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Standards, Procedures and Public Appointments Committee

Complaint against Michael Matheson MSP



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Contents

Background and introduction	1
SPCB investigation and report	2
SPCB decisions	2
The Committee's approach to consideration	4
Timeline of the Committee's consideration	4
Committee membership	5
Data protection and reflections on excluded complaints to the SPCB	6
Representations from Michael Matheson MSP	7
Committee consideration	8
Role of an outdated SIM card in the level of charges being incurred	8
The Member's motivation in authorising the allocation of £3000 from his office cost allowance provision towards the overall cost of the Bill	8
The circumstances in which the data was used and the Member's awareness of potential access to the device and hotspot	9
The Nolan Principles and the Reimbursement of Members' Expenses Scheme	10
Conclusions and recommendations	12
Annexe A: Michael Matheson MSP's representations to the Committee - 15 April 2024	15
Annexe B: Letter from the Presiding Officer (including complaints) - 19 March 2024	25
Annexe C: SPCB report	36
Annexe D: Extracts from Minutes	37

Standards, Procedures and Public Appointments Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) the practice and procedures of the Parliament in relation to its business;
- (b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
- (c) the adoption, amendment and application of any Code of Conduct for members;
- (d) matters relating to public appointments in Scotland;
- (e) matters relating to the regulation of lobbying; and
- (f) matters falling within the responsibility of the Minister for Parliamentary Business.

2. Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion."



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Background and introduction

1. On 19 March 2024, the Scottish Parliamentary Corporate Body (SPCB) referred a report on its consideration of an excluded complaintⁱ regarding Michael Matheson MSP to the Standards, Procedures and Public Appointments SPPA Committee (the Committee). In referring the report to the SPPA Committee, the SPCB set out that it had determined that Mr Matheson's conduct had breached Sections 7.3 and 7.4 of the Code of Conduct for Members of the Scottish Parliament (the Code). With the SPCB having concluded that breaches had occurred, the purpose of the referral was for the Committee to consider whether any sanctions should be recommended to the Parliament in light of the decisions reached by the SPCB. It was not the role of the Committee to reopen the investigation or report of the SPCB.
2. The background to the report is that costs of £10,941.74 were incurred by Mr Matheson on the iPad provided to him by the SPCB in the period between 28 December 2022 and 3 January 2023 during a holiday in Morocco. Mr Matheson later made a £3000 contribution towards these costs through his office cost provision under the Reimbursement of Members' Expenses Scheme. Under the MSPs Use of Parliamentary Resources Policy such devices "must not be used to any significant extent" for purposes other than to support MSPs in their parliamentary duties. As set out in the SPCB report assurances were sought from Mr Matheson that the costs were incurred in relation to his parliamentary duties. The costs, including the contribution from Mr Matheson's office cost provision, were met through parliamentary funds on the basis that they had been incurred in respect of the performance of parliamentary duties and not personal or Scottish Government use. Subsequently, Mr Matheson indicated on 10 November 2023 that he wished to reimburse the SPCB for the full amount of the Bill.

ⁱ An excluded complaint is a complaint that does not fall within the remit of the Ethical Standards Commissioner.

SPCB investigation and report

3. The SPCB's report sets out details of its investigation under paragraphs 9.6(c) and 9.6(e) of the Code of Conduct for MSPs of three excluded complaints received about the data roaming charges incurred by Michael Matheson MSP between 28 December 2022 and 3 January 2023 through the use of equipment provided by the SPCB to him to support the conduct of his parliamentary duties. The remit of the investigation, as set out in paragraph 13 of the SPCB's report was:
 - ” “Data roaming charges having been incurred between 28 December 2022 and 3 January 2023 through the use of equipment provided by the SPCB to Michael Matheson MSP (“the Member”) to support the conduct of the Member's parliamentary duties, to investigate and make findings as to whether:
 - a) an improper claim was made by the Member in respect of the charges (or any part of them) within the terms of the Reimbursement of Members' Expenses Scheme; and
 - b) the Member failed to abide by the policies adopted by the SPCB as required by section 7.3 of the Code of Conduct for MSPs, including the policy on MPs: use of parliamentary resources.”
4. The SPCB's report also sets out its methodology and the standard which it applied in reaching its findings as follows:
 - ” “The SPCB evaluates whether a finding is established on the balance of probabilities. This means that, in order for a conclusion of a breach of the Scheme or the SPCB's policies to be reached in an investigation, the SPCB's view must be that a breach is more likely to have occurred than not.”
5. The process for considering excluded complaints made to the SPCB is determined by the SPCB as it considers appropriate. Accordingly, the Code of Conduct does not set out a specific process to be followed by the SPCB in respect of excluded complaints.

SPCB decisions

6. Throughout its report, the SPCB sets out findings in relation to the investigation. On the basis of these findings, the report sets out the SPCB's decisions as follows:

” “Whether Mr Matheson made an improper claim

211. Mr Matheson’s claim for £3000 telecommunications costs from his office cost provision was an improper claim under the Scheme because it was made in respect of a purpose that was not permitted under the Scheme. In making an improper claim, Mr Matheson made an improper use of the Scheme in breach of Section 7.4 of the Code of Conduct for MSPs.

Whether Mr Matheson failed to abide by the policies adopted by the SPCB

MSPs: use of resources policy

212. During the relevant period Mr Matheson failed to ensure that his parliamentary iPad hotspot facility was not used for non-parliamentary purposes to a significant extent. Mr Matheson therefore did not abide by the MSPs: use of parliamentary resources policy in breach of Section 7.3 of the Code of Conduct for MSPs.

MSPs: expenses

213. In making an improper claim Mr Matheson did not abide by the MSPs: expenses policy.

214. Having been provided with evidence to enable him to evaluate whether the claim was in accordance with the Scheme Principles, Mr Matheson’s failure to undertake a sufficient level of inquiry before submitting the claim was not in accordance with the Scheme Principles. This was an improper use of the Scheme in breach of Section 7.4 of the Code of Conduct for MSPs.

215. Mr Matheson’s failure to inform the SPCB during the period 9 to 16 November 2023, that he was aware that the assurance he had provided that the claim was made for a purpose permitted under the Scheme was unsound, was not in accordance with the Scheme Principles. This was an improper use of the Scheme in breach of Section 7.4 of the Code of Conduct for MSPs.

216. Failing to abide by the requirements of the MSP: expenses policy in these respects is a breach of Section 7.3 of the Code of Conduct for MSPs.”ⁱⁱ

ii SPCB report, page 42

The Committee's approach to consideration

7. In contrast with consideration of complaints falling within the remit of the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner), where the Committee reaches a view on whether a breach of the Code has occurred, in this case the SPCB is the decision maker on the question of whether breaches of relevant provisions of the Code have occurred and the matter has been referred to the Committee to consider the question of any recommendation on any sanctions.
8. The guidance on the Code sets out that where an excluded complaint has been referred to the Committee “it will be dealt with in such manner as the...Committee deems appropriate.”ⁱⁱⁱ In determining its approach, the Committee has taken into account the underpinning principles of natural justice and fairness.
9. The Committee noted the importance of the Member complained about being given the opportunity to make representations on the matters before the Committee, on the question of whether any sanctions are to be recommended. Taking these factors into account, the Committee decided to invite representations from the member, to be considered in private, as it would usually do in considering a complaint report from the Commissioner (at Stage 3) of the complaints process set out in the guidance on the Code of Conduct.

Timeline of the Committee's consideration

10. The Committee has considered the referral from the SPCB at six meetings:
 - 21 March 2024: the Committee agreed to consider the report in private at its next meeting and to seek agreement to meet at the same time as the Parliament on 28 March 2028. The Committee noted that its first decision would be to agree the process it would follow in considering the report. The report itself was not provided to or considered by the Committee at this meeting.
 - 28 March 2024: The Committee agreed its approach to the process for considering report. The Committee agreed to offer Mr Matheson the opportunity to make written representations to the Committee in respect of the consideration of sanctions and to indicate whether he would also wish to make representations in person. The deadline for receipt of written representations was set for Monday 15 April 2024. The Committee also agreed to consider the report, including representations, in private at future meetings, in line with normal practice for consideration of complaint reports.
 - 25 April 2024: The Committee considered the report and Mr Matheson’s written representations and agreed to invite him to make representations in person at its meeting on 9 May 2024.

ⁱⁱⁱ Guidance on the Code of Conduct, section 9, paragraph 49

- 9 May 2024: The Committee heard in person representations from Mr Matheson at its meeting on 9 May 2024 and continued its consideration of the report.
- 16 May 2024: The Committee continued consideration of the report.
- 23 May 2024: The Committee continued consideration of the report, announced its decision on the report in public, and agreed its report.

