the procedure, we wanted to find out, through a court process, whether they were justified.

Again, despite some suggestions to the contrary, it was not a procedure that was put in place for Alex Salmond. It was one that we intended to be in operation—and which is still in operation—so that anybody who had complaints against ministers or former ministers could use it if they wanted to. There was therefore a legitimate public interest in determining whether any of those fundamental challenges to its essential lawfulness was justified.

On Friday, the committee heard Alex say that his legal advice said that he had really good prospects. The committee has now seen the initial note on the Scottish Government's prospects, in

which it was confident that it could successfully defend and rebut all those challenges. The fact is that we do not know who would have prevailed in the judicial review, because—entirely down to the mistake that the Government made in the application of the procedure—it did not get to that stage.

What went wrong, Ms Mitchell—you will not get me, today, in any way trying to sugar-coat or shy away from this—is that the Government made a serious error around the appointment of the investigating officer. As well as this committee looking into that, Laura Dunlop QC is carrying out an independent internal investigation for the Government.

Margaret Mitchell: I merely comment that to refer to what happened as a mistake or a serious error is somewhat disingenuous. *[Interruption.]* If you could let me finish, First Minister.

In the judicial review case, Lord Pentland's order made it quite clear that the process was unlawful and tainted by bias. However, that is for others to go into.

I now want to concentrate on your role, as Deputy First Minister, in the development of the fairness at work policy. In your submission, you say:

"I had no general concerns ... from 2008-14".

As Deputy First Minister, you had a key role in developing that procedure. Will you outline exactly what that involved? Did it ever occur to you that a very high bar was put in place in 2010, when the new policy on fairness at work came into operation, whereby, in order to make a formal complaint, complainants had to put that in writing? Given the timescale, we know that there were complaints against Scottish National Party ministers. That is a very high bar, First Minister, given that such a complaint would have been about someone so powerful, and given the potential effects on a person's career prospects. Did it ever occur to you that that was not the best way to encourage people to come forward and have their complaints resolved?

The First Minister: First, before I answer that, Ms Mitchell, I say genuinely that I am not seeking to be disingenuous in my description of the error. If there is a better word than "error" or "mistake", I am happy to use it. I am not defending it. I am deeply regretful and deeply angry, and will always feel incredibly bad—principally for the two women who were let down because of it, and also because of the wider implications in terms of the cost to the taxpayer. I apologise if I am not using vocabulary that properly gets that across, but I hope that you will take it at face value that I am not trying to underplay what happened in any way, shape or form.

To complete the point, it is a long time since I practised law, but I recognise that the interchangeability of terminology sometimes confuses the situation. The procedure itself has not been declared unlawful; had the judicial review proceeded—who knows?—maybe it would have been. We were confident that it would not be, but we do not know that, because the judicial review did not proceed.

The application of the procedure, which is perhaps what people talk about when they say "the process", was flawed, and the terminology that you have used—"tainted by apparent bias"—is exactly what the court said in its interlocutor. However, it is important to bear in mind the distinction between the lawfulness of the process and the flaw in its application.

On fairness at work, I heard Alex talk about the length of time that it had taken to develop the policy. I had a wry smile when I heard him suggest how involved he would have been in that—that is not my memory of the situation; however, I am going off at a tangent.

The policy was developed with a lot of input. I will not sit here and pretend that I was intimately involved in every aspect of the development of the policy—I certainly do not recall that being the case. It was developed over a period of time with input from trade unions and others. Nothing was formally brought to me as Deputy First Minister, which was my role back then, and I think that you have heard evidence to that effect from others. I would also probably reflect on whether I spent that much time thinking about whether the fairness at work policy was fit for purpose. I did not, but maybe I should have done. That is perhaps one of the lessons that I have to learn from this.

If we go back to late October 2017, in the wake of #MeToo, it was a general sense that people did not think that the existing processes were fit for purpose that led us to review those processes. One of the things that led to a distinct stand-alone procedure relates to exactly what you said. There is a lot of focus on fairness at work, informal resolution and mediation, and perhaps the bar is too high in terms of when things get to formal complaints. Perhaps that approach is not entirely appropriate when you are dealing with sexual harassment allegations. I do not have it in front of me right now—although I have it somewhere—but the fairness at work policy cites that one of the circumstances in which mediation is not appropriate is where there is a significant power imbalance. I will not sit here and say that I think that everything about fairness at work is perfect, but the policy was developed with a lot of input from trade unions, and it remains in place.

Margaret Mitchell: I am conscious of time. All that I will say is that it was entirely in your remit as

the Deputy First Minister to look at complaints at an informal stage. Were you aware that complaints had been raised, predominantly from females? You have always set yourself up as someone who is a champion for women's issues, yet you did not pay them that much attention.

The First Minister: We will come on to when I did become aware of things, but, as I think that you have heard in evidence from others, before the November 2017 media query from Sky News about Edinburgh airport—which I am sure we will come on to later—I was not aware of allegations or concerns about sexually inappropriate behaviour on the part of Alex Salmond. That is just—

Margaret Mitchell: Can I stop you there, First Minister? I am talking generally. It was five SNP ministers. I remind you that Alex Salmond is a key witness to the inquiry. He is not on trial—your actions are. If you could focus on that, that would be much appreciated.

The First Minister: My apologies—I was saying that I had not heard anything, so I was not putting him on trial.

Forgive me, Ms Mitchell, I do not know exactly what you are referring to when you say that it was five SNP ministers. If I can be given more detail, I am happy to respond, but I do not know what you are referring to. As Deputy First Minister, nothing came to me under the fairness at work policy in terms of the role that the Deputy First Minister had and still has.

In terms of more general concerns that are not related to any one individual, throughout my entire working life, have I been aware of problems of sexual harassment, sexism and misogyny? You bet I have, but that does not mean that things were brought to me, or that there were things that I could have acted on back then that I did not act on.

Margaret Mitchell: This will be my last point. Just for reference—

The Convener: Could you give the reference for that point, please?

09:45

Margaret Mitchell: I will. The FDA said:

"In reflecting back on the last 10 years we are aware of approaches on behalf of around 30 members in relation to at least 5 Ministerial Offices".

That was five SNP ministerial offices. You said that you would be happy to look at that. I would be glad to pass it over to you at any time.

The First Minister: Now that you have given me the reference, I recognise it. I apologise, but I have not been able to watch all the evidence that

has been given to the committee. I tried to read as much of it as I could before coming here today. I now recognise the reference that you are talking about.

Those things were not brought to me at the time under fairness at work. That means that I cannot usefully say much beyond what I have already said on those matters. If you are asking whether that concerns me, of course it does. I do not want to be in a position—I would not have wanted it back then and I certainly do not now—in which people in Government feel that they have any need, formally or informally, to complain about behaviours in ministerial offices.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Good morning. I would like to concentrate on the creation of the new procedure in the light of the #MeToo movement. When Mr Salmond gave evidence, he questioned whether there was any need to create a new procedure. He questioned why fairness at work was not simply edited to "strengthen the criteria" to include sexual harassment. Why did the Government decide to create a new procedure rather than tinker with the old one?

The First Minister: This might be unfair to Alex but, as I heard his evidence on Friday, he seemed to be saying that he did not think that there should have been a procedure in place that was capable of investigating him, because he thought that, if there had been a procedure that allowed investigation of historic allegations, it should have taken 18 months or so to put in place. That is what struck me in that section of his evidence. His view was not just that the complaints against him should not have been investigated but that it should have been impossible to investigate them, because there should have been no procedure that allowed that to happen. I fundamentally disagree with that.

I know that the committee pursued a line of questioning with Mr Salmond and others about the fact that the Parliament is changing its procedures to allow historic complaints against MSPs to be investigated—in fact, I think that the bill for that comes to stage 3 at some time over the next few days.

On what we decided to do, first, in the light of #MeToo, the Cabinet took a decision on 31 October to review its procedures; it did not take that decision with a preconceived notion of what the outcome of the review should be. We gave the civil service an open commission to review procedures. I know that we are talking about this after the passage of some time but, given the profile of the #MeToo revelations and how much attention was given to the issue, organisations the world over were doing that at the time. It would not just have been remiss of us not to do it; I am pretty

sure that it would have attracted substantial criticism had we not done it. That is the first point.

Secondly, as that process started and as the gaps and weaknesses in the existing procedures were identified, the view was that a stand-alone process that could involve current or former ministers and that expressly allowed historic allegations to be investigated was appropriate. Some of the points that Margaret Mitchell made to me about the setting of the bar in fairness at work and the focus on informal resolution and mediation were part of the consideration about whether that approach was appropriate for the kind of complaints that we were seeking to put a procedure in place to deal with.

Maureen Watt: Much has been made about the time difference in devising the policies. Fairness at work was devised over 18 months or so and the new policy took a relatively short time to produce. Did you encourage that? Did you want it to be done very quickly?

The First Minister: Again, I go back to the climate at the time and, for want of a better expression, the consensus of opinion that there was a big problem, not only in Scotland or the UK but globally, in relation to an inability of women who felt that they had experienced sexual harassment to come forward and a lack of confidence on their part about coming forward. Part of those concerns was to do with a perception that it was particularly difficult to investigate allegations of historic harassment, so yes, we felt that we—but not only us—had a big problem to contend with and to address that people thought was serious.

If the permanent secretary or the senior civil servants who were tasked with the drafting of the procedure had come to me then—which they did not, so I am speculating here—and said, “First Minister, this is going to take 18 months,” I would probably have said, “Get out of here and do it more quickly than that,” because that is not an acceptable period of time when this was a serious problem that we needed to try to address. Yes, it was something that we wanted to do quickly, but not by cutting corners or doing it in any way inappropriately. There was trade union involvement, as I think the committee has heard. In fact, before I signed it off on 20 December, I had made sure that the trade unions had been involved, so it was not a policy that there was not a lot of consideration given to—there was—but it was a policy that, for good reason, we wanted to have in place sooner rather than later.

Maureen Watt: Under the fairness at work procedure, mediation is an option that is available in cases of complaints against current ministers, so why is there a difference between mediation

being available to current ministers but not in relation to former ministers?

The First Minister: Fairness at work applies only to current ministers and mediation is an option there. There is an open question, which people will have different views on, about whether mediation is always an appropriate procedure in cases of sexual harassment and in cases where there is a significant power imbalance. I also think that, for mediation to be a reasonable process, there has to be consent to that on both sides. There is no distinction between current and former ministers in fairness at work, because fairness at work applies only to current ministers.

In relation to the procedure that applies to current and former ministers, there is not an express mediation provision in the procedure for current ministers; there is a reference in paragraph 6—that is from memory, and I am sure that it will be noted if I am quoting the wrong paragraph—to seeing whether there is any prospect of resolving things, which is not in the part of the procedure for former ministers. However, that is not an express mediation provision.

Why is that in one and not the other? I am not sure that I can fully answer that. We will maybe want to think about that further as we review all this, and Laura Dunlop’s report will part of that. I suppose that, if I was to offer any thought, it is that with a current minister you are more likely to be talking about people who are still working together; maybe if there is an opportunity to resolve something because it has genuinely been a misunderstanding, that provision should be there. However, with a former minister, that is somebody who is not still in the workplace, so perhaps that is not seen to be as appropriate. We will perhaps want to think about that aspect as we complete the review.

Maureen Watt: It is clear from our evidence that, prior to the introduction of the procedure, complaints were sometimes handled informally; we heard Dave Penman of the civil servants union talking about concerns about instances being handled informally—for example, staff were moved on so that they would not have to work with the minister or person whom they complained about, or sometimes people could give an apology. Was that a satisfactory way of dealing with complaints or concerns?

The First Minister: I will answer that in two ways. Sometimes, it will be a satisfactory way of dealing with a particular complaint, because it will be satisfactory to the person who is complaining; they will prefer to have it dealt with informally, and an apology might suffice. Therefore, I would not say that it is never appropriate for that approach to be taken.

My second point relates to the questions that Margaret Mitchell asked. She read out evidence that said there were concerns from trade unions about a number of ministerial offices. At the time, I was Deputy First Minister and had a role in fairness at work, and those issues never came to me. That raises a question in my mind, which is, to use Margaret's terminology, whether the bar is set too high or there is an overreliance on informal resolution. Also—I pose this as a question, rather than a fixed view, but it is certainly a question in my mind—was there an overreliance on informal procedures so that certain things that perhaps should have become more formalised and dealt with in a different way were not? That is a legitimate question to ask the Government, and it is certainly a legitimate one for us to reflect on.

Maureen Watt: Was the new policy or procedure discussed at Cabinet, and how often during the process of drawing up the new procedure and its iterations was it discussed?

The First Minister: It was not discussed particularly at Cabinet. I would have to check Cabinet minutes to see how many times it was discussed, if at all. As the member knows, at Cabinet meetings, we have a thing called SCANCE—Scottish Cabinet analysis of new and current events—which covers issues that ministers bring. It does not involve a full Cabinet paper. It might be that the procedure was raised under that.

The permanent secretary kept me updated on how the development of the procedure progressed. I think that I was sent the first draft of that toward the end of November. That was at the point at which the role of First Minister as, in effect, a gatekeeper with the permanent secretary to complaints was removed.

Before that, on 22 November, I formally wrote to the permanent secretary, because there was a view that, given that not only former but current ministers had been included, the interrelationship that created with the ministerial code meant that there should be express ministerial authority for the procedure being developed in that way. Ultimately, I signed it off on 20 December.

Maureen Watt: At the time of the commissioning of the new procedure, were you aware of any concerns being raised about the behaviour of any current or former minister?

The First Minister: No—not at the time that we commissioned it on 31 October. As I said in my written evidence—we will no doubt come on to talk about this—I became aware, through a media inquiry, of an allegation about the former First Minister some days after that, at the start of November.

Maureen Watt: Did that influence the way that you looked at the policy?

The First Minister: No.

My apologies for interrupting.

Maureen Watt: It is okay.

Finally, do you think that the policy that related to the civil service should have been discussed in Parliament, as someone suggested?

The First Minister: I will come to speak about the Parliament in a minute.

I was definitely a bit too quick to answer there. Obviously, one suggestion that has been made is that the policy was somehow a bespoke Alex Salmond policy. I would have said even in the days when we were besties that Alex Salmond has a tendency to see most things as being about him in some way. I hope that he takes that in the spirit in which it is intended. However, it was not a bespoke policy. To see it in that way ignores what was happening globally at the time. It was about the #MeToo revelations.

You asked whether the Sky thing influenced my views on it. No, it did not. I cannot say that there was no subconscious thing in my mind about that, but the danger would have been that I would have started to influence the development of the policy in a way that somehow protected him. If I had taken my red pen and scored out “former ministers” because the Sky thing had put a lingering suspicion in my mind, I would legitimately be sitting here now and getting a lot of criticism. I did not do that. The policy was not put in place because of Alex Salmond, but nor did I allow any—even subconscious, I hope—considerations about Alex Salmond to influence the decisions that I took on that.

Maureen Watt: What about the question on whether you think the policy should have been debated in Parliament?

10:00

The First Minister: I think that the answer to that at the time would be no. I do not know what would have happened if it had been debated in Parliament. To the best of my knowledge and recollection—I will be corrected on this if I am wrong—I do not think that fairness at work was ever debated in Parliament. Those are human resources policies. The procedure is fundamentally an HR policy and I do not think that it would have been appropriate for it to be debated in Parliament. Similarly, in a way, Parliament is legislating on the situation with investigating former MSPs, but that is because of the legislative underpinning of the standards process. The idea that Parliament would have legislated for or even debated a Government HR process is, I think, a very different issue.

The Convener: Andy Wightman has questions on the development of the policy.

Andy Wightman (Lothian) (Ind): Good morning, First Minister. You have said clearly that you had received no concerns about any alleged behaviour by Mr Salmond before the Sky News inquiry. One of the civil servants—whose complaint ended up in the court, in fact—said to the journalist Dani Garavelli:

“If I had complained it would have been swept under the carpet and I would have suffered in my career ... I never saw anyone in a senior position in the Scottish government tackle the First Minister on his behaviour.”

You reflected a moment ago on whether it might have been better if you had been more aware of, for example, the concerns expressed about five ministerial offices. Is the fact that civil servants in the Scottish Government have had concerns—and might, indeed, continue to have concerns—something that you will now take more seriously in the aftermath of all this?

The First Minister: Yes, but I hope that it is the case that I have taken it seriously previously. I made a comment in my opening remarks about soul searching, and those are aspects that I have thought about deeply in the wake of this. I want to try—briefly, because I know that time is marching on—to unpack your question a little.

I now know that there was an incident that Alex Salmond apologised to somebody for back in 2013. I did not know that at the time. I did not know of any concerns about Alex Salmond’s sexual behaviour back then. Sorry—alleged; I am not making—

The Convener: Yes, please be careful with your words, First Minister.

The First Minister: I am sorry.

I did not hear concerns about that back then. Part of me wishes that I had. If there had been concerns, I am not saying that they would have been well founded, but I did not hear of any. If you ask me—I refer to this briefly in my written submission—Alex was a tough guy to work for, as many people can be, so I am not particularly singling him out other than that it is the basis of the question. He could be very challenging to work for. If Alex was displeased with you, he would make that pretty obvious. There were times when I challenged his behaviour in that respect, when I witnessed situations where I thought that he had crossed a line or was perhaps risking doing so.

One of the things that I have thought about is whether those of us who had worked very closely with Alex for a long time had become a bit inured to that kind of behaviour—I am talking about that and not anything allegedly sexual—and whether we had a higher threshold for that than perhaps

people in Government in 2007 had. Is that something that I think about and have thought about? Yes. Do I want to have a situation where anybody inside Government who feels that they are being unfairly treated by any minister, on any basis and in any way, feels that they have the confidence to come forward and that their concerns will be treated seriously? Absolutely, and I will continue to do what I can to make sure that that is the case.

Andy Wightman: I will ask a fairly basic question. In your written evidence, you say, for example, that you recognise

“that organisations too often closed ranks in defence of men accused of inappropriate behaviour; and that it could be particularly difficult for ‘historic’ allegations to be raised.”

You have mentioned historical allegations a number of times this morning. Can you be clear what you mean by historical allegations? In the pedantic meaning, all allegations relate to something that happened in the past. Can you be clear about what you mean by that?

The First Minister: It is often the basic questions that are the hardest to answer and I am not entirely sure that I will give you a completely technical answer to that; it is a good question that I possibly have not thought about enough.

Thinking about it in the moment, I suppose that what I mean is that you have people—in the context of sexual harassment allegations, they tend to be men rather than women—in positions of authority, power or status over the people who are complaining, which makes it difficult for them to bring forward those complaints at the time when the person that they are complaining about is in that position of power, status or authority, and it can be only when they are no longer in that position that somebody feels able to come forward.

In a general sense, that is partly what I mean by “historical”—it is once the individual who is being complained about is not in the position that they were in, which was perhaps the inhibitor to the complaints coming forward. It probably has other potential meanings but, in broad terms, that is what I mean.

Andy Wightman: In relation to that, I will ask you the same question that I asked Mr Salmond on Friday. 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?

The First Minister: Yes—unequivocally and absolutely because, otherwise, you do not have that ability. Perhaps more than in any other walk of life, people in positions of political power are powerful and, therefore, presumably, it is more

difficult—although not impossible—for people to bring forward complaints. If that ability to hold somebody, such as me, to account stops the moment that we cease to be in that position of authority, that is clearly closing off the ability for us to be held to account, should complaints come forward in the future.

I think that that is the way that things are going, including with this organisation. That is what I found fundamentally difficult to grasp about Alex Salmond's evidence on Friday; he seemed to be saying—although he qualified it a little bit—that the complaints against him should not have been investigated and should not have been capable of being investigated, because there should have been no retrospective policy in place. I fundamentally disagree with that.

Andy Wightman: Yes, there is a fundamental disagreement between you, because he said:

"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."—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 26 February 2021; c 25-26.]

There is a fundamental disagreement between you on that point.

The First Minister: On that point and, of course, on others.

Andy Wightman: In terms of the relationship that the Deputy First Minister and First Minister had with regard to fairness at work and the new procedure, as Deputy First Minister, under fairness at work, you would have been passed a copy of a complaint if informal resolution had failed in relation to any complaints against current ministers. Of course, that never happened. However, under the new procedure, it is you—the same person, but now as First Minister—who has that responsibility. Why did Mr Salmond, as First Minister, not have the role that you now have as First Minister? To put it the other way, why did you, as Deputy First Minister, have that role, whereas the current Deputy First Minister does not? Mr Salmond tried to explain that in terms of conflict with the ministerial code. Do you have a view?

The First Minister: I am not sure that I do—or not one that I feel that I can articulate to you now. I do not recall why, particularly, it was the case that the Deputy First Minister was in that role under fairness at work. Again, I appreciate that people will wonder how that can be the case. In all my years as Deputy First Minister, I was not consciously aware often—if at all—about fairness at work. Obviously, I knew that I had that role, but it was not something that crossed my desk. The discussions around the development of the

procedure were very much, in this respect, about trying to avoid issues. Remember that it was in the wake of #MeToo. You read out something else from my evidence about the perception that organisations and people closed ranks against those views.

This was a procedure that was covering current and former ministers—that is, politicians. Therefore, my view was that the First Minister, as a politician, and potentially of the same party, should not be in the role either of deciding to investigate a complaint or doing the investigation. That was the thinking behind the development of the procedure. Without going back into the dark mists of time and seeing whether there is an explanation there, I am not sure that I could sit here right now and give you a full explanation of why the fairness at work policy developed exactly as it did.

Andy Wightman: Were you ever advised during the development of the procedure that the retrospective element, whereby it applied to former ministers, was of doubtful legality?

The First Minister: I do not recall being advised of that; I do not believe that I was. I do not recall being advised of any concerns about the fundamental legality. I would have assumed—and now know—that legal advice was taken on an on-going basis as the procedure was developed, which you have obviously heard evidence from people on.

Andy Wightman: Paragraph 13 in the procedure states that where it is the case that the former minister was a member of an Administration formed by a different political party, the permanent secretary is given the role of informing the party leader of the outcome of the investigation and any action taken. The end of the process seems to be a little bit strange, because what is the leader of that political party to do with that information? What if the former minister, for example, is no longer a member of that political party?

One of the criticisms of the procedure seems to be that it ends in this rather strange circumstance where you are passing very sensitive information over to a leader of another political party, who may not even have been the leader of that political party when the minister being complained of was a member, and of which the minister may no longer be a member. Do you have any concerns about the end point of the procedure?

The First Minister: The thought processes at the time were that, if a complaint in the context of an HR process was upheld against a former minister, the party of which they had been part should have an awareness of that in case the person held positions of authority within the party.

It would be for the party to decide what to do with that information. That was the thought process. Given what we have been through in the past couple of years, all those are legitimate areas to probe and question.

Andy Wightman: Finally, for now, given that the new procedure was to be made applicable to former ministers from 1999 onwards, of whom there must be dozens—perhaps 40 or 50—what efforts were made to inform them of the fact that they might be the subject of complaints under the procedure?

The First Minister: We did not do that. I think that you pursued this line of questioning on Friday. There had been a suggestion that we would inform, I think, former First Ministers. A letter was drafted and, although I do not have a crystal-clear recollection of this, I would have been part of that, and I think that I decided that, given that it was an HR policy, it was not necessary and would not necessarily have been appropriate to go to external consultation beyond the trade union consultation that we had. That led to the fact that we did not do what you have suggested.

Andy Wightman: I think that that draft letter has not been disclosed to the committee. Could the Government please supply it?

The First Minister: I requested it yesterday. I see no reason why it would not or should not be disclosed, so I am happy to undertake that that will be done.

The Convener: The committee will discuss that in private session later.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): You have mentioned that the process was not declared unlawful. Can you explain for people who perhaps do not understand the distinction between the process being declared unlawful and the application of the process being declared unlawful what that means?

The First Minister: The procedure is still in place. If a complaint about a current or former minister came in again, that procedure is still extant and could be used. The initial judicial review petition had a number of grounds of challenge—I think that there were eight—some of which were about its application but some of which were about the fundamental lawfulness of the procedure itself, such as that it was ultra vires and that it should not have been retrospective. None of those was tested in court, because of what happened with the judicial review, so none of those concerns has been established one way or the other. The procedure itself has not been declared to be unlawful and could be used, although, as I said, we have Laura Dunlop doing some independent internal work for the Government on aspects of that.

10:15

What went wrong was that, when there were complaints to be investigated and the procedure was effectively activated, in the appointment of the investigating officer, which is part of the procedure, a mistake was made. As it turned out—I am summarising here—the investigating officer had had prior contact with those who were making complaints. The flaw was identified in how the procedure was used, not the fundamentals of the procedure. I know that that is difficult for people to grasp, but I hope that I have explained it reasonably clearly.

Dr Allan: Last week, Mr Salmond seemed to wholly reject the idea that complaints against former ministers were legally possible. When he was asked whether he supported them in principle, he said:

“I do not think that you can make that argument ... it would be very difficult to make that argument and to make it legal or lawful.”

Even though the Court of Session did not rule that the procedure itself was unlawful, was the inclusion of former ministers, in your view, unlawful or something that created difficulties?

The First Minister: No. I think that one of the civil servants you heard from, James Hynd, made this point. By definition, the Government created the procedure. It was signed off and legal advice was taken along the way, so the Government considers that the procedure is lawful. Mr Salmond challenged aspects of that. As I said earlier, one reason why there would have been a public interest in the judicial review going to a full judicial conclusion, where a judge could have decided, is that we would have got a definitive answer on that. We do not know what the outcome would be, but the Government's position is that that aspect of the procedure is lawful and nobody has established to the contrary.

Dr Allan: Mr Salmond also questioned the idea that complaints or a complaints process against former ministers would even be necessary. He said:

“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.”

Is he not making a fair point about that?

The First Minister: From his perspective, I am sure that he is. I will give my perspective. When John Swinney answered the question in Parliament—if my memory is right, it was on the afternoon of the day of the Cabinet meeting—he was just saying that we had decided to review our policies. It was not a debate—I do not think that it

was a debate at all—or a discussion of a new policy.

This is a personal reflection on public debate at that time. It would have been very hard to draw a conclusion at that time that historical complaints and the relative difficulty in investigating historical complaints were not a pretty central part of the #MeToo concerns. They were. To come to a conclusion that nobody would have thought that that was a legitimate or priority issue is something that I struggle with, as somebody who paid a lot of attention to the debate at the time.

Dr Allan: When asked about what has since become known as the Edinburgh airport incident, Mr Salmond said:

“Because of the atmosphere at the time—November 2017—perhaps people were overreacting in a number of ways.”—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 26 February 2021; c 25-26, 39, 21.]

Did you feel that people were overreacting to the #MeToo movement in November 2017?

The First Minister: I do not think that people were overreacting. I do not think that the Scottish Government overreacted and I do not think that Parliament overreacted in the steps that it took. More than three years on, I suspect that a more legitimate criticism is that the world has ultimately underreacted to some of the concerns that were raised. Unfortunately, I am not sure that women would necessarily say that the situation got an awful lot better. I do not think that there was an overreaction and I certainly do not think that there was an overreaction on the part of the Government.

Dr Allan: Any sexual harassment procedure that includes current or former ministers may, of course, result in complaints being levelled at powerful people who have both the means and the inclination to challenge those complaints in court. Should the Scottish Government not have been readier for a judicial review challenge to the procedure? For instance, it appears from the evidence that civil servants treated the procedure like any other employment policy, with legal checks being provided by employment lawyers. If you thought that the handling of complaints under the procedure might end up in court, should the Government not have had public lawyers scrutinising whether the handling of complaints under the procedure would be robust if it was challenged in a judicial review?

The First Minister: With hindsight, Dr Allan, I think that that is a legitimate comment and reflection. None of us—certainly not me—would have wanted to be sitting here at the culmination of everything that has happened over the past couple of years, so yes, we have to think with

hindsight about all these things and consider whether we should have done things differently. Unfortunately, you do not have that hindsight when you are doing these things. Maybe we should have done, but we did not at that point anticipate what has unfolded since. It was an employment procedure—albeit with particular features that made it appear to be much more in the political sphere. I absolutely accept that, but it was an employment procedure. The Government took legal advice and had legal input as it developed the procedure.

I was not aware of all the correspondence at the time but, having looked back at all this, I think that the Government was ready for a judicial review. Until something came to light that had not been known and appreciated earlier, the Government was confident in its ability to defend the procedure. The legal advice that was published yesterday, I think, demonstrates that. The note of prospects—which was, I think, in late September—said, like any piece of legal advice, “On the one hand” and “On the other hand” and ranked risks of successful challenge. That is the nature of legal advice. However, across all the grounds of challenge, the Government was as confident as you can ever be in a legal action that it could succeed. We now know that that changed. I will not go on to that just now, because I know that we will come on to that in more detail later.

Dr Allan: Some people have claimed that the procedure was created to get Alex Salmond. I do not offer an opinion on that, but I suspect that you may.

The First Minister: It was not—absolutely emphatically not. Again, we might get into this stuff later but, as I have said many times, Alex Salmond has been one of the closest people to me in my entire life. Some people around this table know what I mean by that more than others might. I would never have wanted to get Alex Salmond, and I would never ever have wanted any of this to happen. Short of brushing complaints under the carpet, which would have been wrong, if I could turn the clock back and find legitimate ways to ensure that none of this would ever have happened, I would. For most of my life—since I was about 21 years old—Alex Salmond has been not just a very close political colleague but a friend and, in my younger days, somebody whom I looked up to and revered. I had no motive, intention or desire to get Alex Salmond.

Dr Allan: I turn to the development of the procedure. You have given some indication of this, but can you set out what role you personally played in the creation of the procedure prior to signing it off?

The First Minister: I did not have a day-to-day central role by any stretch of the imagination. I

know that most people—including me before I was in government—who are not as familiar as I am with the day-to-day workings of government would, understandably, think, “How could that possibly be the case?” However, any minister, particularly a First Minister, deals with a multitude of things every day, ranked in order of priority and importance, which shifts and changes.

Something like this is done almost at arm’s length. You have civil servants doing it, and you will be kept up to date periodically, when appropriate, at key moments on something like this. You will be consulted if there is a particular policy issue that requires to be discussed or requires clear ministerial authority. I said earlier that, in the development of this policy, I identified three particular issues that fell into that category. I was consulted and had a part in the procedure at those stages.

The most significant intervention was to give the express written authority for a procedure that included former and current ministers. At the time, that was more about the inclusion of current ministers because of the interaction with the ministerial code. It was current ministers who were added into the policy at a later stage; as you have heard from others, former ministers were actually included from the initial draft.

Dr Allan: Some discussions have been had about the role that the First Minister should have in the complaints handling process. Mr Salmond told the committee that he was surprised that the First Minister did not have a role in that part of the procedure. You have touched on this point, but can you explain why, in your view, a First Minister does not have the same role in the procedure as they did in the original fairness at work policy?

The First Minister: In fairness at work, the Deputy First Minister is more centrally involved when a complaint is lodged than the First Minister is. I can offer not just an abstract view. I can tell you that I thought that that point was important. Again, this is in a context of—how best to describe this?—the world having changed in this realm because of #MeToo. The old ways of doing things were in the spotlight and considered in some respects to be inadequate and wrong, leading to too much reliance on informal resolution and giving powerful folk too much opportunity to evade accountability or close ranks.

