

PE1458/GGG

Petitioner submission of 24 May 2017

In response to submission [PE1458/FFF](#) noting the addition of a recusal by Lord Bracadale on a case (Nolan v Advance Construction (Scotland) Ltd) one year after the recusal took place -

I urge members of the Petitions Committee to put questions to the Lord President Lord Carloway on the status of the Recusals Register, and make enquiries as to why no note was applied to the register of recusals listing the entry of Lord Bracadale's recusal as being applied in March 2017 rather than when it occurred one year earlier in 2016.

I did make enquiries of the Judicial Office in relation to this recusal. The Judicial Office claimed in their response there was a clerical error as the reason this recusal was not entered at the correct time.

I note the recusal of Lord Bracadale was not entered until I approached the Judicial Office in late March 2017 and asked questions, after I had been passed court documents in relation to this case which I put before the Judicial Office for comment.

The Judicial Office acknowledged the omission of Lord Bracadale's recusal, but have not admitted whether any further omissions exist.

I refer to Lord Gill's evidence to the PPC on 10 November 2015 - in which Lord Gill stated in the official record: **"There are two points to make in answer to that. One is that the register of recusals is not voluntary. To the best of my knowledge, the clerks of court are scrupulously accurate in keeping the register and therefore, wherever there is a recusal, you may depend upon its being recorded in the register."**

Clearly the register has not been fully recorded, and while mistakes can be made, entering details a year later and only after court documents come to light, should at least be acknowledged, along with any other issues affecting the Register of Recusals.

I would point out altering such an important Register as we now have in Scotland, over one year later, could have implications for litigants and those who may have an interest in this particular recusal and the circumstances in which it was made. I have recommended to the Judicial Office a note of when the recusal was applied, and the reasons for application at such a late date, should be entered.

Given there appears to be problems with the Register of Recusals, - which as members are aware was created by Lord Gill as a result of this petition, it would be suitable for the current Lord President to give his account of any errors in the Recusals Register when Lord Carloway appears before the Public Petitions Committee, as per his written offer to give evidence.

Finally, as this is the first identified court case in terms of the existence of a recusal in the Register of Recusals, I urge members to request Lord Carloway now add case references and names of litigants to the Register of Recusals, to give a more complete picture of judicial recusals in Scotland.