Committee membership

11. At its meeting on 28 March, prior to the Committee's consideration of its approach to its process for considering the report, Stephen Kerr MSP indicated that he had submitted his resignation from the Committee to the Presiding Officer. Mr Kerr issued a statement later that day indicating that he had resigned as he did not consider that his participation would be perceived as sufficiently free of bias given previous public statements he had made on the issue. Edward Mountain MSP, as the Scottish Conservative and Unionist Party substitute, attended and participated in the later part of the meeting at which the Committee considered and agreed its approach to the report.
12. Following Stephen Kerr MSP's resignation, Oliver Mundell MSP was appointed as a member of the Committee on 28 March 2024. On 8 May 2024, Ivan McKee MSP submitted his resignation as a member of the Committee following the announcement of his proposed appointment as a junior Scottish minister. Alasdair Allan MSP, as the Scottish National Party substitute, attended the Committee's meetings from 9 May 2024.

Data protection and reflections on excluded complaints to the SPCB

13. Throughout this report, and its annexes – which include the SPCB’s report – the Committee is cognisant of its responsibilities in relation to the processing of personal data, including the data of persons other than Mr Matheson. The Committee has either redacted personal data where appropriate or sought to pseudonymise data where redaction would result in a loss of meaning.
14. This was the first instance since the establishment of the Parliament of an excluded complaint being referred by the Scottish Parliamentary Corporate Body to the Committee. The Committee intends to reflect more generally on the process for excluded complaints that have been referred to the Committee by the SPCB and whether any updates to the Code of Conduct or the Guidance on the Code might be recommended. As part of that wider process, the Committee invites reflections from the SPCB.

Representations from Michael Matheson MSP

15. Mr Matheson made representations on the draft SPCB report and findings. These are included at Annex R of the SPCB report (and see also paragraphs 209 to 210 of the SPCB report).
16. In its consideration of the question of whether or not to recommend any sanctions to the Parliament, the Committee agreed to seek both written and in person representations from Mr Matheson. The written representations were received on 15 April 2024 and are attached as Annexe A to this report.
17. In his written representations, and in the course of his in-person representations to the Committee, Mr Matheson set out matters for the Committee's consideration in determining whether or not to recommend any sanctions further to the SPCB's findings of breaches of the Code.

Committee consideration

18. In reaching a view on the question of whether to recommend any sanctions, the Committee has given full consideration to the SPCB's report and Mr Matheson's representations. The Committee has weighed up both mitigating and aggravating factors in arriving at its recommendations.

Role of an outdated SIM card in the level of charges being incurred

19. Mr Matheson held two mobile data-enabled devices that had been issued to him by the Parliament, an iPhone and an iPad. Mr Matheson took both devices with him when he travelled to Morocco.
20. From late 2020, the Parliament was in the process of switching from EE to Vodafone as its mobile supplier. Mr Matheson had been contacted by the Parliament's Business and Information Technology (BIT) department in 2021 in relation to seeking to arrange for the replacement of his iPad SIM. BIT contacted Mr Matheson in relation to this in February and October 2021 and an appointment was arranged for December 2021 for the SIM to be replaced. This particular appointment did not go ahead. Neither the SPCB report nor Mr Matheson confirmed the reasons for this appointment not going ahead.
21. In February 2022, Mr Matheson was contacted about replacement of his iPhone SIM and a Vodafone SIM was sent to his home address. No reference was made by the Parliament at this point to Mr Matheson's iPad SIM. At the time of travelling to Morocco, Mr Matheson's iPhone was operating on the new Vodafone contract while his iPad remained on the EE SIM.
22. Members are regularly advised to contact BIT prior to travelling abroad, so that steps can be taken to ensure that there is an appropriate mobile data package in place to enable continued use of devices for parliamentary purposes. Mr Matheson did not make such contact prior to travelling.

The Member's motivation in authorising the allocation of £3000 from his office cost allowance provision towards the overall cost of the Bill

23. Mr Matheson has indicated in his written representations to both the SPCB and the Committee that he did not consider the allocation of £3000 from his office cost provision to be a claim. Mr Matheson has set out that he did not initiate the claim and that, when asked by Parliament officials, he sought to clarify whether the making of such payments was an allowable use of money under the Expenses Scheme. It was confirmed to the Member that such a transfer was permissible provided it related to purposes allowable under the scheme – that is that it was permissible if the expense had been incurred in connection with his parliamentary duties. Mr Matheson indicated in his written representations to the Committee that

he “viewed this as transferring some of my own office allowance to BIT to help with the costs. I did not view it as claiming for costs incurred as both my iPad and iPhone cost are met as part of the Parliament’s central contract.”

24. Prior to authorisation of the payment, Mr Matheson was engaged in correspondence with parliamentary staff in the Allowances and BIT offices. In correspondence from the Allowances Office on 28 March 2023 – before the £3000 payment was authorised – the transfer of monies in the manner proposed was described to him as a claim. This correspondence also indicated that the payment would be “picked up both by internal audit and Audit Scotland when they review 2022-23 Members Expenses later this year”. Members are also aware that, as set out in the Expenses Scheme, the SPCB shall publish information on expenses.
25. Although not initiated by Mr Matheson, he confirmed in his representations that the allocation of funds from his office costs provision under the scheme was a voluntary action on his part. The Committee notes that the allocation was not a matter being required of Mr Matheson by either the Allowances Office or the Reimbursement of Members Expenses Scheme.

The circumstances in which the data was used and the Member's awareness of potential access to the device and hotspot

26. The information presented in the SPCB report and in the Member’s representations make clear that the Member was not certain at the time of making the claim what usage occurred that led to the costs being incurred. For example, he sought clarification from BIT as to whether there could have been any unauthorised use of the iPad device and its data by means of hacking. Mr Matheson has set out that he was not aware at that point of any non-parliamentary use having taken place.
27. Mr Matheson has set out that he did, at the point of initial inquiries in January/February 2023, inquire of his family members whether there had been any use made by them of the iPad’s data. Mr Matheson indicates that, with hindsight, he could have pressed further in seeking assurance from his family members at that time.
28. The Committee notes both that Mr Matheson questioned whether there could have been any unauthorised use, such as by hacking, stating in his representations to the SPCB "I also raised the question about my iPad being hacked and data used by someone else, but in the absence of a breakdown of how data had been used from EE this would be difficult to identify."
29. The Committee also noted Mr Matheson’s knowledge that he had been assisted in setting up the hotspot and that the information needed for others to do so – the access code for the hotspot stored on the iPad – could have been available to other people.
30. The Committee has had regard to whether, on the basis of the information available to him at that time, the Member could have been absolutely assured, and be in a position to reassure the Parliament, that the data usage that had occurred was only

for the required parliamentary purposes.

The Nolan Principles and the Reimbursement of Members' Expenses Scheme

31. The Nolan Principles are a set of seven principles that outline the ethical standards expected of those working in the public sector, including holders of elected office.^{iv} They were originally set out in a report from the Committee on Standards in Public Life in 1995. The chair of that committee was Lord Nolan and the principles contained in that report have come to be named after him. The seven aspects of conduct provided for in the principles are:
- selflessness
 - integrity
 - objectivity
 - accountability
 - openness
 - honesty
 - leadership.
32. The Reimbursement of Members' Expenses Scheme sets out scheme principles under these 7 headings (with the addition of equality to note that all Members have equal legal and formal status).
33. The Member set out in his statement to the Parliament on 16 November 2023 and in subsequent representations to both the SPCB and the Committee that he was first made aware that his iPad, via a hotspot connection to the iPad SIM, had been used for non-parliamentary purposes to a significant extent on 9 November 2023. Having been made aware, the Member emailed the Parliament's Clerk/Chief Executive the following day, 10 November, to indicate that he now wished to make payment in full for the whole amount of the Bill. He did not inform the Clerk/Chief Executive at that time that he was aware of non-parliamentary usage. The Member indicated that he intended to issue a statement later that day to confirm that he would be meeting the costs in full.
34. At 5.00pm on 10 November 2023, Mr Matheson issued a media statement in which he set out that he intended to reimburse the Parliament for the full value of the bill. On 13 November 2023, Mr Matheson gave an interview to the BBC in which the costs were attributed to an out-of-date SIM card. In neither the statement nor the interview were the circumstances in which the data use had occurred set out.
35. In his statement to the Parliament on 16 November 2023. Mr Matheson explained that there had been use of his iPad data for non-parliamentary purposes by

iv <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

members of his family. He stated that he had informed the First Minister on Tuesday 14 November and then on Wednesday 15 November had provided the First Minister “with a full account of the matter and of [his] intention to inform the Parliament.”