I thought—and this was #MeToo driven—that in a procedure that, had it been used at all, would have been used for current or former politicians, it was best for a First Minister, a current politician, to be as far removed from the issue as possible. That would be so that there was no suggestion—ironic, given where we are—that a First Minister of the same party as somebody who had been complained about could try to influence how the

investigation was taking place for political reasons, such as to protect a colleague or the party from reputational damage. #MeToo seemed to make it more important that we did not have those perceptions and risks. That point was the backdrop to some of the key decisions that were taken in the development of the procedure.

Dr Allan: You mentioned the culture change that took place around #MeToo, although you did not use those words. The permanent secretary told us in the past that that culture change had been reflected in the UK civil service as well. Did you sense that it was being acted on and that people had an enthusiasm for it across the civil service in Scotland? Did people have to be told that it was a good thing to do?

The First Minister: If the Cabinet decides that something is a priority, it is the job of the civil service—again, you have experience of this—to get on and do it. To describe the civil service as personally enthusiastic would be to misdescribe the role. Civil servants were acting on the instructions and the requests that the elected Cabinet had given them. I do not know about all of you, but I remember the #MeToo stuff being really quite shocking—not in the sense that we had not known that this kind of stuff happened, but the fact that it was coming out into the open and people were prepared to confront these things was a big moment. I remember, as I am sure others do, doing interviews at the time and talking about a watershed moment. There was a sense that we had to live up to that and be prepared to meet the moment.

Three years on, some people think that all that was an overreaction. I do not. I think that it was right to try to do that. I regret the fact that we are sitting here because certain things were not done in the way they should have been, and I deeply regret that that situation allows aspersions to be cast on the motives for what we were doing at the time, which were absolutely right and proper.

Murdo Fraser (Mid Scotland and Fife) (Con): I have no questions on this section, convener.

Jackie Baillie (Dumbarton) (Lab): I have no questions on this section either.

Alex Cole-Hamilton (Edinburgh Western) (LD): I have no questions in this section—it is complaints handling that we are after.

The Convener: Right—that is very refreshing.

Stuart McMillan has questions in this section, so I ask him to lead us on to complaints handling, too. You can take all your questions.

10:30

Stuart McMillan (Greenock and Inverclyde) (SNP): Thank you, convener, and good morning, First Minister.

Prior to contacting the permanent secretary at the point when you thought that legal action against the Scottish Government was going to take place, did you have any involvement in the formal complaints-handling process?

The First Minister: No.

Stuart McMillan: After the contact with the permanent secretary, did you have any involvement in the formal complaints-handling process?

The First Minister: I was not involved in the handling or the investigation of the complaint.

Stuart McMillan: Turning to another aspect, much of the committee's focus has been about the questions of meetings and recollections and conclusions, which will certainly not help what has happened in the past or present, nor will they help future complainers of sexual harassment. What certainly will help is the correcting of the errors in the complaints-handling process—which you touched on earlier.

Our evidence has highlighted that clear mistakes were made in the division of responsibilities between those tasked with the role of communicating with complainants and those tasked with the role of investigating complaints. Do you accept that that went wrong, and what can be done to avoid that going wrong in the future?

The First Minister: I unreservedly accept that things went wrong in that respect, and I have given an apology today for that.

I know that this has been referred to by me many times already today, and others have referred to it previously, but Laura Dunlop QC is reviewing those aspects and matters for the Government right now. I am not sure exactly when we will get her report. I think that the Deputy First Minister has been corresponding or will correspond with the committee on that. That will be an opportunity—in addition to whatever the committee wants to reflect on or suggest—for us to consider why those things happened institutionally, and what needs to be done to ensure that, should a situation like this occur again, they would not happen in the future.

Stuart McMillan: Some of the evidence that the committee has heard has indicated the possibility of a deciding officer or investigating officer being independent of Government. Is that something that the Scottish Government would consider?

The First Minister: We will consider any recommendations that the committee puts

forward. That is not one to which I have particularly given any consideration to date, but if that is a recommendation that we get, we will of course consider it.

Stuart McMillan: I wish to touch on a question from earlier. We have heard that a concern about Mr Salmond himself was handled by him, by giving an informal apology—that was touched on earlier—and that only years later did the person concerned feel able to make a formal complaint. That clearly makes it look like the formal procedures under the FAW process were not good enough. Do you accept that?

The First Minister: In relation to the specifics, I am not sure that I can draw any particular conclusion, because I was not involved in that at the time. I did not know about it at the time that an apology was made, so I have no direct knowledge of exactly what went on then—of what happened in terms of the apology or what the basis of the person involved was for accepting that as a resolution at the time.

To be frank, I only know about that what I have since been told by Alex Salmond or heard more generally in the wider proceedings that have been under way. I could not say categorically that that particular incident meant that there was a flaw or failing in fairness at work. Generally, as I have already commented, there is something to reflect on there, particularly about sexual harassment and the appropriateness of informal resolution over more formal action being taken.

The Convener: I remind all members to be general rather than specific when talking about individual complaints and so on, please.

Stuart McMillan: Sorry, convener.

The permanent secretary certainly told this committee that her direct line manager, the head of the UK civil service, wanted all permanent secretaries to ensure that their procedures could tackle the challenges of #MeToo. The *Official Report* shows that MSPs of all parties spoke in favour of more being done to tackle the issue. Do you feel that you have a broad base of support for the idea of putting in place a new procedure to tackle sexual harassment?

The First Minister: I certainly would not speak for other Governments in terms of what we actually did. It is factual to say that the Cabinet Secretary at the time, Sir Jeremy Heywood, wrote to the permanent secretary, I think, later in the week that Cabinet gave the commission to review processes. That reflects a point that I have made already—this is something that all organisations were doing; they were all reviewing their processes.

At the time—I cannot remember the exact date—I had a discussion with Theresa May, the then Prime Minister, about this matter because she was concerned about it and was taking steps to review Conservative Party processes, and, obviously, the UK Government was looking at these matters as well. However, I would not go from that to saying that the UK somehow endorsed what we did.

You have heard—I was not aware of this at the time, but I am aware of it now, although I do not think that it is particularly significant—that the Cabinet Office made some comment, which was not particularly about former ministers, that it felt uncomfortable having a policy relating to current or former ministers. Therefore, I would not claim its endorsement one way or another for what we did.

I think that what we did was done for the right reasons. I think that we have a procedure that has not been declared unlawful. I will not labour that point, because that has not been tested in court. A mistake was made in its application and nobody can get away from that.

In terms of endorsement, I know that you have heard from trade unions. I think—I do not want to speak for them, and I certainly do not want to misquote their evidence—that there was general agreement that looking at the procedures, putting a procedure of this nature in place and applying it to former ministers were not unreasonable things to be doing.

Stuart McMillan: Thank you. I will move on to the ministerial code now, convener.

The Convener: Mr McMillan, can I stop you? Did you say the ministerial code?

Stuart McMillan: Yes.

The Convener: I would prefer to leave that until after the break.

Stuart McMillan: Okay.

The Convener: Do you have anything further on the implementation of the policy?

Stuart McMillan: No, I am fine, thank you.

Jackie Baillie: Good morning, First Minister. I just note, though, that the procedure that you discussed with some of my colleagues has not actually been used since it was last used in relation to Alex Salmond. Essentially, it has been lying on the shelf gathering dust, so we have concerns that the procedure itself is not robust enough, given that it is not being used.

I will explore with you the confidentiality of complainants, which is something that I think that you and I will both care about. I start with the issue that I, along with Willie Rennie, raised with you at First Minister's question time last week. There was

a series of meetings prior to the meeting on 29 March between yourself, Geoff Aberdein—Alex Salmond's former chief of staff—and a senior member of your team. At one of those early meetings, the complaints against Alex Salmond were revealed to Geoff Aberdein. Who authorised the senior member of your team to have that meeting? Was it you, was it the permanent secretary, or were they simply freelancing?

The First Minister: First, before I go on to that, I say for the record that I was not claiming that the procedure has been used for complaints other than in Alex Salmond's case. That does not change the fact that the procedure is still extant and has not been declared unlawful.

Convener, I want to answer the question as fully as I can, but, like the committee, I am under legal constraints as to what I can say.

I would not accept Jackie Baillie's characterisation of the meeting. I was certainly not at the meeting that has been described—I should also say that neither were the people who are seeking to attest to the content of that meeting. However, I would say that, as I understand it, James Hamilton, who is conducting the independent investigation under the ministerial code, has evidence from the people who were at the meeting.

I was not at the meeting; therefore, I cannot give a direct account of it.

However, I can say that the account that I have been given has given me assurance that what is alleged to have happened at that meeting did not happen in the way that has been described. As I understand it, James Hamilton has the accounts of those who were at the meeting. The person who has been described as a senior Government official is willing and has offered to give private evidence to the committee on this matter. It is for the committee to decide whether it wants to take up that offer. To describe it as a meeting that was authorised or happened in the way that Jackie Baillie is suggesting is not something that I would accept. Unfortunately, the constraints that I am under mean that it is not possible for me to go much further than that.

I do not want to stray into territory that we will come on to later, but in relation to the identity of complainants, I can speak to the discussion that I had with Alex Salmond on 2 April 2018. On Friday, he seemed very certain that a complainant had been named by someone in Government in a meeting that he was not at, but he seemed less sure whether a complainant had been named at a meeting that he was at.

Alex Salmond was open with me about the identity of one complainant. He had not been told about it and there was no suggestion that I can

recall that anybody in the Government had told him. He knew the identity of one complainant because he knew about the incident, because he had apologised to the person concerned. I cannot recall whether the name of the other complainant was shared openly on 2 April in the way that the one I have just spoken about was.

However, Alex Salmond also knew the identity of that complainant. I remember him talking about how he had gone through the Scottish Government Flickr account to find out who had been with him on particular days. The point that I am making is that I do not recall any suggestion from Alex Salmond on 2 April that he had been told about the name of a complainant in the way that is being suggested. However, I know that he knew the identity of both complainants, in one respect because he knew about the incident, and in the other respect through his own investigations.

Jackie Baillie: Thank you, First Minister. I will come on to explore that in a minute. I take you back to my question, which was on the point at which complaints against Alex Salmond were revealed to Geoff Aberdeen. Did you know that the meeting was taking place?

The First Minister: Not to the best of my recollection. Let me be clear: back then, somebody in my team meeting Geoff Aberdeen would not have been particularly newsworthy. Geoff Aberdeen is a friend of most of us and a former colleague. I do not recall that being the case.

Jackie Baillie: I agree that it would not be newsworthy.

The First Minister: I was not a party to the discussion, but based on what I have been told about it, I do not accept Jackie Baillie's characterisation of it.

Jackie Baillie: You might not accept my characterisation of it, but Geoff Aberdeen's conversation with Kevin Pringle and Duncan Hamilton QC is confirmed in written evidence to the committee. Are you saying that they are not telling the truth? Are you saying that Geoff Aberdeen is not telling the truth?

The First Minister: I am not casting aspersions on the veracity of anyone else—that is not what I am here to do. However, Kevin and Duncan were also not at the discussion.

Jackie Baillie: Correct. They are corroborating something that Geoff Aberdeen said. Is Geoff Aberdeen's recollection incorrect?

The First Minister: I do not know because I do not know directly what Geoff Aberdeen is saying about it. I know that James Hamilton has the

accounts of the people who were at that meeting and will be able to consider the matter properly.

It is not for me to tell the committee how to do its work, obviously, but I listened to the Lord Advocate say yesterday that although there are certain things that the committee cannot publish, it is not prevented from considering them. As I said, I understand that the committee has had evidence that denies that allegation and that there has also been an offer to give evidence in private.

Jackie Baillie: I move on to the name of the complainer being revealed to Mr Aberdeen and him communicating it to Mr Salmond. I am sure that you will agree that that is an extraordinary breach of confidentiality and, in any other employment, would be a sackable offence. Who authorised the senior member of your team to reveal the name of one of the complainants to Geoff Aberdeen? Was it you, was it the permanent secretary or were they freelancing?

10:45

The First Minister: I am not accepting that that happened, so I am clearly not accepting that it was authorised in the way that Jackie Baillie suggests. I accept that that is a matter of contention. Unfortunately, there are legal constraints on what we can discuss publicly at this committee, but James Hamilton is not under such a constraint in his consideration. I am not going to sit here and just accept the premise of questions that are being put to me where I dispute that premise.

I do not know for certain, but what I say is based on what I have said about Alex Salmond's knowledge of the identity of complainants and the basis for that knowledge when he spoke to me on 2 April 2018. I did note that Duncan Hamilton, in his written submission yesterday, said something along the lines of, "This was communicated" in the days after Alex Salmond had had his letter from the Government.

Certainly, Alex Salmond was pretty clear that he had found out, through investigations of Scottish Government social media accounts, who one of the complainants was. In relation to the other one—this is the bit on which I am perhaps just speculating—that must have been when he got that letter. He knew about the incident, because he had apologised to the person concerned. My assumption would therefore be that he would have known about that complainant without anyone having to tell him. I know, from what he told me, that he found out the identity of the other one through his own investigations.

Jackie Baillie: First Minister, you have worked with Kevin Pringle and would count him as a friend. He is saying that he heard that information. You have worked with Duncan Hamilton, who is a

QC. He is attesting to the same information about a complainer's name being revealed by a senior member of your team. Leaving aside that they were not in the room, you trust what they say to you—and you have done in the past. Are you saying that Geoff Aberdein, who was in the room and whom you describe as a friend, is lying about that?

The First Minister: I am not here to make that accusation of anybody. I am saying that Kevin and Duncan were not part of that discussion, and I was not part of it. Of the two people who were part of it, I have heard accounts of Geoff's version—I have not heard that directly from him—and the other party has a different account. It is up to the committee to decide whether it can hear, in private, directly from those people and, of course, James Hamilton has their accounts. There is a clear difference here.

The point that I am making is that, because of the reasons that I have set out, in relation to one complainant, where Alex Salmond knew about the incident because he had apologised to her, the knowledge of the identity of that complainant may well have been known. My assumption is that it would have been known to Alex Salmond at that time, for those reasons. However, I know that that particular version of the discussion—to which I was not party—is not accepted by the other person who was in it.

Jackie Baillie: In response to me and Willie Rennie at First Minister's question time last week, you said that you had no knowledge of that at all. At what point did you speak to your senior official about it?

The First Minister: When there was a suggestion made about it. I cannot remember the exact date, but I can check that for you if you want.

Jackie Baillie: So, it predated First Minister's question time.

The First Minister: I think that you can take it as read that when I said that, to the best of my knowledge—. Let me reiterate that I was not at that discussion, so I am not capable—

Jackie Baillie: No—but you have spoken to the senior official.

The First Minister: I do not believe, based on what I have been told, that that account is accurate. However, that is based on my not actually being party to the discussion. As I have said, the committee could, I am sure, speak privately to the other individuals concerned even if it cannot do so publicly.

Jackie Baillie: I want to be clear about this. You spoke to the senior official before First Minister's question time last week and therefore the answer

that you gave both to me and to Willie Rennie was not necessarily strictly accurate.

The First Minister: Sorry—I do not follow.

Jackie Baillie: Okay. It is really simple. We asked you about your knowledge of the issue, and you said that absolutely nothing happened with revealing the name of the complainer and that that was outwith your knowledge. That is clearly not the case if you spoke to an official in advance of our questioning last week.

The First Minister: I would have to go back and check the *Official Report*. To the best of my knowledge, what was being alleged did not happen. That is what I was seeking to convey.

Jackie Baillie: I am sure that we will all check the *Official Report*.

In your discussion with the senior official, did you investigate the matter? Was any disciplinary process gone through in arriving at that conclusion?

The First Minister: The clear view of the person who is being accused of that is that it did not happen. Because of the legal constraints that I am under, I am not able to go into the reasons why that is the case and what might actually be the situation here, but others can do that. James Hamilton is one of them. I say again that I do not know of any reason why the committee cannot at least privately speak to the individuals concerned.

Jackie Baillie: Are you not worried that a senior member of your staff was freelancing in that way?

The First Minister: I do not accept that characterisation.

Jackie Baillie: Okay. I will move on to the leak to the *Daily Record*, which again concerns the confidentiality of complainants. When did you become aware of the leak to the *Daily Record*?

The First Minister: I became aware that there had been a query to the Scottish Government from the *Daily Record* some time in the afternoon—from memory, it was quite late in the afternoon—of 23 August, which is the day before the story ran in the *Daily Record*. That is when I became aware of it.

Jackie Baillie: My understanding is that there were actually two stories—one on 23 August and one on perhaps 25 August, which actually had details of complainants. As I understand it—please correct me if I am wrong—the first story talked about complaints against Alex Salmond, but the second went into details of those complaints. Where do you consider the leaks came from? Mr Salmond believes that it was somebody within your team. The Information Commissioner's Office identified a small group of 23 people, which would be broadly consistent with Mr Salmond's view. I

am curious to know where you think the leaks came from.

The First Minister: I do not know where the leaks came from. I can tell you where I know they did not come from: they did not come from me and they did not come from anybody acting on my authority, on my instruction or at my request. I am as certain as I can be that they did not come from anybody within my office. As you said, the second story had considerable detail. I heard Alex Salmond say that that detail could have come only from the decision report. I was never sent a copy of the decision report.

I have said all along, and I will keep saying, that I was of the view that I should not act in a way that tried to sweep the complaints under the carpet, and therefore I would not have acted in a way that blocked any public comment about the outcome of the matter had the Government thought that that was appropriate. That is not the same as saying that I wanted the issue to be in the public domain.

Since I first became aware of what Alex Salmond was facing, the thought of it becoming public and the thought of having to comment on it horrified me—it absolutely horrified me and made me feel physically sick. I would have been very relieved if it had never come out into the public domain, if that was legitimate and not because I was trying to sweep it under the carpet. No part of me wanted proactively to see the issue get into the public domain. I had nothing to gain from that, and only a lot of pain and grief associated with it.

Jackie Baillie: My understanding is that your office was sent a copy of the decision report. The leak contained confidential information about the two women involved, which I think we would both agree is a matter of serious concern and regret. However, I have been told that the *Daily Record* was given the story of the complaints about Alex Salmond in order to spike another story that it had about you. Is that remotely true?

The First Minister: That is not something that I had even heard before.

Your understanding, which you started that question with, as I think you know, is inaccurate—

Jackie Baillie: I do not know. I am asking.

The First Minister: My office was not sent a copy of the decision report, and, after my principal private secretary appeared before the committee, he wrote to confirm that, because there had been some confusion between that report and the letter that the permanent secretary wrote to me on 22 August to tell me that the investigation had concluded and what was happening with that. However, a copy of the decision report was not, and has not subsequently been, shared with my

office. I want to be clear about that, and I think that has been made very clear to the committee, too.

Now you can tell me what the story was about me that I was trying to spike.

Jackie Baillie: I do not know. I was asking you—

The First Minister: I am intrigued.

Jackie Baillie: —and I would not reveal that publicly without checking with you.

The First Minister: Just think how implausible that is. I have never heard that before, so that is a new part of the conspiracy that I am hearing today for the first time, but imagine how implausible that is. We have an investigation that starts with two complaints against Alex Salmond, which the Government is investigating throughout much of that year, and we just manage to time the culmination to spike some unknown story about me. That is an incredible coincidence, which is why it did not happen.

Jackie Baillie: Indeed, it is an incredible coincidence, but it gives you an opportunity to rebut that—

The First Minister: As I just have.

Jackie Baillie: —which is very helpful.

I will take you back to the seriousness of the leak. Wherever it came from, it was clearly really concerning. Why did you, or anyone on your behalf, not report the matter to the police?

The First Minister: First, I agree about how concerning the leak is. It is one of many aspects that deeply troubles me, because I do not know where it came from. If we put aside the serious nature of the issue with which we are dealing, it always troubles a politician when they do not know where a leak comes from, but I do not know where it came from.

What I do know is that, if you had given me the chance for this whole sorry matter never to be in the public domain, legitimately, I would have bitten your hand off. I never wanted to be publicly commenting on allegations of this nature against Alex Salmond. There is no part of me that wanted to be in that position.

It is also the case that the Government did not benefit in any way from the leak. I appreciate that I say that with hindsight, but the leak has allowed some people, almost from day 1, to cast the Government as the aggressor and the guilty party.

I do not know where the leak came from. I can say, emphatically, that I know that it did not come from me or anybody acting on my authority or instruction. Obviously, there were investigations in the Scottish Government, and Mr Salmond raised

the matter and reported it to the Information Commissioner's Office. There was an investigation and then, I think, a review of that investigation by the Information Commissioner's Office, including by—forgive me if I do not get the terminology right—its criminal investigation section, which did not find evidence that it had come from within the Scottish Government. Had it—

Jackie Baillie: My recollection is that it did.

The First Minister: Well, if you—

Jackie Baillie: There was a limited number of people who it could have come from, but I am not going to argue the point with you. My question was—

The First Minister: It is quite an important point.

Jackie Baillie: My question was: why was it not reported to the police?

The First Minister: I do not know the answer to that question. I am happy to go away and reflect on that. I do not know whether it was something that we considered. As far as I am aware, it was not reported to the police by the Scottish Government. The ICO investigation decision letter, dated 6 March 2020, stated:

"We are satisfied that there is no evidence to corroborate the complaint that an employee of the Scottish Government unlawfully obtained and disclosed personal data relating to Mr Salmond. We are also satisfied that there is no evidence that the Scottish Government acted in breach of Article 5(1) of the Regulation in relation to the processing of Mr Salmond's personal data."

Mr Salmond has pointed to a comment made—I will probably not be able to find this now—when, I think, the decision was being reviewed at his request. Somebody said that they were sympathetic to the hypothesis that the leak could have come from within the Scottish Government, but they had no evidence of that, and, in fact, they expressly said that it could also be said that there was a possibility that it came from other sources as well. I put to you, Ms Baillie, that it is not true to say that the Information Commissioner said that the leak came from the Scottish Government.

11:00

Jackie Baillie: I will ask you again: who else knew about that? Who else had details of the complaints and would have leaked them to the press?

The First Minister: In terms of the identities of people in the Scottish Government who would have had access to the decision report, I would have to check and get back to you. I did not have access to the decision report, and nor did my office. I think that you have heard evidence that the matter was referred through the Crown Agent

to the police, but, as I understand it, the police did not take a copy of the decision report. Obviously, Mr Salmond and his lawyers had a copy of the decision—I say that simply as a statement of fact.

I do not know where the leak came from, and I cannot say that emphatically enough. I wish I did know where it came from. Like everybody else, I can hypothesise and speculate, but I do not know. However, I know emphatically that it did not come from me or anybody acting on my authority or instruction.

Jackie Baillie: Will you ask the police to investigate the matter?

The First Minister: I am happy to consider that, but I think—

Jackie Baillie: Given your concerns, which I share, surely we should do that?

The First Minister: My saying that I want to consider that is not an indication that I do not think that it is serious. I think that you heard a little bit about the way in which such things are reported for criminal investigation from the Crown Agent yesterday. I will stand corrected if I am getting any of this wrong, because I am not an expert on the legal basis, but the ICO criminal review team looked at it. Had it thought that there was evidence, it would have referred the matter through the police or Crown Office. The fact that the ICO has already done a review and decided that there was no evidence leads me to believe that there might not be much purpose in doing what you are asking me to do. The process has already been undertaken. I will not sit here and answer definitively right now; however, given that you have asked me, I will consider it and come back to you when I have had the chance to do so.

Jackie Baillie: Thank you very much.

The Convener: We are at the time when we should take a break, but Murdo Fraser has a specific supplementary to Jackie Baillie's questions.

Murdo Fraser: Good morning, First Minister. I will briefly follow up on Jackie Baillie's line of questioning about the alleged release of the name of a complainant to Geoff Aberdein. You would accept that that is an incredibly serious issue, and would be an appalling breach of privacy.

We have heard what Geoff Aberdein has had to say. In his submission, Duncan Hamilton said:

"I can also confirm that I was told the name of a complainant by Mr Aberdein ... in the early part of March 2018. I cannot recall the precise date, but it was very shortly after the 7th March 2018, the date Mr Salmond received his letter. The name of the complainant had been given to Mr Aberdein by a senior government official. I confirm that I am aware of the identity of the government official who gave the name of the complainant to Mr

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

In his written submission, Kevin Pringle basically corroborates that.

We have a statement by Geoff Aberdein, which is corroborated by Duncan Hamilton and Kevin Pringle. You are a lawyer, and you are well aware of the importance of corroboration in the rules of evidence. You have suggested that the senior official we are talking about has a different version of events. Who would corroborate that alternative version of events?

The First Minister: It is not for me to tell the committee how to do its work, but I think you started your question with the statement, "We have heard from Geoff Aberdein." I am not aware that the committee has heard from Geoff Aberdein, but if I am wrong about that, I apologise; the committee has not, as I understand it—certainly not orally—heard from the other person. It is open to the committee to test that privately with either or both of them. I understand that James Hamilton has accounts from both of them and will be able to make his assessment of that.

I was not a party to the discussion, but my understanding is that what you suggest did not happen. In a discussion in which there are two people, clearly, if there are different accounts, people have to decide by taking account of the whole picture, which we are not able to do today, unfortunately, because of the constraints on us. As I have said already, Duncan Hamilton and Kevin Pringle were not party to that discussion. I am making assumptions here and I want to be very clear about that, but in relation to the bit of the evidence from Duncan that you read out about how the information was received after Mr Salmond had received a letter—on 7 March, I think—my assumption, based on what I know about this and what Mr Salmond shared with me, is that, by that point, I cannot work out how Mr Salmond would not have known that from his own knowledge at that point.

Again, I will stand to be corrected, but I think that Geoff Aberdein knew at the time about the apology to the individual concerned in 2013, so the fact that there was knowledge of the identity of the individual may well have been the case, but I can only say what I have been advised about the conversation in question. I was not party to it. It would be serious if the identity of a complainant was revealed—I absolutely accept that, but that is not what I understand happened in the way that is being set out. As I say, it is open to the committee to take evidence, even if it is in private, from both the people who were party to that conversation.

I come back to another point. Again, if my recollection about this is wrong, I have no doubt that somebody will say so, but I do not recall Alex Salmond giving me any suggestion on 2 April that he had known the identity of a complainer because it had been told to him by somebody in the Scottish Government. I repeat again: one of the complainers he knew about because he knew about the incident. If you are openly saying that you have apologised to somebody for an alleged incident, it is clear that you know who they are. I remember him telling me, although I do not remember whether he used the name of the second complainer, that he had identified the second complainer by going through the Scottish Government Flickr account. I am trying to tell you what I know from my own recollection and my own direct discussions. I have gone as far as I can in telling you my understanding of a discussion that I was not party to.

Murdo Fraser: That does not get away from the fact that we have a statement here that two other individuals will corroborate. I have given you the opportunity to say who might corroborate the alternative version of events that you put forward and there is no corroboration for that. In effect, you are saying that the evidence that has been presented to us is untrue. Why would Geoff Aberdein, a very senior person in the history of the SNP who is now pursuing a career in financial services, as you are aware, give evidence that was untrue?

The First Minister: I have not heard or seen Geoff's evidence, and I am very conscious of that. This will be a feature of much of our discussion today; you are talking about personal relationships that go back a long time. The people we are talking about I have worked with, known and considered friends for a long time. I am not here to cast aspersions on anybody's bona fides or sincerity, but it is clear that there are differing recollections and accounts. I can speak more clearly about the conversations that I was part of; I am telling you what my understanding is of a conversation that I was not part of.

I will say a couple of things. Murdo Fraser will know this, because he is a lawyer: when people are told about something that happened in a conversation that they were not part of, that is hearsay evidence. In relation to who corroborates, you have to look at the bigger picture. I am saying to you that I can think of why the name of a complainant might have been known at that time, but that does not mean that it was revealed or identified in the way that has been said. I am not going to repeat everything that I have said about 2 April, but Mr Salmond knew the identity of both complainers, in one case because, as he told me, he had apologised to her—that is my recollection of how he knew that complainer—and in the other

because he had done his own investigations to find out.

Murdo Fraser: You are absolutely right, First Minister—we do not have evidence in front of us from Geoff Aberdein. However, we have evidence from Duncan Hamilton and Kevin Pringle—

The First Minister: I do not dispute that.

Murdo Fraser: —who both say that he told them that version of events, so either they are not telling us the truth or the senior official you refer to is not telling the truth.

The First Minister: Look, I do not think that I can go much further than I already have on that. I keep saying that it is not for me to tell the committee how to do its work, but it is open to the committee to speak to the two people who were party to the discussion, in private, to try to get a sense of whether there is a direct clash of recollection or a misunderstanding of what actually happened.

The Convener: Mr Fraser, could you be quick? I am very aware of the timing to refresh the room.

Murdo Fraser: I have just one final question, convener. This is clearly a very serious matter. Very serious claims have been made about the release of a complainant's name, which, apart from anything else, would be illegal under the general data protection regulation. It would be a breach of privacy and potentially a criminal act. We have corroborated statements from witnesses that allege that that took place. Have you had that matter investigated in the Scottish Government?

The First Minister: These are matters that are under investigation by the committee, an independent adviser—

Murdo Fraser: No—I am talking about the police. Are the police investigating the matter? If not, why not?

The First Minister: No, I am not aware of the police investigating that. Contrary to some suggestions that have been made, I do not instruct the police. It is up to the police—

Murdo Fraser: With respect, First Minister, as head of the Scottish Government, do you not have a responsibility to protect the privacy of complainants who work for the Scottish Government? A very serious allegation has been made about the release of a complainant's name, which is a criminal act. Surely, as head of the Government, you should be taking action on that?

The First Minister: I am trying to respect the processes that are already under way on such matters—the work of the committee and the inquiry into the ministerial code. The matters in question are being considered as part of both those pieces of work and, rightly or wrongly—

people can draw their own conclusions—I am trying to allow those processes to run their course. The police do not need my authority to investigate any matter that they wish to investigate.

The Convener: Mr Wightman, you have assured me that the supplementary that you wish to ask will be very short. Please make it so.

Andy Wightman: I will. It relates to the ICO's review of the decision by the criminal investigation team, which was reported to Levy & McRae on 28 May 2020. In paragraph 4.8, it says:

"There remains the possibility that the leak came from elsewhere. The list of stakeholders who had access to the internal misconduct investigation report includes the original complainants, the QC, the First Minister's Principal Private Secretary, the Crown Office & Procurator Fiscal Service and Mr Salmond and Levy & McRae, as well as the relevant staff members of the SG."

Therefore, it appears from the ICO's review that the First Minister's principal private secretary had a copy of the internal misconduct investigation report. I think that you said previously that your office had not got a copy.

The First Minister: My understanding—I think that my principal private secretary has written to the committee on this—is that that is a misapprehension from the internal Government investigation into the matter and that my office did not get sent the decision report. If there is further clarification that we can usefully provide on that, we will, but neither I nor my office was sent the decision report.

Andy Wightman: If anyone in the Scottish Government leaked, made public or communicated to a third party information such as the name of a complainer or, indeed, a decision report, that would clearly be a dismissal offence, would it not?

The First Minister: I would imagine so, yes.

The Convener: Thank you, everyone. In line with the mitigations that were agreed to allow us to meet safely in person, I suspend the session for around 20 minutes. We will reconvene at 11.35. I remind members and everyone else to observe social distancing when they leave the committee room and during the break.

11:13

Meeting suspended.

