

PE1458/AAA

Petitioner Letter of 20 November 2016

Noting Lord Carloway's comments and reference to his letter of 8 February, the debate on creating a register of judicial interests is best served by the Lord President taking up the invitation to attend the Petitions Committee and face wider ranging questions from members on the petition.

In addition to members own questions, can I suggest the committee ask Lord Carloway questions on how the register of judicial recusals is functioning over two years on since it came into being - as a direct result of this petition and the work of previous committee members.

I would refer to Professor Paterson's comments in his written evidence on the recusal register in which he states: **"The Public Register of Judicial Recusals is indeed to be welcomed but it only records the cases in which Scottish judges have actually recused themselves, not the cases in which they have been asked to recuse themselves and have declined to do so, far less those in which they might reasonably have been asked to recuse themselves but were not."**

"In short, we cannot always tell if judges are recusing themselves or declining to recuse themselves in the right cases. One measure which might assist with that issue is to ask whether the decision as to recusal should be left to the judge who has been challenged."

Clearly the Lord President is in a position to provide further details on this subject, and would be better placed to give answers in the forum of the Scottish Parliament on this and other issues.

In an example brought to my attention of a possible failure to recuse, I understand a recent ruling by a Court of Session judge which impacted on over 700 investigations at the Scottish Legal Complaints Commission - is now subject to claims the judge should have recused himself from the case.

The matter came to light after litigants discovered a direct relative appeared in front of the same judge on numerous occasions in a civil litigation case, which resulted in issues being taken to the SLCC.

The ruling has affected hundreds of solicitors and clients, and struck down a long held practice where combined conduct and service complaints were previously investigated as "Hybrid Complaints" by the Law Society of Scotland (from 1980) and the Scottish Legal Complaints Commission (from 2008).

I am informed Alex Neil MSP is representing and assisting individuals affected by this ruling, therefore it may be productive for the committee to contact Mr Neil to gain further knowledge of this matter and claims in relation to the lack of recusal.

Finally I would just like to say the following to members.

The proposal in this petition to create a register of interests for the judiciary is not about impinging on the private lives of judges or undermining the independence of the judiciary.

If I thought this petition did either, I would withdraw it myself.

There is cross party support in Parliament for the general aims of this petition over the number of years MSPs have looked at this issue, support from both Judicial Complaints Reviewers, general support from the media and those with an interest in the justice system.

I understand the judiciary's concerns in relation to their privacy. However, other registers of interest in public life rightfully protect and respect the privacy of participants, enhance public trust in those who declare, and promote the independence of participating institutions.

The proposal in this petition is simply to create a similar tier of transparency for judges, which currently exists in other walks of public life.

The current SCTS Board register is a step in the right direction, however this only applies to a few members of the judiciary.

A further step in the right direction could be to create a single source register with the biographies of all members of Scotland's judiciary, added with more detailed recusal information for each member of the judiciary - as mentioned by Professor Paterson, and a range of similar or enhanced declarations of interest applying to all judges, as is currently contained in the SCTS Board register.

If privacy remains a concern, such a register could initially be made available to court users, litigants and legal representatives prior to the commencement of a case or hearing, with a time frame allowing parties to consider information declared in the register, and raise any issues or concerns in relation to recusals and declared interests with the presiding judge or a panel of judges.

Lord Carloway's predecessor Lord Gill created the recusal register. Lord Carloway has the power to go a step further and apply an enhanced version of the SCTS Board register for all members of the judiciary.

This is not a big ask. Four years on, this could be achieved and would be a great success for this Committee and the Scottish Parliament.