36. As set out in Mr Matheson’s written representations on the SPCB report, the first indication given to the Parliament that he had become aware of non-parliamentary usage was on the morning of 16 November 2023 in a phone call to the Presiding Officer. Prior to the phone call, on 15 November 2023, Mr Matheson had a meeting with the Presiding Officer and the Clerk/Chief Executive of the Parliament. Mr Matheson’s representations to the SPCB indicated that the main issue raised at the meeting was “a complete breakdown in trust between me and the parliament given its handling of the matter to date”. Mr Matheson states “Additionally, at no point during the meeting was I asked to explain anything in relation to the data roaming charges and how they had been incurred.”^v
37. Mr Matheson’s representations to the Committee set out that he “had a strong desire to avoid my family becoming involved in a matter which had already attracted significant media and political interest” and go on to state:
 - ” “My family had already experienced significant media interest at our home, family members were unable to leave or enter our home due to media presence. These factors had a significant impact on my desire to avoid my family from becoming involved in the matter. However, I reached the conclusion that to explain some of the data usage I would have to explain their involvement, as I set out in my personal statement to Parliament.”
38. Mr Matheson asked the Committee to “take these factors fully into account given the significant bearing it had on my own actions at the time” and since.

^v SPCB report, pages 153-154

Conclusions and recommendations

39. The issues under consideration by the Committee have, ultimately, been about the use of public finances, the degree of trust that there must be – both in and outside the Parliament – that those funds are used only for legitimate purposes, and the ethical standards with which Members must conduct themselves in all matters, as articulated in the Nolan Principles and the Code of Conduct.
40. In relation to the replacement of the SIM in Mr Matheson's iPad, the Committee is of the view that other steps should have been taken by the Parliament, such as providing a replacement SIM by post or cancellation of the SIM after it had not been updated. The Committee considers that there was a contributory factor on the part of Mr Matheson in relation to his failure to notify the Parliament in advance of travelling to Morocco. The Committee notes that even if the SIM card had been updated, the question of data usage for non-parliamentary purposes remains.
41. In respect of the £3000 contribution from his office cost provision, the Committee notes that Mr Matheson has indicated his understanding was that he was making a contribution on a voluntary basis to offset costs. In seeking to take into account Mr Matheson's motivations, the Committee has noted that Mr Matheson believes he was offering to assist the Parliament and accepts this was his motivation in authorising the payment. However, based on the information in the SPCB report and the information presented by Mr Matheson, the Committee considers that Mr Matheson was provided with sufficient information necessary to be able to understand that the payment from his office cost provision would be regarded as a claim under the Expenses Scheme. The standards of assurance that are expected in making claims under the scheme i.e., that they have not been incurred as a result of non-parliamentary usage to a significant extent were therefore applicable at the material time. Accordingly, the Committee does not consider that there is sufficient mitigation with regard to the information available to Mr Matheson at the time of authorising the allocation from his office cost provision.
42. Mr Matheson's position is that he did not know the data had been used for non-parliamentary purposes at the time £3000 was transferred from his allowances. The Committee has further considered Mr Matheson's degree of knowledge of any non-parliamentary use at the time of authorising this payment. In light of explanation provided by Mr Matheson as to the queries he raised about potential unauthorised use and that he had been provided with assistance in setting up the hotspot by a family member, the Committee considers that Mr Matheson would not have been in a position to offer assurance to the necessary standard. The Committee takes seriously the fact that the required standards of assurance were not met at the time the transfer from the office cost provision was authorised by the member.
43. The Committee acknowledges that Mr Matheson has reimbursed the SPCB for the full amount of the costs incurred £10,941.74 and to that extent, "the costs to the public purse have therefore been addressed" as set out in the SPCB report.
44. In his statement to the Parliament and representations to both the SPCB and the Committee, Mr Matheson has set out that since becoming aware of the circumstances in which the data usage occurred, he has been motivated by seeking to protect his family. Mr Matheson has described the significant impact that there

has been on his family. The Committee acknowledges the impact of the significant media and other intrusions which took place on Mr Matheson and his family. However, the obligations all Members have under the Code, the Expenses Scheme and relevant SPCB policies are of paramount importance in upholding the integrity of the Scheme and the ethical standards framework, flowing from the Nolan Principles, that underpin the conduct of parliamentary duties. Any failure to meet those obligations has an adverse impact on the reputation of the Expenses Scheme, Members and the Parliament as a whole.

45. Mr Matheson has raised concerns about some aspects of the parliamentary authorities' handling of information, including during the period from 9 November 2023 to 15 November 2023. The Committee notes the comments made by Mr Matheson regarding his trust in the parliamentary authorities. However, the Committee has concerns about the fact that the non-parliamentary usage of the data was not drawn to the attention of the parliamentary authorities, including the Presiding Officer, more timeously. Mr Matheson had chosen not to share with the Parliament his knowledge of non-parliamentary use prior to 16 November, and the Committee notes that the Parliament could not have been expected to take into account matters of which it was not aware.
46. The Committee has considered Mr Matheson's decisions regarding the sharing of information of his knowledge of non-parliamentary use in terms of the Nolan Principles and the obligations on Mr Matheson and all MSPs to be open, honest and accountable in relation to the use of expenses.
47. Ultimately, the Committee considers that the findings of the SPCB, indicate a position in which the standards of conduct expected from Members of the Scottish Parliament have not been met. The unanimous view of the Committee is that it is therefore appropriate to recommend sanctions for consideration by the Parliament. The Committee considers that the sanctions it recommends reflect the seriousness of the breaches of Sections 7.3 and 7.4 of the Code in this case. Had it not been for mitigatory factors, including the impact on the member and his family, the sanctions proposed would likely have been greater.
48. The Committee was also unanimous in its view that the sanction should involve both a financial element, by way of withdrawal of salary, and a period of exclusion from participation in proceedings of the Parliament (this includes attending and voting in Chamber and Committees and lodging questions and motions). In considering what sanctions to recommend the Committee has also taken account of the position of the member's staff and his ability to represent his constituents.
49. In reaching a view on the extent of withdrawal of salary, the Committee has taken into account the serious nature of the breaches of the Code, the level of public monies involved, the impact that this matter has had on the degree of trust in the use of public funds by Members and the standards of openness, honesty and leadership expected of Members in line with the Nolan Principles. The Committee recommends that Mr Matheson's salary should be withdrawn for a period of 54 calendar days^{vi}.

vi Jackie Dunbar and Alasdair Allan recognised the need for a financial penalty in this case and in an effort to reach consensus on the Committee supported this sanction though they took the view that it was at the high end of the range of the sanctions available. Alasdair Allan and Jackie Dunbar also accepted the need for a suspension from proceedings of the Parliament, but voted against the proposed 27 day period as, in their

50. The Committee is in agreement that an exclusion from the proceedings of the Parliament be recommended but it is not unanimous as to the length of such an exclusion.
51. A proposal for a period of exclusion of 27 sitting days was made by Annie Wells. Oliver Mundell indicated his support for this proposal. Jackie Dunbar and Alasdair Allan did not agree with this proposal. Martin Whitfield did not cast his personal view in favour of the proposal but, in his capacity as Convener, recognising that the Committee would otherwise not have been in a position to make a recommendation, supported the proposal for exclusion of a period of 27 sitting days. A majority of the Committee therefore supported a recommendation of exclusion for a period of 27 sitting days.^{vii}
52. Finally, the Committee notes its disappointment that material relating to the Committee's deliberations appeared in the media prior to its decisions being reached and announced.

view, this was extremely severe when compared to previous cases.

^{vii} Oliver Mundell had initially suggested 54-day exclusion period to match the duration of the financial element. Annie Wells supported this position. The proposal did not receive support from a majority of the Committee.

Annexe A: Michael Matheson MSP's representations to the Committee - 15 April 2024

I am grateful to the committee for providing the opportunity to make a written submission. The committee will have copies of both my initial submission to the SPCB and my response to their draft report. I will address a number of key areas that I believe are important for the committee to consider.

I want to start by reinforcing that I take full responsibility for what has happened. I am prepared to be fully accountable for my actions. This has been demonstrated by repayment of the sums in full, as soon I became aware that some data used while abroad was not for Parliamentary business, I have co-operated with the SPCB process, I have made a personal statement to Parliament, referred the matter for investigation and I have also resigned from my Cabinet post.

On the 16th of November 2023 in my personal statement to parliament I set out the details of the circumstance which led to the roaming charges being accrued and the immediate action taken when I became aware of personal usage. I had no knowledge of data being used for personal purposes prior to the 9th of November 2023. My family have never before made any use of parliamentary data in this way, and it will never happen again.