11:35

On resuming—

The Convener: Good morning and welcome back to the committee's 15th meeting in 2021. This is an evidence session with the First Minister of Scotland, Nicola Sturgeon MSP. I can confirm

that the First Minister made the affirmation at the start of the evidence session.

Before we suspended, we were discussing the theme of complaints handling. We will stick with that.

Alex Cole-Hamilton: Good morning First Minister; thank you for coming to see us today.

I would like to continue the theme of confidentiality for complainers, but before I do that I have a couple of very specific questions about the way that you phrase things, because I think that words matter.

I was very struck that, in your opening statement, you described the revelation of the investigation by using the phrase that I think you have always used since the allegations came to light, which is that Alex Salmond “informed me of the investigation” on 2 April.

Do you accept that there is a difference between having knowledge of a specific complaint and investigation and having an awareness that someone might have come forward with a concern?

The First Minister: Yes.

Alex Cole-Hamilton: Okay. With that in mind, when did you first become aware that a civil servant may have come forward in 2017 with a concern about historical behaviour on the part of Alex Salmond—not a formal complaint or an investigation. When did you have awareness just of that as a reality—that someone had come forward?

The First Minister: I am not trying to play with words; I will try to answer your questions as directly as I can, based on my recollection of conversations that I had.

We will come on to 29 March.

Partly from the November query from Sky News—which we may or may not come on to—and then from my conversation with Geoff Aberdeen, I had an awareness that there was an issue with concerns about Alex Salmond, and that those might be in the form of a complaint. However, it was not until I read the permanent secretary’s letter on 2 April that I knew, beyond any doubt. Any general concerns or suspicions that I might have had actually became detailed and actual knowledge of the fact that there were two complaints, that those were by civil servants, that they were being investigated under the procedure and what the nature of the complaints was.

Alex Cole-Hamilton: You are saying that, if this was just about Sky News and the airport, that would not have been a complaint in your Government. To be crystal clear, you had

awareness that there might be a concern within the civil service about Mr Salmond at or around that time.

The First Minister: From 29 March is, I think, is distinct from 4 November, when I think the Sky News query was.

We will come on to this—it is a frustration for me. My recollection of the conversation with Geoff Aberdeen is not as vivid as I wish it was, which I think perhaps tells its own story. I came out of that and went into the 2 April meeting—

Alex Cole-Hamilton: First Minister, I will ask you about 29 March later—

The First Minister: I am trying to answer your question.

Alex Cole-Hamilton: Of course.

The First Minister: What I am saying to you is that, ahead of 2 April, I had an awareness that there was a complaint. No doubt, I had suspicions about what the nature of that might be, but that is what it was: a general awareness—a suspicion that, no doubt, I had all sorts of theories about in my head. It was reading the permanent secretary’s letter, which Alex Salmond showed me on 2 April, that gave me the knowledge, and the detail behind that knowledge, of all the things that I have spoken about.

Alex Cole-Hamilton: Forgive me for interrupting you there.

That comes back to the distinction between knowledge of a complaint and awareness that something might be going on.

This is my final question on this bit. Did you have an awareness before 29 March that complaints or concerns might be emerging within the civil service?

The First Minister: Not specifically, but this again relates to something that I think you have heard some of from the permanent secretary.

The query from Sky News on 4 November, which I spoke directly to Alex Salmond about on more than one occasion over a couple of days, left me—for a variety of reasons that I can go into or not, as you wish—with a sense of unease. I cannot put it any more strongly than that.

One of the reasons that led to that, I think, was that I had been made aware on the Monday—for the chronology, the Sky query came in on a Saturday night, and I spoke to him on the Sunday—that he and/or his lawyers had been phoning people in the civil service. I spoke to him again about that. I cannot put this any more firmly than how I am about to put it to you, and I am sorry about that. That and the way that that was raised with me just led to a sense of unease that

those phone calls, whether they were from him or his lawyer, had stirred something—that they had poked a hornet's nest. I did not have knowledge of specific complaints. It was not something that I thought about every day or that I lay awake at night at that point worrying about, but I had a lingering suspicion that there just might be something in the ether or the undergrowth that could surface.

Alex Cole-Hamilton: Okay. Thank you.

The reason why I ask about your phrasing is that, when all this broke in the media, you gave several calculated and selective answers on national television to people such as Sophy Ridge and Andrew Marr and then had to reverse those positions when certain information came to light. Can you see why people might feel misled by your description of these events?

The First Minister: Looking at the matter dispassionately—that is not the right word, because that is not something that it is possible for me to do—yes, I can. To try to explain things as openly as I can, this is all stuff that—I do not want to labour this, because it is not of any interest to the committee, and I am not appealing for special treatment—is deeply personal for me, and it is really quite hard to talk about. If I have appeared cagey about it at times, that is one of the reasons why.

There are other reasons. You talked about interviews with Andrew Marr and Sophy Ridge. I do not think that this is true of the Sophy Ridge one, if it is the one that I am thinking about, but certainly at the time that Andrew Marr first asked me about this, I was very conscious that there was an on-going investigation, and I was really worried that anything that I said about the matter at any time would cause headlines, news and commentary. I was always trying to avoid doing that. If it appeared that I was not being as open, discursive and full, that was another reason why.

The other point about the Sky News query—I think that this is a point that Glenn Campbell has made, as well—is why, when the Government investigation process became public, I did not refer to that. Although that had left me with lingering suspicions, at that point that story had never run or surfaced. As far as I knew, there was nothing to it, although I had some concerns that there might be something to it. I had nothing to base that on beyond what I am telling you here.

Yes, I do understand why people might see that. I would simply say to people that there are a lot of factors here. I have seen commentary to the effect that I always seem really uncomfortable when I speak about this. I am really uncomfortable when I speak about it. We are talking about serious allegations that have led to the breakdown in a

relationship with somebody who was really important to me on all sorts of levels, so I feel uncomfortable when I speak about this at a human level. However, I am not here to talk about that; I am here to answer questions as First Minister, and I am trying to do that.

Alex Cole-Hamilton: I appreciate that, First Minister, but you understand that this comes to the very heart of what we are considering. Your knowledge of these events really matters. The fact that you had to reverse your position on what you knew and when on “The Andrew Marr Show” has left people with considerable doubt.

I will move on.

The First Minister: Forgive me, but can I say something about that?

Alex Cole-Hamilton: Yes, of course—by all means.

The First Minister: There is another point about Andrew Marr. Again, I appreciate that people who are watching this may not see this. Andrew Marr—who will be loving the fact that he is featuring so heavily in this discussion right now—came back to ask me about that, and I think that I made the point that I felt that two issues were being conflated. I thought that the question that I was answering the first time was about the Scottish Government complaints, whereas what I had had previous knowledge of was the Sky query, which is a different thing. Sometimes, one of the other reasons is that different things have been conflated, although they are actually separate.

Alex Cole-Hamilton: Okay.

I would like to move to the issue of the confidentiality of complainers, which Murdo Fraser and Jackie Baillie discussed with you before the break. We have had the assertion corroborated that the name of a complainer was given to Geoff Aberdeen. If true, that is an egregious breach of confidentiality. You told Jackie Baillie that you do not accept that. You confirmed that you had spoken to the senior official who is accused of that when you learned of it. Is that the reach of your investigation into that issue?

11:45

The First Minister: At the moment, I am trying to respect the other investigative processes that are under way here. I cannot speak for Geoff Aberdeen, but I know that James Hamilton has an account of the matter. As I say, it is up to the committee to decide what it does.

Jackie Baillie suggested earlier that I had somehow contradicted myself today against what I said last week at First Minister's questions. I have here a copy of the *Official Report* of that. I did not

contradict myself. What I said was not that I did not have knowledge of the allegation; I said that, to the best of my knowledge, the allegation was not true. I can read out the *Official Report* should anyone want me to.

Alex Cole-Hamilton: With respect, James Hamilton is investigating your actions, not those of those around you, but he might have a judgment to make on those as well—we will discover that. Nevertheless, it is a sackable offence to breach confidentiality in that way. Would you be surprised that the senior official that you asked about the allegation—as the reach of your investigation—denied it?

The First Minister: I am not sure, convener, that I can say much more about this than I already have. I have tried to be as expansive as possible, within constraints. What I do know is that we are talking about breaches of confidentiality and GDPR, but I think that the issues are even more fundamental than that. I do not disagree that, if that happened, it would be as serious as you are saying, but I have set out why I am not sitting here accepting as fact that that happened, because I think that there is an alternative explanation of it.

Talking about GDPR and confidentiality, the person who told me the identity of one complainant and certainly gave me the impression that he knew the identity of the other—I cannot remember whether he told me the name—was Alex Salmond.

Alex Cole-Hamilton: I have a final question on this bit, and then, convener, I promise that I will move on to other aspects of confidentiality.

That revelation—if it happened—clearly knocked Geoff Aberdein for six. He had a telephone conference with Kevin Pringle and Duncan Hamilton. We also understand that he reached out to a former civil servant who he is very close with, clearly reeling from this. However, I understand that you have not attempted to contact any of them.

The First Minister: I have not attempted to contact Geoff Aberdein about the matter, because I think that, if I had and I was sitting here saying that right now in front of this committee, I would probably be getting criticised. I do not have it in front of me, convener, but the initial letter that I got from this committee asking for written evidence had, I think, words to the effect that I should not be comparing stories with other witnesses. I have tried to respect the processes of this committee.

Alex Cole-Hamilton: I fully understand your position there, First Minister. The reason why I am labouring this point—and, I dare say, the reason why Mr Fraser and Ms Baillie are labouring the point—is that, if the allegation is true, it may turn out to be one of the biggest failures for the

complainers at the heart of this, as a name was passed to the emissaries of the man they were accusing. It feels like you have just taken the word of the person who is accused and not investigated it. I will not proceed any further on that.

The First Minister: I do not want anybody to think that I do not treat that seriously. However, you have said things there to me about Geoff's account that, certainly to the best of my recollection, I have not heard. I have not seen Geoff's account. It is open to this committee to have Geoff and the other individuals who were party to that discussion in front of it, at least privately.

I can say only so much about a conversation that I was not party to. What I do know is that Alex Salmond himself gave me, or shared openly at the meeting on 2 April, the identity of at least one and possibly two of the complainers. To the best of my recollection, he did not give me any indication that day that he had got the identity of a complainer from somebody with the description that you are using.

Alex Cole-Hamilton: Thank you.

I would like to move now to the leak to the *Daily Record*. I will not cover that in and of itself, because I think that Jackie Baillie has done that very well, but I find it curious that the day before the leak to the *Daily Record*, the Government was about to press release the fact of the investigation and was stopped only by legal action from Mr Salmond. Was that press release prepared with your consent?

The First Minister: The chronology was that I was written to by the permanent secretary on 22 August. I cannot recall whether the committee has that letter, but I do not see why it would not have. I think that I have the letter somewhere here but I will go through it from memory right now. The letter told me that the investigation had concluded, that certain things had been upheld and that a decision had been taken to refer, I think, three matters to the police. By the time that the permanent secretary wrote to me, that referral had taken place. That letter on 22 August told me that there was further consideration about putting into the public domain some very limited information, but that the decision had not been taken. Therefore, it was not my press release; it was not a press release that I was preparing. As I understand it now—I think that I understood it at the time, but certainly as I understand it now—the reason for that was that the Government also had a requirement at that time to answer a freedom of information request that, although I cannot remember the exact phraseology, would have required that information.

If I am getting my dates right, on 23 August, when, I think, the permanent secretary decided that a limited amount of information would be put into the public domain. That was notified to Alex Salmond, his lawyers threatened interdict action and the Government decided not to do so. The query from the *Daily Record* came in later. I understand that the Government made Alex Salmond's lawyers aware of the query from the *Daily Record*. It is not for me to say, but, at that point, Alex Salmond clearly decided not to take action against the *Daily Record*. That is my knowledge of the chronology of that.

Alex Cole-Hamilton: That is very helpful; thank you. I have a very brief question on that. Were the complainers asked whether they were happy for the press release to go out or for that limited amount of public information to be released?

The First Minister: I was not the decision maker in that process. Again, I will check it but, from memory, I think that the complainers had been told that limited information was going to go out but I cannot recall—and would need to check—whether they had been asked for their opinion or just advised of that.

Alex Cole-Hamilton: I have two final short questions. It is odd; the police had expressly advised against releasing information of that kind, considering that it—or, rather, the report—had been passed to the Crown. Can you see that, taken together, those two things—the press release and the leak—look like a determined attempt to splash that information, in order to damage Alex Salmond, irrespective of what that might mean for the complainers?

The First Minister: I think that if you want to see it that way, you can certainly see it that way. I am now commenting on things that I know about; I was not centrally involved in the decision making around them at the time. I go back to the fact that, as I understand it, what tipped the balance in favour of putting some limited information into the public domain was the freedom of information request that had to be answered; that was the basis for that consideration.

I cannot speak for anybody other than myself here but, as I have said before, I did not ever want to be in a situation where I was standing in front of a camera, talking about allegations of this nature against Alex Salmond. I had no desire for that to be in the public domain. I certainly would not have tried to illegitimately block it, because that would not have been appropriate. I think that I did know that, because of the threatened interdict, a planned press release could not go—interdict action had been threatened. I recall feeling quite relieved about that, because it meant that I was not suddenly facing this thing coming into the public domain. I never wanted any of this to

happen and I certainly would not have had any desire to see it forced into the public domain.

Alex Cole-Hamilton: Forgive me, First Minister; I was not suggesting that it was necessarily you that had the desire to push that information out there.

This is my final question, as you will be glad to hear, convener. Around that time, the report of the investigation was also passed by the permanent secretary to the Crown Agent, against the wishes of the complainers at the heart of that investigation. Was that the right thing to do?

The First Minister: On balance, yes, I think that it was the right thing to do. When the permanent secretary wrote to me on 22 August, it was not just that the decision had been made; by that point, the referral had been made.

I will answer the question specifically in relation to the fact that, in terms of all the charges that are being levelled at me or the Government generally, one of the things that I have found myself doing is almost to pose the counterfactual. Let us say that we had done the opposite—and by “we”, I am talking generically. Had the permanent secretary, sitting with allegations and complaints that she had gone through a process with and thought had substance and which, on the face of them, involved alleged criminality, not passed that information to the police and it had later come out, I think that the questions being posed to us would be just as serious but from the opposite perspective.

Alex Cole-Hamilton: With respect, that would have been criminality against people who have agency and the capacity to make decisions about what they want done about what has happened to them. The women expressly said that they did not want criminal involvement.

The First Minister: I have read some stuff—I have it here but I will not start looking through it—and I think that guidance from the Advisory, Conciliation and Arbitration Service talks about, sometimes, there still being a need to refer something to the police even when people do not want that to happen. If the Scottish Government thinks that criminal acts have been committed, I would think that it has a duty—I use that word not in a technical sense, although it maybe is true in a technical sense—to do something about that.

I do not know how strongly opposition was expressed by the two complainants but, on balance, these things often come down to judgment. Much of what we are discussing and will discuss today are things that, perfectly legitimately, we are being criticised for and that I am being criticised for. I understand why people are doing that but, had I done the opposite, I would also be getting criticised. That is perhaps

just a reflection of the invidious, almost impossible, situation that this has placed a lot of people in.

Alex Cole-Hamilton: Thank you.

Dr Allan: I will build on the questions that were asked by Mr Cole-Hamilton. You have described to us the circumstances around the press release. Indeed, Mr Salmond said that, in his view, it was “remarkable” that the permanent secretary had planned to make a press statement on 23 August, announcing the outcome of the complaint against him. Did the permanent secretary or anyone else in the Government subsequently seek to give a formal explanation of that order of events and the reasons behind them?

The First Minister: To me?

Dr Allan: To you.

The First Minister: The permanent secretary’s letter to me on 22 August—I can dig it out if people want me to quote from it—indicated that the issuing of a press comment was still under consideration. What I understood then, and what I have understood since, is that the reason for deciding, on the balance of judgment, to issue a press comment was that there was an outstanding freedom of information request that had to be answered. I think that the question that was asked was whether complaints or concerns had been raised about Alex Salmond’s behaviour.

That was the judgment that was made. Again, I will play the counterfactual. What if we were sitting here a couple of years on and it had come to light that there had been a Government investigation that nobody had known about, that it had upheld complaints against Alex Salmond and that it had been put in a drawer? People can draw their own judgments on which course was right or wrong, but I would bet my bottom dollar that, if that had happened, I would be sitting here right now answering questions about why we thought that it had been appropriate just to keep the matter private.

These are really difficult situations and really difficult judgments. Did the Government, I and the rest of us get every single one of the judgments right? Possibly not—that is for others to judge. However, at every step of the way, a real effort was made to get it right.

The other thing that I have tried to do—it has not been that hard because of my past relationship with him—is to see the matter from Alex Salmond’s point of view. Given his position and what he has gone through, subjectively I am not surprised that he takes a different view on some of the key judgments. That is understandable, but it does not necessarily make him right and the Government wrong. That is just the fact of the matter.

Dr Allan: I turn to one of the other issues on which Mr Salmond, when he spoke to us, took a different view from yours. It is a matter of record that Mr Salmond was of the view that you should have intervened to advocate for use of arbitration in the complaints against him. Last week, I asked him whether arbitration on a public law matter that was related to, in this case, sexual harassment would have been inappropriate. He refuted that. Should the Scottish Government have looked at arbitration, or do you continue to take the view that your Government was right not to go down that line?

The First Minister: Alex Salmond wanted me to intervene at two points on two issues. First, before we got to the point of arbitration, he wanted me to intervene to, in effect, persuade the permanent secretary to agree to a process of mediation. As I understood it, that would have been mediation between him and the complainers. It was later that he started to seek a process of arbitration of the procedure. The Government considered that; in terms of the process that was under way at the time, those things were considered, and the Government came to the view that they were not appropriate.

12:00

If you want my view now, my understanding of the situation is that the complainers did not want mediation and, in such a situation, it would not have been appropriate to force that into a process that did not, in and of itself, allow for it. On the arbitration of a public procedure in which the issues were very much public law issues, I am not an expert, but it is not immediately obvious to me that arbitration would have been the right thing or would necessarily have been a quicker, cheaper or more effective way of dealing with those things. Those were matters that the Government looked at in the course of the investigation.

The issue for me is not so much whether I think that mediation or arbitration should or should not have happened; the issue for me was whether it would be appropriate for me to intervene in the process to try and bring either of them about. I do not think that it would, given the nature of the process and my not having a role in it at that stage.

To pose the counterfactual, I think that, had I done so, I would be facing serious criticism on that score, as well. In fact I think that, when this first came to light—from the questioning of me in the chamber—that is what people thought that they were about to start to level at me, and I do not think that the treatment of me would have been particularly favourable. I do not think that anybody around this table would be patting me on the back

today, had I sought to intervene and influence the course of that procedure.

I will make a final point on this. I am not questioning whether Alex Salmond thought that both mediation and arbitration might, in their own terms, have been appropriate, but I also had the strong impression that both of them were devices to stop the complaints coming to the point of decision. Therefore, had I intervened to try and bring them about, I would have felt that I was effectively colluding with him to try to thwart the direction and the natural course of an investigation. I think that that would have been a heinous and egregious breach of my position.

Dr Allan: I appreciate the distinction that you make between arbitration and mediation.

It became clear last week that Mr Salmond does not believe that the original complaints under the procedure were so much made in bad faith; rather, he seems to believe and indicated that, in his view, various people were trying to manufacture allegations against him after that point. He cites a variety of emails that were sent out to past and present members of staff, particularly to women, around that time. He indicated to us that he thought that they were a “fishing exercise”, rather than offers of support. What is your understanding of all that and of all those communications?

The First Minister: The ones that have been raised in particular are those that were sent by the SNP on two occasions. One was at the time of #MeToo, when we developed—I think that other parties were doing the same—not a new procedure but a different route for people to raise complaints; an independent route. A lawyer was there whom people could go and speak to if they did not want to go through the more internal route. We sent that out in an all-member email, I think around the end of October. I think that that also went to staff, or some communication around that went to staff.

Secondly, after the situation with Alex Salmond had become public, communications again went to all members, I think, and to particular members of staff. That was a duty-of-care move. Most such high-profile situations should, and are right to, perform that duty-of-care role of saying to people—not as a “fishing exercise”—that if they have any concerns, here is how they go about raising them. I really struggle to see from an objective perspective—this is not a criticism, and I appreciate that Alex cannot be objective in this—how that is not just a reasonable thing, but a perfectly appropriate thing, for the SNP to have done.

Beyond that, it dismays me to hear suggestions that people were concocting or making up allegations. A number of women came forward,

and they did so of their own free will. Did they support each other along the way? Some of them evidently did. Did people in the SNP—people who had worked with Alex Salmond—talk to each other and support each other? Absolutely. To suggest that that is something that it is not, is seriously wrong.

To this day, I do not know the identity of every complainer in the criminal trial. Some of those whose identities I do know, I do not know well, and to the best of my knowledge they do not all know each other well. The idea that this was some concoction or plot is just not based on any semblance of fact or credible evidence.

Dr Allan: On the Government's legal advice in the actual process, what role does external counsel—

The Convener: Can I intervene, Mr Allan? Would you mind if we left that until we get to the judicial review section, please? It would make our splitting up of our chronological decisions more sensible.

Dr Allan: Okay. In that case, I will ask more generally about the evidence, as it were, behind your position. I asked Mr Salmond about the evidence that he could provide to back up his position. He has, for instance, implied to the committee that there are many documents that could neither be led in the criminal trial nor released to the committee, but which back up his position on the claims that he made in committee last week. Do you have a view on all that—on why the documents have not been released and on the conclusions that he draws from those facts?

The First Minister: It is fair to say that I do. First, I heard him say last week something like, “the First Minister says that I have to produce evidence, but it's not for me to produce evidence because I've already gone through two court cases”. I am not suggesting, and was not suggesting, that Alex Salmond has to evidence his innocence of criminality. That was done in a court and is beyond question. However, if someone is going to pose or put forward the suggestion that there is some kind of plot or, as I think he described it, a “concerted” and “malicious” campaign, there is a need to evidence that, but I have not heard evidence of that.

There have been references, repeatedly, to material that was handed over to Mr Salmond's defence as part of the criminal trial. By definition, that is material that must have been seen by the police and the Crown. I understand that there were applications to have that material introduced into the criminal trial and that the court decided that it was not relevant. I just put forward the view that, if that material showed what Mr Salmond wants us to believe that it shows, somebody in the police,

the Crown Office or the court might have seen that too. People should draw some conclusions from the fact that they did not.

In terms of the messages that have been quoted, I have tried to find out where they are from, whom they are to and what the context is, and every one for which I have managed to get to a point at which I can take a view myself, is completely the opposite of what he is trying to suggest. They have been taken out of context, misrepresented and twisted. What they show, in terms of what I have seen, is people supporting each other, people talking to each other—yes, there was a bit of gossip about what was going on; remember that it was a massive thing for the SNP, particularly for people who had worked closely with him—and people co-operating with police inquiries.

The SNP and individuals in the SNP were being asked to co-operate with police inquiries and some of what has been misrepresented as trying to find or concoct evidence is actually people co-operating with the police at their request. I have seen nothing that comes within a million miles of backing up the central assertion that Alex is making that there was some kind of co-ordinated attempt, for whatever motive. The motive seems to be on shifting sands, as well, the more I listen to it. I have seen nothing that comes within a million miles of demonstrating that.

Dr Allan: Finally, if I can rewind a little—you alluded to this earlier—one of the first things that the committee looked at was workplace culture. We heard evidence on that from Sir Peter Housden, the former permanent secretary to the Scottish Government, who offered opinions about the workplace culture and comments about the former First Minister's place within it. Is there anything more that you want to say about the issues that he raised and alluded to?

The First Minister: I am sure that there was more than one, but the point on which I agreed with Alex Salmond on Friday is that the inquiry is not into him—the inquiry is into me and the Government, and I accept that without reservation. I simply make the point that it is impossible to properly consider all those things without straying into the allegations that were made against him.

Other than to rebut or explain my actions, I am not here to cast aspersions on Alex Salmond. I would dearly love to get to a point where I do not have to think about Alex Salmond's behaviour or alleged behaviour ever again, to be perfectly frank.

He was a tough guy to work with. Personally, I did not experience that very much, maybe due to the nature of our relationship, but he was a really tough guy to work with. Sometimes that was justified and sometimes it was not, and there

would be times when I would tell him that he had gone over the score. As I think I said to Andy Wightman earlier, maybe those of us who worked with him for so long became a bit inured to that, so we did not appreciate it from the perspective of people who were not fully inured to it. However, those are reflections that are not particularly germane to the committee's questioning of me.

The Convener: Jackie Baillie has a short supplementary that is directly related to one of Dr Allan's questions.

Jackie Baillie: Indeed it is. It is on the text and WhatsApp messages. I will ask the First Minister about the messages that we discussed with Mr Salmond, and I am excluding the messages that the committee has seen and regards as being not relevant to our inquiry. I am thinking of the messages that we have yet to see this afternoon: messages between Peter Murrell, who is the chief executive of the SNP, Sue Ruddick, who is the chief operating officer, and Ian McCann, who is the compliance officer. Given that you are also the leader of the SNP, did you ask to see those messages?

The First Minister: I have made inquiries about the messages to satisfy myself—they are not my messages. If you take the ones between Sue and Peter—the ones that have been quoted and the ones that I have seen—you can see that they are just not as they have been presented. Peter has given his own account of his messages, and if the committee gets to see—I do not know whether it will—the full version of one of the messages that “pressuring the police” has been taken from, I think that you will get a very different impression from that.

The messages are from people who were co-operating with police inquiries and supporting each other. The message that I just spoke about was sent—I am just getting my dates right here—the day after Alex Salmond had been charged.

Just pause on this for a moment. This man, whom we had worked with, campaigned for and helped to get elected twice as First Minister, and who some people, including me, considered to be a really close personal friend, had just been charged with a number of serious sexual offences. I defy anybody in that position not be really upset and a bit angry, and for that perhaps to come across in their communications. However, the idea that that suggests some kind of plot or conspiracy is actually quite offensive, given the years of loyalty that the people who are being accused of that have shown to Alex Salmond.

He quoted four messages on Friday; I have taken steps to ensure that I could satisfy myself that they are not untoward. I think that the committee has seen part of one of them, as part of

what it saw previously, as I understand it, because I have been told that by people whose messages they are. Alex Salmond said that one of them—where is it?—said something like, “Tell me the evidence that is wanted and I’ll get it for them.” That is somebody who had made a complaint, who had spent hours and hours with the police—

The Convener: Can I stop you there, please? Later on, the committee will see messages that we requested of the Crown Office. I do not think that it is appropriate for us to be taking a view on them before we have read them in context.

The First Minister: I apologise. I was trying to answer the question.

The Convener: I know.

The First Minister: The committee will draw its own conclusions. I am not saying that I have seen all the messages that the committee will see—I have no idea whether I have. Suffice it to say that these were people who were upset, who were at times angry, who were talking to and supporting each other, and who, crucially, were co-operating with policy inquiries. When the messages are seen in context, I think that any objective person will draw that conclusion, certainly based on what I have seen.

The Convener: The committee will draw its own conclusion.

Jackie Baillie: The convener is right to remind us of that.

I am not asking about the messages and the content of them, I am asking whether you have seen them and whether you are reassured by them.

12:15

The First Minister: I do not know whether I have seen all the messages that Alex Salmond has referred to because I do not know what all of the messages that he is referring to are. I have seen, or I have had an account of, the ones that he has quoted. I am satisfied that they are not what he suggests in terms of the motive and what lies behind them, which is nothing like what he is suggesting.

Jackie Baillie: I am sorry to press you on this, but, as leader of the SNP, have you asked to see all those messages?

The First Minister: I do not know what “all” is, Ms Baillie. I do not know what “all” means in this context.

Jackie Baillie: Okay. I will leave it there.

The Convener: I have two more requests from members to ask questions in the section on complaints handling.

Margaret Mitchell: It is now good afternoon, First Minister. Before I get to my substantive point, it would be good to clarify some timescales. We know that the fairness at work policy took 18 months to develop and this procedure took three months. Can you confirm when the complainants finally decided that they would complain officially?

The First Minister: If you give me a moment, I can find that information. This is stuff that I only know in the way that the committee knows it—well, not quite in the way you know it, but it is stuff that I am telling you with hindsight. As I now understand it, the official complaints were made in January 2018, although there had been some informal contact in the latter part of the previous year.

Margaret Mitchell: Thank you. When was the procedure published on the Scottish Government website?

The First Minister: It was published in February 2018. I can find the exact date—I want to say 8 February, but I am not 100 per cent sure that that is precise, although it was certainly in February. An issue has been made of why it took so long to publish it. We were also doing some work to review the ministerial code for the same reasons—as a result of #MeToo—and the decision had been taken to publish it all together.

Margaret Mitchell: When was the policy signed off?

The First Minister: It was signed off on 20 December.

Margaret Mitchell: You will be aware that that is being disputed by the First Minister.

The First Minister: I am the First Minister.

Margaret Mitchell: Yes—by the former First Minister. He disputed that in his last submission.

The First Minister: What does he dispute? Is he disputing the date of the sign-off of the policy? I was not aware of that.

Margaret Mitchell: It was three months in development: it was started in November, then there was December and January, and it was published immediately it was signed off, in February. However, as you have just said, the complainants made their complaint in January, which is before the former First Minister is alleging that the complaints procedure was signed off.

The First Minister: It might be unusual for me to do this in this context and I could be jumping in wrongly to defend the former First Minister, but I am not aware of that. He certainly disputes a lot of this, but I was not aware—perhaps I am wrong about this—that he disputes that the policy was signed off on 20 December. He has an issue about the fact that the policy was not published

straight away and therefore how complainants were aware of it.

The policy was signed off on 20 December. No changes were made to it after that. It was published in February. Was that ideal? No, it was not, but the reason was that other, related work was under way. As we know, one of the issues around the judicial review was the concern that the policy was in operation before it had been published.

Margaret Mitchell: Can you tell us when the complainants first came forward?

The First Minister: I can find those dates. I only became aware of those dates afterwards. I think that it was around November 2017 that concerns were first raised. The formal complaints were made in January 2018.

Margaret Mitchell: I merely say that there is a discrepancy about how long it took to develop the process from beginning to end.

The First Minister: I do not understand what you mean when you say that there is a discrepancy.

Margaret Mitchell: Was it three months in the making? If they only came forward in November, then there was December, it would take us to the end of January before the procedure was signed off.

The First Minister: I am really not sure that I am following your point. The procedure was in place from 20 December. It was not published until February. The procedure was in place and, clearly, it was being used.

The dates on which the complaints came forward are a separate, albeit very related, issue. The procedure was signed off on 20 December. I know that, because I did it.

Margaret Mitchell: Right, but the complaints only came forward in November. What happened in October? If it was a three-month period from beginning to end—

The First Minister: Convener, my apologies—I am not following this line of questioning.

Margaret Mitchell: I am just going to leave that there. I will leave all that hanging in the air. Others can look at it and we can go back and check things.

The First Minister: Given the seriousness of—

Margaret Mitchell: A three-month policy, complainants came forward in—

The First Minister: I do not understand what you mean by a three-month policy.

The Convener: Hold on, First Minister. Margaret, could you please go to the beginning of your query again? I think that it is confusing.

Margaret Mitchell: Yes. When did work start on developing the process?

