

First Minister appears at Holyrood before Harassment Committee

The First Minister, Nicola Sturgeon, is appearing before the Scottish Government Handling of Harassment Complaints committee today.

She is to offer her evidence under oath in the government investigation into the way complaints against former First Minister Alex Salmond were handled by her, the government, its officials and advisers.

In her opening statement Ms Sturgeon has countered Mr Salmond's claims that there was a plot against him by saying that this was an "absurd suggestion that anyone acted with malice or as part of a plot... "



First Minister Nicola Sturgeon MSP appears before the Scottish Parliament Committee on the Scottish Government Handling of Harassment Complaints today 03/03/2021. The committee met in Committee room 2 at the Scottish Parliament, Edinburgh. Pic – Andrew Cowan/Scottish Parliament. 03 March 2021.

The First Minister's evidence is now being offered in the light of yesterdays' events.

John Swinney released a redacted version of the legal advice to the government on Tuesday. He did this in the shadow of a motion of no confidence to be lodged against him by the Conservatives. The Scottish Conservatives also plan to lodge a motion of No Confidence in the First Minister on Wednesday.

They have set out their desired timetable which is to hold one vote before the other. If their motion against John Swinney is successful (which it could be as the opposition parties appeared to support it at least over the weekend) then the government may be forced to release the rest of the legal advice.

If the balance of that legal advice is released, then the Scottish Conservatives plan to hold the second vote of No Confidence on the First Minister. It is for the Parliamentary Bureau to set the timing of these votes, however and, the Scottish Conservatives said this morning that initial discussions suggest that the vote on John Swinney may be held on Thursday.

Scottish Conservative leader Douglas Ross said: “The Scottish Conservatives have seen enough to know that the government ignored legal advice for months and lost more than £500,000 of taxpayers’ money. We also know that evidence from three credible witnesses confirms that Nicola Sturgeon misled the Scottish Parliament with numerous false statements.

“The evidence published so far is devastating to the First Minister and the government. We will table our motion for a Vote of No Confidence today as a result.

“But we still only have the limited amount of legal advice that ministers were willing to release when John Swinney’s job was on the line.

“What has been provided is not enough. It does not respect the two votes of the Scottish Parliament or the requests of the Salmond inquiry committee. It is devastating – but there is more.

“So we will first press ahead with a Vote of No Confidence in John Swinney to get the legal advice that’s still hidden. We believe that is necessary to send the message that the Scottish Parliament decides what evidence it needs, not the Scottish Government, and to reveal the true extent of the government’s mistakes and dreadful, costly decisions throughout this process.

“Once the full legal advice has been released, we will put our motion of No Confidence in the First Minister to a vote and MSPs across the chamber can judge the First Minister’s

conduct, with all the evidence before them.”



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Written advice

In the written advice from legal counsel – these are Senior Counsel, Roddy Dunlop QC, and Junior Counsel, Christine O’Neill Solicitor-Advocate it is the timing which is quite important.

On 8 January 2019 Lord Pentland struck down the findings of the government investigation into the allegations of sexual harassment after the government admitted that it failed to follow correct procedures.

The main flaw was that the government official appointed as Investigating Officer in the investigation was the same person

who had been in contact with the two women who complained about Mr Salmond's conduct. This is essentially a matter of employment procedure. The two complainants were in the employment of the government and they were complaining about the behaviour of a senior member of staff.

In the evidence released on Tuesday there is an email to the Lord Advocate dated 6 December 2018 where two options of ways to proceed with the Judicial Review were laid out – Either (1) Concede the petition and, if so advised, return to square one or (2) press on regardless. This advice was being offered by Senior and Junior Counsel to the government on the basis of the discovery that the Investigating Officer had had prior involvement with the complainants.

The email clearly states that “Counsel are of the view that the least worst option would be to concede the Petition. They understand how unpalatable that advice will be, and they do not tender it lightly”.

It appears from the email chain that the “prior involvement” had been noted as early as 31 October 2018 in a note by Senior Counsel, Mr Dunlop. But between October and December Mr Salmond had raised it as a ground of challenge – and it was disclosed on 6 December that this is the petitioner's grounds of challenge “more likely than not to succeed”.

The government procedure under which the allegations against Mr Salmond were investigated includes a requirement that the Investigating Officer “will have had no prior involvement with any aspect of the matter being raised”.

This mistake on which the government's defence in the Judicial Review collapsed cost the government about £630,000. Mr Salmond said afterwards in a statement that it was Leslie Evans, the permanent secretary, who “has wasted huge amounts of money in an incompetent attempt to enforce an unlawful process”. He also claimed at the time that central documents

were not released by the government which he said was “conduct entirely unworthy”.

After the Judicial Review had been disposed of, Mr Salmond was charged with multiple counts of sexual assault of varying degrees. He was acquitted by a jury last March on all charges.

The remit of the committee 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 First Minister is expected to give evidence for most of Wednesday.

TEXT OF THE FIRST MINISTER’S OPENING STATEMENT TO THE COMMITTEE:

The spotlight shone on historic workplace harassment in late 2017 was long overdue.

It was 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 historic nature, to be investigated.

When complaints were made about Alex Salmond it was also 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 this 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 independently of me.

However, I was kept abreast of its development and I signed 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, and so I want to take the opportunity to say sorry to the two women involved and to the wider public.

I also accept – without 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, Mr James Hamilton.

Mr Hamilton is conducting an independent investigation and I await his findings.

His investigation is not being conducted in public – though of course his conclusions will 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 – including, as I understand it, from people who were actually party to discussions that others, who were not, are seeking to attest to.