Having served in Parliament for almost 25 years, I have always sought to uphold the seven principles of public life. I have never been referred to this committee during my time in Parliament and I have always ensured that my parliamentary resources are used in line with the guidance issued by parliament and to the high standards expected of those holding office.

I appreciate that the circumstances that caused this matter are unusual, arising due to my phone not working and the complication this created. I deeply regret that this matter has occurred and as I stated in my personal statement to Parliament, I apologise for this.

Background.

On the 27th of December I travelled to Morocco with my family – my wife and two teenage boys. Shortly after arriving it became clear that my mobile phone was not working as it had no data. However, when I arrived at our hotel, my iPad was working. On the 28th of December I emailed IT helpdesk at 9.22am to tell them that I was out of the country, in Morocco, and that my phone was not operating. I understand that I should have told IT that I was taking two Parliamentary devices with me overseas. This was my mistake which I recognise should have been addressed before travelling. However, IT were informed the morning after I arrived that I had the two devices with me in Morocco. I was then called by IT helpdesk, and I explained that my phone was not working but that my iPad was working. I was informed by IT that my phone should work in Morocco, and after attempts to get it operating IT informed me, they would contact the network provider to see what the problem was. IT then called me again to say that the network provider advised that my data package was suitable for use in Morocco. I was told to remove and replace the SIM card from my phone, as the problem might be a fault with the SIM card.

Nothing in the discussions I had with IT led me to believe that there was any risk in using my iPad while in Morocco, particularly given that they were aware that I had my iPad with me and that it was working.

The only way I could get any data with my phone was for a hotspot to be set up with my iPad. My son helped in setting this up. Where I was able to use Wi-Fi, I would do so.

SPCB Investigation process.

I have set out below areas that I would respectfully ask the committee to consider in order to ensure fairness not only to the process, but to the outcome. I am concerned that the report continues to have incorrect information and material factors have been omitted and therefore unreliable conclusions have been reached.

The most obvious example of an unreliable conclusion is that I have 'claimed'

£3000 when in fact, at no point did I initiate any proposal to use any of my

allowance to meet the costs. BIT opened up that process by approaching the Allowances Office on the 6th of February 2023 to discuss using my office allowances. I was then asked by BIT on the 7th of February if I would contribute. The documentary evidence supports that. There is also no account taken that I was unaware of personal usage until 9th November – with no evidence to suggest otherwise. All of the email correspondence reinforces this fact.

Additionally, while the report recognises that I genuinely believed all of the data used had been for parliamentary purposes, the IO states the SPCB can only consider the circumstance as they are now known. I would ask that the committee give consideration to my knowledge at the time when I agreed to contribute from my office allowances, that I had no knowledge that there had been any personal use of data.

Let me state that I have fully accepted responsibility for my part in this and am deeply embarrassed about what happened. The taxpayer has not suffered any loss and I ensured this as soon as it became clear what had happened.

However, I have a number of important comments I wish to make about the SPCB investigation process which I would be grateful if the committee could consider.

Process concerns

The committee will be aware that this is the first time SPCB have taken this approach to investigating excluded matters and there are important aspects that I feel require to be considered.

(a) Independence of the process

Investigations into the conduct of MSP's are normally the responsibility of The

Commissioner for Ethical Standards in Public Life in Scotland, with the

exception of those that are considered 'Excluded.' Any investigation by the commissioner ensures that the investigation process is independent, objective, and impartial and is conducted confidentially.

The approach taken by the SPCB investigation has departed significantly from the independent investigation of complaints.

The final report and evidence show a clear interplay between my own actions and that of Parliamentary staff. Based on both objectivity and impartiality I believe it would have been more appropriate for someone independent of parliament to carry out the investigation, similar to the way SPPA investigations are carried out. While the investigation is a matter for the SPCB, the investigation has been conducted by a senior manager from Parliament, who has been responsible for interviewing and assessing the role of her colleagues in the process. It is essential that any process is seen as being objective and impartial.

Further, the investigation process did not afford me the same opportunity as parliamentary staff to provide oral evidence, particularly ahead of producing a draft report which contained a number of significant inaccuracies. I am grateful the committee has agreed to provide such an opportunity.

(b) Confidentiality

Confidentiality is essential in any investigation to ensure fairness and confidence in the process. The SPPA committee issued a report in 2018 emphasising the importance of confidentiality when a complain about an MSP is being investigated. The report highlighted the impact that a breach of confidentiality can have on an investigation.

The report reminded all members of the importance of confidentiality in the complaints process for members saying:

“The committee takes all breaches of the code seriously. The rule covering disclosure is important because it allows investigations by the commissioner and the committee to be conducted in the absence of external partisan comment.

The committee condemns, in particular, any breaches which risk causing reputational damage to another member in advance of a proper investigation.”

The report highlights several instances where confidentiality has been breached and states that the identity and nature of the complaint should not be disclosed prior to the committee completing its investigation. The report stresses the need to prevent external partisan comment during an investigation as it risks the committee having to carry out its important responsibilities against a backdrop of external comment, speculation, and judgement.

The important principles set out in this committee’s report should equally apply to the process for investigating ‘Excluded’ complaints. However, from the outset of this investigation there has been considerable external comment, speculation, and judgement.

Matters relating to the investigation have been leaked to the press. There was repeated media reporting on the matter during the investigation and prior to me receiving a copy of the draft report. The need for confidentiality is critical to ensure a fair process for all involved. The most recent example of confidentiality being breached occurred when I requested an extension to the two-week feedback period.

Having written again to David McGill to highlight this latest breach of confidentiality I was advised on the 22nd of March, that he had instructed an investigation into the matter.

Breaches of confidentiality during an investigation only undermines the process by

compromising trust, fairness, and the integrity of the process.

(c) Overview of process

The committee will be aware that I referred myself to the SPCB and I have fully cooperated with the process throughout.

In establishing the investigation, the SPCB minutes show a clear desire to have the investigation completed expeditiously and wanted to set out a clear timeline to *'mitigate potential challenge to the SPCB.'* While timing for the completion of an investigation is a factor, it should not compromise the objectivity, integrity, and fairness of the process.

The process engaged by the SPCB has directly contributed to the level of external comment and speculation throughout the investigation. For example, the timeframe provided by the SPCB created speculation at each stage of the process as shown by the political commentary and media coverage of my request to have an extension. Additionally, SPCB minute since the 21st of November have provided comment or updates on the investigation on an ongoing basis, which contributed to external comment and speculation. This has had a significant impact on my family.

I would ask that the committee consider the approach taken by the SPCB on the investigation process, particularly given the findings of the SPPA committee report in 2018 and the importance of confidentiality, avoiding external comment, speculation, and judgement being arrived at during an investigation.

Further, given this is the first instance in which the SPCB have investigated an 'Excluded' complaint it would seem right to consider whether lesson can be learned for the future, reflecting on the approach taken by the SPPA to investigating complaints. I am also aware that the House of Commons have a process where matters of this nature are investigated independently of the Parliament and have an independent appeals process. Should the committee give consideration to this at a later date I would be happy to assist in anyway, given my experience over the last five months.

SPCB report.

Inaccurate information.

The report does not take full account of the interplay between my own actions and that of Parliament staff. For example, the report takes little account of inaccurate and misleading information I was given at the time by Parliamentary staff.

In January 2023 I was advised by BIT staff that I had used a high level of data and incurred data roaming charges. I was given the impression that the high data usage had resulted in the costs incurred. This turned out to be inaccurate. Prior to being informed of this I had never received any information on my mobile data usage from BIT, I therefore accepted the advice given by BIT as I had no knowledge of what my normal data usage was. My monthly data usage has been published by Parliament, January 2024, this shows my data in January 2023 was similar to that used in May, August, and October. It was also below that used in March and September. It is therefore unreasonable for the IO to expect me to recognise that some form of streaming had taken place, as the data used in January was not significantly different from what I had used in other months.

However, the IO has concluded that I should have recognised this level of data usage as streaming. Given that my data usage in January 2023 was consistent with my pattern of

data usage throughout the year, the conclusion reached by the IO is I believe unreasonable.

Insufficient inquiry.

I acknowledged in my personal statement that I should have pressed further when I obtain assurances that no personal use of data had been made by my family. However, I conducted all of the actions asked of me at the time by BIT and I was unaware of any other actions I could have taken to understand the data usage and the cost incurred.

Further when I discussed the issue with BIT I asked if information could be obtained from EE on data usage. I was told that they had asked EE, but that the

contract was ending and there was little incentive for them to be helpful. The evidence from the REDACTED at Annex C of the report confirms that this information had not been asked for. This is contrary to the explanation I had received at the time. It would appear that officials chose not to request this information based on earlier experience. However, given the importance of this information in understanding the data usage BIT staff should have at least tried to obtain the information.

