



OFFICIAL REPORT
AITHISG OIFIGEIL

Committee on the Scottish Government Handling of Harassment Complaints

Monday 22 June 2020

Session 5



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Monday 22 June 2020

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**COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT
COMPLAINTS**

2nd Meeting 2020, Session 5

CONVENER

*Linda Fabiani (East Kilbride) (SNP)

DEPUTY CONVENER

*Margaret Mitchell (Central Scotland) (Con)

COMMITTEE MEMBERS

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

*Jackie Baillie (Dumbarton) (Lab)

*Donald Cameron (Highlands and Islands) (Con)

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

*Angela Constance (Almond Valley) (SNP)

*Alison Johnstone (Lothian) (Green)

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

*attended

LOCATION

Virtual Meeting

Scottish Parliament

Committee on the Scottish Government Handling of Harassment Complaints

Monday 22 June 2020

[The Convener opened the meeting at 14:00]

Decision on Taking Business in Private

The Convener (Linda Fabiani): Good afternoon, everyone, and welcome to the second meeting in 2020 of the Committee on the Scottish Government Handling of Harassment Complaints. I ask members to ensure that notifications are turned off on their devices, and I remind them to leave a few seconds between contributions to ensure that the broadcasting team can operate their microphones.

Agenda item 1 is a decision on whether to take in private item 3, which is consideration of the committee's work programme. As no members object, it is agreed that we will take item 3 in private.

Approach to the Committee's Inquiry

14:01

The Convener: Agenda item 2 is the approach to the committee's inquiry. At this point, I think that it is worth while restating the committee's remit:

"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."

We have to consider our approach to the inquiry. Before I take contributions from members in the order that we agreed before the meeting, which is alphabetically by surname, I will provide an update on our progress since our previous public meeting in February and, indeed, since the conclusion of the criminal trial of Alex Salmond in March.

Since then, we have been in correspondence with the Scottish Government regarding deadlines for the provision of information, all of which is published on our website. I know that members will want to comment on that process. The Scottish Government has now confirmed that it understands the deadlines that we have set in our most recent letter to the permanent secretary, which means that we should receive some information during the summer recess ahead of our return in August.

It was agreed that, by 22 June, we would receive a written statement plus supporting documents in respect of the development of the Scottish Government's procedure for handling harassment complaints involving current or former ministers. By mid-July 2020, we want to receive a written statement plus supporting documents in respect of information about the judicial review and, by the end of July, we want to receive a written statement plus supporting documents in respect of how the Scottish Government handled specific complaints under the harassment procedure. If that is not possible, the committee has requested an explanation of why that is the case.

I can confirm that the first tranche of information on the development of the policy has been received, and that the committee will publish what it can of that information as soon as possible.

Under our work programme discussion later, there will be various pieces of housekeeping for the committee to consider and agree to. The decisions will be listed in full in the minute of the meeting. That should provide additional detail and

clarity on the committee's approach to the inquiry and the handling of information that is provided to the committee.

We will also be invited to consider a written statement that confirms how we plan to handle evidence during the inquiry. Given the sensitivities and the absolute confidentiality of the information that we will receive, the statement will give anyone who interacts with the committee a clear understanding of how we will treat evidence that is received and how we will take evidence. Once there is committee agreement on the statement, we will post it on the committee's webpage.

I am very keen to allow members to express their views on the progress so far and where we expect the inquiry to go once recess finishes in August. I now hand over to the deputy convener, Margaret Mitchell, before calling members in the previously agreed order.

Margaret Mitchell (Central Scotland) (Con): I am particularly pleased that, since the committee was established and held its first meeting on 20 February 2019, we have been able to meet regularly in private. The reason for doing that was to ensure that we did not stand still when there were concerns about sub judice and other issues of confidentiality and that we were able to collect background information that would help us to hit the ground running when we got to the stage that we are at today, when we are able to hold another formal meeting in public.

Much of the information that we sought was from the Scottish Government, and it has been frustrating that a lot of the deadlines that we set have not been met. Therefore, it is entirely appropriate that the permanent secretary will be our first witness. That will allow us to hear the reasons for the deadlines being missed, as well as anything else that she has to say. Following on from that, we will take decisions about other witnesses.