The First Minister: The Cabinet commissioned a review on 31 October. I think that the committee has heard evidence from James Hynd that the first draft of the policy, in which he was involved, was issued on 7 November. Therefore, work on the procedure had started at that early November stage and it concluded with the procedure being signed off on 20 December.

The dates of the complaints are separate from the development of the procedure, although I know that, in practice, the two things are obviously connected. The procedure was developed and signed off in that timescale, and the emergence of complaints happened on a parallel track.

Margaret Mitchell: Okay. I am going to leave that there, because I do not think that we are going to get too much further with it, First Minister.

The First Minister: I am not sure that I am going to get much further with it—that is for sure.

Margaret Mitchell: I turn now to an issue that Alex Cole-Hamilton raised. We know that the complainants did not want to report their complaints to the police, but that that was done on the basis of the IO's report and the permanent secretary's final decision.

We have a submission from Police Scotland, which came in in January. It makes it clear that, during the handling process, Scottish Government officials made contact with the police. The initial contact was on 5 December 2017, via email. On 6 December, there was an in-person meeting. Between 30 January and 3 August 2018, there were another six meetings. The purpose was to seek advice on

“the SG approach to sexual harassment procedures ... and, SG obligations in response to allegations”.

Please bear with me, because it is very important. Police Scotland told us this:

“Police Scotland provided advice at the meeting on 6th December 2017, advising that where criminality was suspected, individuals”

—that is, complainants—

“should be directed to support and advocacy services, to enable them to make informed decisions about whether or not to report matters to the police.”

So that is very firmly in those individuals' hands. Police Scotland went on to say:

“This advice was reiterated on several occasions throughout the ongoing contact between ... 2017 and August 2018. A number of hypothetical questions were

posed during email and telephone contact around the criminal justice process.

Police Scotland advised that, without specific details, no appropriate response could be given and no assessment of risk could be made. It was further emphasised that individuals should be directed to the relevant support services as it appeared that the hypothetical questions were predicated upon a ... set of circumstances and the SG response to that set of circumstances, rather than ... a generic procedure ...

It was highlighted that SG staff were not trained to undertake such investigations, or to engage with victims."

Despite that, First Minister, Scottish Government officials continued with this investigation. Why?

The First Minister: I know that you will find this answer unsatisfactory and I understand that, but I cannot answer the question directly because I was not involved in the handling of the investigation. I have read the letter from Police Scotland. I was not aware at the time of all those contacts with the police and I am not aware of the detail of them.

Clearly, there are aspects to all that that the Scottish Government needs to consider and I hope that the committee will be part of that process of consideration. I am trying today to be as open with the committee as I can—I suspect that the convener thinks that I am sometimes taking too long to do it—but there is a limit to the degree to which I can comment on things that I just was not party to, and did not have knowledge of, at the time. That is asking me to get inside other people's heads—not always a good idea—and to second-guess decisions that other people were taking at the time. I will try to be as helpful on that point as I can, but there are limits to my ability to do that.

Margaret Mitchell: Is it your position that you knew nothing about this police advice? Scottish Government officials had been told that the staff were not trained to undertake such investigations or to engage with victims. Did those civil servants and Scottish Government officials keep that from you? If so, who were they?

The First Minister: I am mindful of the convener's earlier stricture, which I have probably breached in a number of ways, about naming civil servants. As it happens, we can provide as much information on that point as you wish. I was not aware at the time of those interactions with the police and the detail and content of them; I had no role in that investigation and was not involved in its handling.

You might well be raising issues that we have to reflect on, and the committee might also want to reflect on them. I am not suggesting otherwise—I am simply saying that if your question was, "Why did a civil servant, having been told X by the police, decided to do Y?" I cannot answer it today,

because I do not know the thought processes and the decision making that lay behind that.

Margaret Mitchell: Knowing what I have just read out, was it appropriate for the Scottish Government officials to go ahead and carry out that investigation?

The First Minister: That is a matter on which the committee will want to have its own say. I think that it was appropriate—in fact, I think that not to have done that would have been inappropriate. When complaints came forward, they were taken seriously and investigated. I now know—we all do—that in the course of that investigation, those who conducted it got things wrong. We particularly know about the appointment of the investigating officer and the contact that the investigating officer had had, which was the focus of the concession of the judicial review.

I am not saying that the civil service got nothing else wrong in the conduct of that investigation, which is partly what the committee is here to say. Equally, I cannot definitively say that any particular action that any particular civil servant took was inappropriate. The context of this was the Government trying, in the light of #MeToo—everything that we have been through already—to properly investigate complaints that had come forward. We know that it made a mistake and the committee might decide that it made more mistakes than that, but I cannot sit here in relation to things that I was not involved in at the time and second-guess the reasons why every single action and decision was taken.

Margaret Mitchell: First Minister, they ignored the fact that they were not trained and should not have been dealing with victims' complaints. That advice was absolutely crystal clear and they ignored it. You said that they made mistakes—they were not trained to do it. Apparently, you knew nothing about that. More than that, the complainers' right to decide for themselves whether they would take their complaints forward, having spoken to the people who were trained to speak to them—that support and advocacy service—was taken completely out of their hands.

Do you understand why you should not have had that dilemma—should the complaints be reported to the police despite the complainants not wanting that—because it was quite clear that the Scottish Government officials should never have been anywhere near the investigation? At that point, the investigation should have ceased and the complainers should have been referred to support and advocacy, and the choice would therefore have been with them.

12:30

The Convener: I will intervene here for the benefit of clarity, because I think that there are two different issues there.

Margaret Mitchell: Convener, could you let the First Minister answer? Maybe then you would have some clarity.

The Convener: No. I would like some clarity for myself, thank you. I think that we are talking about two different things. The first thing was about the development of the policy.

Margaret Mitchell: Yes.

The Convener: The first thing was about the development of the policy and advice that was asked for and given by the police about the development of the policy. Then there is the implementation of that policy, which was about whether there should be independently trained people involved in such serious cases. Deputy convener, I think that you then got on to whether it was appropriate for the matter, once investigated, to be passed on to the police.

Margaret Mitchell: I appreciate that, convener, but you are just wrong. It was—

The Convener: Okay.

Margaret Mitchell: Can I tell you why?

The Convener: No.

Margaret Mitchell: Those approaches were made—

The Convener: Deputy convener—

Margaret Mitchell: This is a crucially important line and you are shutting it down.

The Convener: No, I am not shutting it down. I am trying to get some clarity. If you let me finish, you can come back and clarify. What I picked up beyond the development of the policy was that there was an issue about whether it was appropriate for the civil service to have passed the complaints on to the police for investigation. If that was not the case and there was no confusion in your mind about that, deputy convener, I will supplement your question with that while we are on the subject of the police.

Margaret Mitchell: I appreciate that you are trying to be helpful, but that confuses the issue. The issue was the investigating officer's role. When those Scottish Government officials approached the police, it was to look at how the procedure would be developed. They gave some hypothetical questions and from that, the police began to suspect that it was not only about a procedure and that they had something in mind. They were told clearly that they were not trained and that they should not be talking to the

complainants about that if criminality was suspected. Therefore, they should have gone to advocacy services and the complainants should have had the ability to complain for themselves. You appear to be totally unaware of that, First Minister. Does that mean that the officials did not report that to you?

The First Minister: No, they did not report that to me, because they were conducting an investigation that I was not meant to be party to. I have to confess—and I take responsibility for this myself—that I am a little confused about what exactly you are trying to get from me here, so I will do my best and if I get it wrong, I know that you will jump in and tell me. There was advice taken from the police, as I understand it, on the development of the policy and then they were going to the police and taking advice that was perhaps more about the application of that policy. Was that always right and appropriate and did they always follow the right advice there? I cannot say that categorically, because that is something that the committee is looking at. I know that the complainants made complaints to the Scottish Government, so I push back on the idea that the Scottish Government should not have tried in any way to investigate them.

There is perhaps a question about the appropriate moment and whether the right moment was chosen to refer to the police, and the committee may want to say something about that. There is then the question of whether that referral to the police should have happened, given that, as I think I said to Alex Cole-Hamilton—although I do not know how strong complainants' views on this were—the complainants did not want that. On some occasions there are duties on public authorities to report suspected criminality, even if others do not want them to do that. In relation to what the complainers wanted and what might have been a better way for the complainers, I do not know whether the committee has taken views from them—I know that it would have to be done privately. There was then a police inquiry where, presumably, people had to decide the extent to which they wanted to make complaints to the police that would be investigated in that way. I cannot speak for complainers.

Again, this is not a criticism of the committee, but one of the genuine worries that I have here is the extent to which this whole process has kind of sidelined and silenced the voices of complainers. I know that that is not what anybody in this committee has wanted or has tried to do. I keep saying that it is not for me to tell you how to do your work—and it is certainly not—but if you want to know what the complainers thought, then perhaps trying to speak to them would be a better way than trying to get me to second-guess their

views and then say what that should have meant for how the Government did things.

Margaret Mitchell: I just reiterate that the first approach to the police was before the handling process had been signed off, which was at the beginning of December: 5 December and 6 December, with various meetings thereafter. It was made clear at that point that it would not be appropriate for the investigating officer who carried out the investigation, and for the people who spoke to the complainants, to carry out that role; and that, at that point at the beginning of December, if they knew about something and had concerns, they should have referred the complainers to the appropriate people who were trained and could properly give them the advice to decide whether they wanted to go forward with the complaints.

Although this whole process is about the complainers, they were denied that opportunity and that decision was taken out of their hands because of the Scottish Government's handling of the complaints. That goes to the very essence of our remit and to what we have to look at to make sure that this never ever happens again. As things stand, I think that it is in everyone's mind that there is now no possibility that anyone would want to come forward with a complaint as a result of how this was handled.

The First Minister: In many ways, I do not disagree with a lot of what you said there. People can take this in whatever way they want, but I hope that the committee does not take it as a criticism, because it is not intended in that way. However, the fact that everything that you said in your last few sentences there is true leads me to think that it is quite extraordinary that the complainers, or the complainers' voices, have not been heard not publicly but more strongly in this inquiry. That is a personal opinion and I will stop there.

The most important people in all this are not me—obviously, in terms of parliamentary scrutiny, of course it is—and not Alex Salmond but the complainers, who were let down by the mistakes that the Government made. If the committee, reflecting on the *Official Report* of this meeting, thinks that there is more that I can provide here, I am happy to supplement in writing.

I do not have the police letter in front of me, which is why I am acting from memory here, but I think that some of what you quoted to me there was police advice given, effectively in the abstract, about a policy and what to do in particular hypothetical situations. The issue of whether in a real situation the civil servants followed that advice is a separate issue but an issue that the committee might well have views on. I think that I have probably gone as far as I am able to both in

my understanding of the questions and in my understanding of what lies behind them, but I am happy, if it would be helpful to the committee, to try to follow up in more detail in writing.

Margaret Mitchell: That would be very helpful in letting us know exactly who met the police and who ignored the advice. I just point out again that the police formed the view that

“the hypothetical questions were predicated upon a set of circumstances ... rather than ... a generic procedure”,

and it was made quite clear that, in those circumstances, the people carrying out that investigation, speaking with the complainers and ignoring their wishes, were not trained to do so and that the complainers should have been referred to advocacy services.

The First Minister: I am not sitting here arguing against what you are quoting to me there. I am simply saying that I think that there must be proper consideration, of which this committee is a part, of the advice in the abstract and the hypothetical, and whether that advice was properly applied when the hypothetical became actual complaints. If the committee wants to put in writing some particular points for clarity or further information, I will do my best to answer those.

Margaret Mitchell: That would be very much appreciated, because it is essential to make sure that this never happens again, and that this kind of advice is never ignored by Scottish Government officials again. I am sure that you would not want to be party to that happening in a Government that you lead.

The First Minister: You will get nobody agreeing with you more strongly than me that I never want a situation like this to happen again. I would like to think that complaints like this would not have to come forward again, because we do not make mistakes here. Equally, I do not want to have a situation where, because of this experience, there is a reluctance on the part of Government to properly investigate complaints or a reluctance on the part of complainers to come forward. It is going to be difficult to make sure that we get that right overall. I remain hopeful that this committee will be part of the process, but I think that the voices of complainers also matter in all of this.

Margaret Mitchell: You seem to have missed a crucial point. It is not for the Government to try and—[*Interruption.*]

The Convener: Ms Mitchell, we have spent half an hour on one question.

Margaret Mitchell: —to take them on board and then refer them to the people who are qualified and trained to deal with the complainers.

The Convener: Can you have the last very short word on this, please, First Minister; then we really must move on.

The First Minister: I think that you can raise a question about whether the complaints should have been referred to the police earlier in the process. I am not sure about just handing the complainers over for advocacy and effectively not doing the complaint. I do not know whether I think that that would have been right in this situation, but I am not sure that I am helping to bring clarity to this situation here. Where I absolutely agree is that the centrality of complainers' wishes and voices cannot be ignored, and the determination to learn from the mistakes that were made here is absolute on my part and the Scottish Government's part.

There is always a different path that you can take on everything. I suspect that, had we taken a different path on all sorts of aspects of this, it might not have resulted in us not sitting here, but we would just be sitting here with the questions coming from a different perspective.

Margaret Mitchell: I think that any complainers would welcome knowing that, if they came forward, they would be dealt with properly and referred to the proper services in the future. That would give them—[*Interruption.*]

The Convener: Can I just intervene here, Ms Mitchell. I asked the First Minister to have the last word on that. We have been half an hour on one question. We really must move on now.

Before Mr Wightman winds up for us in this section, I will take very quick supplementaries—please make them very quick—from Maureen Watt and Stuart McMillan.

Maureen Watt: A lot of this has been covered in earlier evidence sessions with senior civil servants. Nonetheless, the ACAS guidance on sexual harassment states:

"If they do not want to tell the police, you should still encourage them to do so. You might still need to report it but should always tell the person affected if you're going to do this".

In my earlier questioning of civil servants, I have been keen to find out the appropriateness and qualifications of many of those involved in HR procedures. It took a long time to tease out those who were qualified and those who were not. In this situation, the Scottish Government seems to have been acting within clear employment guidance in reporting the matter to the police. I am not asking you to tell us now, but do you think that this is a paragraph in the procedure? In our report, I would like us to make a point about asking whether enough HR specialists are involved in the Scottish Government.

The First Minister: I think that that is a fair question. I cannot answer today on how many civil servants in the Scottish Government are qualified versus how many should be, but it is a perfectly fair and legitimate question. The ACAS guidance that you quoted was what I was searching for a wee while ago. It is there and it is clear. The procedure itself talks about the possibility of complaints being referred to the police. I appreciate the view that, because the complainers said that it was their preference, that should not have happened. Equally, I take the view that, as the ACAS guidance sets out, there is a wider interest that must be considered.

12:45

The Convener: Kindly, Mr McMillan has said that his question has already been answered, so Andy Wightman is next.

Andy Wightman: I am loth to continue the previous conversation, but the evidence from Police Scotland, which I have in front of me, advises that

"Police Scotland provided advice at the meeting on 6th December 2017, advising that where criminality was suspected, individuals should be directed".

It went on to say that Scottish Government

"staff were not trained to undertake such investigations".

On my reading, that is the police saying that Scottish Government staff are not trained to undertake investigations into potential criminality. You would probably agree that that is not their job. A reasonable explanation might be that Scottish Government staff did not believe at the outset of the complaints that there was, in fact, potential criminality and that that arose only later. It is important for the record to set out correctly what the police's concerns were.

To conclude on the handling of complaints—I think that I have the last word on this line of questioning—on page 8 of your written evidence to the committee, you said in relation to the meeting on 2 April:

"I made clear to him that I had no role in the process and would not seek to intervene in it."

In his evidence last week, Mr Salmond said:

"There is no doubt that people at the meeting, Mr Aberdeen 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."—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 26 February 2021; c86]

In written evidence that was submitted yesterday, Duncan Hamilton QC states that his recollection was:

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

Your written evidence says that you made it clear to Mr Salmond that you had no role and would not seek to intervene. Mr Hamilton's recollection is that your words were:

"If it comes to it, I will intervene."

Can you explain that contradiction?

The First Minister: I will certainly attempt to do that. I believe that I made it clear that I would not intervene. I might expand on this in a minute, but I also know that I was perhaps trying to—how will I best put this?—let a long-standing friend and colleague down gently. Perhaps I did that too gently and he left with an impression that I did not intend to give him. I think that I was clear, and I certainly intended to be clear. Look at the statements that were being made—I do not recall those particular ones, but I am not necessarily quibbling with the sentiments behind them, because I cannot recall enough to do that—such as,

"If it comes to it, I will intervene."

If it comes to what? I saw, I think in a written submission from him, that Mr Salmond said that I said something like, "I'll intervene at an appropriate time." On Friday, he said that I said things such as that the permanent secretary has to come to me first. In the procedure, the permanent secretary tells me only at the end. All of that says to me that I was possibly couching, "I'm not intervening," in terms that, given the relationship between us, were not as blunt as they perhaps should have been. I had no intention of intervening and, crucially, I did not intervene in the process, and that is the case.

During the discussion on 2 April, to be blunt about it, my head was spinning. I was experiencing a maelstrom of emotions. I had been told something pretty shocking by Alex Salmond, and there were probably—not probably; there were a number of things in my head. I had a very strong, instinctive view that I could not and should not intervene. I was dealing with a friend, and perhaps that led to some of what I was saying. There were also things going through my head, such as the ministerial code, which we will come to later. I was thinking about whether I should be reporting any aspect of this. These discussions, as everybody knows, do not take place in a kind of antiseptic, sterile environment devoid of human emotion, but I did not intend to intervene and I did not intervene. Although I know that it is more complex than this, I think that that is the root of Mr Salmond's anger towards me.

Andy Wightman: My final question relates to all this becoming very public on 23 August. In the report of the Information Commissioner's Office

review of its criminal investigations team's investigation of the leak, it says, in paragraph 4.2:

"The leak came a few hours after the SG had notified their intention to publish a press release and very shortly after Levy & McRae had given notice of their intention to apply for an interim interdict. The effect of the leak was to defeat the court action because the information was by then in the public domain."

The Information Commissioner's Office reviewer went on to say, at paragraph 4.3:

"I have also considered the statement of Detective Chief Superintendent [Redacted], helpfully provided by Levy & McRae."

We aim to get a copy of that statement. I am not sure whether we will be successful. The reviewer went on to say:

"The statement confirms that at a meeting on the 21 August 2018,—

we talked about that yesterday with the Crown Agent; the chief constable, the detective chief superintendent and the Crown Agent were present—

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

Were you aware of the concerns that the detective chief superintendent had voiced at that meeting?

The First Minister: Not at the time, no. As I think that I said earlier, by the time I was told by the permanent secretary about referral to the police, the referral had already happened. I did not know at that time what the police's reaction to it was, what the police had said or what they were doing.

Andy Wightman: You were never told, even after that event, what the concerns were that the detective chief superintendent had raised about making a public statement.

The First Minister: By "after that event", do you mean in the days around that?

Andy Wightman: No, I mean up until now. Do you have any knowledge of what those concerns were?

The First Minister: I know what is now being said. I have read what you have said. From the best of my recollections, I do not think that I was aware of that at the time, and I have not had detailed discussions of what the views of the police were in that respect.

Andy Wightman: We do not know what the concerns were at that meeting; we do not know the concerns.

The First Minister: In detail, I do not know either.

Andy Wightman: Okay. That was my only question, really. We do not know what concerns were expressed at that meeting—we are going to try to find out—and you do not know what the concerns were either. Is that the case?

The First Minister: No, I think that I have assumed that they did not want public release because it might get in the way of an investigation or—

Andy Wightman: But that is just a presumption, and you do not know—

The First Minister: I think that that is just a presumption. I do not think that I can be 100 per cent sure that that has never been said to me, but I do not think that it has been said to me. I think that what I just said there is in the realms of presumption, rather than actual knowledge.

Andy Wightman: You do not know, and we do not know, what concerns the detective chief superintendent voiced at that meeting. At this moment, we do not know.

The First Minister: I do not think that I know beyond presumption.

Andy Wightman: We will try to find out.

The Convener: Nobody in this room knows anything about that.

We will move on to the judicial review.

Murdo Fraser: Convener, if you will indulge me, I have a number of questions on this area.

First Minister, may I start by asking you what your role was in relation to the judicial review? To what extent was there ministerial oversight of decisions that were being taken?

The First Minister: On my formal role, I was named as an interested party in the petition. There was a petition against the Scottish ministers, of which I am one, although, as you know, it is a collective designation.

I was involved in discussions about prospects of success and the changing perceptions of those prospects of success as we went through. My involvement was greater at particular junctures; this was not something that I was being briefed about or talking about every single day. I remember having discussions with the Scottish Government legal department around the time when the petition was going through the process of being served on the Scottish Government on initial views of prospects of success. I knew that there were discussions in, I think, early September and into mid-September about preliminary issues and I was aware of the views that were being taken.

By preliminary issues, I mean things such as whether we were going to oppose permission to proceed; whether there were any parts of this that we considered time barred; whether the designation should have been against the permanent secretary or just the Scottish ministers; whether there was a case for sisting at that stage because of the criminal proceedings, which I know that the committee heard about from Mr Salmond; and whether there were reporting restrictions. I was aware of all that in the early days. I then saw the note on prospects, which you have now seen—I think that that was in late September—and saw the initial Government answers to the pleadings.

As a minister, I have had reviews against the Scottish Government—there have not been lots of them, I hasten to add, but they have been high profile—for example, on minimum pricing. There was not an unusual degree of involvement or oversight in this case. Obviously, it was made slightly unusual because of who was taking the Scottish Government to court.

The next period at which I would have been particularly aware of the detail of what was going on was around that point at the end of October. I am not saying that there was nothing in between but, clearly, the next key point would have been in December and, ultimately, the period during which we decided to concede.

Murdo Fraser: Thank you. That is helpful. I will maybe want to explore some of the detail with you, if I can, but it sounds like you were quite well briefed all the way through the process. Can I ask—

The First Minister: I have set myself up for a fall, here.

Murdo Fraser: Your chief of staff was also involved, I understand, and attended a number of meetings, presumably in order to represent you and to feed back information to you.

The First Minister: I think—and, again, if I am getting any of this wrong, I will stand corrected—that she attended three meetings with counsel and would have seen the stuff that was coming across my desk. That, again, is not unusual. You will understand this, Mr Fraser. I am a lawyer by background; there is a natural interest in some of this stuff that goes beyond the ministerial interest—it can be a bit weird, but that is it. She was involved to the extent that she will be involved in a lot of things: to make sure that she is hearing anything that I need to be aware of and that she is representing my interests. I was named on the petition, so that is not unusual. She did not have an involvement that was in any way unusual for a chief of staff.

Murdo Fraser: Thank you. I would like to take you through some of the legal advice that we obtained. It is fair to say that you will recognise the committee's frustration. We have been trying to get hold of the legal advice for months. There have been two votes in Parliament that the Government has not acceded to. It is only with the threat of a vote of no confidence in the Deputy First Minister that finally we see some aspects of the legal advice. We do not know for sure whether what we have seen so far is the entirety of the legal advice, but it is all that we have to go on for now. Perhaps you can tell us whether parts are missing from what we have seen.

In response to questions from Margaret Mitchell and Alasdair Allan about the note on prospects that was prepared by external counsel on 27 September, you said, if I heard you rightly, that counsel were confident—I think that that was the term that you used—about the Scottish Government's case.

I am just having a look at the joint note by senior and junior counsel Roddy Dunlop QC and Christine O'Neill. At paragraph 6, they said:

"we think that there is a real risk that the Court may be persuaded by the petitioner's case in respect of the ground of challenge based on 'procedural unfairness'."

They went on to say:

"We ... consider the defence to be perfectly statable ... However, it would be wrong to pretend that we do not see a vulnerability in this regard."

I would not categorise that as "confident"; I would categorise it as a nervous judgment on the prospects.

The First Minister: I would not, in any proper legal sense; other people may take a different view.

I have not gone back and checked all of this, so it may not be 100 per cent accurate, but, in all the legal action and all the judicial review action that I have had ministerial involvement in and oversight of during my years in government, I do not think that I have ever seen an opinion that says, "One hundred per cent, this is a cast-iron case; there is no risk of losing this." The risks are ranked in order. Actually, that note of prospects would be at the more optimistic end of some that I have seen. It highlights what counsel considered to be the greatest vulnerability—it turned out not be the greatest vulnerability—but says:

"We should stress that we do see an answer to this point".

That is actually the kind of thing that, in a legal opinion, gives you confidence if you are having a potential vulnerability pointed out.

13:00

I mentioned this a moment ago. I have not gone back to look at all the opinion and all the legal advice on minimum pricing, so I am speaking from recollection. Minimum pricing is a subject that I care deeply about and was very associated with: losing in court would have posed great questions for me, as well as being really regrettable from a public health policy perspective. In the early days of minimum pricing, if we were to have applied anything like the test that you are applying to that note of prospects, I think that we would never have done it. Particularly in those early days, the view of our prospects of success was not that confident, but we took a view that it was an important public health policy. We thought that we could argue it, and therefore it was worth doing, because of its importance. That is the nature of this.

In the context of all the legal opinions I have seen in different court cases, that actually is probably at the more optimistic end of the spectrum.

Murdo Fraser: I am not going to argue the toss with you on that. To be fair, counsel's opinion says that there is a stateable case. I think that it was reasonable for the Scottish Government to defend what was a stateable case.

Let us jump to 31 October, because we have nothing between that and 31 October. On 31 October, there is an urgent note by senior counsel Roddy Dunlop, because it has been disclosed at that point that Judith Mackinnon was the investigating officer, and the issue of prior involvement has been identified at that point.

At paragraphs 9 and 10 of that opinion, senior counsel is clear that that

"presents a very real problem indeed",

and, in paragraph 10, that

"it would be wrong for me to suggest that this revelation is anything other than an extremely concerning one."

He goes on to say in paragraph 13 that he is sufficiently concerned about that to have had contact with the Lord Advocate to express his concern

"as to the potential repercussions for the wider case."

In paragraph 14, there is discussion of the choice that needs to be made as to whether the case can continue or whether the petition should be conceded at that point.

Is it fair to say that, at 31 October, the case was in real trouble?

The First Minister: No. I do not think that I would use that phrase; other people might use it. Again, this turned out to be more unusual and

much more problematic than we realised at that stage.

In my experience—I can only speak from my experience—it is not unheard of during a process of litigation to have lawyers say that issues have cropped up that cause them real concern. That is not unheard of or unusual. The note says all the things that you say, but it also clearly considers the options and identifies further work that has to be done.

After that opinion was submitted by Roddy Dunlop, there was a consultation with counsel, which I think was two days later. I was not at that. At that point, the discussion was around the interpretation of section 10 of the procedure and the differing interpretations that we thought that that was open to. The conclusion was not that we should be unconcerned about that point, nor that it was not a point of vulnerability, and certainly not that it was not a point that weakened our prospects of success. The conclusion was that the point was arguable and defensible, and that the Government thought that the argument could be made. Therefore, the decision was taken to continue.

Actually, right up to 11 December—I think that you have this, too—the view of the law officers was that, across the petition, and including on the issue of the appointment of the investigating officer, there was a stateable case and there were arguments that could be made.

I know that we are seeing this in the context of a very high-profile and very sensitive judicial review—obviously, it has turned out to be incredibly so. However, in the process of litigation, this kind of thing is generally not, in my experience, hugely unusual. Problems are identified and then assessments are made of whether the problems are fatal or can be overcome.

Right up until the point when the case become unstateable, we were weighing up wider issues—the committee heard that from the Lord Advocate. We had to be certain that we had a stateable case, and there was a degree of confidence that the argument could be put, but there was a wider interest, which I think was a legitimate interest. Eight grounds of challenge had been made to the procedure and its application. Therefore, the Government wanted, if possible, to hear from a court whether it thought that those challenges were well founded, so that—whatever might happen in the Alex Salmond case—we could have confidence that we had a procedure that was lawfully based and sound. That was the Government's wider, legitimate interest in all of this.

Murdo Fraser: The Lord Advocate was in front of the committee yesterday. It is a pity that, because we did not have sight of the legal advice until 6 o'clock last night, we could not put these questions to him.

There is a lacuna in the information that was provided to us, which jumps from 31 October to 6 December. There must have been more consultation; there must be notes of meetings held during that period. Will those be made available to us?

The First Minister: I am happy to look at what more is there and can be made available. My understanding and recollection of the period from the end of October through to the beginning of December is that a process of adjustment of pleadings was going on in both directions.

I do not have the exact date in front of me, but I think that, at some point over that period, Alex Salmond's lawyers introduced a new ground of challenge based on this, which triggered a review based on that, and that led to the early December note.

You said that there is a lacuna. I was not a litigation lawyer, so I do not know about this from a lawyer's perspective—Andy Wightman probably knows more about it than I do—but I understand that it is part of the litigation process to have periods when there is an adjustment of pleadings.

Murdo Fraser: We know that you attended a meeting with counsel on 13 November. Who was at that meeting and what was discussed?

The First Minister: Clearly, I was at the meeting, as were senior and junior counsel, the permanent secretary and Liz Lloyd—my chief of staff. I think that SGLD was represented, as well.

I requested the meeting; it was part of what I thought was the proper thing to do. I was testing myself whether, as a result of what had come to light and the 31 October position, we actually still had a stateable case. That is why I requested the meeting.

I came out of the meeting satisfied that we had a stateable case and that, not just in a theoretical, abstract way but based on actual consideration of what the Government had intended around section 10 of the procedure, we could argue the interpretation that we thought should be attached to it.

Of course, later in December, things emerged—not about the interpretation of section 10 per se, but about the extent of the contact between the IO and the complainers—that changed that judgment and which, to be fair, gave rise to suggestions that the Government had not been as open about this as it should have been. That was not intentional, but it gave that impression.

Murdo Fraser: Was a decision taken at the meeting to proceed with the case, and were you party to that decision?

The First Minister: I do not think that it was a decision-making meeting. There was never a point at which the decision was taken not to proceed; we had not got to that point. This was part of a process. On the high profile of this, would I normally meet with counsel in a judicial review? I probably would not. The 31 October note does not read as has been presented by some people, but it raises concerns, so the meeting was basically about me getting assurance that we were not prolonging a judicial review that was dead in the water. The meeting satisfied me that that was not the case and that we had a stateable case and were confident that we could continue to put the arguments.

Murdo Fraser: I will again cite Roddy Dunlop's opinion of 31 October—Halloween. Paragraph 14 says:

"Depending on the information available on Friday, a swift decision is going to have to be taken ... whether (a) the issue is disclosed and any argument based thereon then resisted, or (b) the issue is disclosed and the Petition then conceded as a result thereof."

Who took that decision?

The First Minister: I was not at that meeting. Obviously, we are not usually meant to say this, but we are in a different position with regard to legal advice. I think that the Solicitor General was present at the meeting, and the consensus that came out of the meeting was that the case continued to be stateable and that there was a perfectly credible and arguable interpretation that could be made of section 10.

Murdo Fraser: We jump to 6 December, which is the next date for which we have documentation. By 6 December, the situation has deteriorated to an even more dramatic extent.

Paragraph 4 of the joint note by senior and junior counsel says:

"We are now jointly of the view that those grounds"

of challenge

"are more likely than not to succeed."

