APPENDIX 6

Response to Dr Dyer re Complaint by Harlick

Further to our recent correspondence, I am grateful to you for the opportunity to set out in further detail my position in relation to the press release made by me on 1 February 2008.

In short, my primary position is as follows:-

1. The press release issued by me on 1st February 2008 was entirely reasonable and proportionate, having regard to the relevant circumstances; and

2. Having regard to the circumstances, it cannot reasonably be stated that, in issuing that press release, I was in breach of the Code of Conduct.

I will comment briefly on both points below. There are additionally certain legal arguments, arising I understand from the Human Rights Act and the common law of fairness, which are applicable in the event that you are not with me in relation to points 1 and 2. Again, I outline these arguments below.

1. The Statement was entirely reasonable and proportionate in the circumstances.

1.1 It is important to recall the context in which the press release was issued. I had as you will be aware since 29 November 2007 been the subject of intense media coverage regarding the investigation which was being conducted by the Electoral Commission. As of 1 February 2008, the outcome of that investigation by the Electoral Commission was widely anticipated and the subject of intense ongoing speculation in the media. The central issue in the media, and the focus of its coverage, was whether the Electoral Commission would refer my case to the Procurator Fiscal. There was therefore every potential for the two processes – the Electoral Commission matter and your own investigation and referral – becoming confused in the media.

1.2 It was in that context that I received your determination, on 31st January 2008, at the conclusion of stage 1 of your own investigation. This was to the effect that you intended to refer the substance of your own investigation about me to the Procurator Fiscal. You conveyed to me the decision which you had reached, in light of Senior Counsel's advice, to the effect that the donations to my leadership campaign were Registrable Interests.

1.3 Two points were immediately clear to me. Firstly, consistent with the approach which I have taken throughout, it was appropriate to act upon your opinion by seeking to register the donations to my leadership campaign account (to the extent over the threshold of £520) in the Register of Members' Interests. In doing so, recognising the reality of the political climate and level of media attention
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surrounding me, it was inevitable that my decision to register those donations would in itself be the subject of intense press scrutiny. It was absolutely clear that it was incumbent upon me to say something by way of explanation of the timing and rationale for this decision.

1.4 Secondly, it was also absolutely clear that the media would be made aware of your decision to refer my case to the Procurator Fiscal. This of course was precisely what transpired. The disclosure of this information to the media occurred, I would reiterate, not at my hand and notwithstanding the formal requirements in relation to the confidentiality of your process. It was absolutely inevitable that this would further fuel the process of "trial by media" which was already being conducted about me by both the written and broadcasting media. It was, again, also not unreasonable to conclude that the two processes- the Electoral Commission matter and your own investigation and referral- would become confused in the media.

1.5 In short, against this factual context, recognising the exceptional circumstances in terms of the two parallel inquiries and the surrounding level of media scrutiny, it would seem to me that the limited press release which I did make was entirely reasonable and proportionate.

2. The press release was not in breach of paragraph 9.1.2 (read alongside paragraph 9.1.4) of the Code of Conduct

2.1 It is clear from the terms of the press release that what it was about fundamentally was not the complaint by Mr Harlick, but my decision to register the donations in the Register of Members' Interests.

2.2 The fact and substance of the complaint and its investigation by you were already in the public domain, having themselves previously been the subject of significant media coverage. I might reiterate that this media coverage had equally not been instigated in any respect by me. I include for your reference copies of a dozen such articles.

2.3 The extent of my previous response to such coverage had consisted of a brief comment made on my behalf to the effect that I had acted in relation to the donations upon the basis of advice provided to me by the Clerks to the Standards and Public Appointments Committee.

2.4 To the extent that my press release of 1 February 2008 touches upon the complaint itself, this is simply to explain that my decision to register the donations had arisen from an opinion which you had conveyed to me. The press release referred only at a general level to your opinion, did not discuss its detail in any respect, nor did it refer directly to the complaint or your decision to refer the matter to the Procurator Fiscal.
2.5 To the limited extent therefore that the press release can be said to refer, albeit indirectly, to the complaint, it avoided entirely discussing details of that complaint and any such indirect reference was, by any measure, brief.

2.6 In all of the circumstances, it would seem to me that the press release either does not engage paragraph 9.1.2 of the Code at all, in so far as it cannot reasonably be said to "disclose, communicate or discuss any complaint" or, and in any event, it falls squarely within the exception permitted by paragraph 9.1.4 of the Code.

3. **Legal Arguments**

I understand that there are additionally legal arguments, which are applicable in the event that you are not with me in relation to 1 and 2 above. These, in outline, are as follows.

3.1 **Engagement of Article 10 (Right to Freedom of Expression) of the Human Rights Act.**

3.2 There can be no doubt that the Human Rights Act applies in this context. On any view, any suggestion that I was not entitled to issue my press release of 1 February 2008 would on the face of it constitute an infringement of my right to freedom of expression and in particular, my right to "impart information and ideas without interference by public authority", in accordance with Article 10(1) of the Human Rights Act. It is not obvious to me upon what basis such interference could reasonably be justified under the Human Rights Act, having regard to all of the circumstances. That being the case, any finding to the effect that, in so doing, I had acted inappropriately in breach of the Code of Conduct would, I understand, be likely to be invalid because incompatible with my rights in terms of Article 10(1) of the Human Rights Act 1998.

3.3 **Application of Article 6(1) (Right to a "fair and public hearing…..by an independent and impartial tribunal") of the Human Rights Act and the common law on fairness.**

3.4 I understand that there are issues of fairness which arise both at common law and in terms of Article 6 of the Human Rights Act. These arise to the extent that there is cause for real concern as to the possibility of this matter receiving a transparently independent, impartial and fair consideration and adjudication.