

PE1458/CCC: SUBMISSION FROM MELANIE COLLINS

I would like to make the following submission in relation to the current system of judicial recusals.

In my view the system is not transparent about the circumstances in which judges should recuse themselves, such as circumstances in which a judge could be perceived as having a potential bias, or the instances in which a judge may be asked to consider recusing themselves but decide not to do so. My experience demonstrates that the recusal register is not working and that a register of interests being put in place is both necessary and correct to allow the public to have faith in the judiciary and transparency of the judicial system.

My views arise from a case raised on my partner's behalf and in which a senior judge did not recuse himself, in circumstances in which the existence of a register of interests may have resulted in him having done so.

The matter, which I note has already been mentioned in a submission by the petitioner and has been aired by Committee members, has relevance to a recent ruling in the Court of Session <https://www.scotcourts.gov.uk/search-judgments/judgment?id=1d0c1da7-8980-69d2-b500-ff0000d74aa7> in relation to around 700 cases of investigations carried out by the Scottish Legal Complaints Commission .

In a civil case raised in the Court of Session, on behalf of my partner, Mr Donal Nolan, Lord Malcolm (Colin Campbell QC) heard and ruled on evidence in the case.

His son, Ewen Campbell, who at the time was with Levy & McRae, was an assistant solicitor involved in the day-to-day running of the case, providing the defenders with advice and representation in court. Ewen Campbell reported back to Peter Watson, formerly a senior partner of Levy & Mcrae, and (at the date of this submission) currently suspended as a temporary sheriff.

In the case raised on behalf of my partner Mr Nolan, had a register of interests for members of the judiciary existed prior to the case coming to court, this may in my view have resulted in Lord Malcolm having recused himself.

In relation to the impact of this on the ruling in the case involving the Scottish Legal Complaints Commission, the SLCC were investigating matters in relation to this case which the ruling by Lord Malcolm had the effect of changing the hybrid complaints process which resulted in numerous cases not being concluded.

There are examples in the judicial recusals register of judges recusing themselves, particularly the instance where former Lord President, Lord Brian Gill, recused himself on 26 June 2014, after his son appeared in the same court acting for a respondent.

It is not clear to me how this instance differed from my case where Lord Malcolm did not recuse himself and on which Lord Brodie's opinion concluded that the circumstances did not satisfy the test for apparent bias or that there was a question of interest on the part of Lord Malcolm. This lack of clarity about when recusal is appropriate does not help in assuring public faith in the judiciary and transparency of the judicial system .

Members may also wish to note I have written to the current Lord President Lord

Carloway, to make him aware of concerns in relation to my own experience before the Court of Session.

No action has been taken by Lord Carloway to address the matter, which in my view is of significant concern where there is a potential conflict of interest, and where the transparency of the judicial system could be improved. In a response from the Lord President's Office, information about the complaints mechanism for judges was not provided.

As members of the Committee have previously been made aware of certain details of this case, I would very much welcome the opportunity to give evidence in a public session, and also that my MSP, Alex Neil whose assistance has been invaluable in advancing matters, be invited to give evidence before the Committee.