Mr Hamilton has offered no commentary on his investigation and nor 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 asked of me directly and in as much as detail as I can.

Firstly, on the 8 January 2019 I volunteered to Parliament my contact with Alex Salmond. I stated as follows:

‘On 2 April [2018], he informed me about the complaints against him...’

I will explain why I stand by that statement.

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

Thirdly, I will outline why I believe 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.

And, finally, although the mistake 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 taken at each stage of it were legally sound.

I am sure we will return to all of these matters in detail.

However, I want to focus, in these opening remarks, on the issues around my contact with Alex Salmond on 2 April – and my contact 3 days earlier with his former Chief of Staff.

Alex has claimed in his testimony to the Committee that the meeting in my home on the 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 I

already knew everything.

In fact, this 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 – as per his comment in January 2019 – that 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 another former colleague, Duncan Hamilton, who had accompanied him, and my Chief of Staff who was with me.

That would hardly have been necessary had there already been a shared understanding on the part of all of us.

He then asked me to read a letter he had received from the Permanent Secretary.

This letter set out the fact that complaints of sexual harassment had been made against him by two individuals, made clear that these complaints were being investigated under the Procedure adopted at the end of 2017, and set out the details of what he was alleged to have done.

Reading this letter is a moment in my life I will never forget.

And although he denied the allegations, he gave me his account of one of the incidents 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 – another reason why that moment is embedded so strongly in my mind.

At the time he was showing me the letter and outlining his account, Geoff and Duncan were doing the same with my Chief of Staff.

Again, this would seem unnecessary had she and I known everything in advance.

Questions have been raised about a conversation I had three days earlier – on 29 March 2018 – with Geoff Aberdein and another individual.

I have not seen Mr Aberdein's account of that conversation.

However, I know the account Mr Salmond has given of the meeting – though he also said on Friday that he had not been given a read-out of it.

Let me say upfront that I have no wish to question the sincerity of Geoff's recollection, but it is clear that my recollection is different and that I did not and do not attach the same significance to the discussion that he has.

The purpose of the conversation seemed to be to persuade me to meet with Alex as soon as possible – which I agreed to do.

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 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' welfare and state of mind – which, as a friend, concerned me.

He also said he thought Alex might be considering resigning

his party membership.

It was these factors that led me to meet him, and it was these factors that placed the meeting on 2 April firmly in the personal and party space.

Not unreasonably, some people have asked how I could have forgotten the conversation on 29 March. I certainly wish 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 shocking.

That was the moment at which any suspicions I had or general awareness that there was a problem became actual knowledge.

It is also worth saying that even if I had known on 29 March everything I learned on 2 April, my actions wouldn't necessarily have been any different.

Given what I was told about the distress Alex was in and how it was suggested to me he might be intending to handle matters, it is likely that I would still have agreed to meet him – as a friend and as his party leader.

And, as I set out in written evidence, my decision not to record the meeting on 2 April wasn't about the classification I gave it – it was because I did not want to compromise the independence or the confidentiality of the process that was underway.

All of which begs the question of why I would have gone to great lengths to conceal a conversation that had taken place a mere 3 days earlier.

Let me turn now to my decision not to immediately report the contact.

Sections 4.22 and 4.23 of the Ministerial Code seek to guard

against undisclosed outside influence on decisions that Ministers are involved in and likely to have an influence on, such as changes in policy or the awarding of contracts.

This situation was 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 have known that an investigation was underway.

So, in my judgment, the undue influence that section 4 is designed to avoid would have been more likely to arise had those conducting the investigation been informed that I knew about it.

I didn't want to take the risk that they might be influenced, even subconsciously, by any assumption of how I might want the matter handled.

Their ability to do the job independently would be best protected by me 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 was for those reasons that I did not immediately record the 2 April meeting or the subsequent phone call on 23 April in which Mr Salmond wanted me to tell the Permanent Secretary that I knew about the investigation and persuade her to agree to mediation.

It is worth noting that respect for the impartiality of civil servants and the confidentiality of government business are also obligations imposed on me by the Code.

My judgement changed when Alex Salmond made it clear to me that he was seriously considering legal action.

I felt I had no choice at that stage 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 this is evident.

But intervening in a process that I was expressly excluded from – and trying on behalf of a close associate to change the course 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 informed the decisions we took.

It is clear from that advice that whilst 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, and to check if we should continue to defend the case. However, as late as December 11 the view of the 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.

“Senior Counsel made clear that his note was not intended to convey that he didn't think we have a statable case.

They concluded that “...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 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 we receive and consider the broader public interest.

And the test in the Ministerial Code is not the view of external lawyers but of the Law Officers.

Finally and briefly – though I hope to say more as we get into questions – I feel 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 in 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 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 single 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 this committee and an independent investigation are now considering what happened and why.

For my part, I am relieved to be finally facing the Committee, though given all that has brought us to this moment, being here also makes me sad.

Alex spoke on Friday about what a nightmare the last couple of years have been for him and I don't doubt that.

I have thought often about the impact on him. He was someone I cared about for a long time.

And maybe that's why, on Friday, I found myself searching for any sign that he recognised how difficult this has been for others too.

First and foremost, for women who believed 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 accused of plotting against him.

That he was acquitted by a jury of criminal conduct 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 acknowledgment of that.

I can only hope that in private, the reality might be different.

Today, though, is about my actions.

I have never claimed to be infallible. I have searched my soul on all of this many times over.

It may very well be that I didn't get everything right. That's for others to judge.

But, in one of the most invidious political and personal situations I have ever faced, I believe I acted properly and appropriately and that overall I made the best judgments I

could.

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



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