EE in their own evidence say that the information is only available for 4 months from the date of use. No explanation is provided by the IO on why this was not pursued and why I was advised that it had been requested. This would have clearly helped at the time. However, the information could only have been requested by the contract holder. While the report finds that I did not investigate the matter fully, it takes no account of my request for information from EE. Given the importance of this information REDACTED should have formally requested it. I believe the IO's finding does not take this into account and appears to apply a different standard of enquiry that I should have undertaken compared to that of BIT staff.

The report also refers to two text messages from EE and implies that I should have known about the roaming charges being incurred. In the evidence at Annex E provided by EE they confirm that texts are only "Welcome SMS" showing the cost of roaming charges, they do not inform you about the amount of data you are using or the cost you are incurring from roaming charges. Based on the evidence from EE and the configuration of the iPad these messages would have gone to a message app on the iPad. As stated in my own evidence I did not receive them. However, when BIT highlighted to me on the 25th of January 2023 the message app was checked and there are no messages present. REDACTED confirms that there is no evidence to support that they were even read. Further, the IO in the evidence at annex E also asked EE for the frequency of notification of data roaming charges. EE confirm that only two "Welcome SMS" had been issued and that no notifications were issued warning of the amount of data roaming charges being incurred or the amount of data being used. As I have said throughout this process, I had no knowledge of data roaming charges being incurred. Had I known I would have avoided such costs. It would be inaccurate to interpret the

text as informing of the amount of data being used and the cost being incurred for data used. I presume these text messages are standard for the industry, what they do not alert you to is the costs of any data roaming you have or are incurring.

With hindsight it's often easy to find other actions that could be taken, however based on the knowledge I had at the time the evidence demonstrates that I tried to understand what exactly had caused the data use and the cost associated with it.

I would draw the committees attention to the actions that were taken by me.

1. I asked BIT if a breakdown of what had caused the data usage could be provided.
2. Parliaments BIT staff checked the iPad to see if the device had caused the problem.
3. I asked BIT if it was possible that my device had been hacked, as referenced in my discussion with REDACTED. Advised by BIT this would be difficult to show without a breakdown of the data usage from EE.
4. I discussed with my family if they knew anything that could have caused the bill. They confirmed that they did not.
5. I reviewed my own use of the iPad, including for the two 'Welcome SMS' from EE.

At no point was I asked to take any other action by BIT officials. Given my own technical knowledge it is not clear to me what more I was expected to do. I accepted what reassurances I was given at the time; I had the device checked and I reviewed my own use. I have stated that with the benefit of hindsight I should have 'pressed more' on the assurances provided by my children, however the finding in the report do not take sufficient account of the action taken by me.

Outdate SIM Card.

As I have previously explained, the outdated SIM card was a significant factor in contributing to the roaming charges being incurred. The report has evidence from REDACTED that the new Vodafone contract has a data roaming package that includes a cap. At annex C it says, *'the SIM would have been replaced to put him on the new Vodafone contract and a roaming data package which would have included a cap would have been applied.'*

I accept that the SIM card should have been updated, however the report at paragraph 95 is inaccurate. It says, *'He notes that 13 months had elapsed since BIT first highlighted that he had an outdated SIM card'*. This is incorrect and was highlighted as being incorrect at the time of the draft report. I was emailed by BIT in February 2021 to bring my iPad to the engagement desk to have the SIM card replaced. I was then emailed in October 2021 and then in December 2021. An appointment had been made in December to have the SIM replaced, however this had to be cancelled. During the 13 months between December 2021 and January 2023, I had no contact from BIT requesting the iPad SIM be replaced.

However, in February 2022 BIT contacted me to say that my Parliament iPhone required its SIM card to be replaced with the contract transferring to Vodafone and that a new one would be posted out to my home address. This was done without any difficulty; no reference was made to my iPad. The details of this are set out in the evidence and it is unclear why this is still misrepresented in the final report. The report finds that I should have updated my iPad SIM card, however it does not take any account of the way this was managed by BIT, in particularly the 13-month period during which BIT took no action to replace the SIM card.

The evidence suggests that the only reason BIT realised I was still using an outdated SIM card was because of the roaming charges incurred, rather than a planned changeover. However, it is worth drawing the committees attention to the information published on the 20th of March by Parliament, which confirmed that in January 2023, BIT still had thirty-four devices running with an EE SIM two years after the contract had been awarded to

Vodafone. Following the incident with my data roaming charges, by February 2023 no devices were on the EE contract. Whilst I recognise that the SIM card should have been replaced, it would be reasonable to have expected BIT to have been more proactive in seeking to have the SIM card replaced.

However the report findings do not take account of any issues relating to the SIM replacement programme or whether BIT should have been more proactive in seeking to have the SIM replaced.

It is clear that the outdated SIM card played a significant role in contributing to the data charges being incurred due to the nature of the contract with EE and it is high data roaming charges. The evidence provided by REDACTED explains the benefits of the new Vodafone contract over the old EE contract, including having a cap in place. A new SIM card would have prevented this type of cost from being incurred due to the new contract arrangements with Vodafone.

Allowances transfer.

It is important to be very clear when considering the IO's findings on the use of allowances, at no time did I initiate any proposal to use any of my allowances to meet the cost. BIT opened up that process by approaching the Allowances Office to discuss the matter, following which they asked if I would contribute some of my office allowances. The report does not take sufficient account of this. The report at Annex M confirms that BIT contacted the Allowances Office on the 6th of February 2023 *'seeking advice on meeting cost from within the Reimbursement of Members Expenses Scheme. This was followed by a meeting to discuss the way forward and action to be taken.'* This was a meeting and discussion that took place without my knowledge. I only became aware of this following receipt of the draft report.

As the report confirms I was approached by BIT and asked if I would look at contributing from my allowance on the 7th of February 2023. I was unaware that

BIT had already approached the Allowances Office on the use of the Reimbursement of Members Expenses Scheme.

I was conscious of the significant financial cost incurred for BIT and the report would suggest that the cost being incurred by BIT late in the budget year was a factor in their request for me to contribute from my office allowances. I did so in good faith to help BIT in managing the costs. The report at paragraph 117 states; *'Recognising this, he agreed to make a contribution through the Scheme towards meeting what was a significant cost for the central IT budget to meet at this late stage in the financial year.'* This request has been made from a BIT budget management perspective. In retrospect this should have been paid at the time by the central budget.

My iPad is provided through the Parliaments central contract and its costs are met through central funding. In the evidence at Annex C REDACTED confirms "there is a small number of Members who have their mobile costs met through the office costs provision, although the majority are met through the central budget." It would appear from the information recently published by Parliament this only relates to a small number of MSP's who will be using their own phones and are reclaiming the costs for Parliamentary usage.

However, I was not claiming for any cost incurred in this way. I was transferring some of my office allowance to help in meeting the cost to the BIT central budget. Additionally, BIT

opened up the process of contributing from my office allowances and the process for doing so confirmed by the Allowances Office. I acted in good faith following their advice in transferring the funding. The Investigating Officer's findings do not take this into account, despite the evidence showing that BIT opened up the process of using my office allowances without my knowledge and at no time did I initiate any proposal to use any of my office allowances.

The report acknowledges that I genuinely believed that the data had only been used for Parliamentary purposes at the time of agreeing to the use of my office allowances, and that I repaid the entire amount once I became aware of personal usage. However the SPCB are only able to assess the facts as they are now known. I would therefore ask that the committee give consideration to my understanding of the facts at the time, that no personal usage had taken place and that I acted as soon as I became aware of personal usage.

At the time I viewed this as transferring some of my own office allowance to BIT to help with the cost. I did not view it as claiming for costs that I had incurred as both my iPad and iPhone cost are met as part of the Parliaments central contract. Additionally when I agreed to contribute towards the cost, I emphasises I had no knowledge of any personal usage of the data.

Technical data.

While I recognise the technical expertise of those who provided technical advice to the IO, the hourly calculation of data usage provided is not consistent with normal usage. It is not clear what is defined as '*Typical business usage*' in arriving at this calculation, however it is not reflective of my data usage. For example, in March 2023 my mobile phone data usage was 25GB. There calculation of using 40-80MB per hour is not reflective of real time data usage. To try and understand the use of data for one week, I was able to have the data usage on my phone reset on the 24th of March 2024. Over the course of seven days my mobile data usage was just over 7GB. There will be variations from one week to the next, however the hourly rate suggested is clearly unrealistic.