You mentioned the committee's remit, convener. In addition to that, we know that complaints go back to 2008 and continue up to 2014. It is, therefore, entirely reasonable that the committee goes back and looks at the development of policy around the handling of those complaints and how the fairness at work policy was implemented and reviewed. Thereafter, members will contribute their thoughts about additional witnesses who we might want to talk to and other information that we might need about more recent events. Our thoughts in that regard will, of course, be dictated by the evidence that we receive. That means that, although we might have a fair idea of where we think we will go with the inquiry, that could change dramatically.

The committee has an important task. It concerns the actions of officials and the most powerful people in the land. It is essential that we meet in a way that enables us to do our job effectively and efficiently, and that we are not shoehorned into decisions based on when a room is available or when members can make it along. The committee will need to look at that to ensure that we can carry out our duties effectively and efficiently.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): I echo what has been said about the importance of the committee's remit and the need for us to keep collecting information. I think that we all agree that we have reached a point at which we are ready to hear from some of the main witnesses. It is reasonable to say that the date when Parliament comes back in August is when we should set about doing that. We have already heard that the permanent secretary is likely to be among the early witnesses, and I think that we will decide who the other witnesses should be in the normal way that committees do.

I do not have much more to add to that, other than to say that we are ready to set about our work when Parliament returns in August.

Jackie Baillie (Dumbarton) (Lab): I do not want to rehearse what you and the deputy convener have said while setting the context, convener, but there are issues of detail that we need to consider.

We have gathered evidence from the Scottish Government, and we will continue to do so during the summer. There are other people from whom we should now gather evidence. For example, I recollect our writing to the First Minister asking for hard copy or electronic records relating to personal telephone messages and for copies of emails. I believe that we talked about doing the same with the Scottish National Party—at some point, there was discussion about SNP emails between ministers and special advisers, so making a similar request for those emails would be helpful. Of course, we should request material from Alex Salmond as a consequence of the information that he will have from the judicial review.

As for witnesses, again, I do not want to rehearse a long list. As other members have mooted, the First Minister and the former First Minister are likely to be invited, as are people who were involved in the political meetings between them. I am also keen to explore whether we could hear from the two former permanent secretaries, who could give helpful context as to the culture and the development of the policy that we are considering. However, we will discuss that aspect in more detail later on.

I turn to the practical arrangements. I am conscious that, when we come back in August, social distancing measures are still likely to be in place at the Parliament. I do not think that the work of the committee can be conducted virtually. Although we have managed admirably so far, I consider that there is a need for us to meet in person. I would favour a programme of meetings either weekly or with whichever other frequency you might determine to be suitable, convener. If committee members are to meet in person, I think that we would struggle to do so in the existing committee rooms. I would therefore favour our making a bid for time in the chamber to allow us all to be present together, along with the clerks, to ensure that there is complete transparency on and engagement with what we are doing.

Finally, I seek clarification on an issue, or ask you to do so on our behalf. At the weekend, we saw a memo that was sent to civil servants about an independent review in addition to the First Minister's self-referral in relation to the ministerial code. Does that refer to the independent review that was stopped at the point of the judicial review or, if not then, the court case? It would also be helpful to clarify the timetable to which that review is operating, and whether it is an independent and external exercise or an internal one. It would be useful for the committee to have that information.

The Convener: I will certainly seek clarification on that for the committee.

Donald Cameron (Highlands and Islands) (Con): I echo what Jackie Baillie said about the importance of the committee meeting physically as soon as possible in August, in whatever way the Parliament and the members of the committee might deem suitable.

I want to address two issues: evidence and documents. On evidence, many people have already spoken about the witnesses who should be called before the committee. I request that the committee publish at least an initial list of its witnesses very shortly—either later today or in the next few days.

My other and main point on evidence is to request that the committee take sworn evidence—by which I mean evidence given on oath. We are able to do so. That is provided for in section 26 of the Scotland Act 1998 and in rule 12.4.2 of the Parliament's standing orders. It would simply be a case of the convener administering an oath or affirmation with each witness who would come before us.

I have two reasons for making such a request. First, it seems absolutely imperative that the evidence that we receive is as accurate as it can be. We need the opportunity to test its credibility and its veracity, not least because we are likely to

get conflicting versions of events, and there will be disputed areas of fact. Secondly, as has been said, we will be dealing with serious matters that involve the highest echelons of the Scottish civil service and the conduct of very senior ministers, past and present. Taking sworn evidence would underscore the gravity of the subject matter of our inquiry and would ensure that we receive the best possible evidence.

