

PE1458/JJJ

Submission from the Petitioner, 29 November 2017

A further development of interest to members with regards to the Register of Judicial Recusals – created by former Lord President Lord Brian Gill as a result of this petition in April 2014.

During the creation of the Register of Judicial Recusals in 2014, some 400 plus members of the judiciary – Justices of the Peace – were excluded from the register for no apparent reason.

Recent communications with the Judicial Office and further media interest in the petition¹ has prompted the Judicial Office to finally include Justices of the Peace in the Register of Judicial Recusals – with a start date of January 2018.

This follows an earlier development after Lord Carloway gave his evidence to the Committee, where the Judicial Office agreed to publish a wider range of details regarding judicial recusals². A copy of the revised recusal form for members of the Judiciary has been provided by the Judicial Office and is submitted for members interest.

Additional enquiries with the Judicial Office and further media interest³ on the issue of Tribunals which come under the Scottish Courts & Tribunals Service (SCTS) and Judicial Office jurisdiction has produced a further result in the Judicial Office agreeing to publish a register of Tribunal recusals.

I urge members to seek clarification from the Judicial Office and Lord President on why Justices of the Peace, who now comprise around 500 members of the judiciary in Scotland, were excluded from the recusals register until now – as their omission from the recusals register has left a distorted picture of judicial recusals in Scotland.

Since my earlier submission of 4 September, the Scottish Courts & Tribunals Service has published their Annual Report, which contains a Register of Interests for SCTS Board members, including several members of the judiciary, available here: <http://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/scts-annual-report-accounts-2016-17.pdf>. A copy of the Register is included with this submission.

While the register exists for a handful of judges who sit on the SCTS Board – including Lord Carloway, and does include further detail on some financial holdings of the judiciary, as provided by the Judicial Office SCTS Board shareholdings register - there is clearly a format by which this same register, with enhanced requirements of disclosure as appear in other jurisdictions, could be applied to all members of Scotland's judiciary.

¹ Campaigner calls on Scotland's top judge to extend register of recusals, *The National*, 3 October 2017

² More details to be shared about judges recusing themselves from cases, *The National*, 1 August 2017

³ Campaigner Cherbi calls for change to tribunals register of interests, *The National*, 14 October 2017

Finally, I wish to draw attention to members of the status of the Norwegian Register of Judicial Interests, which is a very comprehensive register, and could well be used as a template for a similar register of judicial interests in Scotland.

The Norwegian register of judicial interests is available here: <http://www.domstol.no/en/The-Courts-of-Justice/The-ordinary-courts-of-Norway/Dommeres-sidegjoremal>. I urge members to contact Norway's judiciary to seek comments on their register of judicial interests, and if necessary invite evidence on Norway's implementation of such a register and how it impacts on judicial transparency.

July 2017

Intimation of a Decision of Declinature (Recusal)

Declinature of jurisdiction, also referred to as **recusal**, refers to the act of a judicial office holder abstaining from participation in legal proceedings due to a conflict of interest or when his or her impartiality might reasonably be impugned.

The [attached form](#) should be completed by clerks of court in the event of a formal motion for recusal being **granted** or **refused** in open court and accordingly recorded in an appropriate interlocutor.

The return should only be completed for recusals involving a senator, temporary judge, sheriff principal, sheriff or summary sheriff (this includes fee-paid members of the judiciary). It should not be completed when there has only been an informal administrative decision not to sit in a particular case.

The returns should be completed electronically and emailed to judicialofficeforscotland@scotcourts.gov.uk

This information is being collated on behalf of the Lord President and this requirement should be completed accurately and timeously. Local records should be noted once the return has been submitted.

If you have any questions please contact the Judicial Office for Scotland: judicialofficeforscotland@scotcourts.gov.uk



Intimation of a Decision of Declinature of Jurisdiction
(Recusal)

COURT	
DATE	
NAME OF JUDGE	
CASE NAME & REF	
ACTION TYPE	
MOTION (please select)	
GRANTED/REFUSED	
REASON (please provide specific reasons)	
CLERK OF COURT	
CONTACT DETAILS	