Therefore, the findings based on this technical calculation are unreliable for such an important aspect of the report. It is clearly not reflective of my own data usage overall and that of many other members. My concerns about this were highlighted to the IO in my response to the draft report, as they do not appear to take account of data levels used by social media apps. The IO said that this was included in the web browsing aspect of the assessment. However the calculation is inconsistent with my own data usage over the year.

Wider implication.

The findings of the report also do not consider the implications this issue has had for my family. The report states that motivation is not relevant in determining a complaint. The committee will be aware of the present environment politicians are operating in and the significant media and political commentary that this issue generated. As a politician I fully accept that I am open to public scrutiny and to be held accountable for my actions and decisions.

As I explained in my statement to parliament, I had a strong desire to avoid my family becoming involved in a matter which had already attracted significant media and political interest. I was very conscious that once I explained my families involvement it would result

in my children coming under scrutiny in a way that I do not believe any parent would want.

My family had already experienced significant media interest at our home, family members were unable to leave or enter our home due to media presence. These factors had a significant impact on my desire to avoid my family from becoming involved in the matter. However, I reached the conclusion that to explain some of the data usage I would have to explain their involvement, as I set out in my personal statement to Parliament.

The findings for the report take no account of my desire to avoid my family from becoming involved in a matter that had become so highly politicised and was attracting such significant media interest. It also takes no account of the significant impact it had already had on my family. The SPCB believe this is a matter for the SPPA to take into consideration. I therefore ask the committee to consider why I felt the need to protect my family and the circumstances that influenced my decision making at the time.

Unfortunately, my concerns on the impact this would have on my family members once I had explained their involvement have been realised. I would respectfully ask that the committee take these factors fully into account given the significant bearing it had on my own actions at the time.

Factors for the Committee to consider in determining this issue.

I would be grateful if the Committee considered the following issues in determining their conclusions on this issue.

- The report recognises that I genuinely believed that no personal usage had taken place.
- At the time I conducted all of the actions asked of me to understand the use of data.
- The outdated SIM card was a significant factor as confirmed by the different contract arrangements with the new Vodafone contract.
- No action was taken by BIT for 13 months to have the SIM card replaced.
- EE were not asked for data use information, despite the fact that I was advised that such information had been requested.
- At no point did I initiate any proposal to use any of my allowance to meet the costs. BIT opened up that process by approaching the Allowances Office to discuss the matter, following which they asked if I would contribute some of my office allowances. I agreed to do so in good faith.
- Contribution from my office costs was made to assist BIT in meeting the costs, and to balance their budget late in the financial year.
- Provided with incorrect information by BIT on level of data used.
- I only became aware of personal usage on 9th November and took immediate decision to reimburse the full amount.
- Made a full and open personal statement to Parliament and apologised for the situation arising. I also responded to questions from Members across the chamber- the first time this has ever happened in a personal statement.

- I referred myself to the SPCB and I have fully cooperated with the investigation process and accepted responsibility for the matters that rest with me.
- Process engaged by the SPCB has resulted in significant and continued media and political speculation.
- Confidentiality has been breached during the investigation despite assurances provided.
- No opportunity to give oral evidence was afforded to me as it was given to Parliamentary staff, despite my request.
- No independence in the investigation, in a desire to have the investigation completed quickly.
- Significant impact on me and my family over the last five months, including the need for additional security measures having to be installed in our family home and in my constituency office.
- Recognise my strong desire as a father to try and avoid my children from being drawn into a matter that was already highly politicised and receiving significant media attention.
- Throughout my 25 years in Parliament, I have never been the subject of any referral to the standards committee, and I have always sought to uphold the Nolan principles.
- That I have acknowledged my own mistakes. However, I believe the role of Parliamentary staff in contributing towards the situation I faced have not been taken fully into account, due to the investigation process being undertaken by a member of Parliament staff and not an independent person.
- My family have never before made any use of Parliamentary data in this way and the committee can be assured it will never happen again.
- Lessons to be learned from the SPCB process when compared to the process used by the SPPA Committee and the House of Commons.
- Significant media and political speculation for the last 5 months that has had a significant impact on my family.

Annexe B: Letter from the Presiding Officer (including complaints) - 19 March 2024

Dear Martin,

The Scottish Parliamentary Corporate Body Investigation under Paragraphs 9.6(c) 9.6(e) of the Code of Conduct for MSPs

The Scottish Parliamentary Corporate Body (SPCB) has been undertaking an investigation under paragraphs 9.6(c) and 9.6 (e) of the Code of Conduct for MSPs following the receipt of three 'excluded' complaints received about the use of data roaming charges incurred by Michael Matheson MSP between 28 December 2022 and 3 January 2023 through the use of equipment provided by the SPCB to him to support the conduct of his parliamentary duties.

The SPCB's investigation considered whether:

(a) an improper claim was made by Mr Matheson in respect of the charges (or any part of them) within the terms of the Reimbursement of Members' Expenses Scheme; and

(b) Mr Matheson failed to abide by the policies adopted by the SPCB as required by Section 7.3 of the Code of Conduct for MSPs, including the policy on MSPs: use of parliamentary resources

The SPCB has now concluded its investigation as it relates to its own remit under the Code of Conduct. It has found that the Member breached sections 7.3 and 7.4 of the Code of Conduct and has upheld the three 'excluded' complaints. Mr Matheson has been made aware of the SPCB's final decision.

In reaching this conclusion, the SPCB has also decided that its Investigation Report should be referred to your Committee, under paragraphs 9.6 (c) and (e) of the Code of Conduct, for its consideration of whether it is appropriate, for the recommendation of any sanctions to be applied against the Member (Standing Order 6.4.2).

In making this referral, the SPCB acknowledges that Mr Matheson has repaid all the monies in respect of the data roaming charges. The SPCB makes no recommendation regarding removal of the Member's entitlement under the Members' Expenses Scheme.

The SPCB has published its determination of the complaints and its decision to make the referral to the Committee. In order to permit the Committee's consideration of the referral to be conducted in private should it so determine, the contents of the SPCB report will remain confidential until it is determined that the requirement for confidentiality is no longer necessary.

I therefore enclose with this letter a confidential copy of the SPCB's Investigation Report, including all the annexes which also incorporate representations made to the SPCB by Mr Matheson dated 4 March 2024. I also enclose copies of the three 'excluded' complaints.

Please be aware that in accordance with its statutory obligations under the UK General

Data Protection regulations and the UK Data Protection Act 2018, in preparing its report for publication at the relevant time, the SPCB will make any redactions it considers necessary to meet those obligations.

Please do not hesitate to contact me should your Committee require any further information.

Yours sincerely

Alison Johnstone MSP

Presiding Officer

From: Sent: To: Subject:

19 November 2023 14:18

First Minister; Public Information; Swinney J (John), MSP Michael Matheson £11000 expense claim

For the collective attention of Alison Johnstone, Humza Yousaf MSP, John Swinney MSP, Dear Presiding Officer, First Minister, Mr Swinney,

Mr. Matheson, as Health Minister, has made an expenses claim for private use of his Government supplied iPad whilst on holiday. To put this in context that many taxpayers such as myself can relate to, I would need to earn my pitifully small retirement income for FIVE years to generate that amount of tax. It represents almost four years of council tax payments for me. Three years of energy bills. Yet the Minister has removed that money from the public purse, for his own personal gain, in a false claim. Just think about that and how it plays to an audience of low income citizens across Scotland.

There is further context for you to consider.

In the commercial world {where I worked for 40 years paying substantial amounts of direct and indirect tax during that time) there are very clear and well managed policies in companies to ensure they comply with all the regulations, meet their audit requirements and ensure that the money they work hard to generate from their business activities is not squandered by feckless staff. Those expense policies are part of the contract of employment so abusing them results in a breach of contract. In severe cases, such as knowingly making fraudulent expense claims of any value {let alone one of £11,000) constitutes gross misconduct and normally results in instant dismissal with no redress, compensation or right of appeal.

That approach, and the standards of conduct required by it, are commonplace in every company I have ever worked for. Yet they seem utterly alien in the Scottish Government as Mr. Matheson has not only failed to be disciplined, he continues to believe he has done nothing wrong. Or at least nothing that requires his removal from office.