In their conclusion, at paragraph 30, they go on to say that one option

"is to concede the Petition",

and the other option

"is simply to press on regardless. That is, in many ways, even less attractive: the expenses will be far higher, and the trumpeting far louder, if the case proceeds to a written judgment."

They say that there

"is the real prospect of damaging criticism from Lord Pentland."

Counsel conclude that

"our own view is that the 'least worst' option would be to concede the Petition."

At that point, why did the Scottish Government not take counsel's advice, and agree to concede?

The First Minister: I will comment on the point about counsel, but I will not comment on the "trumpeting" comment—I will leave others to draw their own conclusions from that. All that I will say—and people can decide whether it relates to that—is that the "more likely than not" terminology that has been used publicly has always been attributed to advice from 31 October, but it actually relates to 6 December.

I was not at it, but there was a meeting on 11 December involving law officers. External counsel's views are important—we instruct and pay them—but, in terms of the ministerial code, my duty is to make sure that I am abiding by what the law officers say. On 11 December, the law officers were expressing the view that there was

"no question or need to drop the case".

The Lord Advocate was

"clear that even if prospects are not certain it is important that the case is heard. Senior counsel made clear that his note was not intended to convey that he didn't think we have a stateable case ... They tested most of the arguments including the appointment of the IO and concluded that we have credible arguments to make across the petition."

That was the view that was expressed by the law officers in the days after the opinion. The charge that has been made against me is that I wilfully allowed a judicial review to proceed against the legal advice and therefore I broke the ministerial code. With respect, as you now know, I was acting in accordance with, not against, the views of the law officers. They come to their views by taking into account external counsel's opinion and the wider interest.

The other comment that you have seen from that discussion is the Lord Advocate being clear that we should not concede,

"with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure".

That speaks to that broader public interest that I was talking about. We thought that we had a stateable case, and it is clear that, at that stage, counsel were not arguing that we did not—that changed later. At that stage, counsel were not arguing that we did not have a stateable case, we thought that we had credible arguments to make, and we were taking account of the wider interest in

getting a determination on the many grounds of challenge that Alex Salmond made to both the procedure and its application.

Murdo Fraser: The reason why I raise those issues, and the reason why they are relevant to the inquiry, is that we are dealing with public funds. When the concession eventually came, which we will come to in a moment, the award of expenses was done at the highest level available to the court. In the words of Lord Hodge, such expenses are awarded only when the defence has been conducted either “incompetently or unreasonably”. That is a really serious charge to lay against the Scottish Government and the law officers in terms of their conduct in this case.

The point that I put to you is that, by 6 December, if not before, it was very clear that the risks of proceeding with that action were very high and, therefore, you were risking public funds in continuing with the action.

13:15

The First Minister: I think that every time that a Government defends a legal action, it is risking public funds, because there is never a guarantee that it will be successful. I do not want to keep going back to that point but, if I had taken the risk-averse approach to minimum pricing, we would have thrown in the towel on that before we got started. Sometimes, there are good reasons why you have to defend in order to establish wider points. You cannot do that if your case is unstateable, but you can if you think that you have a stateable arguable case, and there were credible arguments as late as 11 December.

I will come back to the issue of expenses in a second but, in terms of taxpayers' money, I feel very, very, very sorry about that; I expressly said that earlier. However, we had a procedure that was being challenged not just in terms of its application to Alex Salmond but in its fundamentals and, should we have further complaints that required that procedure to be activated, whether we were on solid ground using it. In the wider taxpayer public interest, that is not insignificant.

I am not an expert—and I will not pretend to be one today—on the reasons for the award of expenses at certain levels. My understanding is that much of what went catastrophically wrong in the case, which probably leads to your characterisation, happened in that later stage of December, when it became clear—I believe not intentionally—that there was information and material that had not hitherto been disclosed. That was not just very bad in terms of the duty of candour that is on litigants; it was also the factor

that changed that judgment about whether there was a stateable case.

Murdo Fraser: Okay; thank you for that. I understand the argument that says that it was reasonable to use public funds to try and push the case, even though the prospects were receding, but of course the Scottish Government did not, in the end, subject that to the judgment of the court, because the court reached no view on the basis of the policy. It was a concession on one ground, so the court never got to the point of determining the issues that Mr Salmond had raised.

You highlighted what happened later in December. On 19 December, we have that astonishing note from senior and junior counsel. I have never seen anything quite like it, with regard to what it says about the conduct of the case. The counsel refers to

“the regrettable way in which document disclosure has unfolded”

and the “extreme professional embarrassment” that they have faced in court. They say that the havers who are cited for the commission hearing will

“expect a torrid time in the witness box”.

They also say that

“the late nature of the revelation”

is “unexplained” and “inexplicable” and that it caused “acute difficulties” to them in the way that they have, “on instructions”, pled the case. That is catastrophic, is it not?

The First Minister: That was catastrophic and it was what led to the ultimate concession. You are right that we did not get to the point, which we wanted to reach, of getting a judicial determination of all the grounds for challenge. The point that I am making is that, up until around that point, we thought that it was a stateable, credible and arguable position to be in. The revelation completely changed that and, for the reasons that you just set out, that fundamentally changed the position in the court case.

Had I, at that point, said that we would steam ahead anyway, I would potentially be sitting here with there being some—or a lot of—justification for the charges that are being made to me. However, I do not think that that is the case because, as I have read out, as late as 11 December, it was the opinion of law officers that we had a stateable case with credible arguments and that we should continue for that reason, as well in the wider public interest.

What Murdo Fraser described was dreadful and catastrophic; it is at the heart of what went wrong in the judicial review, and it reflects what went wrong in the application of the procedure. I will

defend our decision making throughout the judicial review, including up to the point where the right decision followed—that we would concede the case. I will not defend what led to that note, because I share your views of it.

Murdo Fraser: Who is to blame for that?

The First Minister: Ultimately, I am the head of the Scottish Government. I am not going to sit here and chuck blame in other directions. I was not involved in the investigation and I was not aware of the error at the time, but I am the head of the Scottish Government, which is why I have apologised for the error today. I apologised for the error in Parliament on the day when the case was conceded.

Part of what we are doing in all this, including the committee and the Laura Dunlop review that I have already spoken about, is to try to learn those lessons ourselves.

Murdo Fraser: You have been very patient, convener. I have just one more question; I know that other members wish to come in. In his evidence, the former First Minister claims that the Scottish Government conceded the case only when senior and junior counsel threatened to resign. Is that true?

The First Minister: That is not my understanding of the position. The note came in. I think that I was in London on that day—it might have been the day after—speaking to your former boss, Mrs May, when things were going very badly wrong. I remember speaking to the Lord Advocate on my way back up the road, when it was clear how much trouble, at that stage, the case was in. I think that I saw him in person in Parliament the following day.

Over the next period, there was a process of review. Even thinking that there might be a catastrophic situation, the Government has to go through a proper process of review. The permanent secretary commissioned the note—“note” seems to be a flippant way to describe it—or piece of advice from Sarah Davidson, which the committee has seen previously. It was not the happiest Christmas and new year period that I have ever spent. That led to concession of the judicial review.

Do I think that that is deeply and horrendously regrettable? Yes, I do. However, what is regrettable is the error that progressively came to light and that took us to that point. The handling of the judicial review was legally sound. People can take different views on whether all the decisions were decisions that they would have taken but, in my view, the decisions that were taken in the conduct of the judicial review were legally sound, and were taken in line with the views of the law officers. As far as I am concerned, that is the test

that I need to pass in relation to my responsibilities under the ministerial code.

Murdo Fraser: You have very skilfully avoided answering my question. Did the junior and senior counsel threaten to resign?

The First Minister: I am sorry, but I think that I answered that. I am not aware that they threatened to resign.

I did not have that kind of experience or anything like it as a lawyer, but as a former lawyer, I know that a lawyer will not carry on with a stateable case—I am sorry; I mean an unstateable case. That was a potentially catastrophic slip of the tongue.

I know that a lawyer will not argue an unstateable case; if we had said that we would carry on with an unstateable case I am sure that the lawyers would have withdrawn from acting and I am pretty certain that they would have made that clear. However, the way in which that has been put forward suggests that we said “No, no—we’re going to carry on”, then they had to force us into the position by saying that they would resign.

The Government was not going to ignore the contents of the 19 December note. There was a process of consideration and review to be done and that culminated in what happened, as the committee knows, off the back of the Sarah Davidson advice that came over the Christmas and new year holiday.

The Convener: Alex Cole-Hamilton has a supplementary question.

Alex Cole-Hamilton: I want to ask about the advice that was received from senior counsel on 31 October, at Halloween. First Minister, you have compared the review with another judicial review that had shaky grounds, which was the review on minimum unit pricing. The difference between the two judicial reviews is that one is about public health and alcohol policy and the other has two vulnerable human beings at its heart.

When senior counsel laid out the options, he made the interesting suggestion that an advantage of concession was that the procedure could be reset and safeguards put in place, thereby allowing renewed investigation of the complaints. At that crossroads, were the views of the complainers sought to inform your decision on whether to proceed?

The First Minister: I do not think so, but I would want to double check whether that was done in any way. It certainly was not something that I did personally. Is there an argument that that should have been done? I guess that that argument can be made.

In using the comparison with minimum unit pricing I am not trying to underplay the seriousness of the issues. One of the things that is hard with this is that, when we are discussing litigation and stateable cases, we strip the human impact out of things, and I am not intending to do that. I am not trying to describe to the committee the process of litigation—the committee knows that—but I am trying to describe the factors and the test that ministers must apply and consider when we are taking decisions on conduct. There are comparisons, even though the circumstances are completely different.

I do not think that the complainers would have been asked their view at that stage, but I will check, and I can come back to the committee on that more definitely.

I do not want to overstate this as being a big part of the decision making, but in my mind it would definitely have been the case that whatever we did would have an impact on complainers. We were defending that at what you will remember was a time when we thought that we could argue with credible arguments, so it might have been better for complainers for us to prevail that we had done this properly, rather than putting them through the whole process again.

Those are judgments, and they are not black and white.

Alex Cole-Hamilton: The reason why I ask is that the failure of the judicial review is one of the reasons why, to this date, the two complaints have never been fairly or properly adjudicated.

You say that every decision that you took in the process would have affected the complainers. Did you consult them at any point?

The First Minister: I have not spoken directly to the complainers.

Alex Cole-Hamilton: I am sorry. I mean, did your Government do so?

The First Minister: I think that you have heard evidence about points at which the complainers were consulted and spoken to—including by the permanent secretary, which is, of course, one of the points of contention.

Do you mean in the judicial review?

Alex Cole-Hamilton: I mean in the context of the judicial review and the decisions that you took.

The First Minister: I would want to check that. I am not sure of the answer to that. I apologise.

The Convener: We are almost at half past 1, so this is an appropriate point for a break, in line with the agreed mitigations that are allowing us to meet safely in person today. We should reconvene at 2 o'clock. I remind members and everyone else to

observe social distancing when leaving the committee room and during the break.

13:27

Meeting suspended.

14:01

On resuming—

The Convener: Good afternoon, everyone, and welcome back to the 15th meeting of this committee in 2021. This is an evidence session with the First Minister of Scotland, Nicola Sturgeon MSP. I confirm that Ms Sturgeon made a solemn affirmation at the start of this morning's evidence session.

Before the break, we were talking about the judicial review. We will carry on with that.

Dr Allan: Thank you, convener. Before the break, we spent some time talking about external legal advice. First Minister, what role does external counsel usually play in determining the Government's legal position, and did this case in any way depart from that?

The First Minister: It is quite hard for me—maybe that is just a deficiency in my communication skills—to almost scientifically answer the first part of your question. In a serious piece of litigation, external counsel play a big role. They conduct the litigation, they draft the pleadings and they give advice, as you have now seen. I suppose that I would say that their advice is very important; it carries a lot of weight. Then, I suppose, it is weighed with other factors—in some judicial reviews, the small-p political public interest issues. Of course, for ministers, on matters of this seriousness, the views of the law officers, which take account of all these things, are what matters, in terms of the ministerial code.

Did this happen in the same way as it would in other litigation? If we put to one side the catastrophic error that became evident at the end of December, which I like to think is not in any way normal, I suppose that you would have to ask litigators and Government lawyers whether the conduct of the litigation was anything out of the ordinary. In my experience—bar the seriousness of the issues that emerged and that ultimately led to the loss of the judicial review—I would not say that it was particularly out of the ordinary.

For me, this was a former First Minister taking the Government to court; it was my former boss, friend, mentor and long-time associate taking the Government to court, so in that sense it was not normal. In my view, it did not lead to a significantly appreciable difference in my degree of involvement, but of course there are elements that

meant that it did not feel entirely normal. I cannot remember whether this is absolutely correct, but from my memory, meeting with counsel, for example, to satisfy myself that we still had a stateable case and to discuss that directly with them, would not be absolutely a routine thing for the First Minister to do on every piece of litigation.

Dr Allan: We have talked a fair bit about the timeline of all this and we have looked at how 6 December, or perhaps, arguably, 11 December, were crucial dates, in terms of the advice that was being offered. Was a more crucial moment a change in the view that was expressed by the law officers, rather than external counsel?

The First Minister: The external counsel were conducting the litigation. In that later part of December, the commission on diligence—I cannot remember whether that is the technical term—was happening and they were conducting that. They were at the front line. There is maybe an element on which I owe them an apology as well, because the conduct of that was not what you would ever want it to be. They were in a situation that they should not have been in, with documents coming to light that had not previously come to light. They were at the sharp end, on the front line, informing the view and opinion from 19 December—from which Murdo Fraser read out copious quotes.

The Lord Advocate—the law officers—then had to take account of that, and there were discussions. I think that I said earlier that I discussed the deteriorating position on the phone on my way back from London—I think on 19 December. I saw the Lord Advocate the following day and I do not want to quote him, but I think that, by that point, he was pretty much of the view that this was, if not unstateable, fast becoming unstateable.

That then led to the process, which the permanent secretary commissioned—I think on boxing day—and to the Sarah Davidson advice and the decision that we took formally. Technically, it was the permanent secretary's decision—I think that she said that before the committee—but I would not want to leave the committee with anything other than the impression that I was involved in it. I was properly consulted and was part of that decision, and I stand by it.

Dr Allan: I have a final question, again on matters of timing. As you are aware, an accusation was put to the committee that the Scottish Government sisted the case to allow the criminal trial to take over and the judicial review to be stopped before it reached a decision. Those are obviously serious allegations and this is your opportunity to respond to them.

The First Minister: The Scottish Government did not sist the case and never asked to sist the

case. There is a factual flaw in that hypothesis to start with. Correct me if I am wrong, convener, but I think that the Deputy First Minister said that there might be more information on the sisting consideration yet to come to the committee.

Sisting was considered at an early stage. Again, in my non-expert opinion, given the circumstances at an early stage of this, when a criminal investigation was also under way or at its early stages, it would have been absolutely extraordinary if the question of sisting had not even arisen in our considerations. My memory of those early discussions—by early, I am talking about early to mid-September or a bit longer than that—is that the preference seemed to be, if I recall correctly, in favour of reporting restrictions as opposed to sisting. I think that the lawyers for Alex Salmond made a motion to the court for reporting restrictions at the end of September—27 September is the date that comes into my mind—and the Scottish Government did not oppose that.

I was not part of every discussion with lawyers, but from my memory, the sisting thing was never a really serious thing that the Scottish Government intended to do. Again, I cannot say that it was never discussed or that I did not ask any questions about it, but I do not recall at a later stage that sisting was ever something that the Government was considering in any sense. The fact is that we never made an application to sist.

Generally, this idea that we were gaming the timing of the judicial review—these are my words and I am just using them for shorthand—to allow a police investigation to overtake it is absurd, bizarre and completely without any evidential or factual foundation. The committee can take a view on whether it thinks that our decisions on the judicial review were right or wrong, but first, you can see from the advice the process that was being gone through. Gaming the timing would have involved the police, us knowing what was going on in the police investigation, what the timing of it was and the police being prepared. The idea that we could have done that is absurd and anybody who suggests otherwise stretches the credibility of even the most devout conspiracy theorist.

On the evidence that was put forward—I use the word “evidence” loosely—I do not think that the sisting thing happened in that way.

On the messages, I will be careful here—the convener reminded me about that earlier—but I have looked at the four messages that were put forward in evidence to this committee as somehow substantiating that idea. As I said, I think that the committee has seen one of them as part of what it has seen before. I think that a couple of them were right around the time that the whole thing became public and before the judicial review had even got properly off the ground. I am maybe getting the

one and two around the wrong way, but if memory serves me correctly, the other one—I think it was two—was after the judicial review had already collapsed.

I am sitting here as if I have to go through it step by step in order to debunk it. It is just absurd, and I do not think that absurdity should be given the amount of time that I am taking to debunk it.

Margaret Mitchell: I refer you to your written submission and the entry dated 5 July 2018, when there is a discussion with Alex Salmond about arbitration. He says:

“arbitration is rejected because the SG is confident in the legality of the process ... My Senior Counsel believes it is unlawful. That’s the whole point of the arbitration. The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.”

Can you explain why those arguments were rejected?

The First Minister: That was not my decision. I can give you a view on the appropriateness or otherwise of arbitration, but it was not my decision. That was part of the process of handling the investigation that I was not involved in and did not intervene in. You heard from the Lord Advocate, who is much more qualified to comment on those things.

There is a question—I will put it no more strongly than that—about whether arbitration would have been an appropriate process to resolve issues that should be resolved in a court. These are public policy and public law issues. Arbitration—I am simplifying here—tends to be about settling private disputes between companies, for example. I think that there is a very big question about whether arbitration would have been appropriate, but the Government was considering it as part of the process of the investigation.

From what you read out, I think that that was a message from Alex Salmond to me suggesting that I should be intervening to help to bring about that process of arbitration. Putting aside whether you think that arbitration is a good thing or a bad thing, or whether the Government should or should not have done it, the point is that I think that it would have been highly inappropriate for me to intervene on Mr Salmond’s behalf to try to bring about any particular outcome. It was an investigation that I was not part of and that I had no role in. I was not even supposed to know about it, and I would have been intervening on behalf of

a friend, colleague and associate. The complainers did not have the ability to come to me to ask me to intervene to get something that they wanted to happen in the process—although I do not know whether they would ever have wanted to do that—but I would have been giving him privileged influence in a process in which I was not meant to have a part.

I will tell you something. People have strong views about my conduct, which is perfectly correct; I defend that and I will take people’s judgment of that. However, if I was sitting here right now having done that, I think that the criticism that would be raining down on my head would be absolutely and utterly justified.

Margaret Mitchell: Here is my problem with that, First Minister. The former First Minister of Scotland, who has a reputation for knowing procedure and for running a very competent Government, has told us on record that he came to you saying that he was reluctant to take the Government—which he had been First Minister of—to a judicial review.

He was explaining to you that there was another way, and it seems to him, apparently, that if, as First Minister, you were taking all the considerations into account, including that you are custodian of the public purse, you would not have a blank cheque to pursue what might not be necessary action. It seems that his argument was that that would save the taxpayer a whole lot of money, which would be prudent, and that it would establish whether the procedure was lawful, and that, if it was, the complaints et cetera could go ahead. Crucially, too, it would also have protected the anonymity of the complainers.

14:15

You have said that that was rejected. What I am wondering about this morning, in all the evidence that we have heard, and given all the mistakes, is that, surely, somebody has to be held responsible. What I am not hearing is where the division of powers is, from our independent civil service to the ministerial responsibility. You, very graciously, seem to be taking responsibility for it all, but that does not help to achieve accountable, transparent and open government. People need to know how that happened and why that was rejected.

Lastly, you would have been criticised because you had not brought the matter forward in a public forum. That suggests to me that political considerations outweighed the public purse considerations, the anonymity of the complainers and the reputation of the Scottish Government and, by extension, the Parliament.

The First Minister: I feel very strongly about that aspect, and people are entitled to their

different views, but I will give you my view straight. It goes to the heart of the appropriate exercise of power and not abusing power, and it goes to the heart, therefore, of trust and integrity in government. First, though, I cannot let pass the opportunity to thank you for your verdict that the Government in which I was Deputy First Minister for all those years was a “competent Government”. I am sure that we will reflect on that.

Margaret Mitchell: [*Inaudible.*]*—[Laughter.]* I think that we helped you out a little bit, when you were a minority Government.

The First Minister: Minority Governments—I am not going to go down that road.

Putting that slightly flippant point aside, I think that you make a lot of assumptions there, and, I say with respect, you conflate a lot of different things and a lot of different roles. I understand why, but I am going to try to unpack them a bit, if that is okay.

You make an assumption that arbitration would have avoided all the problems that occurred in that process. That is a massive leap of logic; nobody knows that. The Government, in a process that I was not part of, because I was expressly excluded from it in this procedure, was undoubtedly considering the arguments that Alex Salmond’s lawyers were putting forward in favour of arbitration. They decided, for the reasons that they had, that arbitration was not an appropriate thing to do. I think that you have probably canvassed this with the Lord Advocate and the permanent secretary, but the permanent secretary would be one who would make that judgment.

The question for me at that point, because it was not a process of investigation that I was involved in, was whether it would have been right for me to intervene. You said that he is a former First Minister. He is a former First Minister, and he was a former First Minister when he was asking me to do this, but he was also the person who was subject to complaints that were being investigated, and he was seeking to get me to intervene in that process of investigation on his behalf, in a way that would have departed from the terms of the procedure and which would have been trying, on his behalf, to put the investigation down a track that he hoped would avoid the complaints ever coming to a point of decision.

Even if you think that Alex Salmond’s legal advice—all that he is putting forward is his legal advice—is right, and even if you think that arbitration is something that the Scottish Government should have done, and both those points can be rebutted strongly, the point for me is about whether it would have been appropriate for me to intervene on behalf of my friend, colleague and former boss in a process of investigation that I

was not meant to have a part in. As First Minister, if I had done that—whatever you think about the merits of what he was arguing for—and used my role, my influence and my power to get him an outcome that he wanted, not as a former First Minister but as the person who was the subject of the complaints, that would have been an egregious breach of my power. It would have been wrong and deeply inappropriate.

Maybe, had I done that and arbitration had happened and you turned out to be right and I made it all go away, we would never have found out. However, let us say we had found out. I do not think that I would still be sitting here, because I do not think that anybody would have accepted that that was a reasonable, legitimate or acceptable way for a First Minister to behave. Frankly, there would have been a lot more justification in that criticism than there is—if I may say so—in some of the criticism that is being levelled at me.

I am sorry that, in all this, there has been a lot of personal angst for me and others—me, least of all. However, for me, one of the hardest things was sitting and saying no to a friend who was asking me for help, which is maybe why I let him down more gently than I intended to on that 2 April meeting. Saying no to a friend who is asking you for help is a tough thing to do, and it has had big implications for me and my relationship with him. But was it the right thing to do? Absolutely—and I will maintain that for as long as I live.

Margaret Mitchell: The difficulty with that is that you are the First Minister of Scotland. You are the most powerful person in Scotland and you should be acting in the public interest.

The First Minister: I was.

Margaret Mitchell: To act in the public interest would, it seems to me, have been to establish the legal advice that you got—it was not 100 per cent certain that it was fine—and the legal advice that he had got from very credible and experienced lawyers. It was not as though he had put his finger to the wind and said, “We think that this is what it is”. He was making material points, and you seem to have absolved yourself of any responsibility to take those points on board and to act to protect the public purse and the anonymity of the complainers—all to make sure that you were not accused of covering up. That does not seem to me to be credible.

The First Minister: No—it was to make sure that I did not abuse my power as First Minister on behalf of a friend who was accused of serious sexual misconduct. We are going to have to agree to differ on this. However, on all the legal arguments and legal advice that he had, remember that it was not that the Government did

not have them because I was not agreeing to intervene. The Government had them, and they were being properly considered in the process of the investigation.

The point is that this was a procedure that rightly or wrongly—you can have your views on the procedure—excluded me from the process of investigation. I apologise to them in advance for naming them in this way, but I mention them to illustrate a point. Let us say that the complaints had been not against Alex Salmond but against Jack McConnell or against Henry McLeish. Although I like and respect both of them, they would not have had the same access to me as Alex Salmond, so I would have been using my power to help my friend in a process of investigating serious complaints.

Ms Mitchell, I will maintain for as long as I live that, had I done that, and had it come to light, people—probably you included—would be sitting here telling me that I had acted completely inappropriately.

Margaret Mitchell: I think that I would have weighed up the arguments, but the point is that there was a route. Arbitration was offered to the permanent secretary and she rejected it. It is a process that anyone, regardless of political party, could have followed, and it is what he did follow.

The First Minister: And he made that argument—*[Interruption.]*

Margaret Mitchell: If you will excuse me, First Minister.

It is for others to look at the case that I have set out and at what you have said. Forgive me—I am maybe putting words in your mouth—but it sounded like, “I was going to make sure that it was exposed and that he did not get off with this. That was my overwhelming motivation rather than acting in the public interest at that very early stage.”

Yes—if he had been found right, you would have had to go back to the drawing board. It did not mean that it was the end of the matter. It could have been examined again; a new procedure could have been put in place. It was not the end of it, but you chose to do something else. I do not think that we will agree on this, but we have set up enough of the balancing arguments for others to make their own determination.

The First Minister: If the committee’s conclusion is that I should have intervened, the committee is entitled to that. My view of propriety in those things will be severely challenged at a fundamental level.

I think that you are putting it to me that I wanted to see him being exposed at all costs. I think that if somebody has serious complaints made against

them and there is a procedure in place to allow those to be investigated, it is in the public interest that the procedure be allowed to happen without political interference from somebody’s powerful friend to try to divert the course that it would take. That is absolutely in the public interest and that is the judgement that I made. People can decide whether it was right or wrong, but I decided that I would have acted in an improper way if I had done what he wanted me to do because I was his friend. I do not think that anybody would be patting me on the back now if I had chosen to do that.

I cannot find the words to express this strongly enough. I never, ever, wanted to face a situation in which Alex Salmond—a man who I had revered since I was 20 years old or probably younger—was facing serious allegations of sexual misconduct. I did not want him to be exposed; I did not want any of it to happen. My conduct in all this is rightly under scrutiny; I have no complaint and no right to have any complaint about that. However, the idea that I ever wanted any of this to happen—

This situation, however people judge I handled it, was not of my making, and I tried to handle it in a way that I thought was best overall. It would have been deeply wrong for me to intervene on behalf of Alex Salmond to try to engineer the outcome that he wanted. He was not some objective bystander. He was not a former First Minister coming to me on some matter of public policy, saying, “Nicola, do you think you should think about this?”. He was a party in this whole issue and asked me to intervene on his behalf. It would have been deeply inappropriate to have done so.

The Convener: Do you have any other questions, Ms Mitchell?

Margaret Mitchell: No, I do not. That sets out both arguments clearly.

Andy Wightman: I have a few questions on the judicial review. I thank my colleague Murdo Fraser for walking us through much of the process. First, the petition was against Leslie Evans, who was the first party, and the Scottish ministers were the second party. Can you confirm that at all stages, the petition was defended as essentially one petition, and that there were no separate decisions made, or separate considerations given to the two different parties?

The First Minister: I think that the answer to that is yes, but there might be technical issues with regard to the considerations that lawyers made. I cannot recall all the ins and outs of the matter, but I know that at the early stage there was some legal consideration about whether it might be appropriate to have the petition amended so that it was just against the Scottish ministers and

not against the permanent secretary individually. However, I do not think that that went anywhere legally.

Andy Wightman: Would it be fair to say, in response to Murdo Fraser's line of questioning, that the critical tipping point—the thing that changed everything—was the period 6 December to 19 December? On 6 December was the point at which counsel said “concede” or “press on regardless”.

Then there were clearly problems with disclosure of documents: on 19 December 2018, at paragraph 11 of the legal advice note, Roddy Dunlop QC said that

“all of this gives rise to two concerns”

and, at paragraph 12,

“First, we are now in a position where we think that maintaining a defence of the appointment of the IO may be unstateable. Given the timescales we are reluctant to take a final view on this, but there is a real risk that we so conclude.”

Would you agree that 6 December to 19 December was the critical period?

The First Minister: Yes—although I would probably narrow it a bit more than that. The quotations that I used earlier, which summarise the views of the law officers, were from 11 December, so up until 11 December there was a belief that the case was stateable with credible arguments.

I am looking at my notes and failing to find it, but I think that the period was from 11 December onwards. The 14th seems to be—I do not remember whether that is when the commission process started. Referring to the period from 11 to 19 December would be more accurate. For some reason, the 14th to the 19th seems to be in my mind as when it really started to go badly wrong.

14:30

Andy Wightman: That is fine—it is not particularly important.

I will move on to the process of the concession. The Scottish ministers decided to concede the case and I understand that there was discussion at 4 o'clock on Hogmanay 2018—I am sure that the Lord Advocate appreciated that—about the basis on which the case could be conceded. The text says:

“It would be useful to have counsel's input on these matters before the decision ‘goes live’; and, ideally, before final decisions are made on handling”.

I do not know whether there was further counsel input—we do not have that, although it might well be coming. I would be interested in that.

The grounds on which ministers decided to concede were based on the inability to defend the fact that documents were produced after it was promised that everything had been produced. That related to questions about paragraph 10 of the procedure. Did the petitioner comment on the proposals that the Scottish ministers made as to the joint minute?

The First Minister: I would think that the answer is yes. I was not involved and I would have to check the precise dates but, once the Government decided to concede, there was a process of lawyer-to-lawyer discussions. A bit like pleadings, the joint minute was probably discussed between the different legal teams. I think that the counsel who had been involved in the case did that, but I would have to check the detail. That went into a legal process about the terms of the concession and the joint minute, which led to the interlocutor of Lord Pentland.

Andy Wightman: So you agreed the joint minute, and Lord Pentland basically issued that as an interlocutor, in effect.

The First Minister: I assume so—I was not in court.

Andy Wightman: No problem.

The First Minister: I will not try to speak for Lord Pentland.

Andy Wightman: No, but we know what Lord Pentland said, because it is in the interlocutor, which is before me. It says:

“having heard counsel, on the petitioner's motion, of consent, and in terms and in respect of the Joint Minute for parties ...

(i.) finds and declares that the decisions of the first named respondent ... Leslie Evans, as set out in”

the decision report and as set out in

“a letter from her to the petitioner's solicitors dated 22 August 2018 ... are unlawful in respect that they were taken in circumstances which were procedurally unfair and in respect that they were tainted by apparent bias by reason of the extent and effects of the Investigating Officer's involvement with aspects of the matters raised”—

and the text goes on. Ultimately, the court decided that the two decisions of Leslie Evans were unlawful.

The First Minister: I am not in a position—yes, I assume—

Andy Wightman: I do not think that you will know the answer to this question, but what I am getting at is whether, in the winding-up period when you decided to concede, there was any suggestion, discussion or approach from the petitioner about you not just conceding on the application of the procedure in terms of the decisions that Leslie Evans made in the case but

including in the joint minute, and therefore in the interlocutor, legal grounds in relation to the procedure itself. Were you aware of that?

The First Minister: Not as far as I am aware, but I would have to check that. I was not party to the lawyer-to-lawyer discussions about the settlement of that. I am not aware that that was the case, but I cannot sit here and say definitively that none of that happened.

Maureen Watt: Committee members were allowed to read the report by the former director general of organisational development and operations, Sarah Davidson. The permanent secretary said that the decision that she took after reading that report

“was to concede—indeed, that was also the advice that was given to ministers.”—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 17 November 2020; c 49.]