I turn to documents. We all understand that the holding of the criminal trial and the subsequent Covid-19 pandemic have meant that our timeframe has been affected. However, in my view, there have still been very regrettable delays in the production of evidence. It is crucial that, as we move forward, we get relevant information as soon as possible. Under section 23 of the Scotland Act 1998, we have powers to recover evidence.

I would expect specific documents to be supplied within the clear and precise timelines set out by the convener. To that end, I propose that we ask the Scottish Government, individuals or any other source of information for specific documents or classes of documents. In essence, I propose that we send them a list of what we require and that the committee publishes that list. I would be more than happy to work with our clerks on that.

14:15

Alex Cole-Hamilton (Edinburgh Western) (LD): I would like to start where Donald Cameron left off. I share his concern about the very regrettable delays, some of which were caused by the sub judice aspects of the criminal trial; others were caused by Government capacity issues as a result of the coronavirus pandemic.

Nevertheless, a lot of what we have asked for has already been prepared by Scottish Government officials for the conduct of the judicial review. It seems as though the Government has treated the work of the committee as a bit of an afterthought, and I do not think that it has necessarily taken our requests as seriously as it might have done. I remind other members of the committee that we have at our disposal the section 23 powers to compel the provision of evidence. If we used those powers, it would not be optional for the Government to provide evidence—it would be compelled to do so. I hope that we do not have to act in that way and that we have better co-operation in the future. After all, we are not asking the Government to reinvent the wheel.

I reiterate Donald Cameron's request to have witnesses heard on oath. This is an extremely important matter, and we will hear conflicting

stories, so it is vital that we have confidence in what we hear.

I think that the approach to witnesses that is set out in the approach paper is broadly right. I will not go into detail, but it covers three groups of witnesses. The first group, which relates to development of the policy, includes the permanent secretary, the head of Cabinet and other people like that. The second group, which relates to the judicial review of complaints, seems fine, although I repeat that I would like to see much of the written evidence that the Government compiled for the judicial review. The third group, which relates to referral under the Scottish ministerial code, consists of a lengthy list that includes the First Minister.

One group that is missing from those witness baskets, if you like, is people who could give evidence on the peripheral process. We know from the court trial that there was a parallel, less formal process for the handling of complaints. For example, I would like to hear from the civil servant who apparently altered rotas in response to anxieties about the former First Minister's behaviour. That might not have been official protocol, but it was certainly a response to anxieties that were felt at the time. We must ensure that we look at the peripheral, informal handling of complaints as well as the application of the formal procedure.

On the practicalities, I agree strongly with Jackie Baillie. It would be almost impossible to take what will potentially be quite sensitive and controversial evidence in a format like the one that we are using today, when we have to stage manage the order in which questions are asked and people cannot intervene on one another. I agree that we should seek to work in the chamber. We should also seek to meet regularly. I do not think that this is the sort of work that we can pause or stall once we have started it. We have agreed a start date of 17 August but, thereafter, I would like us to have a regular rhythm of meetings so that we get a momentum that will take us through the process.

Finally, we need to go where the evidence takes us. I agree that we must publish the witness list today or tomorrow at the very latest, but that list might be added to as new avenues of inquiry emerge.

Angela Constance (Almond Valley) (SNP): I echo colleagues' view that it is time to proceed and to do so with pace. Like Margaret Mitchell, I think that, after the summer recess, the committee should meet at least weekly. When we discuss our work programme, we might want to discuss ways in which we could progress more quickly, if that is possible.

My preference has always been for us not to question witnesses remotely or online, as I think that that is particularly problematic. I would want to do that in person, but that will require careful consideration of public health advice, of course, and, obviously, we will have to consider parliamentary protocols, too. However, my distinct preference is to proceed by questioning witnesses in person.

As other members have said, we have fairly and clearly set out what we as a committee expect from the Government and others in terms of access to records and information. It is important that we expect and receive full co-operation from the Scottish Government and others.

The convener mentioned that we have begun to consider publishing a statement about how we will handle information. That is really important in the committee's clearly setting out its expectations and boundaries, and giving reassurance to all witnesses.

Donald Cameron, Jackie Baillie and Alex Cole-Hamilton have touched on what our initial witness list is likely to be. It is already a matter of public record that we will start with the permanent secretary. Given that the most senior people in Government will be required to give evidence, we should expect the same from other external organisations. Where possible, we should endeavour to ensure that witnesses who appear in person appear only once, but we must also reserve the right to recall witnesses.

