

Agenda Supplement – Committee for the Scrutiny of the First Minister

Meeting Venue:

Committee Room 5 – Tŷ Hywel

Meeting date: 5 April 2019

Meeting time: 09.15

For further information contact:

Graeme Francis

Committee Clerk

0300 200 6565

ScrutinyFM@assembly.wales

– Written Statement by the Welsh Government

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

2.1 Written Statement by the Welsh Government – Response to the High Court judgement

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Attached Documents:

Written Statement by the Welsh Government – Response to the High Court judgement



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Response to the High Court judgement**
DATE **04 April 2019**
BY **Mark Drakeford AM, First Minister**

On 27 March 2019, the High Court handed down its judgement in the judicial review brought by Bernadette Sargeant in relation to the procedure intended to govern the independent QC-led investigation, which had been established to look into the actions and decisions of the former First Minister in relation to Carl Sargeant's departure from the Cabinet in November 2017.

The court concluded that by taking decisions on the procedures to be followed by the independent investigation, the former First Minister acted contrary to undertakings, which had been set out in a press statement in November 2017. This had stated that the preparatory arrangements for the investigation would be made separately from his office.

The court found those undertakings were legally enforceable and concluded it was not reasonable for the former First Minister to depart from them.

The court granted the application for judicial review, noting the defendants – the former First Minister and the Permanent Secretary – were “unfortunately, led into error by a collective misunderstanding of the legal position”.

But the court rejected the remaining grounds of Mrs Sargeant's challenge, including the challenge under the Human Rights Act 1998.

As a result of the court's judgement, a number of questions raised in May 2018 in the operational protocol for the investigation now need to be revisited. These are:

- Whether any oral evidence given to the independent investigator should be heard in private (paragraph 30 of the operational protocol);
- Whether to empower the independent investigator to refuse to permit the claimant and the family of Mr Sargeant to attend hearings if attendance will cause a witness to

withdraw his or her consent to give evidence (paragraph 30 of the operational protocol);

- Whether to refuse to permit the claimant and the family of Mr Sargeant to ask questions of any witnesses through their legal representative (paragraph 32 of the operational protocol).

Prior to my appointment as First Minister, I was not involved in the development of the operational protocol. Nevertheless, I have concluded that, in light of the High Court judgement, these issues should be reconsidered independently of myself and the Welsh Government.

To ensure this consideration can take place, without reference to any previous remit, Jonathan Jones QC, Treasury Solicitor and Head of the UK Government Legal Department has agreed to undertake this work.

He will consider the judgement, the relevant documentation and all the previous representations, which have been made about the operational protocol in reaching his conclusions. In the interests of openness, I intend to publish the letter I send to Mr Jones confirming the scope of this task.

This process should be concluded before the coroner's inquest is completed and the resulting operational protocol will be published. It will not be fully finalised, however, until the inquest proceedings have also been completed. If any additional reconsideration is appropriate at that stage, I will publish any further remit letter issued.

I want this process to take place because, without making any final decisions at this stage, I would wish the operational protocol to remain a course of action open to me at the point when the coroner's inquiry has been completed and its conclusions have been published.

Once the coroner's inquest has concluded, there will be a consultation with the Sargeant family and other interested parties before a decision is made about the next steps in the independent investigation.

It is my intention to publish the leak inquiry report after the coroner's inquest. At that point, all the relevant reports, which relate to Carl Sargeant's sad and untimely death, will be published in one place – the outcome of the coroner's inquest, the operational protocol (including any updates to the protocol), the leak inquiry report and the Hamilton report.

I am copying this statement directly to Ann Jones AM, Deputy Presiding Officer and chair of the Committee for Scrutiny of the First Minister, which meets on Friday April 5.