Completed forms should be emailed to judicialofficeforscotland@scotcourts.gov.uk

Register of Interests for SCTS Board members

Name	Directorships	Appointments ex officio	Trusteeships	Other Appointments and Interests
Lord President – The Rt. Hon. Lord Carloway	None	None	Trustee, Scottish Arts Club	None
Lord Justice Clerk - The Rt. Hon. Lady Dorrian	Cranley School Ltd Glenside Court Ltd Franco – British Lawyers Society Ltd	Commissioner of the Honours of Scotland Senior Commissioner, Queen Victoria School, Dunblane	Cranley Trust Faculty of Advocates 1985 Trust Scottish Arts Club	None
Rt. Hon. Lady Smith	None	None	President and Trustee - Friends of the Music of St Giles Cathedral	Chair - Scottish Child Abuse Inquiry Honorary Bencher -Gray's Inn
Sheriff Principal Duncan Murray	None	Commissioner, Northern Lighthouse Board Trustee Kibble Education and Care Centre	None	None
Sheriff Iona	None	Deputy Lieutenant for	None	Partner in

McDonald		Ayrshire and Arran		property rental firm - JI
Sheriff A Grant McCulloch	None	Chair West Fife Education Trust	None	Chair Relationship Scotland – Couple Counselling Fife Committee Member Cammo Residents Association Chair – Discipline Committee ICAS
Johan Findlay JP OBE	None	Honorary Sheriff Justice of the Peace	None	None
Dr Joseph Morrow QC	None	Lord Lyon King of Arms Member of Judicial Council	Trustee, Munday Trust, Dundee Trustee, Kidney Trust, Dundee Trustee, Tealing Community Hall	Legal Assessor, South Episcopal Church President, Society of Messengers at Arms President, Scottish Genealogical Society

				Patron, Scottish Family History Society
Dr Kirsty J Hood QC	None	None	None	<p>Self Employed Advocate</p> <p>Regular ad hoc employment with the</p> <p>University of Edinburgh – delivering seminars on one of the LLB courses</p> <p>Regular ad hoc employment with the University of Glasgow - Delivering lectures/seminars on one of the LLB courses</p> <p>Contributor of updates to “Scottish Lawyers Factbook” (W Green. Publishers)</p> <p>Clerk of Faculty - Faculty of Advocates (non-remunerated)</p> <p>Member of the</p>

				<p>Scottish Committee of Franco-British Lawyers Society (nonremunerated)</p> <p>Contributor of updates to "Scottish Family Law Service" (LexisNexis, Publishers).</p>
Simon J D Catto	None	None	None	<p>Member Gateley (Scotland) LLP: Head of Litigation</p> <p>Member of Cornerstone Exchange LLP</p> <p>Member of Cornerstone Exchange No2 LLP</p> <p>Member of Exchange Tower Property LLP</p>
Professor R Hugh MacDougall	None	None	<p>Eriska Trust</p> <p>Cunningham Trust</p> <p>Cross Trust</p> <p>St Columba's</p>	<p>Visiting Professor University of Edinburgh</p>

			Hospice	
Joe Al-Gharabally	Ernst & Young	None	None	None
Col. David McIlroy	None	None	None	Independent Prison Monitor
Eric McQueen	None	Member of the Scottish Civil Justice Council	None	None

SCTS Board – Shareholdings of judicial Members as at 5 October 2017

Name	Shareholdings
Lord President - Rt Hon Lord Carloway	None
Lord Justice Clerk - Rt Hon Lady Dorrian	None
President of Scottish Tribunals - Rt Hon Lady Smith	Artemis Fund Managers, Barclays, Blackrock AM, Brown Advisory, Henderson Investment, Ishares PLC, JP Morgan, Lazard Fund Managers, Pimco Global, Vanguard Funds PLC, Fundrock Management CO Gsquaretrix.
Sheriff Principal Duncan L Murray	Jupiter European Fund, Hargreaves Lansdown Stocks and Shares ISA
Sheriff Iona McDonald	None
Sheriff A Grant McCulloch	None
Johan Findlay OBE JP	Aviva, Vodaphone, Santander, Unilever, Norwich Union, Legal & General, Fidelity Funds Network, Lloyds Banking Group, HBOS, Standard Life
Dr Joseph Morrow QC	None

SCTS Board – Shareholdings of Non-Judicial Members as at 5 October 2017

Name	Shareholdings
Eric McQueen Chief Executive SCTS	None
Dr Kirsty Hood QC	None
Simon Catto	Aberdeen Football Club PLC, Scottish Power UK PLC, Royal Mail PLB
Joe Al-Gharabally	RBS, Ryan Air, Aviva, AT&T
Professor Hugh MacDougall	None
Colonel David McIlroy	None