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11 June 2019

Dear Mr Jones,

**Independent QC investigation into the actions and decisions of the former First Minister, Carwyn Jones AM in relation to Carl Sargeant's departure from the Cabinet in November 2017 ("the investigation")**

Thank you for agreeing to consider the changes requested by (1) the family of the former Welsh Minister, Carl Sargeant, and (2) the independent investigator, Paul Bowen QC to the Operational Protocol ("the Protocol") for the investigation.

I have annexed to this letter the High Court's Order, and its judgment, on the judicial review of the Protocol (*R (Sargeant) v First Minister of Wales and another* [2019] EWHC 739 (Admin)). The background to this matter is set out at paragraphs 6-48 of the judgment. I am very grateful to you for your willingness to undertake this matter. The task is to review and determine the terms of the Protocol in light of the High Court's judgment, and Order.

The High Court's Judgment

You will see that the Court ordered that changes made to the Protocol in May 2018, approved by the former First Minister, Carwyn Jones AM ("the former FM"), were unlawful and are quashed.

The Court concluded that by taking decisions on the procedures to be followed by the investigation, the former FM 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 that those undertakings were legally enforceable, and concluded that it was not reasonable for the former FM to depart from them.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.  
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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

The Court rejected the remaining grounds of Mrs Sargeant’s challenge, including the challenge under the Human Rights Act 1998.

The issues to be determined

The High Court Order quashes the changes made to the Protocol in May 2018. Those changes need to be reconsidered (and are shown – track changed – in the revisions to the Protocol under consideration between March and May in the High Court bundle of documents).

I would be grateful if you could please reconsider these changes and determine the terms of the Protocol independently in light of the Judgment, the relevant documentation (see below) and all the previous representations which have been made about the Protocol. These are the only representations which I wish you to consider. They can be found in the enclosed Bundle as follows:

	<b>Exhibit to Jeff Godfrey’s Witness Statement</b>	<b>Page Numbers in Bundle</b>
<b>Investigator’s representations</b>	JCG4	416-418
	JCG6	437-440
	JCG7	441-464
	JCG11	477-491
	JCG14	518-524
	JCG16	528-531
	JCG18 (in response to JCG17)	550-557 (532-549)
<b>Sargeant family’s representations</b>	JCG5	419-436
	JCG19	558-565

The Judgment draws attention to four aspects of the Protocol in particular. Of those, three are highlighted as specific matters for review in my published written statement of 4 April 2019, annexed to this letter (though this does not preclude you from considering the wider changes made).

The fourth aspect (paragraph 12 of the Protocol), said at paragraph 112 of the Judgment to be quashed by the Court, is not a change made in May 2018 and so is not caught by the Order. In substance, it amounts to a declaratory statement of the legal position (that the Investigator has no power to compel witnesses) which the Court finds at paragraph 114 of its Judgment to be correct.

The remaining parts of paragraph 12 of the Protocol – the commitment of the Welsh Government to co-operate with the Investigation – need to be retained. It is only the

statement of the legal position (that witnesses cannot be compelled to give evidence) which falls to be considered. The Order of the Court would appear to indicate that there is no expectation that the relevant sentence will change or be removed, though in light of paragraph 112 of the Judgment and in the interest of completeness, you may choose to consider this aspect as part of your review.

#### The relevant documentation

To assist you in considering these matters, I have enclosed (in two lever-arch files) the bundle of documents from the High Court substantive hearing of the judicial review. These documents have, through the judicial review proceedings, been made available both to Mrs Sargeant (through her legal representatives, Hudgell Solicitors) and to the investigator.

These documents have also been provided to the former FM. They are supplied to you on a confidential basis, and solely for the purpose of conducting the review and determining the terms of the Protocol. I would be grateful if you could please store and process the information contained within the enclosed documents in accordance with the Data Protection Act 2018, and return the documents to us once your review is complete.

There is an index to the bundle of documents at the front of each lever-arch file. The documents contained within the bundle trace the history of the development of the Protocol, along with the representations made by Mrs Sargeant, and the investigator, in relation to the issues for determination.

#### Timing

I would be grateful for your determination of these questions as soon as practicable, and in any event before the Coroner's Inquest into the death of Carl Sargeant has concluded. That Inquest is set to resume on 8-12 July 2019.

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 investigation.

#### Copy recipients

This letter has been copied to Hudgell Solicitors (Mrs Sargeant's legal representatives), the investigator and the former FM. It will also be published via the Welsh Government website.

*Yours sincerely,*

*Mark Drakeford*

**MARK DRAKEFORD**