

PE1458/G

Stuart Hunt Letter of 30 April 2013

Response to the submission by the Lord President dated 5 February 2013

The Lord President states “The Complaints about the Judiciary (Scotland) Rules 2011 came into force in 2011. To date there have been no substantiated complaints alleging judicial bias”.

The Judicial Office clarified the above on 8 April 2013 by stating “that when the Judicial Office or the Lord President refer to “substantiated complaints” we mean complaints that have been referred to a Nominated Judge for investigation and report in terms of Rule 11 to 16. Correspondence that has not been considered under the Rules and complaints that have been considered and dismissed under Rules 9 and 10 are not deemed not to be substantiated”.

I would make the following observations regarding the above;

1 When the Lord President refers to no substantiated complaints alleging judicial bias he is referring to the last 2 years or so since 28 February 2011. Figures for a longer time period would provide clearer picture of the extent of the problem and in that regard the Committee may wish to ask the Lord President for further clarity on this matter. I have asked the Judicial Office for the number of complaints of judicial bias and their outcomes over the last 5 years in the first instance.

2 Most, if not all complaints of judicial bias would reference a judicial decision taken by a judicial office holder. Therefore most, if not all complaints of judicial bias would be dismissed under Rules 9 and 10, irrespective of the merits of the complaint, thereby being classified as not substantiated. Again this is likely to distort the extent of the problem and the Committee may wish to ask the Lord President for further clarity on this matter.

3 Evidence of judicial bias may emerge weeks, months or years after a judicial decision. Rule 6 states that a complaint must be dismissed if it “finds on anything occurring more than 3 months before the date on which the complaint was received” unless “exceptional circumstances” exist that would allow the complaint to proceed. The Committee may wish to ask the Lord President what constitutes “exceptional circumstances” in this regard.

4 In the event of a complainer being dissatisfied by a decision taken by the Lord President there is no provision within the 2011 Rules for making a complaint against the Lord President. The Committee may wish to ask the Lord President for his thoughts on this matter given he made the rules.

The best safeguard against judicial bias is the fear of being caught. Some aspects of the 2011 Rules may discourage genuine, well founded complaints or result in a genuine, well founded complaints being dismissed prematurely and lessen the chance of being caught.