May I ask about that decision-making process? Did the permanent secretary discuss that matter with you, prior to making a recommendation to concede?

The First Minister: We discussed it on an ongoing basis over that period of a few days when she commissioned that note, we got that advice and then the decision was taken. I was in touch with her—it was over the Christmas and new year period—so, yes. I cannot tell you exactly on what day that was. A lot of it was done by phone, obviously, given that it was over the holiday period. As I think has been described—as was the case, and she said it in the committee—it was the permanent secretary’s decision. Whatever the technicalities are, I am in no way seeking to disassociate myself from the decision. I was involved in the deliberations. I was in agreement with it, and I absolutely stand behind the decision that the permanent secretary took.

Maureen Watt: In his evidence, the Lord Advocate highlighted the importance of focusing on the complainers when it came to the decisions to concede the judicial review. Did protecting the complainers and their complaints play a role in the fact that it took quite a while to decide whether to concede the judicial review?

The First Minister: I do not think that you can separate that out. Forgive me, but I am about to speak in answer to a question about complainers in a way that will sound quite dispassionate, but it was a decision-making process in a judicial review case. I recall the evidence that the Lord Advocate gave on that point. Alex Cole-Hamilton asked me something similar. As long as the case was stateable and we thought that we had an arguable, credible case—even though our prospects had deteriorated—the wider public interest came into play, and that was the desire to, if possible, get a

judicial determination on all the grounds of challenge. In addition to that, if we thought that we had a chance of successfully defending this and prevailing on the legality of both the procedure and the process, that would have been in the interests of the complainants, because it would have meant that the whole process was not set aside in the way that it ultimately was. Therefore, that was part of it.

However, in these decisions, you can take account of those wider things only as long as you have a stateable case. We carried on deciding that for as long as that was the case, and the view to concede came when that ceased to be the case, because of what happened with the uncovering of information that then suggested that the IO had had greater involvement with the complainers, which changed the judgment that we had made about being able to defend the interpretation of section 10.

A view of the complainers was an integral part of that. Alex Cole-Hamilton put the alternative view that it might have been better for the complainers to concede earlier and allow a new process to begin. People will take different views on that, but the interest of the complainers was part of the wider consideration—our view was that, as long as the case was stateable, we should continue to defend it.

Jackie Baillie: It feels like a long time since we last spoke, First Minister, so let me try to rattle through this—[*Interruption.*] I am sorry, but I missed that.

The First Minister: I said that you misquoted me the last time we spoke, so—

Jackie Baillie: You corrected me, and you clearly have lots of resources to do that. Let—

The First Minister: I hope that I do not have to do it again, Ms Baillie.

Jackie Baillie: Well, let me try to make sure that you do not.

The Convener: Could you two just get on with it, please?

Jackie Baillie: Yes, absolutely.

The First Minister: We have been doing this for years.

Jackie Baillie: I have noted that, throughout today, you have talked about a litany of failures. You have described them as “catastrophic”—

The First Minister: I rest my case.

Jackie Baillie: Well, you have. You have talked about errors in the investigation. You have talked about errors in the judicial review. You have talked about errors in the supply of information. I

absolutely appreciate your apologising as the head of the Scottish Government and taking responsibility, but you are not directly responsible, are you?

The First Minister: Every single day, Ms Baillie, things happen in the Scottish Government—not explicitly in my name—that, ultimately, I am responsible for. Most of them go well, some of them do not go well and I cannot pick and choose what I take responsibility for. In the sense that I was not directly involved in the problems that led to the judicial review collapsing, no, I was not directly involved, but there are lots of things that happen in the Scottish Government that I am not directly involved in. That does not mean that I can sit here and say that I bear no responsibility.

Jackie Baillie: I do not think that I have ever heard you describe your stewardship of any particular problem as “catastrophic”, as you have done with these errors.

The First Minister: Perhaps not publicly.

Jackie Baillie: Perhaps not publicly but, then, you do not confide in me. However, you have used that word. That is a strong word. Why, then, has nobody resigned or taken responsibility for this? At the heart of this matter, two women have been really badly let down. They have had no closure in this at all.

The First Minister: I will give you a sort of personal answer to that and then give you the Government answer. Forgive me, but, four hours in, I am perhaps getting too tired to safely give personal answers.

Technically, I think that I was responding to Murdo Fraser’s use of the word “catastrophic”. I did not disagree with that word—I agreed with it—but it was not my choice of word; it was his. He can correct me if I am wrong, and we can correct the *Official Report*. You and I both like to be accurate on these things, Ms Baillie.

There are two points to make. I feel strongly that, rightly or wrongly, this situation of complaints emerging against Alex Salmond was horrendous for everyone who had to deal with it. I am not saying that that sort of thing is unprecedented, obviously, but it was really difficult for everybody. I did not know about it at the time that people were originally dealing with it, but it was an invidious and difficult situation, and people got things wrong. That might have made me too likely to be understanding of people who made mistakes.

The more governmental answer is that we are still in the process of investigation and inquiry into all of this. On the day that we conceded the judicial review, I think that I said in Parliament that we would instruct an independent process of investigation, which Laura Dunlop was charged to

do. We are awaiting the outcome of that, and we are awaiting the recommendations and conclusions of this committee. I think that that is right and proper.

Jackie Baillie: My problem with that response is that you are the head of the Government, you have responsibilities, the policy lies on a shelf gathering dust and two women have been failed by what has happened. What happens in the intervening two years that you have taken to look at this for any woman who suffers sexual harassment?

The First Minister: In much of the intervening two years, there has also been a criminal investigation, although I am not saying that that constrains the internal things that we can do. The policy lies on the shelf, to use your description. It is still extant. It has not been declared unlawful. Further, fairness at work—although we have talked previously about the perceived or actual deficiencies in that policy that led to the new procedure—is still there and available for those within the Scottish Government who want to come forward.

I have profound concerns, which I think we all share, about the impact of what has gone on—the narrative that has developed around it, the allegations that have been made and so on—and what it means for the confidence that women in Scotland have in coming forward. I do not deny that the Government’s actions are part of that, but I think that every one of us, when this is all over, must think about how we repair that and build again a culture in Scotland in which women feel confident in coming forward. I do not shy away from the Government’s big responsibility in that.

Jackie Baillie: Yes. It might be useful to have a policy in place that people can—

The First Minister: There is a policy in place.

Jackie Baillie: Well, we can debate that.

I will move on to information. Let me genuinely say how frustrated I have been as a member of this committee. I do not think that I have ever felt quite so frustrated in my 22 years of serving on parliamentary committees as I have while serving on this one. Let me tell you why.

We have waited for information from the Scottish Government. The stuff that we have received has been partial and late. The complaints handling phase was due in August, but we received it in December. It took two votes in Parliament and a motion of no confidence in John Swinney before we saw the legal advice, last night at 6 o’clock, and there is information missing. Reference is made in the documents to communications with Christine O’Neill, but none of them is there. Reference has been made to an

urgent consultation meeting on Friday 2 November, but no information on that has been given to us.

14:45

With regard to your meeting on 13 November—which I think is critical—as the First Minister, with the permanent secretary, the chief of staff and external legal advisers, there is nothing. Where is the consultation note of that meeting? It has not been provided to us.

We have waited until the 11th hour for the legal advice and we got partial legal advice. Do you understand the frustration of the committee? Do you understand that it looks as though the Government does not want to give us critical information? What will you do to rectify that today?

The First Minister: I am not sure what you want me to do today.

Jackie Baillie: Give it to us.

The First Minister: Look, I could sit here and give you an explanation of the factors that underlie the decisions in that regard, as I have done with regard to certain legal advice, and we could agree or disagree on that. That would not remove your frustration, nor would I expect it to.

I would also take issue with some of the characterisation of delay and—although I do not think that you use this word—prevarication, and of the Government trying to avoid giving information. There have been complex issues behind the provision of some of this information. Sometimes, the issues involved the quantity of information. However, often, the legal constraints and the particular legal orders in place have had to be considered. I think that the Government has fully co-operated with the committee and has provided information in a proper way.

As First Minister, I absolutely respect the committees of this Parliament and I am not going to sit here and say, having listened to what you have just said, that I am not going to reflect seriously on that, because, of course I will.

I think that I said earlier that, for different reasons, I share a lot of the frustration that you speak about with regard to some of the information that has not been made available. In the case of some legal advice, that is down to the Government, for the reasons that I have set out. However, with regard to other categories of information, it is not down to the Government. That is the case in relation to things that are handed over in criminal trials, because it is not in the Government's gift to give that out.

What I would say is that, every time a piece of information that a lot of mystique and intrigue has

been built up around has been published—or, in the case of some of the information from the Crown Office, has not been published but has been made available for the committee members to read—it turned out that what had been said about it was not the case. I would argue that that can be seen in relation to the legal advice because, although people can take different views on the decisions that we took, they can look at the legal advice in the round and see that some of the things that were being said about the Government's position are not borne out in fact.

I shared some of the frustration, even if I do not accept some of the characterisation of all aspects of what lies behind that. However, as I would do with any committee that is saying that it feels that way, I will reflect on that. If there are particular pieces of information that the committee still feels that it needs and has not got, I will today undertake to do what I can to provide it to the committee, if it is available.

Jackie Baillie: The time for reflection has passed. We have been asking for this information for months. There have been two votes in Parliament, which, as far as I can recall, you were present for, that demanded the release of legal advice. There have been endless letters from the committee to John Swinney, your deputy, asking to see legal advice. We did not want to see it all; we wanted to see counsel's opinion and the notes where counsel were involved in providing advice to ministers, the Lord Advocate and so on. However, we have not got that today. We simply do not have it.

What is the legal basis for not giving us the 13 November consultation note of the meeting with counsel? What is the legal basis for not giving us a note of the meeting of Friday 2 November? What is the legal basis for not giving us the communications with Christine O'Neill? I genuinely do not understand that.

The First Minister: First, I know that the Deputy First Minister has said that further information will be coming to the committee. I am crossing this line today because I am sitting in front of the committee, but I have deliberately recused myself from the handling of that, so I do not know exactly what the different arguments are in relation to every single bit of information. That process is still under way and I am not going to get into the detail of that. The position may have been developing as I have been here today, so I am not equipped to do that.

Jackie Baillie: Do you accept that those are critical bits of information that would have been so useful to talk to you about?

The First Minister: I have spoken about the matter. In my exchanges with Murdo Fraser, I

talked—perhaps not at length—about the consultation on 2 November, which I was not at. I talked about the Solicitor General being at that meeting and the outcome of it.

I am not going to get into the specifics of that, because I am not in possession, at this point, of all the information about what exists and what can and will be passed to the committee. I understand that that process is under way.

On the general issue, I am not going to sit here and rehearse all the arguments about legal advice. The position on Government legal advice is long established and there for good reason. Sitting here right now, I am glad that you have got the legal advice so that I can talk about it openly today, but I have a concern about getting into a situation whereby Government advice is routinely asked for and published, because I think that that would undermine the basis on which Governments properly inform their decisions. However, I am not going to rehearse that argument.

After the parliamentary votes, I understand that the committee went through a process with the Deputy First Minister that resulted in—this was not quite as unprecedented as what we released yesterday but, at that point, it was also quite unprecedented—showing the committee substantial information summarising the Government's legal advice.

It is not true to say that the Government did not respond. However, we have genuinely held views and concerns about the basis on which Governments need to be able to take confidential legal advice. Incidentally, when Alex Salmond was First Minister, he held those views as strongly as I do now.

The Convener: I will intervene to say that the committee, generally, shares the frustration that Ms Baillie has expressed. We will be meeting later today to consider the legal advice that we have received compared with what we requested in the motion that we passed unanimously some time ago, to see whether the terms of what the committee agreed have been met. We will then get straight back to the Government to discuss the issues. It is noted that Mr Swinney, the Deputy First Minister, has in fact said that more information may be available. That issue is ongoing.

Jackie Baillie: Thank you for that helpful point of information, convener. However, I am very clear that what has been provided does not meet the terms of the committee's request—it is partial. The Government has taken the decision to release the legal advice—not some of it—but we have not yet received that. I find that really disrespectful to the committee.

Let me move on. I will try to be very quick in relation to the areas that Murdo Fraser has already covered. Counsel's opinion of 27 September, at paragraphs 6, 58 and 60, quite clearly questions whether you would succeed, on the basis of one particular ground that was suggested in the original petition: ground 4, procedural unfairness. I think that you would accept that those paragraphs question whether you would succeed.

The First Minister: I missed which opinion you mentioned at the start.

Jackie Baillie: It is that of 27 September, which is the very first counsel's opinion.

The First Minister: Which paragraphs are you talking about?

Jackie Baillie: Paragraphs 6, 58 and 60.

The First Minister: Okay—carry on.

Jackie Baillie: It notes:

“the vulnerability arises from the Procedure itself, and not from its implementation in this particular case.”

The concern is not just about implementation; it is about the policy itself. I am interested in that, because it calls into question the policy that you still have in place.

The First Minister: I tried to address that issue with Murdo Fraser. I have never—actually, I do not know that I can say it in an unqualified sense. I do not think that I have ever seen a piece of legal advice about a Government decision or a litigation that Government was involved in that was absolutely unqualified and which said, “100 per cent, there are no weaknesses in your case.” If I had read that and it had said that there were no potential weaknesses, that might have created more questions in my mind than it did.

Particularly on the point about litigation and prospects of success at an early stage, they point out the matters that they think are the greatest vulnerability. That is what they said was the greatest vulnerability in the case. That did not mean that they thought that it was really, really vulnerable and that we were definitely going to lose. I guess that it was also relative to the other grounds that they thought were much stronger. That is how legal advice tends to be presented: “Here are the really strong bits, and here are the bits that are less strong.” It is relative, and you take the advice overall.

I am not going to speak for Roddy Dunlop and Christine O'Neill, but I certainly did not read that as saying, “You are definitely going to lose the judicial review on this ground”; I read it just as, “Relatively speaking, this is your greatest risk and greatest vulnerability.”

Jackie Baillie: Let me quote paragraph 60. It states:

“this aspect of the case does seem to us to be the most difficult, and we cannot say that there is anything other than a material possibility that the Court will agree with the petitioner’s complaints in this regard.”

Is it not the case that if one—just one—of the petitioner’s grounds of challenge was found to be legitimate, that could have led to the quashing of the decision made by the permanent secretary and to the quashing of the procedure?

The First Minister: It could have done, yes. I think that that is evident and factual. It could also have been the case—I put it no more strongly than that—that a judge may have taken an overall view and come to a decision that there might be weaknesses but that, overall, the procedure was fair. The operative word in your question to me was “could”. I say that, genuinely, if the Government were to decide not to defend legal action on the basis of legal advice and opinions such as, “Here are your grounds, here’s where we think you’re strong, here’s where you might have a weakness,” the Government would never defend any legal action, because I do not think that you ever get an opinion that says, “You have no vulnerabilities; there is no possibility of losing.” If that is the test that you apply, no Government anywhere would ever defend a legal action, and I am not sure that you are suggesting that that is the position that we should be in.

Jackie Baillie: No, I am not, but it was an interesting explanation. I agree that, when you consider the opinion of 27 September, they are suggesting that other grounds are quite weak, so I could see why you would proceed on that basis. However, when I come to the opinion of 31 October, I find no such positive news anywhere in any of the paragraphs. Here was an opinion, written by Roddy Dunlop QC on Halloween at 10 to 11 at night. It was urgent, genuinely urgent, and you get the sense of that from both the submission and the emails surrounding it in virtually every paragraph—in fact, in every paragraph. He concludes that the prospects of winning are incredibly slim. I do not see any positive balancing paragraph. Do you?

The First Minister: Again, I am probably straying into trying to speak for Roddy Dunlop, which I suspect is really unwise. It was Halloween and it was late at night, and he was clearly seriously concerned but, to give a bit of context, he also said:

“My apologies for the hour”,

and that he had been unavailable. He said:

“I am presently engaged in a 3 week proof.”

To go back to the question that I was asked earlier—I cannot remember who by—of whether counsel had to threaten to resign, lawyers will not pursue an unstatable case. If Roddy Dunlop or Christine O’Neill had thought at that point that the case was unstatable, they would not have agreed to continue. They thought that there was a problem. There was a consultation two days later in which the discussion ended with the thinking that, “Actually, this is arguable. Yes, section 10 is open to the interpretation that led Roddy Dunlop to write that note but, equally, it is open to the other interpretation, and we think that we can argue the alternative interpretation.”

Those are the kinds of judgments and decisions that are made in litigation, I imagine, all the time. I go back to what I said. Fast forward to 11 December. I will read again the summary of the position of the law officers:

“They tested most of the arguments including the appointment of the IO and concluded that we have credible arguments”.

Weeks after 31 October, the law officers still thought that we had credible arguments. There will always be a balance of judgment and differences of opinions about when would have been the optimal time to concede a court case in the event that it is ultimately lost. However, taking everything into account, the point at which the Government should have conceded the case was not 31 October. If someone is going to make an argument about earlier concession, it would be much more credible to make it on the basis of the 6 December note, rather than the 31 October note—although it is still not right to make such an argument in my view.

Jackie Baillie: I appreciate you guiding me on the questioning, but let me return to 31 October.

The First Minister: I was not guiding your questioning—I was giving my answers to your questions.

15:00

Jackie Baillie: Absolutely. Let me return to the note of 31 October. I quote paragraph 14, where Roddy Dunlop says:

“it makes little sense to continue to defend the indefensible.”

Previously, you spoke about the interests of the two women in this. I absolutely agree with you. Roddy Dunlop goes on to say that there is an

“upside to such an eventuality: the Procedure would simply be reset, and safeguards could be put in place to minimize the risk of a further challenge to the renewed investigation.”

Would it not have been better for the two women if you had followed that advice?

The First Minister: Ultimately, with everything that we know now, you can certainly make that case, but that was not so on 31 October. Let me quote the final paragraph of that note:

“All of that is, however, presently hypothetical. A final decision will require to await the information discussed above. This Note is simply provided to ensure that the main decision makers are fully sighted in advance of Friday’s consultation.”

Friday’s consultation looked at the whole thing and decided that there was a credible argument that could be made. Although we were sitting there with a significant weakness in the case that had not been previously known—I think that Roddy Dunlop used the term “serious problem”—the consensus, supported by the law officers, was that there was a credible argument. In any event, it did not happen—which is why you can apply hindsight and get to the point that you are reasonably making to me—and at that point, it was a reasonable judgment to say that it was better for the complainers for us to try to defend the case and hopefully prevail, so that they did not have to go through a revised and re-run procedure.

Jackie Baillie: We do not know what happened at the meeting on 2 November, because we do not have those papers in front of us.

The First Minister: You have made that point.

Jackie Baillie: I am making it again, because there is an obvious difficulty—I have nothing to test your response against.

I turn to an area where it was obvious that the lawyers wanted further information: the role of the investigating officer. Why did it take so long to find out the investigating officer’s prior involvement with the complainants when, according to her evidence to the committee, it was widely known?

The First Minister: At that point, it was believed that the degree of contact between the investigating officer and the complainants was not such that we could not argue the interpretation and the fact that the degree and nature of the contact was such that it did not make the process unfair. Later, further information came to light. I cannot definitively answer the question as to why it took so long for that information to come to light.

You can only base your decisions on the information that you have at the time. That is the broad summary of the position that pertained on 31 October. A large part of the 31 October note talks about the obligation of disclosure on the Government. That issue was disclosed by the Government and became one of the formal challenges in the judicial review.

It is part of the committee’s job to look at the thing in the round, from the perspective of the outcome, work its way back and come to a view

on what we got right and what we got wrong, but when you are in the decision-making process, you take decisions on the basis of the information that is in front of you at the time. At each stage, the decisions that the Government reached are absolutely defensible on the grounds of being legally sound and sound in the wider context, too.

Jackie Baillie: Was she spoken to by the Scottish Government’s legal department, and if so, when?

The First Minister: Sorry, who?

Jackie Baillie: The investigating officer. Was she interviewed by the legal department?

The First Minister: I do not know.

Jackie Baillie: She was interviewed by junior counsel on 17 October.

The First Minister: I am sorry—in the context, I understand that statements and affidavits were taken from the investigating officer. I am sorry—I think that I misunderstood your question.

Jackie Baillie: Do you know when that was?

The First Minister: I do not have the dates of that.

Jackie Baillie: That would be useful to know.

She met with junior counsel—we understand—on 17 October. Again, we do not have a note of that meeting. Would it be appropriate to supply us with that?

The First Minister: I do not know. As I said, I am not involved—not least because I am sitting here right now—in the process of considering what further information the committee will be sent. I am not going to answer those questions with a yes or a no, because considerations will no doubt be undertaken.

Jackie Baillie: I will move on to the duty of candour, which of course requires full disclosure of information by the Scottish Government.

Why was the commission and diligence needed? Why did the Scottish Government not hand over the information that would be required and expected of it?

The First Minister: My understanding is that the Scottish Government did hand over the information that it thought that it had, and that it thought that it was complying with the duty of candour. Regrettably, information came to light during the commission and diligence that then had the result that we have spoken about. There was, to the best of my knowledge, no intention on the part of the Scottish Government to withhold information, but the process demonstrated that information had not been handed over in the proper and timely way.

Jackie Baillie: I have to say that that mirrors the committee's experience of trying to get information from the Scottish Government.

You may recall that a search warrant was issued to the permanent secretary from the Crown Office to ingather material for the criminal trial. The committee itself asked for information on the complaints handling phase and, in addition to a number of documents, we got 40 documents not previously seen either at the criminal trial or, indeed, at the Court of Session during the judicial review. Should they have been revealed to the Court of Session and the Crown Office—

The First Minister: I do not know what documents—

Jackie Baillie: and—

The First Minister: I am sorry; I thought that you were finished.

Jackie Baillie: As a layperson, I had understood that breaching the terms of a search warrant was quite serious. Have I got that wrong?

The First Minister: It would be serious, if that is what had happened. However, a bit like some other things that have been put to me, there is an assumption underpinning that question that I do not necessarily accept.

A suggestion has been made—I think by Mr Salmond—that 46 documents were inappropriately withheld from the warrant in the criminal investigation. Scottish Government officials have reviewed the documents that were listed in the submission that he made to the committee; of those documents, 13 were, in fact, released under the warrant, and others did not meet the specific terms of the warrant.

Certainly, ministers and the permanent secretary had no role in determining which documents were in the scope of the terms of the warrant. A rigorous process was undertaken and, crucially, the warrant process included oversight by an independent commissioner who was appointed by the court. Where documents were not handed over, that would therefore have been because a judgment was made that they were not within the scope of the warrant. However, that was not a process that I had any direct involvement in.

Jackie Baillie: I will move on to sisting. You spoke earlier—I think in response to Alasdair Allan—about the nature of the attempt to sist the judicial review, which—

The First Minister: To the best of my knowledge, there was no attempt to sist the judicial review.

Jackie Baillie: But there was discussion about it.

The First Minister: I would have been astounded, given the circumstances, if there was not even a discussion.

We are talking here about a judicial review where there was a criminal investigation. You would consider—and I think that the Government did—whether there was any case that there should be an application for sisting. That did not happen; instead, there was an agreement on the part of the Scottish Government not to oppose the motion for reporting restrictions. Certainly, from my memory of those discussions, there was always a sense that reporting restrictions would always be preferable to sisting, because it would allow it to go forward. This idea that the Government was trying to get the judicial review sisted is not the case.

Jackie Baillie: We were told by the former First Minister that he had a precognition statement that suggested that a special adviser was encouraging civil servants to come forward, as they were out to get him, and that that would assist the sisting process.

The First Minister: I will come on to what I understand from that precognition. I hear these things—

Jackie Baillie: We have not seen it.

The First Minister: Neither have I, but I have made some inquiries. You were told a lot of things by the former First Minister. Just as you will apply your critical faculties to what I am telling you, I am sure that you will do the same to his words, too.

The Government did not try to sist. As I said, I cannot sit here and say that no one in Government ever raised the word “sisting” again; I cannot even be sure that I did not raise the word “sisting” again. However, to the best of my knowledge, after the early stages in September that led to reporting restrictions being imposed, there was no serious attempt at any point on the part of the Government to have the case sisted. That kind of theory seems to fall apart on that really inconvenient fact.

I turn to the precognition statement. I have to piece these things together. It may be putting it too strongly to say that there has been an implication, but I think that some people have wanted it to be assumed that the special adviser in this particular fragment of the conspiracy theory—if I can call it that—was my chief of staff. My understanding is that that is not the case. The special adviser who allegedly said that was, I think, asked about it by the police and is adamant that it was not something that was said. That special adviser also would not have had any real knowledge of or insight into what was happening in the judicial review.

I cannot say more than that, because I am just trying to piece together fragments of information. Probably the most important thing for me to say is that, if someone genuinely wants to argue that the Government was trying to game the timing of the judicial review in order to allow it to be overtaken by a criminal investigation, a lot of very unlikely and implausible things have to be established. Nobody, as far as I can see, has come within a million miles of doing that, which is probably because it simply did not happen.

Jackie Baillie: I absolutely hope that the First Minister is right. You will not be surprised to hear that we do not have the paperwork relating to that. We have been promised it, but it is still to appear.

The First Minister: I may be getting this wrong but, if the Government had made an attempt to sist the case, presumably it would be known through the court proceedings that there had been an attempt to sist the case.

Jackie Baillie: We have nothing from the Government, despite requesting it. The Government has promised to deliver it. Maybe you could hurry it up.

The Convener: Mr McMillan has a small question or two on the judicial review, after which I ask him to move straight to his questions on the ministerial code.

Stuart McMillan: I want to follow on from a couple of Jackie Baillie's questions. It was mentioned a moment ago that the Scottish Government did not send anyone to the lodging of the complainers' process. Can you explain why the Scottish Government did not send anyone to that?

The First Minister: Forgive me, Mr McMillan, but I am not 100 per cent sure what you are asking about. Is your question about the motion for reporting restrictions?

Stuart McMillan: Yes.

The First Minister: As I understand it—I stand to be corrected if I get this wrong—that was because we were not opposing it. Therefore, there was no need for the Government to turn up to say, “We’re not opposing it.” As far as I understand, that is not unusual in court proceedings. If a motion is unopposed, there is no need for everybody to be there in court. My understanding is that that is the explanation of that.

Stuart McMillan: In your time as a minister, have you ever seen any legal advice from counsel that predicted defeat for the Scottish Government, but the Government went on to win the case?

The First Minister: I am conscious that we have waived legal privilege on the legal advice in this matter, but we have not waived legal privilege

on legal advice on all other issues, so the ministerial code still applies. Therefore, I could not confirm or deny the content or provenance of legal advice on other matters. I am not going to do that, because it would take me into difficult territory.

I commented in general terms that you will get a spectrum of opinion in any litigation on any issue. Sometimes, in the course of a litigation, the opinion will move backwards and forwards—it will move from “We’re really confident,” to “We’re not so confident now,” and back again. That would not be unusual. I use the example of minimum pricing because it is the one that I have been most closely associated with and involved in—these matters aside—in my ministerial career, and also because it was a very long, protracted litigation, which went all the way to the Supreme Court, if I recall. I use that to illustrate the point, but I cannot go into the content of any legal advice on any particular issue.

15:15

Stuart McMillan: Both the Lord Advocate and the former director of legal services were quite candid about the Government's failings in locating and sharing all relevant documents with Mr Salmond as part of the judicial review. How can Scottish Government procedure change so that the Government is in a much better position to make the information more available, certainly when it comes to future documents that are necessary in any litigation?

The First Minister: The Government will be learning lessons on all of this—I know that. I cannot give you specific answers to that right now on the technical things that I have no doubt that the Government is trying to improve around document retrieval. Those are never simple things. The sheer volume of documents that go through Government systems on a daily, weekly and monthly basis is massive. I am not making excuses, but that will have been part of the issue here.

I am not an expert on how such searches are done, but you use key words and phrases and suchlike. Given the volume of information that the Government has, it is a complex process. It did not work at all times here in the way that it should have worked, and that has had the consequences that we have been talking about. Those will be things that we will be seeking to improve and learn from in the future.

Stuart McMillan: I have one final question in this area. It goes back to the document that was published yesterday—the legal advice from 27 September, which Ms Baillie touched on. Do you have any comments or thoughts about the counsel's advice in that document regarding the retrospective element of the case and procedure?

The First Minister: I am not sure which document you are referring to.

Stuart McMillan: The legal advice that was published yesterday, from 27 September.

The First Minister: The note of prospects?

Stuart McMillan: Yes.

The First Minister: I have nothing to say in addition to what I have said already; I am about to repeat what I have said already. That note of prospects was covering all the grounds of challenge and was looking at what the view was on all of them. I cannot immediately recall exactly what it said on the retrospectivity ground, but all of that would have been taken into account as we considered our prospects. I do not know whether you want to point me to a paragraph.

Stuart McMillan: I am referring to paragraphs 39, 40, 47 and 48. My reason for asking the question is that, when he was before us on Friday, Mr Salmond discussed the aspect of retrospectivity at length and viewed it as a strength for his case. However, the Scottish Government's counsel stated that

"there had been an increased public focus on historical allegations of harassment and on the 'failure' of those who had experienced harassment to make complaints at the time of the alleged harassment",

and that

"changes in procedure) are often retrospective, and legitimately so".

The First Minister: Thank you for helping me out with that. That goes to the heart of it. Mr Salmond has a view, which he says was backed up by his legal advice—which it may well have been—that retrospectivity was inappropriate and would have been a legal flaw in the procedure. My view and the Government's view is different, both on the legal basis and on the appropriateness of allowing complaints of a historic nature to be investigated.

Stuart McMillan: I will now move on to the ministerial code.

In your opening statement and in your written evidence, you provided an account of why you met or had contact with Mr Salmond. Can you briefly take us through those reasons?

The First Minister: I can go into as much detail as you want but, in summary, I was told that he was facing an issue and that he was distressed. I do not know what the basis of this was, but I was told that he might have been considering stepping aside and resigning from SNP membership. Therefore, as a friend of Alex and a party leader, that was the basis on which I chose to meet him. I have set out in my opening statement and my written evidence that that was the basis.

The decision that I then took around not immediately notifying that under the ministerial code—I suspect that I am slightly responsible for this, because I talked a lot about the party basis of that—was not really based on the classification of the meeting; it was down to a consideration of how best I protected the independence and confidentiality of the process. I go into that in my written evidence, and I touched on it in my opening statement today.

Stuart McMillan: In your view, what was Mr Salmond's motivation for attending the meeting?

The First Minister: When he got there and we had the discussion on 2 April, I think that it is as he set out: he wanted me to intervene initially to try to bring about a process of mediation. I believed—I did not believe, I knew—that I was seeing him in the party/personal space, but he clearly had a different objective coming into that. When we had that discussion on 2 April, it very quickly became clear to me that what I had thought he might be about to do was not the case, and I thought that it was not appropriate for me to intervene in the way that he was asking me to do.

I heard him rebut it and perhaps he never had any intention of resigning, but it was put to me that he was potentially considering that, given that he was handling a difficult situation. I do not know whether Geoff Aberdein, who told me that, was telling me because Alex had told him that or whether it was just Geoff's surmising, but that was something that I thought was a prospect or a possibility. Knowing Alex as I did, and knowing Alex as many of you do, the one thing that you always have in your mind about Alex is that he does not do the expected thing. Therefore, initially, facing a difficult situation, did I think it credible that he would decide to handle it by saying, "I'm going to stand down from the party to clear my name"? I thought that it was credible.