In the Public Sector, as every single penny spent comes from the taxes paid by the citizens Government is elected to serve, the level of probity, integrity and transparency should be even greater. But in Scotland, obfuscation, distraction and denial are the standards and methods employed. As a Government Minister, the level of scrutiny and quality of behaviour should be beyond reproach at all times. Yet Mr. Matheson did the following and clearly expected to "get away with it" until others saw differently:

- He failed to understand that roaming charges would apply or what they might be - yet upon arrival in a non UK country the network provider alerts you to potential charges. Mr. Matheson must have ignored this.
- He failed to attempt to connect the device to wi-fi, as most tourists would to avoid roaming charges, either through ignorance {unacceptable in today's world) or arrogance because he didn't care about the amount
- He did not take basic security precautions and allowed his three children access to a device intended for Government work only, and to access overseas websites. Why is it considered acceptable for a Government minister's device to be used without his apparent knowledge? It is almost impossible to view UK TV channels from outside the UK so how they managed to do this should be queried. How did they get his password?
- When he claimed that all the charges had been legitimately incurred because he was working on Government/Parliament business knowing all the while this was a lie. He continued that lie in Parliament.
- He said he did this to "protect" his sons but he has in fact done the exact opposite. Had that been his objective, he would have come clean when the bill was received, paid up and avoided the issue. Now his

family has been dragged into this sordid affair against their will and are no doubt feeling some discomfort as a result. Instead of protecting them from scrutiny, he has increased it whilst avoiding scrutiny of his own actions.

- He has used his own department's budget to pay for some of the cost. Even if he repays it from his salary, this is still, in effect, taxpayer's money as that is where his salary comes from.

As far as the oversight and commercial competence of those running the business of Scottish Government and Parliament is concerned, there are clearly massive gaps in the constructs of the policies that apply to Ministers and public officials. This claim was supposedly scrutinised and approved by a "senior official". Was that official complicit in helping Mr Matheson deceive everyone or are they simply incompetent? This would not happen in any PLC I know of. It should not be condoned or accepted by Parliament either.

In addition, the commercial people have failed to negotiate a contract with a mobile telecom provider that delivers value for money, provided one that allows connection to networks that charge massively for data, has not negotiated a free data allowance (my paltry £5 a month mobile contract allows me 2GB a month when roaming in 50 countries) and has failed to mandate upgrades to SIM cards to prevent such misuse accidentally or otherwise.

Again this would not happen in a well run and competent IT function of a PLC.

Taking all of this into account, I call upon the Scottish Parliament, the Scottish Government, and if necessary HMRC and Police Scotland, to investigate this matter on various fronts as follows:

1. Claiming money, via expenses, which was not spent on a legitimate business purpose constitutes fraud. I call upon the Presiding Officer to determine if this is the case and to prosecute if it is, without fear or favour.

2. Using a business device for personal activities, especially when on holiday, is normally regarded by HMRC as a taxable benefit in kind. I call upon the Presiding Officer to request that HMRC investigates Mr Matheson's tax return to ensure this benefit was declared and the appropriate tax paid. If not, HMRC should enforce collection and any fines resulting under their policies.
3. Bringing Parliament into disrepute is a sanctionable offence usually resulting in suspension of the member. I call upon the Presiding Officer to suspend the Minister for his blatant disregard for the reputation of the institution he serves in order to further his own ends. I further call upon the Presiding Officer to make public the policies that relate to this situation so that the public can decide if they are appropriate or not. It seems that any auditors employed are asleep at the wheel.
4. Exhibiting such poor judgement, subsequently lying and only coming clean when under severe public scrutiny makes an elected member unfit to hold a Government office or even retain their seat in Parliament. I call upon the First Minister to take appropriate action to restore what little faith remains from the public in how the Government in Scotland is managed. The appropriate action in this case is to remove Mr. Matheson as Minister for Health and demand that his constituency has a vote of confidence in him, which I am certain he will lose, thereby resulting in an election of a new MSP. Any action short of this means the First Minister condones such inappropriate actions and calls his own judgment into question.
5. I further call upon my MSP, Mr John Swinney, as a former Finance and Deputy First Minister, to make a public comment via the regular updates he publishes in local magazines, that he condemns this behaviour and that he will work to ensure that faith in MSPs and Government ministers is repaired.

Finally, to all addressed here, I make it very clear this is NOT a party political issue - it goes to the very heart of our democracy and the expectations that those elected to serve us, do so to the highest standards and with unimpeachable integrity. Full and voluntary transparency on the part of all involved would be a good start. If Mr. Matheson truly has nothing to hide or be ashamed of, and is indeed the man of integrity the First Minister has asserted in Parliament, then he will have no issue with his expenses claims being made public.

I look forward to confirmation of these actions and their outcome in the very near future.

From: Sent: To: Subject:

noreply@parliament.scot 15 November 2023 16:47 Public Information

Complaint to the Scottish Parliament

The Scottish Parliament has received a complaint.

Contact information and details of the complaint are listed below:

Email:

Address:• •

Postcode:

Telephone:

How would you like to be addressed How would you prefer to be contacted? By email

Tell us about your complaint The potential fraudulent expenses claim made by Michael Matheson. 1.5.2 The SPCB may investigate any claim. Where, following such an investigation, the SPCB finds that a member has submitted an improper claim, the SPCB may report to the Standards, Procedures and Public Appointments Committee and may recommend the removal of all or part of the member's entitlement to reimbursement of expenses under this Scheme for such period and to such extent as the SPCB may specify.

What would you like to happen? This matter to be investigated. Paying back the money is an irrelevance, if the claim is fraudulent.

Date and time of visit/incident

March 2023 (as detailed on his expense submission)

From:

Sent: 17 November 2023 14.14

To: Presiding Officers

Subject: MSP - Code of Conduct - Michael matheson

Attachments: FM letter MM 161123.docx

Hello

Having read your code of conduct I believe that the above has breached code section 7 in terms of conduct and expense

Section 7: General conduct of MSPs

1. Members must comply with the requirements of this Code of Conduct (the Code), with the Standing Orders, and with any other decision of the Parliament relating to the conduct of MSPs. Expenses
4. No improper use should be made of any payment or allowance made to members for public purposes. Members must abide by the Reimbursement of Members' Expenses Scheme agreed by the Parliament.

I did write to the FM, and in his response claimed it is not in his remit I have attached a detailed letter.

Regards

First Minister Scottish Government St Andrew's House Regent Road Edinburgh

EHI 3DG

Dear Mr Yousaf,

Re: Government/ SNP behaviour

I write to you in connection with recent events in the Scottish government and the behaviour of both you and the Health Secretary Michael Matheson. I must say that this as a taxpayer of Scotland and no political motive. I have copied in the fellow leaders for transparency and the CC for a criminal investigation for a potential crime.

I will also state unlike both you and Mr Matheson, inform you I have copied this letter into Douglas Ross, Anas Sarwar and Jo Farrell

I first want to draw your attention to the following which both you and Mr Matheson may not be aware of.

[https:// www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2](https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2)

1. Selflessness

Holders of public office should act solely in terms of the public interest.

1. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

1. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

1. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

1. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

1. Honesty

Holders of public office should be truthful.

1. Leadership

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

I Think you will se from these that neither you nor Mr Matheson has meet any of these. You of course have previous being fine when transport minister for having no insurance.

Ref:

<https://www.bbc.com/news/uk-scotland-scotland-politics-38234763>

So let us move on and your failure as a health secretary and the fact you have not been elected in a democratic manner.

So let us look at the facts.

1. Scotland's health minister clocked up an £11,000 bill on his official iPad on a family holiday to Morocco.
2. It relates to a holiday in January 2023 yet has only become public knowledge in November 2023.
3. Humza Yousaf has insisted he has "absolute confidence" in Michael Matheson as the SNP leader faced calls to sack the Health Secretary over an £11,000 data roaming bill.
4. The First today Minister claimed his Cabinet colleague had committed an "honest mistake" after he racked up the five-figure sum on his parliament-issued iPad while on a family holiday in Morocco last Christmas.
5. You stated the fact that the claim was totally legitimate and was on consistency business.
6. Mr Matheson also stated to various press organisation and government sources that it was used for consistency business.
7. In my working experience I have come across many kinds of people but never as much of low standards as you and Mr Matheson. To spend 7 days defending the use and then to pay the sympathy card measures a sewer rat.
8. I don't see Mr Matheson as such public profile as say David Beckham.
9. You also said you have complete confidence in Mr Matheson, yet it is now clear that he lied to you, Scottish government, and the public.
10. He states the reason that he committed this offence was to protect his children, well should we ask him about his responsibilities as health secretary. This results in this.
11. In the week up to November 5, 1,660 patients (6.7%) spent more than 12 hours in an emergency department before being seen and subsequently admitted, discharged, or transferred.

This is an increase on the previous week where 6.6% waited the same period and is almost as high as January 15 - the last time the 12-hour figure was so high, at 7%. Public Health Scotland (PHS) data also showed the number of patients waiting eight hours increased to 15% - 3,735 people - higher than March 26, when the figure was 14.5%.

Meanwhile, the proportion of those seen within four hours - the Scottish Government target time - reached its lowest level since January, with 60.9% (15,129) seen within this timeframe in the week ending November 5.

