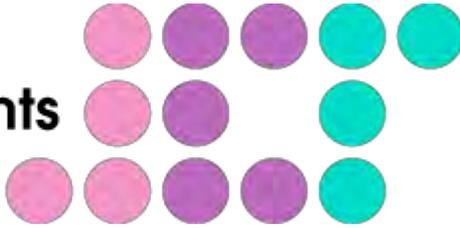


judicial
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reviewer



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Andrew Howlett
Assistant Clerk to the Public Petitions Committee
Scottish Parliament
T3.40
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9th October 2013

Dear Mr Howlett,

Petition PE1458

Last month I gave oral evidence to the Petitions Committee. It may be helpful to the Committee to receive the following information by way of follow-up.

The Committee asked me about recusals but I did not have such information. I suggested that the Committee approach the Lord President for this data. Following my evidence to the Committee, I was contacted by a member of the public with an understanding of the court system. They informed me that they thought it unlikely that the Lord President would hold information on recusals, as the judiciary deal with perceived conflicts of interest in different ways and there is a lack of clarity about how such matters should be handled. I am informed that sometimes concerns about potential conflict of interest are aired publicly in court; at other times it's done behind the scenes.

They made a suggestion that seems to be a sensible and pragmatic step in the right direction. Their idea was that rules could be produced by the Court placing an express duty on a judge to declare any potential conflict in open court. Parties' views could be heard and a judicial decision made on any objections. Thus, with almost immediate effect (subject to the approach taken by the Scottish Civil Justice Council) there could be in place a more open and consistent system than the present practice. **I stress that although I do not think that such a suggestion does away with the need for a register of interests**, it does take things a step closer to greater transparency and accountability, could be implemented fairly quickly, and it would provide a basis for the collection of data on the number of recusals.

I believe that this stepping stone towards a published register of interests could only enhance the standing of the judiciary. I recently received a case review request in which I felt that I may have a perceived conflict of interest. I raised my concern openly and honestly with the complainer and suggested how it might be dealt with. Just yesterday he replied with this response: "I must also thank you for your integrity and wish that certain individuals in the judiciary shared that quality. I believe you to be a very trustworthy person and would be happy to accept any arrangement you may wish to make in respect of ..." Given that his original complaint was about conflicts of interest, I was concerned that he may be unhappy that I too had what may be perceived to be one as far as this case was concerned. However, as his reply demonstrates, when officialdom is open about any perceived conflicts, and discusses a way through it with the public, trust and confidence is boosted.

The other matter that I wished to follow up on relates to the Lord President's procedure for informing the Judicial Complaints Reviewer of outcomes following referrals. When I gave my evidence I explained to the Committee that I had written to the Lord President asking for clarity on what information would be given to me. I have since received a reply, so I am now in a position to clarify the process. The Lord President has confirmed: "You have a clear but limited remit. The nature of your work and the terms of your remit do not involve any follow-up." So the situation is that when I make a referral to the Lord President that the complaints Rules have been breached, I will be told what the Lord President proposes to do – for example, to reinvestigate the complaint – but thereafter I will be given no further information, such as whether the complaint was subsequently upheld, as this data cannot be shared with "third parties" for reasons of confidentiality.

I am surprised at this response for two reasons: I do not regard the JCR as a "third party" but as an integral part of the complaints process; and in England and Wales, the outcomes of investigations, when upheld, are published on the Judicial Conduct and Investigations Office's (JCIO) website. The JCIO is the closest equivalent body to the Judicial Office for Scotland, in that it supports the Lord Chancellor and the Lord Chief Justice (the equivalent of the Lord President, as head of the judiciary) in their joint responsibility for judicial discipline. It seeks to ensure that all judicial disciplinary issues are dealt with consistently, fairly and efficiently. Like the Judicial Office, it can only address complaints about a judicial office-holder's personal conduct and cannot deal with complaints about judicial decisions or about case management.

I believe that I have now provided follow-up information on all outstanding issues but I am happy to provide any further information if it is required.

Yours sincerely,

Moi Ali
Judicial Complaints Reviewer