To be perfectly honest, that was something that stayed in my mind for longer. Although, after speaking to him on 2 April, it was clear that he wanted to deal with the issue in a particular way, so that it did not become public, if Alex had got to the point where he thought that that was not going to be possible, it was always a prospect in my mind that he would decide to take control of the narrative and handle it in a different way. That was just a factor that was in my mind throughout that period, from the meeting on 2 April, through that summer.

Stuart McMillan: You have described meeting Mr Salmond on more than one occasion and, on one of those occasions, you put in your evidence that you did not want to be "cornered" by Mr Salmond at an upcoming party conference, which you thought might occur if you had not discussed

the matter with him beforehand. What do you mean by “cornered”?

The First Minister: That might not have been the best word to use. You know what SNP conferences are like. Just to deal with the chronology, that was after the prospect in my mind had become much more serious that he was contemplating legal action against the Government. That was the point at which, notwithstanding my reasons for not telling the permanent secretary beforehand, I decided that I had to tell the permanent secretary because of that threat of legal action, and that is what I did on, I think, 6 June. I told her in the letter that I wrote to her that I would make Alex aware that I had told her and reiterate that I would not intervene. That was the purpose of that meeting.

I also knew that we had our party conference at the end of the week and I assumed that he was going to be there. As it turned out, I do not think that he was planning to be there, but I assumed that he would be there, and I did not want that discussion potentially to happen in an ad hoc way; I wanted it to be planned, so I arranged to meet him, in effect, to say that I had told the permanent secretary and that I was not going to intervene. I am summarising, obviously. I think that that was the meeting at which he wanted me to take away a draft petition for judicial review, which I did not think was appropriate for me to do.

Stuart McMillan: According to your evidence, the first time that you saw the allegations against Mr Salmond under the Scottish Government’s complaints procedure was at the meeting on 2 April in your house.

You have previously described Mr Salmond as a friend of some 30 years, and you have done so on numerous occasions today. The press has reported a comment from you about learning of the “gory detail” of the allegations. Will you expand on that, please?

The First Minister: I will not expand on it very much. If I did, I suspect that the convener would stop me, because we would be straying into territory that is not within the remit of the committee.

He showed me the letter that he had had from the permanent secretary, which set out the details of the complaints that had been made against him. They were distressing and upsetting details. Going back to what I said earlier, he was aware of one of the incidents and had apologised to somebody for it at the time. He gave me his account of that incident. I should be very clear: he denied the specifics of the allegation, in the sense that he denied that there was anything in it that was not consensual. My view is that his account constituted behaviour that was not appropriate for

the First Minister, but I should probably not go into any more detail than that.

Stuart McMillan: Mr Salmond’s account of what happened when you met and he brought up the complaints against him was that you said, “I want to assist”, which he took to mean that you would intervene to advocate for mediation in the first instance. What is your response to Mr Salmond’s comments?

The First Minister: I think that I answered that in response to Andy Wightman. I want to paint a picture—or rather, give people the context. I was sitting in my house. We are talking about 2 April, which was Easter Monday. The man whom I had worked with, been friends with and in my earlier years had looked up to so much had just told me something pretty shocking. My head was spinning and I was dealing with complicated emotions. When you are sitting with a friend who is saying, “I’m facing this terrible situation,” it is entirely possible that you say things like, “I’d love to help if I could”—people say that kind of thing. This was a human situation. We are talking about it now as a political scrutiny situation, which is absolutely proper, but in the moment, it was a human situation between two people who knew each other really well.

As I think that I have described to Andy Wightman, from the minute I saw the letter, I knew that it would not be appropriate for me to intervene. I was probably trying to soften that for him. From his accounts, maybe I softened that too much. In real time, I was also thinking, “Is there anything I have to do? Do I have to report this to anybody?” All of that was going through my head as we were having that discussion. However, I did not intervene because, for the reasons that I set out very vehemently to Margaret Mitchell, I did not think that that would have been appropriate for me to do.

The other thing that I would say is that what I have just described to you also demonstrates that the detail of this was not something that I had three days to think about; I was thinking about it in real time.

Stuart McMillan: So, looking at it from the human perspective, is that the reason why you met Mr Salmond on a few occasions afterwards?

The First Minister: I met him twice after that. I met him on 7 June, ahead of the SNP conference, which we have already talked about. The third and final time that I met him—in fact, I think that it was the final time that I met him, full stop—was around 13 July. If I am being very reflective, that is probably the meeting at which I thought, “Why did I meet him again here?” It was still very much in the personal/party space. I go back to what I said earlier: if he was sitting here right now, he would

say, “Don’t be daft—I’d never do that.” However, there was always this thought in my head, “If he gets to a point where he doesn’t think he can stop this in the ways he’s trying to, he just does the Alex Salmond press conference.” I guess that I just wanted to know that I would not suddenly face that at some stage.

15:30

This might be the most ironic bit of all. At that stage, I was probably still a bit concerned about him. I am sitting here, facing all of this, and being accused of being part of a grand conspiracy against him when some of what has probably led me into trouble is that I was concerned about him. That is why I met him in July. At that point, he was putting to me a belief—I do not know whether it was a genuine belief or a device to try to draw me in—that I was blocking arbitration, which was not the case, because I was not part of the discussion.

Stuart McMillan: Last week, Mr Salmond said:

“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”—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 26 February 2021; c 91.]

Do you agree?

The First Minister: Yes. Not surprisingly, he was putting forward the view that this was an occasion on which that was not the case and I should have done. I am not going to rehearse everything that I said to Margaret Mitchell. I feel very strongly that it would not have been right for me to intervene, however much I might, in my heart, have wanted to help a friend, although the nature of the situation was more complex than that. It would not have been right for me to do it, and that is why I did not do it.

Alex Cole-Hamilton: First Minister, I too would like to focus on the meetings of 29 March and 2 April 2018, and the immediate aftermath. All my questions will be around that.

Can I just start by confirming something that you told us in your written evidence, which is that you had no idea that you were going to meet Geoff Aberdeen until he appeared in your parliamentary office on 29 March?

The First Minister: I did not know for certain. I had been told that Geoff wanted to see me and that he might be in Parliament that day. I think that that was probably the night before, although it might have been the morning of. I was told, “He might be in Parliament and, if so, he wants to have a word with you.” I did not know that it was certain that he was going to be in Parliament.

Alex Cole-Hamilton: So you were partially prepared for it. Mr Aberdeen said nothing of the actual investigations at that meeting, but he did hint that Mr Salmond might be facing allegations of a sexual nature.

The First Minister: As you know—it has been the subject of comment and scepticism, and I understand that—I did not remember the meeting. My recollection of the meeting is still not as vivid as I would like it to be. I will not go into detail but it was a colleague’s birthday. We stepped into my office. He indicated that there was a harassment issue. To the best of my recollection, he talked in general terms. What I remember most strongly is how worried he was about Alex, and the main purpose of the discussion, as I recall it, was to get me to agree to see Alex.

I do agree that, although part of Alex’s evidence on Friday seems to suggest that I did not, I agreed at that meeting to see him. In a sense, the 2 April meeting was agreed on 29 March. I do not think that the date was confirmed until the weekend, but I did agree to see him.

That is what I recall. There was an issue, it was serious, Geoff was really worried about Alex, and I needed to see him. My best recollection of that, however, is that it was in general terms.

Alex Cole-Hamilton: Despite limited information from Geoff Aberdeen on 29 March, you agreed to drop everything and meet Alex Salmond four days later. You have just said that that was for two reasons in particular. One reason was personal—he was in a profound degree of distress. The second was that you had been told by Geoff Aberdeen that he might well be about to resign from the SNP.

When I asked Mr Salmond about that, he was very strident in stating that resignation was the last thing on his mind. What reason did Geoff Aberdeen give you for suggesting otherwise?

The First Minister: As I said, I cannot even recall whether Geoff even said, “Alex has told me this,” or “I am worried about this.” It was just something that he said—“I think he might even be about to resign,” and that gave me the sense that it was a serious issue and I really needed to speak to him.

Let me be clear. Within a very short time of Alex being in my house on 2 April, it was clear to me that that was not his intention. That could always change with Alex; I do not think that I am describing something that people would not recognise. People should always expect the unexpected with him.

My final point is about your suggestion that I would “drop everything”. The second of April was Easter Monday. My friend of 30 years asked to

see me and I agreed to do so. I was due to be working at home. My chief of staff, who was at that meeting, was due to be there to see me, because I was off to China later that week, so it was not a case of dropping everything to see Alex; it was a meeting that I agreed to have, and that was the first available and convenient date to do it.

Alex Cole-Hamilton: Forgive my poor choice of words. However, this massive and devastating fear and belief that you had that your mentor of 30 years was about to quit your party came from a meeting that you claim to have forgotten all about. I am sorry, First Minister, but do you realise how unlikely that sounds?

The First Minister: Yes, I do, actually. That is part of my difficulty here. I get that view, but it happens to be the case that that was not the big, significant meeting. I will try to explain that with reference to two things. First, my recollection is that that discussion with Geoff Aberdein, in terms of the detail, was general. It was not a detailed discussion in terms of the substance. It was very much, "You need to see Alex. Will you agree to meet Alex? He is really distressed and he may be about to resign." Actually, although, by that point, we were not seeing each other as often as we had once, the nature of my relationship with Alex was such that, if I thought that there was a big, serious issue that he was facing, I would want to hear it from him; I would not want to hear it third hand.

I have asked myself how I could have forgotten that meeting, and the other point that helps explain it—certainly to me—is that it was not the first time that I was hearing a general concern. The Sky News Edinburgh airport query had created that lingering suspicion.

The other thing is that what happened in my house, in my dining room, on 2 April with a man who has been all of those things to me for 30 years was so significant that that is the thing that will live with me forever. Did that slightly obliterate in my mind what came before? Possibly. However, that is the fact of the matter. Sitting there, not just being told about the complaints but listening to what he told me about his version of that incident, is ingrained in my mind.

Alex Cole-Hamilton: So you have said, repeatedly.

I want to ask about Peter Murrell. He told us that, as a rule, you do not discuss Government business with him, but it is a different story when it comes to party business. Indeed, when speaking to the *Daily Record* in 2012 about your relationship, you said that you end up talking about party business all the time and you never leave it outside.

You have been clear that you met Mr Salmond because you had been told by Geoff Aberdein that

he was possibly about to resign from the SNP and you would have to "prepare the party" for that—those are your words. However, you said nothing to Peter Murrell of your concerns, and he just thought that Mr Salmond was popping in for a chat. Is that correct?

The First Minister: I think that it probably merits slightly more explanation. Did you say that the *Daily Record* article was from 2012? Maybe we had learned by the time of the meeting that we should not spend all our time talking politics—that it was not good for our relationship, health or anything else; I just say that flippantly.

I have heard you posit to Peter and others that, surely, if I thought that Alex Salmond was coming to resign, we would have to have a handling plan in place and so on. However, although I worried that something like that was the case, I wanted to talk to him before I set hares running with anybody else. I wanted to speak to him confidentially. If he had come to my house on 2 April and said, "Nicola, I'm about to resign from the SNP," I would of course have told people in the party, so that we could prepare for that. As it turns out, he did not tell me that, and I had decided that I wanted to hear from him what it was that he wanted to tell me.

Alex Cole-Hamilton: There are lots of things that the people watching probably do not understand entirely, whether that is court orders, redacted evidence or whatever. However, they understand marriage.

The First Minister: I am not sure that I do, so they are better than me.

Alex Cole-Hamilton: If you genuinely thought that you were meeting him in a personal space and thought that the party was potentially facing one of the biggest threats in its history—the resignation of the man who had, effectively, built it—can you see how hard it is for those people to believe that you would say nothing to your husband, the Scottish National Party chief executive, who you have previously said that you talk about party business a lot with?

The First Minister: I can see how hard all of this is for people to understand. All that I can say is that there are lots of different emotions, factors and considerations to take account of. I had been given the impression by Geoff Aberdein that resignation was a possibility. I did not know—I certainly cannot recall—exactly what the basis of that was. I did not think that it was a certainty. It was one of the things that meant that I wanted to meet Alex and hear what the situation was. Having not heard whether that was a reality, I was not going to send my party into crisis mode to prepare to deal with it.

Had Alex sat in my dining room on 2 April and said, "I'm going to resign," that would have been very different. However, I wanted to hear from him before I started to tell anybody else whether there was a problem that we had to deal with. I am not sure that that is impossible for people to understand.

Alex Cole-Hamilton: Again, so you have said before.

Is it not a more plausible explanation for those watching that you knew that this was Government business, and that that is why you did not discuss it with your husband, the chief executive of the SNP?

The First Minister: No, I do not think that that is necessarily more plausible. I can see why people might make that assumption. I understand that. However, I can only tell you that, from my perspective, it was something that I had been told was a problem. Earlier, in an answer to a question—from you, I think—I talked about the lingering general concerns that were clearly strengthened and underlined in the conversation with Geoff Aberdein, but I wanted to speak to Alex and hear directly from him before I started doing anything about it. I thought that the matter was confidential and, obviously, after I spoke to him, I was even more concerned about respecting the confidentiality of the process.

I hope that there are not many people, certainly in politics, who find themselves in the position of having to deal with serious complaints like this against someone who was so close to them. Did I deal with all of this perfectly? Did I deal with it in a clinical way that, with hindsight, everyone can absolutely get? Maybe not, but I dealt with it the best I could, and people will draw their own conclusions and make their own judgments about that.

Alex Cole-Hamilton: But talking to someone you share a house with is not a clinical way of dealing with something.

I will move on, First Minister. I think that you have made yourself very clear.

I want to turn briefly to the question of why Mr Salmond left your house with the impression that you were going to help him. I wrote down what you said in your clear answer when Mr Wightman was asking you about the conflicting evidence that we have received from you and from Duncan Hamilton QC about whether you had made the offer to assist. You said:

"I let him down more gently than I intended to".

Those were your words. However, your written evidence to us could not have been clearer. It said:

"I made clear to him that I had no role in the process and would not seek to intervene in it."

That does not sound like letting him down gently at all, does it?

The First Minister: I made clear to him that I had no role in the process. He could see that himself, because, I think, he had a copy of the process. I think that I made it clear that I would not intervene. Given what he has said and what Duncan Hamilton has said, there is a question about whether, in discussing with him what he thought should happen, I made that clear enough. If Duncan Hamilton says that I said something like that, there is, in a sense, disputed evidence. However, when I look at the things that I am being accused of saying, they do not strike me as being, "Yeah, yeah, I'm going to intervene." Rather, they are things like, "Well, I'll help if it is appropriate or if it comes to it"—if it comes to what? I do not know. The permanent secretary has got to tell me. Under the procedure, the permanent secretary would not tell me until the end. It sounds as if I was not actually thinking of intervening. However, if Alex left there with the impression that I was, all that I can say is that that, clearly, was not the impression that I wanted to give him.

A crucial part in this is that I did not intervene. It has been put to me today that I should have intervened, but I did not. Whatever way I expressed myself and whatever discussions I took part in, I did not intervene in the process.

Alex Cole-Hamilton: With respect, that is not what we are looking at here. We are looking at what you have told this inquiry in your written evidence, juxtaposed with what has been said by Duncan Hamilton, who is a QC and has also suggested that he would be willing to repeat those assertions under oath, knowing full well what that would mean for his reputation in the Faculty of Advocates and so on. He has said this explicitly:

"My clear recollection is that her words were 'If it comes to it, I will intervene.'"

There is no suggestion in that of letting Mr Salmond down gently, and it is not along the lines of what you have written to us.

15:45

The First Minister: I do not know what

"If it comes to it"

would mean in the context of what we are dealing with. If it comes to what?

An investigation was under way. All that I am trying to explain here—it is imperfect, and I get that—is that I am in this discussion, in which I have been told something shocking and upsetting; I am trying to process it all in my mind as I go, and

maybe I express myself in ways that I should not have done. I am not saying that I did not, but I believe that I was clear that I could not, and would not, intervene in this process.

Alex Cole-Hamilton: With respect again, First Minister, you are focusing on the wrong set of words.

"If it comes to it"

is not as important as

"I will intervene."

It does not matter—

The First Minister: Those particular words, I do not—

Alex Cole-Hamilton: We will move on. I appreciate that we will not agree on this. I am coming to an end, convener—I appreciate your patience with me.

First Minister, the problem is that some of the facts bear out Duncan Hamilton's statement—not least Mr Salmond's messages to you, which bear out Mr Hamilton's version. He certainly left with the impression that you were going to help. He said on 3 June that his recollection of Monday 2 April was rather different and that you wanted to assist. I understand that you have told us that you perhaps left him with the wrong impression. I do not think that anyone is suggesting that you made good on that promise, but he left with that impression.

The other thing that really sticks with me is the delay in your telling the permanent secretary. You finally told Leslie Evans about the April meeting on 6 June—more than two months later. That is more than 60 days of your seeing the permanent secretary in Government almost daily—we know how often you meet with her. Although you spoke and texted with Mr Salmond from time to time, you said nothing to her. Would you not suggest that the transparent thing to do would have been to say to the permanent secretary from the outset that you had had this unsolicited approach from Mr Salmond? Is it not right that you did not do that because you were initially minded to help him?

The First Minister: No. That is not the case, and if I did not express myself clearly enough, that is something that I will have to hold my hands up to. I was, in my own mind, absolutely clear from the outset that I could not, and would not, intervene in the process.

In terms of the decision around not notifying that to people in Government, I set that out in my written evidence and again today. Again, people can decide whether they think that I made the right judgment or the wrong judgment.

I looked at the ministerial code, which imposes a range of obligations on ministers, sometimes in

situations that can feel conflicting, and you have to make a judgement. The relevant sections of the code in relation to notification—4.22 and 4.23—are about, for example, a situation in which I am at a party conference and a company lobbies me about a decision that I am actually involved in. Those sections are about guarding against undisclosed influence on decisions that you take.

This felt the opposite to me. This was a decision that I was not party to—I was not meant to know. The risk that those sections are meant to guard against would be more likely to arise if I told people in Government. Would any conversation that started with me saying, "Alex Salmond has told me about this"—even unintentionally and inadvertently—make the people doing the investigation think that I am trying to bring about a particular thing?

The second reason is that, if you read the code in that respect, to notify meetings in that way involves publication. You might all tell me that I am wrong here, but if a meeting between Nicola Sturgeon and Alex Salmond had suddenly appeared in my published diary, people would have wanted to know what that was about, so there would again have been a risk to confidentiality. That is the judgment that I arrived at. This committee is examining it, and whether or not I got that judgment right is one of the issues that James Hamilton has to look at.

The ministerial code also says at other sections that I have an obligation to respect the impartiality of civil servants and the confidentiality of Government business. I weighed up all that and came to a judgment. It is for other people to judge whether I was right or wrong, but I think that I made the best judgment overall, and that I made a judgment that was, in that respect, defensible; in my view, I think that I made the appropriate one.

Alex Cole-Hamilton: I have a final question. When you finally told Leslie Evans of the 2 April meeting with Mr Salmond, did she instruct you in any way to sever all contact with him—to not meet or speak to him again?

The First Minister: I wrote to Leslie Evans—I think that the committee has a copy of that letter. I think that I had indicated to her verbally in passing that something of that nature was coming, so that it did not land on her without warning. She replied to acknowledge receipt. In that letter, I advised her that I was going to make Mr Salmond aware that I had told her and reiterate that I would not intervene.

Maureen Watt: To follow on from Alex Cole-Hamilton's questioning, Mr Salmond said to us that he thought that you should have informed officials in the civil service as soon as it became clear that the meeting of 2 April was related to a

Government matter. Did he say that to you at the meeting on 2 April or at any time later?

The First Minister: I do not recall him quoting the ministerial code. If he had done, I would have been as surprised as I was when I heard him talk about having copious knowledge of the fairness at work policy, but that is another matter.

I do not recall him quoting the ministerial code at me, but he wanted me to tell the permanent secretary that I knew so that I could use my influence to bring about a process of mediation. I do not think that I am saying anything here that he is not saying. To be fair to him, he is being perfectly up front about that. He is making a case—people have a choice to make as to whether they agree with that—for why he thinks that I should have done that. I am not saying that he does not have a stateable case, to use the phrase that we have been using; I just think that it would have been the wrong thing for me to do.

Maureen Watt: So, if he did not say to you at the time that you should do that then, why do you think that he is saying it now?

The First Minister: Forgive me—I did not watch all six hours of his evidence on Friday but, from the bits that I saw and have read through, I am not sure that he was saying that he expressly quoted the ministerial code to me; I think that he was saying that he thought that I should tell the permanent secretary and that he thought that that was part of my obligations under the ministerial code. On 2 April, to the best of my recollection, he was not couching what he said in the ministerial code; he was couching it in the sense of, “This is an outrageous thing I’m being subjected to. This procedure is wrong. There should be mediation, and you should help me bring that about.” I think that some of the text messages—to be accurate, they are WhatsApp messages—show that, later on, the ministerial code issues that he brought into the discussion were around making sure that the Government was acting legally and lawfully, which I believe I did.

Maureen Watt: Yes, he said to us:

“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.”—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 26 February 2021; c 41.]

What is your response to that? Did he communicate that view to you at the time?

The First Minister: I knew—because he told me—that his lawyers were corresponding with the Government. Therefore, I had an assumption that the Government would be engaging on the legal points that his lawyers were putting across. I did not just ignore that. I weighed up the different obligations that I thought that I was under. Had I

intervened in the way that he wanted, that would have satisfied what he thought that my obligations were, but I think that I would have been acting improperly by intervening on his behalf, because of our relationship, in a process that I was not meant to be involved in.

When we got to the stage where it was clear that he was not talking about legal action in the abstract but was considering it very seriously, I then took the decision to inform the permanent secretary that he had said that to me—as part, I suppose, of being sure that the Government had awareness so that it would take the proper steps to ensure that it was acting appropriately legally.

Life as a minister would be much easier if these things were all binary and, for every situation, you could point to a provision in the ministerial code that would answer the question for you, but the code does not do that. Every day, we face complex decisions in which we have to balance different factors, and we have to act in a way that we feel is appropriate overall and that aligns with the multitude of obligations that the ministerial code places on us. That is what I sought to do.

Murdo Fraser: I want to follow up some of the questions that we had from Alex Cole-Hamilton about the meeting on 29 March. Initially, when you were asked about that in Parliament, you did not acknowledge that that meeting had taken place. Subsequently, you said that it had. In your written evidence to the committee, you said that, initially, you had essentially forgotten about it, until you were reminded of it, and you said:

“I think it did cover the suggestion that the matter might relate to allegations of a sexual nature.”

I have to share Mr Cole-Hamilton’s scepticism about your forgetfulness in that respect. I will try to put it in parallel terms. At the time that you were deputy to Alex Salmond, I was deputy to Annabel Goldie. If somebody had said to me in a meeting that Annabel Goldie had been accused of sexual harassment, I think that that would have stuck in my memory. I do not think that I would just have forgotten about that. I would have been so shocked and appalled by such news that I probably would not have slept a wink that night. It would not have just gone out of my mind. I think that you will understand why we are struggling to believe the story that you just forgot about that meeting.

The First Minister: It is not a story; it is an account of what happened—and I do understand what you said, which is why I am trying to explain the relative import and significance of the two meetings. The other factor around the 29th is that to the best of my recollection it was a general discussion that was focused, really, on getting me

to meet Alex Salmond so that we could talk directly on the issue.

By that time, as, again, I have set out in my written evidence, the whole episode, if I can call it that, around the Sky News Edinburgh airport query had left me with a kind of lingering fear, suspicion or concern—call it what you want—that something might appear. In a sense, on that general concern and discussion, if that had been the first time that I had ever heard any suggestion of complaints of sexual misconduct against Alex Salmond, that might be true, but it was not.

On the other side of that, sitting in my own house on 2 April reading a letter with all the detail, and hearing his account of it, is the strong memory in my mind.

I appreciate that people might think, “How could you forget that?” but I am trying to set out what actually happened. I have struggled a lot with why I did not remember 29 March. I have been struggling to try to remember as much as I can about the content of that discussion.

When this first came to light, and I was trying to think about when I found out about it, in my mind—just instinctively—it was not a choice between 2 April and 29 March. When it first became public, I remember checking the date of Easter Monday, because it was on Easter Monday that we met. I was thinking, “What date was Easter Monday?” Rightly or wrongly, to use your words, people can be sceptical about that, but I had not remembered 29 March as being the big significant factor in this. In many ways, I really wish that I had, because, if I had, although I would be sitting here answering a lot of these questions, I would not be sitting here trying to explain that to you. I am trying to explain it to the best of my ability and the best of my recollection.

Murdo Fraser: Okay. You claim that the meeting on 29 March was effectively a chance meeting—an informal meeting—and that it was not prearranged. That is contradicted by Geoff Aberdein, and we know that because it is reflected in the evidence that we had from Mr Salmond last Friday and it was corroborated by Duncan Hamilton and Kevin Pringle. I asked Mr Salmond explicitly about that when he was here on Friday, sitting where you are sitting. He said:

“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”.—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 26 February 2021; c 80.]

The First Minister: I cannot speak to what Alex thought or was told in all of this. As I said earlier on, I did not walk out of my office and find Geoff there, not having known anything about it. I had

been told—I think it was the night before. It was on a Thursday, and usually on a Thursday morning I am focusing on other matters. I had been told that Geoff may well be in Parliament the next day and wanted to see me. In that sense, if Geoff thought that that was prearranged, that is the basis on which I understood it.

What is definitely the case is that, in that meeting, I agreed to see Alex. I am not disputing that. I am not disputing that the genesis of the meeting of 2 April was in the meeting of 29 March.

Murdo Fraser: I think that the claim is that the meeting was set up by your office.

The First Minister: My understanding is that Geoff had asked to see me. Clearly, it was through people in my office that that request was conveyed.

Murdo Fraser: So the meeting was not at the request of your office.

16:00

The First Minister: Not as far as I am concerned.

Murdo Fraser: Right. That is directly contradicted by the evidence that we heard from the former First Minister, and his version of events is corroborated by Duncan Hamilton and Kevin Pringle.

The First Minister: I may have missed something, but I thought that Alex Salmond’s evidence was that Geoff Aberdein had wanted to come to see me to brief me. I was not asking to be briefed on matters. The request was that Geoff wanted to come and see me and might be in Parliament the following day.

Murdo Fraser: If you read the evidence from Duncan Hamilton, which is corroborated by Kevin Pringle, it is clear that they support the former First Minister’s version of events and not yours.

The First Minister: On what point? I have it here, but I will not waste time digging it out. Is it that the meeting on 29 March was requested by my office?

Murdo Fraser: I would have to double check the *Official Report* to see what Mr Salmond said about that. He certainly said that the meeting was prearranged.

The First Minister: I have explained that. I might be wrong, but I was not of the view that he claimed that it had been requested. Anyway, I am happy to come back to the committee on that.

Murdo Fraser: Yes—I can come back to that.

The Convener: Mr Fraser, I suggest that you move on to your other questions and we can ask our clerks to check that.

Murdo Fraser: Fine—I will do that. Thank you, convener.

This all comes back to the question of corroboration that I put to you earlier, First Minister. This morning, we had a conversation about the claims that the name of a complainant had been passed on to the former First Minister, or to Geoff Aberdein and then to the former First Minister. You basically denied that, and I pointed out to you that the claims were corroborated by the evidence that we have had. Why would people such as Duncan Hamilton and Kevin Pringle band together to make those claims if they were not true?

The First Minister: I am not suggesting that anybody is doing that; all I am saying is that Duncan and Kevin were not in either of the conversations, and I cannot speak to what they were told about them. There was a third person in the room on 29 March—again, it is somebody that the committee would be able to take private evidence from. In a sense, how do I corroborate that? There was a third person in the room.

On the 29 March meeting, I come back to something that I said in my opening statement. I absolutely accept that my forgetting about the meeting and then genuinely my recollection of 29 March not being as clear as I would like it to be is not helpful to me, let alone anybody else. However, I come back to this point: why would I have gone to such great lengths to conceal the 29 March meeting? If I had known everything on 29 March, given the fact that I was being told that Alex Salmond was in distress and might resign, I think that I would probably still have agreed to see him. As I said, my decisions around notifying were not actually based on the classification of the meeting; they were based on my considerations of the independence and confidentiality of the process.

Therefore, had the 29 March meeting been something more than I am remembering, I do not think that it would have changed the course of things. I come back to this point: why would I have gone to such great lengths and the jeopardy of that to sort of conceal that the meeting happened? It does not make sense in my mind that I would have done that.

Murdo Fraser: I have now found the quote that I was searching for and could not lay my finger on a moment ago. The former First Minister said in evidence:

“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.”—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 26 February; c 75.]

The First Minister: Again, we are getting into the territory that we were in earlier where I have to be careful in what I say, but it is not my understanding that the meeting on 29 March was requested by my office; it was Geoff Aberdein who wanted to come and see me. Again, there are people who can be heard from by the committee in private.

There was one other point that I wanted to make, but I cannot remember it—it might come back to me. My apologies.

Murdo Fraser: I move on to the meeting of 2 April. When Peter Murrell, your husband, appeared before the committee, sitting where you are now, I asked him about the meeting of 2 April. He was very clear that, in his view, the meeting was on Scottish Government business. I pressed him on that point because I was surprised that he was so adamant. However, that was clearly his view. Perhaps you had words with him when you got home, but that was the position he took.

The First Minister: I would not have had words with him because I might have thought that doing so would have jeopardised me getting my tea that night.

He did not know the basis of the meeting. Appearing before a parliamentary committee like this one is not normal for any of us, but it is more normal for members—he is not practised in sitting in front of a parliamentary committee. I guess that that was his assumption based on the fact that I was not telling him what was going on. He did not know the basis of the meeting. I think that he said that he was drawing on my evidence.

I want to emphasise this particular point again, perhaps for the third or fourth time: I take responsibility for the confusion here because what I decided to do and not do in relation to notification under the ministerial code as a result of the meeting was not down to my classification of whether it was party or Government business. I agreed to the meeting on party/personal grounds. It is clear that what Alex Salmond came to discuss with me was a Government investigation. What I decided to do then was not to think, “I’ve got to say this was a party meeting not a Government one so I don’t have to notify it”. My decision on that was based on what I have already set out: my view that telling people in the Government that I knew would potentially compromise the independence and confidentiality. That is something that I think that I have not managed to convey properly, which is why am trying to explain it today. There has been the sense that it was Government not party business so I must have

breached the code, but that was not the basis for the decision that I took around notification under the ministerial code.

Murdo Fraser: You say that Mr Murrell was not clear what the meeting was about, but he was very clear when he answered our questions that he thought that it was a Government meeting.

The First Minister: He would also have read all the evidence, just as I have read his evidence. I know that he was making the point that he was basing his answers on his interpretation of my written evidence. The point is that he was not in a position to judge the basis of the meeting, so he was making assumptions on the basis of evidence that he had read.

Murdo Fraser: Do you think that people giving evidence under oath to a parliamentary committee should make assumptions when they answer questions?

The First Minister: I think that people should try to be helpful, as I am doing today. He appeared before the committee on two occasions and, having read his evidence, I believe that he answered the questions appropriately and truthfully.