In January 2023, the last time the figure fell so low, 57.6% were seen within this time,

despite ministers aiming for 95% of patients to be treated within four hours.

Does this represent a minister doing an excellent job, please don't use covid as that is well past. Your performance in this area is well tested. Previous HS Robison, Sturgeon, Freeman, and yourself.

Pre covid the figures were in 2012 the waiting list was 250k, this has raised from 80k in 2012. It was pre covid 400K, and after covid 600k. This shows that before covid the figure rose by 320k, yet due to covid it rose by 150k. Your consistent excuse of covid is not legitimate.

1. I would now like to draw your attention to the behaviour of you and your government. Both you and Mr Matheson have lied to all concerned. Can I draw your attention to the definition of the

Ministerial code

Gross misconduct in a public office Ministerial Conduct

1. Ministers should be professional in all their dealings and treat all those with whom they meet with consideration and respect. Working relationships, including with civil servants, Ministerial and Parliamentary colleagues and Parliamentary staff should be proper and appropriate. Harassing, bullying or other inappropriate or discriminating behaviour, wherever it takes place, is not consistent with the Ministerial Code and will not be tolerated. Ministers in post at and from the time of publication of this edition of the Code agree to cooperate and engage fully and promptly with any complaint processes, including any informal process or with any formal process conducted under the procedure for making a formal complaint about a Minister's or former Minister's behaviour regardless of when such behaviour is alleged to have occurred. For the avoidance of doubt, this obligation to cooperate will continue to apply to a Minister after they have left office.
2. The Ministerial Code should be read against the background of the overarching duty on Ministers to comply with the law, including international law and treaty obligations, and to uphold the administration of justice and to protect the integrity of public life. They are expected to observe the Seven Principles of Public Life (set out in the Annex to this Code) and the following principles of Ministerial conduct:
 1. The principle of collective responsibility, as defined in section 2 below, applies to all Ministers.
 2. Ministers have a duty to the Parliament to account, and be held to account, for the policies, decisions and actions taken within their field of responsibility.
 3. It is of paramount importance that Ministers give accurate and truthful information to the Parliament, correcting any error at the earliest opportunity. Ministers who knowingly mislead the Parliament will be expected to offer their resignation to the First Minister.
 4. Ministers should be as open as possible with the Parliament and the public, reflecting the aspirations set out in the Report of the Consultative Steering Group on the Scottish Parliament. They should refuse to provide information only in accordance with the Freedom of Information (Scotland) Act 2002 and other relevant statutes.

(e) Ministers should similarly require civil servants who give evidence before Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful, and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;[1]

(f) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests.

(g) Ministers should not accept any gift or hospitality which might, or might reasonably appear to, compromise their judgement, or place them under an improper obligation.

(h) Ministers must keep separate their roles as Minister and as constituency or regional list Member of the Scottish Parliament (MSP).

(i) Ministers must not use public resources for party political purposes.

(j) Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code as set out in the Constitutional Reform and Governance Act 2010.[2]

1. This Code provides guidance to Ministers on how they should act and arrange their affairs to uphold these standards. It lists the principles which may apply situations, drawing on past precedent, but it is not a rulebook. The Permanent Secretary may provide Ministers with advice on matters which the Code covers and will ensure procedures are in place to support compliance with the Code. It is not, however, the role of the Permanent Secretary or other officials to enforce the Code.
2. The Code applies to all Scottish Ministers and covers Parliamentary Liaison Officers in paragraphs 4.9 to 4.15. It sets out the standards of conduct required of Members of the Scottish Parliament (MSPs) who are acting in their capacity as Government Ministers. Ministers must also always comply with the requirements the Parliament itself has laid down in relation to the accountability and responsibility of Ministers. All Ministers (both MSPs and Law Officers) are bound by the Interests of Members of the Scottish Parliament Act 2006, taken together with Section 39 of the Scotland Act 1998. All MSPs, including those who are Ministers, must also adhere to the terms of the Code of Conduct for Members of the Scottish Parliament, which provides a set of principles and standards for MSPs and sets out the ethical standards expected of them in carrying out their Parliamentary duties. The MSPs' Code of Conduct is available from the Scottish Parliament's website.[3]

The above taken from your version of the code and signed off by you.

Gross misconduct In a Public Office Evidential Considerations

The elements of the offence were summarised in Attorney General's Reference No 3 of 2003 [2004] EWCA Crim 868. The offence is committed when:

a public officer acting as such.

wilfully neglects to perform their duty and/or wilfully misconducts themselves.

to such a degree as to amount to an abuse of the public's trust in the office holder without reasonable excuse or justification

A public officer

There is no simple definition of a public officer, and each case must be assessed individually, considering the nature of the role, the duties carried out and the level of public trust involved.

1. Mr Matheson statement to Holyrood against shows a trial of deceit and lying but both yourself and Matheson. He states he only found out about his family use on Thursday a week ago.
2. So, he has failed in his duty of care to parliamentary equipment and access to sensitive data.
3. He reiterated again on Monday that he was on parliamentary business, another clear lie.
4. He stated he informed you on Tuesday evening and you stated that the matter was closed as there was no further information a clear lie.
5. So, we have some false tears from him, and blaming his children. So, can I ask you if he has this weight on his mind how can he be performing his duties as HS?
6. I would think considering the factors that you would agree that you have broken the code in numerous areas and do the right thing and resign. Should you not it can only be seen that your government has not changed from the corrupt one which was run by your predecessor. Considering the that it has been highlighted in the Covid inquiry that she lied to the Scottish public.
7. I believe the administration of Holyrood already is obliged under Counter Fraud requirements placed on all public bodies, to call in the police. A fraud has been committed.
8. You still during FM questions continued to back your mate knowing that he had lied to the parliament, press and more importantly the public. #I will give you 48 hours from receipt to acknowledge I will make this document public knowledge.
9. Is it acceptable policy within the Scottish government for family to use a government laptop and was there secure data on it and how do we know it was not accessed?

FYR

System and information security Information security

You are responsible for any action carried out under your IT account and must take all reasonable steps to ensure that you do not unnecessarily compromise the security of the Scottish Parliament's information and associated assets. Further guidance can be accessed through BIT's Information Security Guide. To avoid misuse, you should:

lock your workstation when away from your desk

ensure that you log out of your account when you are finished.

never divulge your password to anyone

never attempt to log on to, or use a network account that is not yours

1. I would also assume you will be asking the information commissioner to investigate and ensure that no data protection laws have been broken. Considering the data which is contained on his ipad.

I think when independent parties review this evidence it can be clearly see that both you and Matheson should resign. However, because of the low standards in in current political gove'rnment we need others to investigate and produce a verdict.

Regards

16 November 2023

cc

Jo Farrell

Chief Constable Police Scotland Tulliallan Castle I<incardine

Fife

FI<IO 4BE

Annexe C: SPCB report

Scottish Parliamentary Corporate Body Investigation Report

Annexe D: Extracts from Minutes

7th Meeting, 2024 (Session 6) Thursday 21 March 2024

4. Complaint: The Committee considered its approach to a report from the Scottish Parliamentary Corporate Body. The Committee agreed to consider the report in private at its next meeting and to seek permission to meet at the same time as the Chamber.

8th Meeting, 2024 (Session 6) Thursday 28 March 2024

4. Complaint (In Private): The Committee considered and agreed its approach to consideration of a report from the Scottish Parliamentary Corporate Body. The Committee agreed to consider the matter in private at future meetings. Stephen Kerr MSP was not present for this agenda item. Edward Mountain MSP joined the meeting for this agenda item only and in his capacity as Committee substitute.

10th Meeting, 2024 (Session 6) Thursday 25 April 2024

1. Complaint (In Private): The Committee considered a report from the Scottish Parliamentary Corporate Body. Oliver Mundell MSP confirmed he had no relevant interests to declare.

12th Meeting, 2024 (Session 6) Thursday 9 May 2024

1. Complaint (In Private): The Committee continued its consideration of a report from the Scottish Parliamentary Corporate Body.

13th Meeting, 2024 (Session 6) Thursday 16 May 2024

3. Complaint (In Private): The Committee continued its consideration of a report from the Scottish Parliamentary Corporate Body.

The meeting was suspended between 10.28 and 15.03.

The meeting was suspended between 16.47 and 17.24.

14th Meeting, 2024 (Session 6) Thursday 23 May 2024

1. Complaint (In Private): The Committee concluded its consideration of a report from the Scottish Parliamentary Corporate Body.

2. Complaint: The Committee announced its decision on a report from the Scottish Parliamentary Corporate Body.

3. Complaint (In Private): The Committee agreed its draft report.