Finally, making requests for written information over the summer will be important in helping us to establish a more definitive witness list, although the committee might wish to add to that list at any point in time.

Alison Johnstone (Lothian) (Green): Convener, it was helpful that you began by reminding us of our remit, which 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".

That remit will affect who are appropriate witnesses. I agree that we should call for written evidence to be submitted over the summer recess period and, once we have that evidence, I would welcome further discussion about who to call to give oral evidence. I think that that would be helpful. Notwithstanding that, it is clear that there are senior officials and others who we will require to have in front of us. I agree with colleagues' comments about where would be the most appropriate and the safest place to do that.

In addition, perhaps more than other committees, this committee must bear in mind that there are legal and data restrictions when it comes to the handling of evidence and assuring the wellbeing and privacy of potential witnesses.

I very much look forward to beginning our work as soon as we possibly can in the next parliamentary term. Although this is our first public session, a great deal of work has been going on in the background. We are all keen to proceed, and the deputy convener's points about how we might best do that are well made. I would like us to meet weekly at the very least. We might work more efficiently if we meet more frequently, so that we are not constantly referring to information that we have heard previously. That will ensure that it is a fresh and fluid inquiry and that we can all work optimally.

One of my colleagues suggested that we speak to former permanent secretaries with regard to culture, and I know that we will consider whether to have a separate session on that. It might become apparent from evidence that we receive in writing and orally that culture is a big issue. We will consider and report on actions, but it is clear that culture was key to those actions, so I would like to make sure that that issue is considered very carefully in our work.

Colleagues are frustrated that, in some cases, it has taken a long time for the Scottish Government to provide information. Obviously, to an extent, the delay has been unavoidable because of the pandemic, but the process could perhaps have been speeded up with a bit of will and co-operation, and I look forward to seeing more of that.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): A lot of what I would have said has been said. There is now a great degree of urgency in what we do. There is obviously a lot of interest in the committee's work, and we must work with the utmost integrity at all times.

I agree that we should have an initial list of witnesses, and I think that it is urgent that we put out a call for written evidence as soon as possible, so that evidence comes in over the summer and we can consider it before we have our next official meeting. However, we should not be constrained by that initial list. We ought to look at the written evidence very carefully and see what other evidence comes in in relation to our remit, which is quite specific. We should always have our remit in mind when we call other witnesses, if that is required.

The Convener: I thank everyone for their comments. There seems to be broad agreement on how we should go forward from here.

I would like to sum up. From what I have heard at this meeting and in previous meetings and discussions, we have agreed to work through the inquiry in three phases. First, we will consider the actions that were taken in relation to the policy on handling harassment complaints involving current and former ministers, including the development of the policy and the handling of complaints. What has come out strongly is the view that we should look at the culture of the organisation in which the development of that policy on the handling of complaints grew. Secondly, we will consider the judicial review. Thirdly, we will look at the actions that were taken in relation to the Scottish ministerial code.

We have already sought extensive written evidence from the Scottish Government, and we will now seek written evidence from a number of others. Of course, all those requests for written evidence will be published when they are issued, and I take on board the comments about specific evidence from the Scottish Government.

We will begin to meet regularly from August. At this moment, it would probably make sense to say that the plan will be to meet weekly, but we will look at how we can most efficiently and effectively operate the committee, and we might look for other solutions and ways of doing that. I have taken on board very strongly the understandable view that the optimum position would be to meet physically to take evidence. I have noted, too, the committee's view that we might wish to hear from the same witnesses on more than one occasion, so that we get all the evidence that we require.

We will discuss witnesses, and perhaps further witnesses, in private session after the public session ends. I am sure that more witnesses will be identified once we receive written evidence over the summer. The minutes of this meeting will set out all the decisions taken that can reasonably be shared at this stage. Soon after this meeting, I will publish on the committee's website a statement on our approach to the inquiry that will cover in more detail the issues that I have just outlined. I know that officials will be working over the summer to prepare our papers for the return in August, and it is clear that we are all agreed that we will call the permanent secretary and relevant officials to give evidence in August.

We now move into private session to deliberate in more detail and reach decisions on the points that members have raised.

14:29

Meeting continued in private until 15:34.

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