Murdo Fraser: Okay. After the former First Minister gave evidence to the committee on Friday, a spokesman for the Scottish Government said that there was no evidence to back up the claims that he made. The committee has now found evidence—it has corroboration of various statements he made, from Duncan Hamilton and Kevin Pringle, as we have pointed out to you. Will you withdraw the Scottish Government's statement that there is no evidence? It is clear that there is evidence.

The First Minister: I would not accept that. I do not question the sincerity of the statements that have been made, but I do not believe that it adds up to what you are saying. You are talking about people who were not in either of the discussions—they are reporting things that they were told. It is hugely frustrating for me that, for reasons that I entirely understand, the people who were in those discussions, apart from me in relation to 29 March, are unable to give their accounts. They cannot do that publicly at the committee for reasons of which we are all aware, although they can give an account to James Hamilton, who will reach whatever conclusions he reaches. As I have said, it is open to the committee to speak to them privately to get their accounts. I do not accept the assumptions and characterisations that you make.

On a couple of occasions last week, when I was speaking about evidence—I would add to this more generally—I was talking specifically about the complete lack of evidence for the suggestion that all of this was some plot that had been dreamt

up against Alex Salmond. In my view, there is zero evidence of that.

Murdo Fraser: I do not want to get into plots—I am not interested in pursuing that. As a lawyer, you will be well aware that contemporaneous statements count towards corroboration and therefore, the evidence that we have from Duncan Hamilton and Kevin Pringle points to contemporaneous statements.

The First Minister: I make this point not as a lawyer but as a person. Having contemporaneous statements from people who were told things when you have not heard from the people who supposedly said them seems to me to be a missing bit.

Murdo Fraser: But you are still alleging that the source of all this—Geoff Aberdein—is giving a false set of events.

The First Minister: I am not. I have not heard Geoff's evidence directly. One of the distressing personal things about this is the relationships that have been collateral damage. Geoff is somebody who I think very highly of and I am fond of him, but we have not been able to speak because of this. I am not here to cast aspersions, but there are different accounts. I was present at the meeting on 29 March, but I was not present at the other one. Hearing the views of the people who were there, to explain whether there are just clashing accounts or whether there is an explanation for a misunderstanding—hearing from the actual people—is really an essential part of the process; otherwise you do not have the account that you seek to corroborate before you get to the corroborating evidence.

Murdo Fraser: Okay. You have accused Alex Salmond on a number of occasions of spreading dangerous conspiracy theories. Are you not, in effect, doing the same yourself by painting the group of individuals close to Alex Salmond as being part of a conspiracy?

The First Minister: No, I have not. Point me to where I have said that.

Murdo Fraser: You have just done it. You have just suggested that the evidence that we have been presented with may not be correct.

The First Minister: I have not heard the direct account from Geoff Aberdein. I am making the point that there are often different accounts of conversations and that unless you have heard from the people who had the conversation, there is a really big hole in the picture that you are trying to construct. I am not here accusing anybody of anything—I am not doing that. I am saying that I have a different understanding of one conversation based on what I have been told; and on the conversation that I was a party to, I have

tried, to the best of my recollection, to give you an account of it. On the two other people in the room—Geoff Aberdein and another individual—I do not know what the committee has seen from Geoff, and the other one has not been heard from. So, I am not accusing anybody of a plot, a conspiracy or anything. I think that there has probably been enough of that in this whole episode.

Murdo Fraser: Okay. You have said some very harsh things about the former First Minister. As a political opponent, I have said some harsh things about him, as others round the table have, but that might be expected from us. However, you are an ally and have been a close political friend of his for 30 years. You were his deputy when he was First Minister and you succeeded him as leader of the SNP and as First Minister. All through that period, you told the Scottish people that we should trust Alex Salmond and that he was a man of integrity and honour, not least when he was leading your party to try to win the independence referendum. You are now telling us that we should not believe a word that he says. So, when did you decide that Alex Salmond was no longer the Charles Stewart Parnell of Scotland but was in fact a liar and a fantasist?

The First Minister: I have not used those words. This is where you get into deeply personal territory. I have learned things about Alex Salmond over the past couple of years that have made me rethink certain things that I thought about him. No doubt he would say the same about me, because he has said harsh things about me as well. I have had to go through a process of reassessing all sorts of things around that. I watched him on Friday lashing out—those are my words—against us. I do not know whether he ever reflects on the fact that many of us, including me, feel very let down by him. That is a matter of deep personal pain and regret for me. I should probably stop there.

Murdo Fraser: Finally, then, do not you think, given that you asked us all to trust him for so long, you owe an apology to the people of Scotland for asking us to do that?

The First Minister: I trusted him and I am not going to apologise for the behaviour of somebody else. If I have things in my behaviour to apologise for, I will apologise, but I do not think that it is reasonable to ask me to apologise for the behaviour—some of which he will deny, of course—of Alex Salmond. I think that the only person who should apologise for any behaviour on his part, which he was asked to do on Friday and failed to do, is Alex Salmond.

Murdo Fraser: Thank you.

The Convener: Thank you. This is an appropriate time to say that time has run on, but I still have three members who wish to question you, First Minister. However, I am also at the point where, in line with the agreed mitigations to allow us to meet safely in person today, I have to suspend the evidence session. I think that we should reconvene at half-past four and aim to be finished for 5 o'clock. I remind members and everyone else to observe social distancing when leaving the committee room and during the break.

16:15

Meeting suspended.

16:30

On resuming—

The Convener: Welcome back, everyone, to the 15th meeting of the committee in 2021, which is the evidence session with the First Minister of Scotland, Nicola Sturgeon MSP. I can confirm that Ms Sturgeon took the affirmation at the start of this morning's evidence session. We have three questioners left to talk about the ministerial code. I intend to finish the meeting at 5 o'clock, so I ask the three questioners to bear that in mind in their timings and to be fair to each other. Andy Wightman is first.

Andy Wightman: I have two or maybe three brief points to make. In annexe A, on page 6 of your written submission to the committee, which relates to the meeting on 29 March 2018, you say:

"Mr Aberdein was in Parliament to see a former colleague and while there came to see me."

Do you know who that former colleague was?

The First Minister: I do. I am not going to name somebody. It was a colleague of mine who had been a colleague of his—a civil servant, I should say—who had a significant birthday. That is what I have been told might have been—as well as wanting to see me—a reason for his being in the building.

Andy Wightman: So, he had two meetings that day, at least, that you knew about.

The First Minister: I have no idea. I just know that he was there for the birthday celebration for the colleague.

Andy Wightman: Thanks very much. I will turn to the ministerial code itself—your version of the ministerial code from 2018. I must confess that I had not read the ministerial code in such detail until recently. Given the significance that is attached to the panel of independent advisers—last week, Mr Salmond told us that he had established the independent panel to investigate alleged breaches of the ministerial code, which

seems to have been a good idea—to make a general observation about the ministerial code, it is curious that section 1.7 is the only reference to referring matters to independent advisers. It is just four lines long. I wonder whether that is appropriate. You might want to reflect on that.

It is not directly related to the inquiry—well, it is, actually, quite directly related to the inquiry, because, when you referred yourself to the independent adviser, in response to an inspired question from Clare Adamson on 3 August 2020, John Swinney, the Deputy First Minister, set out that the self-referral was on the grounds of sections 4.22 and 4.23. Later on, following a letter from my colleague Alex Cole-Hamilton and others, questioning whether Mr Hamilton should also look at section 1.3(c), my understanding is that he came back and said that, indeed, he was looking at it all. I am just wondering about the propriety of having a process whereby someone refers themselves to an independent adviser on a ground. Should it not be the case that, as a matter of course—a matter of routine and, in fact, policy in the ministerial code—that should be done in reference to an alleged breach of the code and it should be up to the independent adviser to decide which grounds, if any, have been breached?

The First Minister: Yes, I think that that is reasonable. I do not recall—I am certainly not aware of—any deliberate change to the provision in this version of the code from previous versions. There might be, but I am not aware of any. Obviously, I am not going to try to speak for Mr Hamilton—he will speak for himself—but my understanding of how he is doing this is that, if he sees anything relevant that he thinks is engaged with the ministerial code, he will look at that.

I remind members that, before the referral under sections 4.22 and 4.23—if you cast your minds back; I do not have the *Official Report* of this sitting in front of me—in the week that the judicial review was conceded, when I made the statement and set out the contacts that I had had with Alex, at First Minister's question time, Richard Leonard—I think—posed questions specifically on my failure to notify about the meeting. That was the request for it, so that was the genesis of the referral being made on those points.

Look, I have no interest in constraining this review. I want to be able to set out the actions that I have taken and get a view on my conduct in terms of the ministerial code. I do not want people to be able to come back afterwards and say that it did not look at the right things. My view is that Mr Hamilton should be completely unconstrained in anything that he wants to look at or say.

Andy Wightman: Finally, in your foreword to the ministerial code, you say:

"I will lead by example in following the letter and spirit of this Code, and I expect that Ministers and civil servants will do likewise."

You confirm that, following the report from Mr Hamilton, you will, indeed, lead by example in following the letter and spirit of the code in respect of any findings and hearings.

The First Minister: In everything that I do as First Minister, I will seek to do it appropriately, properly and to the highest standards. It is for other people to judge that.

When I have been asked the question, "Will you do X if he says—" [*Interruption.*] I know that, but I am trying to explain; I am not trying to dodge it. I think that it is not unreasonable for me to say, "Let Mr Hamilton do his work and report, and then I will respond to whatever his report says."

Andy Wightman: I understand that, but you made a commitment in the foreword. You said:

"I will lead by example in following the letter and spirit of this Code."

I am just inviting you to agree that that is, indeed, what you will do.

The First Minister: Absolutely. I believe that. I try my best to do that every day in this job. It is for others to judge whether I fail, succeed or fall somewhere in between. I take very seriously the obligations, privileges and everything that comes with this job. For me, the office of First Minister—and all that comes with it—is bigger and more important than any individual incumbent of it.

The Convener: We will have questions from Jackie Baillie and Margaret Mitchell. Please bear in mind the time that we have left.

Jackie Baillie: I will certainly try, convener. I will start with the precursor meetings to 29 March, when Geoff Aberdein was told by a senior member of your team about the complaints. Were you aware of those meetings?

The First Minister: I have answered that question already today to the best of my ability. I do not think that I can add anything—within the legal constraints that I am under—to what I have already said about these matters.

Jackie Baillie: There are no legal constraints to your telling me whether you were aware of the meetings.

The First Minister: No—to the best of my knowledge, I was not.

Jackie Baillie: You were not. So, a senior member of your team had meetings that you knew nothing about.

The First Minister: That is not as unusual as you might think it is, Ms Baillie. I do not know what

every member of my team is doing every minute of the day.

Jackie Baillie: Okay, but a senior member of your team talking about complaints against the former First Minister would be quite significant, I think you would agree.

The First Minister: We are going back over previous ground here. I am not accepting the premise of your question, that what you are claiming happened at a particular meeting actually happened. That is where I am going to start repeating myself and we are going to go over all the same ground.

Jackie Baillie: No, I am not talking about complainers or the names of complainers; I am talking about the fact of complaints.

The First Minister: I was not at those meetings, and the people who were at those meetings have not been heard from. I am not going to comment on meetings that I was not party to, beyond what I have said already.

Jackie Baillie: I understand that you were not there and that you were not party to those meetings. I am not asking about the complainer. What I am asking is whether you knew that there were meetings to discuss the fact that there were complaints.

The First Minister: No.

Jackie Baillie: The 29 March meeting was pre-arranged, we understand—I have checked it. It was jointly arranged by a senior member of your team along with Mr Aberdeen. It was, according to the evidence that we have received, to discuss complaints. Were you aware of that in advance?

The First Minister: As, I think, I have set out already today, I was aware that Geoff wanted to see me and that he might be in Parliament the next day. I was given a broad indication that he wanted to see me about concerns about Alex Salmond.

Jackie Baillie: “A broad indication” was given by a senior member of your team.

The First Minister: Yes.

Jackie Baillie: Did the indication say, at any stage, that there were complaints in train?

The First Minister: In terms of specific complaints—I have gone through this—that was not what I was aware of at that point. I had an awareness that Geoff wanted to see me and that it was about concerns about Alex Salmond. I have gone through what, from my recollection, Geoff then told me, and I have also gone through what happened on 2 April in terms of Alex Salmond showing me the letter from the permanent secretary.

Jackie Baillie: Okay. I am going to come on to 2 April in a minute, but I am curious to know that. According to Geoff Aberdeen, he was coming on 29 March to discuss complaints. You are telling me that you did not know that that was the case.

The First Minister: It depends what you mean by “complaints” and whether you mean the specific complaints. I knew that he was coming to see me about a general concern about Alex. I have said that, on 29 March, he shared with me that there was an issue around a harassment concern and that he wanted me to see Alex.

I keep saying this—not because I am trying to be difficult here; I am not trying to be difficult—but I have not seen Geoff Aberdeen’s account, so I am being asked to comment on something that I have not directly seen.

Jackie Baillie: My understanding is that Geoff Aberdeen’s account was given in court, under oath.

The First Minister: I was not in court, and—

Jackie Baillie: It was widely reported.

The First Minister: On what I have heard in terms of Geoff Aberdeen, I have seen something reported in the media that I believe to be an account of Geoff Aberdeen, but I do not know that for sure, and I have heard Alex Salmond’s account of 29 March. I do not know what this committee has had from Geoff Aberdeen. I have not seen it.

Jackie Baillie: Okay, but, given that he gave the information under oath in court, and knowing what you know about Geoff Aberdeen, one could safely assume that it is true.

The First Minister: I do not know specifically what you are asking me—

The Convener: Can I interrupt? I think that this is starting to become inappropriate, because it is referring directly to the court case. I am not convinced that it is adding any value. We have heard the First Minister give her view on what happened on 29 March many times.

Jackie Baillie: Thank you, convener. The difficulty is that I am not entirely satisfied with the responses that we have received.

The First Minister: I was not in court. I did not hear the evidence that Geoff gave—

Jackie Baillie: I accept that. I was not there either.

The First Minister: You say that Geoff said things in court under oath. I did not hear that evidence. I said openly in my opening statement that, if the accounts that I have heard attributed to Geoff are the case, it is clear that I have a different recollection of the level of detail of that discussion.

I said that openly in my opening remarks, and I have said it on several occasions since then.

Jackie Baillie: Can I ask you about the meeting on 2 April? Duncan Hamilton QC notes in his evidence that the only matters discussed at the meeting were the complaints against Mr Salmond. Is that correct?

The First Minister: At the meeting, once Alex had taken me into a private room and shown me the permanent secretary's letter, that was the focus of the meeting, yes.

Jackie Baillie: Okay, so there was no discussion about him leaving the SNP or anything like that.

The First Minister: No. I said, I think, in response to somebody previously that I had believed that that was possibly something that he was going to come and discuss with me. I think that I have said openly that it was very clear to me very quickly in that discussion that that was not actually what he was going to suggest, so there was not a discussion about him considering resigning. That was one of the things, though, that I thought in advance of that meeting was a possibility.

Jackie Baillie: In advance of the meeting, you thought that he would resign for what reason?

The First Minister: The way that it was put to me, from recollection, was that it would be part of his being accused of something serious. What I took from it—I cannot remember clearly how much of this was expressed—was that he might have been thinking of resigning from the SNP as he handled that. What I took from that was that it would be to try to protect the party from the implications of it. That was my assumption. To be clear, though, that was not, as it turned out, what he wanted to talk to me about.

Jackie Baillie: You had to have made that assumption in advance.

The First Minister: Yes.

Jackie Baillie: If you thought that he was going to stand down from the party to clear his name, you knew prior to 2 April what the problem was.

The First Minister: I knew there was a problem, and it had been suggested to me—on what basis, I do not know—that part of how he might handle that problem would be resigning from the SNP. Actually, that was one of the reasons why I was being asked, and why I agreed, to meet him. As it transpired, on 2 April, that was clearly not what was in his mind, and it was therefore not the subject of discussion.

16:45

Jackie Baillie: But you said to Stuart McMillan that you thought that he would stand down from the party to clear his name. So, you needed to have known, in advance of the meeting on 2 April, exactly what he was trying to clear his name of.

The First Minister: I think that leap of logic is quite something.

Jackie Baillie: I do not think so.

The First Minister: I had a belief that there was a problem and that he was being accused of something. I have been open about having had that belief going into 2 April, but he sat me down on 2 April and showed me the letter from the permanent secretary. I had a general idea that there was something—although “clear his name” is my description of it right now, and it may be part of my looking back on it. I am not saying that that is what Geoff said or that it was the terminology that was used. However, I knew that there was a problem on 29 March and I knew the general nature of it, and it was suggested—I cannot recall exactly whether Geoff said it because Alex had said it or whether he was just surmising—that that might be something that was in his mind.

Jackie Baillie: You have framed a number of responses to different members of the committee as, “What did I think and do as the First Minister after Alex Salmond asked me to intervene?” That is basing it entirely on your view that intervention as the First Minister would have been wrong, but you told us and the Parliament that you were there as the party leader. Was it the case that you were there as the First Minister?

The First Minister: No. I agreed to that meeting on 2 April—people can now read this, and, no doubt, lots of people will have listened to my opening statement—on the basis, first, that Geoff seemed very concerned about Alex's state of mind and wellbeing. I was, at that time, his friend and I wanted to see him on that basis. There was also a sense that there was a serious issue that might affect his status in the party. So, I agreed to meet on that party and personal basis.

Clearly, what he showed me was a letter relating to a Government investigation. If I had been intervening, I would therefore have been doing so as First Minister. I would have had no locus to intervene at that stage in that procedure as party leader; I would have been doing that as First Minister. So, clearly, the decision on whether to intervene in the way that he was asking me to would have been taken by me as First Minister.

Jackie Baillie: You would have been clear by the end of the meeting, surely, that it was a Government matter and not a party matter. Why, then, did you not report it to the civil service?

The First Minister: I have gone through this two or three times now.

Jackie Baillie: Well, do it for a fourth time.

The First Minister: I am going to, because it is a really important point.

Jackie Baillie: Good.

The First Minister: My decisions about notification were not based on the classification of the meeting. I did not think, "If I say it's a party meeting, I don't have to report it," but I can maybe take responsibility for giving the impression that that was the case. The reason that I did not report it was that, if I had reported it, I would have compromised the independence, the privacy and the confidentiality of the process. That was the basis on which I took that decision.

People can look at the relevant sections of the ministerial code—I doubt very much that anybody involved in writing the ministerial code had these particular circumstances in mind when they wrote it, but a situation of this nature is perhaps an issue that should be dealt with in the ministerial code—and see that the provisions are to guard against undisclosed influence on decisions that a minister is taking. I judged that this was the opposite of that, and that I would risk the independence and confidentiality of the process more if I made my knowledge known than I would if I did not. That is absolutely a matter that James Hamilton has been asked to consider and to give his view on.

Jackie Baillie: But Duncan Hamilton reported—and he was in the room—your saying, "If it comes to it, I will intervene." Those are the words that he used. Sitting silent could be entirely misconstrued—I think that you would accept that—and you sat silent. My understanding of the ministerial code is that there are no exemptions; it does not say, "If you're likely to breach privacy or confidentiality, don't report"—it requires you to report. The breach of confidentiality actually occurred at that meeting on 2 April. With the benefit of hindsight, would you report something like that, if it happened again, immediately?

The First Minister: No, I am not sure that I would. You have all spent months on this committee—

Jackie Baillie: Years.

The First Minister: Is that true?

Jackie Baillie: Of course it is true.

The First Minister: You will have thought about all these things, but I am prepared to go out on a limb here and say that you probably have not thought about these things as often or as much as I have over the period. I have agonised over every decision and every step that I took in the process.

I have searched my soul on this on a personal level, a political level and a Government level.

On that particular decision, I did not intervene. I did not try to influence the process. My worry was that, if I had picked up the phone or told the civil service that I knew, that action itself might have influenced the process, because suddenly there would have been civil servants thinking, even just subliminally, "What does she think we should be doing about this?" In addition, publication requirements meant that confidentiality would potentially have been breached when people asked, as they would have done, "What were you meeting Alex Salmond for?"

That was the decision that I took. James Hamilton will come to a view on whether he thinks it was right or wrong. I simply point to the fact that there are other parts of the ministerial code that put responsibilities on me to respect the confidentiality of Government business and the impartiality of civil servants.

Before this year, I would have said that it was the most difficult set of decisions that I have ever had to take. After this year, that is probably not the case, but the personal, political and governmental nature of all this made it a really invidious situation. I do not say that to ask for a free pass; you expect First Ministers to deal with difficult situations properly. However, the combination of all of this was horrendously difficult and I tried to reach the best judgments. Maybe people will decide that I did not, but I have to be able to satisfy myself that I did the things that I thought were right at the time as well as I could. I have thought a lot about it, and I am sitting here, saying that I think that I reached the best judgments that I could.

The Convener: Ms Baillie, please leave time for the deputy convener.

Jackie Baillie: I am trying to. I hope that we can run over, because I think we should exhaust the questions—

The Convener: No—I have to say that an eight-hour meeting is pretty fair.

Jackie Baillie: This goes to an issue of judgment. You met Geoff Aberdeen on 29 March. You met Alex Salmond on 2 April in your home, and you had telephone contact with him on 23 April. Messages were exchanged on 1 and 3 June. On 7 June, you met in Aberdeen. There were meetings in July, including one on 14 July in your home. Given what you are saying about his behaviour, why did you keep meeting Alex Salmond?

The First Minister: Those are reasonable questions, and you are absolutely right: this does go to an issue of judgment. I think that I made the

right and appropriate judgments overall. Other people in the same situation as me might have done different things; that is the complexity of these situations.

Thank you for reminding me of something that I was meaning to do after the last break, which is to correct something. I think that I referred earlier to a meeting being on 13 July when, in fact, it was on 14 July, as was set out previously.

I was dealing with a situation that involved somebody who was the former First Minister facing a Government investigation, the former leader of my party—this potentially had, and has had, huge implications for my party—and somebody who was a really close friend of mine, whom I cared about. All those things led me to make these decisions and try to balance them overall in a way that I thought was appropriate.

We have talked a lot about 29 March and 2 April. I have set out the reasons why I decided to meet on 7 June. Regarding 14 July, I think you could ask why I did that. That is the one meeting about which I have thought, “Why did I do that?”, but I know why I did it—I still worried that this might be about to erupt, and I was still concerned about him. I am just going to say this: I still felt, despite everything, a loyalty to him. That is why I made those decisions, and people will have to decide whether they think I was right or wrong.

The thing I was absolutely adamant about was that—despite all that I have just said about loyalty and friendship—I would not, on his behalf, try to influence the process in the way that he wanted me to, because that would have been inappropriate. That is the touchstone of this, and I believe that I was right. I have heard different views on that this afternoon, but I believe that that was the right decision to make.

Jackie Baillie: Finally, you said to Andrew Marr in 2018 that you had not heard any complaints about Alex Salmond. It was an unequivocal denial, yet you have told us today about an alleged incident at Edinburgh airport in 2017 that you had knowledge of. Did you just get it wrong?

The First Minister: I think that I have set that out already today. Two things are being conflated. I cannot speak for Andrew Marr about the basis on which he was asking the question but, from how I remember that interview, I was answering the question about the Government complaints.

On the Sky News query, I have set out the suspicion and lingering concern that that left me with but, at that time, that never materialised. At that point—this also applies to quite a long period after that—I was aware that other proceedings were potentially under way, so I was trying not to say any more than I had to on that issue.

These are all things that I accept. I accepted them at 9 o'clock—or after 9—when I made my initial statement. Maybe one of the differences between me and Alex Salmond is that I have never tried to pretend that I am infallible. I have never tried to pretend that I do not get things wrong, so there will be things that I look back on and maybe wish that I had done better or differently. If that is the case, I am sorry about that. I tried to do those things as best as I could.

The Convener: Ms Mitchell, we have only a few minutes left, so please be brief.

Margaret Mitchell: If you do not mind, this is important, convener.

The Convener: Ms Mitchell, I have just asked you to be brief. Would you please do so? I was quite clear about when I felt that the meeting should close. I can allow a couple of minutes' leeway, but I will not allow another 15 or 20 minutes.

Margaret Mitchell: I might not be able to put the questions that I want to the First Minister but I will see what progress we make.

The Convener: Please carry on instead of wasting time.

Margaret Mitchell: First Minister, at the very beginning, we established that transparency, openness and accountability are essential for any Government to establish trust with the electorate. In responding to the fact that no one so far has taken any responsibility for the catastrophic fallout from the Government's complaint handling, which cost the taxpayer almost £1 million, your response has been to say that perhaps you have been too understanding of those who made mistakes. They include very highly qualified individuals with gilt-edged pensions, who earn what normal Scots would deem eye-watering salaries. Under oath, they have had—or developed—collective amnesia, managed to forget about texts and other correspondence, and had to come back to the committee repeatedly to correct their evidence.

The independence of our civil service matters, but it appears that either we have the most incompetent civil servants under the sun—some of them at the head, which does such a regrettable injustice to our excellent civil service—or that, after 13 years, the independence and the lines have been blurred. Is that a possibility and does it concern you? If you do not mind, given the constraints that the convener has put on me, I will leave your answers to the end.

We have also heard evidence—this is definitely a breach of the ministerial code—from the former First Minister that there has been abuse of power in the leadership and, with regard to substantiating the abuse of power allegations, your response has

been, “Well, where is the evidence?” I turn your attention to the *Official Report* and the problem with providing that evidence, which our committee has also experienced. Alex Salmond said:

“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.”

I put it to you that anyone looking at the inquiry process in isolation would assume that it was put in place by a tin-pot dictatorship. It is deeply damaging to the proud and well-respected Scottish justice system—it leads it into disrepute and open ridicule.

17:00

It has taken a decision of the Crown to establish that jigsaw identification is an absolute, which could possibly lead to a breach of Lady Dorrian’s order and a contempt of court. This is underdeveloped; it is a concept that was rejected by Westminster in 1989, when there were drafting and implementation problems.

You are saying what matters to you. Alex Salmond clearly laid out what matters to him, which should also matter to everyone here. People are asking about the fact that a former First Minister can find himself in the dock, almost facing imprisonment, because of what he alleges is an abuse of power. Alex Salmond said—and I agree—that an independent civil service matters. He said:

“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.”

Litigation, at any cost, to assist the court in reaching the correct result and, thereby, improve standards in public administration matters. Above all, as he also said,

“Democratic accountability through Parliament matters.”—*[Official Report, Committee on the Scottish Government Handling of Harassment Complaints, 26 February 2021; c 4, 3.]*

What we have found is that the Parliament does not have the power to hold the Scottish Government to account.

Collectively, events during the inquiry have shone a light on a worrying deficit and centralisation of power. That matters when, because of the pandemic, the police and the First Minister hold exceptional powers. We are shortly to have an election and, if the SNP—

The Convener: Will you come to a close, please?

Margaret Mitchell: —were to be elected again, there would be no checks and balances on those powers, and that matters.

The Convener: I am going to stop you there.

Margaret Mitchell: Will you respond to those points, First Minister?

The Convener: No, Ms Mitchell. I am going to stop you there. Some of your remarks have been inappropriate. There was an awful lot in there that was your own rhetoric, rather than questions.

Margaret Mitchell: I was quoting the *Official Report*.

The Convener: Yes, I know. You read it out.

Margaret Mitchell: I am telling the—

The Convener: Ms Mitchell, will you please let me, as convener, say what I have to say?

Margaret Mitchell: Certainly.

The Convener: Thank you. Some of the language that you used was inappropriate, whether it was in the *Official Report* or not, and I think that your tone was somewhat inappropriate at times. It was difficult to see what questions were being asked.

I ask the First Minister to respond to anything that she picked up that she feels that she is able to respond to.

The First Minister: Who wins the Scottish Parliament election is a matter for the Scottish people—nobody else.

I have sat here in front of the committee, as is my duty, for many hours trying to answer all the questions as fully as I can. In advance of today’s evidence session, I read comments yesterday by other members in the Parliament that literally said that it did not matter what I said today, because they had decided that I was guilty. Forgive me if I think that, in return, I could perhaps make comments about due and proper process. However, having said that, I will stop there.

I will address a few points. The civil service made very serious mistakes and we will see what comes out of this committee’s recommendations and the internal process that is under way. If decisions need to be taken as a result, they will be taken. I am not defending the mistakes that were made, but the civil service in Scotland acts properly and impartially at all times.

I am going to say this bluntly: I am privileged to have an impartial, independent civil service serving this Government. If, on 6 May, the people of Scotland take a decision to have another Government, that civil service will serve the new Government just as professionally and impartially as it does this one. The accusations that have

been made about lack of independence or impartiality on the part of the civil service are deeply unfair and, more important, unfounded, notwithstanding mistakes of the type that are made in any organisation at times.

It is a similar position with the Crown. The Crown acts independently of the Government. In respect of evidence shared in a criminal trial, which was not disclosed or handed over, it has been operating within the law—the law passed by this Parliament—that said that such information could not be handed over. That was an absolute, and there were no exemptions. However, the committee has had—and has exercised—the right to use powers under the Scotland Act 1998 to get that information. Again, I suggest that that is an example of a system that is working—not one that is not. I also think that the attacks that have been made on the independence of our criminal justice system and the Crown Office are unfair and deeply unfounded.

I turn to issues around the contempt of court order, which was put in place by Lady Dorrian and has to be abided by and interpreted. The Crown Office has a duty there to uphold the law. In the course of this inquiry, issues have been raised that the Parliament might well wish to look at in the next session. They include whether there should be greater privilege and immunity for the Scottish Parliament in terms of contempt of court, more akin to the position at Westminster. That is a perfectly legitimate issue. However, anyone who suggests that any of these things have happened in a way that is untoward is wrong; they are examples of the law operating.

That takes me to my final point in answer to Margaret Mitchell. I know what Alex Salmond has said. I know what version of this that he wants people to believe, and I know why. However, what happened here with Alex Salmond is no different to what would have happened with any individual. People came forward with complaints, first to the Scottish Government and then to the police. They did so of their own free will. As I have said before, I do not know the identities of every single one of them. The police investigated those complaints independently, as they would have done regardless of whom they had been about. As it does every day, the Crown Office assessed the evidence and decided that there was case to answer, and then a court and a jury did their job.

Mistakes have been made in this. There is a lot of learning to be done, partly because of the narrative around it. However, I put it to people that, when it is seen in the terms of what actually happened, this is an example of the independent institutions of the country doing their job. Actually, out of this comes the message that no matter how powerful you are, or were, and no matter what

your status or connections might be, if you are accused of serious offences they will be investigated and you will have the chance to defend yourself in court. That is how these things should work.

Mistakes have been made by the Government, and that is undeniable. However, the idea that because someone does not like what happened over the past couple of years we should allow this attack to be made on the very fundamentals of our democracy I find deeply distressing and unfair. Whatever you think about me, the SNP or the Scottish Government, it has been deeply injurious to the health and wellbeing of our democracy. I really think that all of us should think long and hard about it.

Margaret Mitchell: Can I make a final response?

The Convener: No. First Minister, can I take it that you see those as your closing remarks?

The First Minister: I think that I probably should take those to be my closing remarks.

The Convener: I thank you for your evidence today and for spending so long with the committee. Thank you very much.

The committee will now have a short break and will reconvene virtually for a private session.

Meeting closed at 17:09.

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