



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 19 November 2019

Session 5



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JUSTICE COMMITTEE
28th Meeting 2019, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*James Kelly (Glasgow) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Moi Ali

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 19 November 2019

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning, and welcome to the 28th meeting in 2019 of the Justice Committee. We have had no apologies.

Agenda item 1 is a decision on taking in private items 3 and 4, which involves consideration of the evidence that is heard today and a discussion of our draft secure care report. Do we agree to take those items in private?

Members *indicated agreement.*

Petition

Judiciary (Register of Interests) (PE1458)

10:00

The Convener: Agenda item 2 is an evidence session on petition PE1458, in the name of Peter Cherbi, calling on the Parliament to establish a register of judicial interests. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

I welcome our witness, Moi Ali, who is a former Judicial Complaints Reviewer. Regrettably, Peter Cherbi is unable to be here this morning. I wish him a speedy recovery.

I refer members to the recent letter on the petition that the committee received from the Lord President.

We move to questions from members.

John Finnie (Highlands and Islands) (Green): Good morning, Ms Ali. Thank you for your written submission.

Will you outline the nature of the problem? Is the problem actual or does it involve perceived bias?

Moi Ali: The short answer is that it is a mix of both. Without a register of interests, it is extremely difficult for people to work out whether there is an issue.

I acknowledge that there are perceived concerns, but that is an issue in itself. For example, there are no real issues about public board members getting involved in deals that they should not get involved in—I believe that there is no evidence of that happening—but we are still required to complete our entries in a register of interests, as are MSPs.

In a way, the issue is not whether there is any real bias, although I have been sent evidence that there is. For me, the issue is one of perception, and having confidence in the judicial system is important. We want justice delivered, but we also want justice to be seen to be delivered, which is very much about openness and transparency.

John Finnie: You are a former Judicial Complaints Reviewer. Can you give us an outline of the sort of complaints that you dealt with, and tell us whether they would inform this debate?

Moi Ali: Yes, I can. The difficulty that I had as the JCR was that people tended not to escalate complaints to me, because it was known that I had no powers and that there was nothing that I could do.

The complaints system is such that judges investigate complaints about judges and, at the

end of that process, there is what can only be described as a little bit of window dressing. The final stage is with somebody called a JCR, which is set out in statute. That individual has no powers, so they cannot change or overturn a decision and cannot do anything about it at all. Their only power is to look at whether the complaints process was followed. The complaints process is simply about matters such as whether the person who was complained about wrote to the complainant within the five-day timescale or whether they sent a response within 10 days. The JCR does not look in detail at the complaint; rather, they simply look at whether the process was followed. That is very different from the system in England and Wales.

John Finnie: What sort of complaints did you deal with in that way?

Moi Ali: The complaints were about a wide range of issues from judicial conduct in the private world—the way in which judicial office-holders conducted themselves when not acting as, for example, judges—to things that happened in the courtroom, such as issues with their behaviour, rudeness, unsympathetic approaches or, sometimes, conflicts of interest.

John Finnie: Is there anything that we can learn from elsewhere? The petitioner has indicated that judicial registers operate successfully elsewhere and gives the example of Norway, which is often used as a comparator for Scotland. Are you aware of that system?

Moi Ali: I am not. I have to say that I am not an expert in registers of interest for the judiciary but I am passionate about openness and transparency in public life. For me, that is the fundamental issue. In many ways, this is not about a register of interests but about public office-holders in various guises, whether it is people like you in politics, people like me on boards and in public life or judges taking decisions about people's lives. Is there a requirement on people who represent wider society to be open and transparent in our dealings? For me, there is a very clear answer: yes, we have to be open and transparent.

John Finnie: Okay, thank you.

The Convener: I would like to follow up on the point about having no powers other than to look at the process and see that it is being followed. What powers do you suggest that the JCR should have?

Moi Ali: A good example is the role that I have at the moment. I am the independent assessor of complaints for the Crown Prosecution Service in England and Wales. In a way, it is a similar job, in that I independently review complaints. The difference is that, when I was the JCR, I simply considered the process, whereas now I can overturn a decision and reach a different decision

about the outcome of a complaint. I believe strongly that the JCR ought to be able to do that.

What I found frustrating as the JCR was that if, based on the evidence, I could not understand how a particular decision had been reached, I had no power to say, "That is nonsensical; it needs to be looked at again". I could say only, "Well, you followed the rules, therefore I do not uphold the complaint".

I think that the JCR ought to have the power to consider the complaint, reach a different outcome and have a conversation with the Lord President about what can be done to remedy that complaint, instead of simply ruling on whether the process was followed or not.

The Convener: When you say, "overturn a decision", do you mean the decision of a case where there might be an appeal pending?

Moi Ali: No. It is important that there is a distinction between legal decisions that judges make—clearly, we have to have an independent judiciary, and nobody should get involved in overturning legal decisions—and service elements. So, for example, if a judge is rude to somebody in court, that is not a legal decision, that is a service decision. I do not believe that any non-judicial office-holder ought to overturn legal decisions. However, if, after considering the evidence in a case, the JCR cannot understand why judges have not upheld a service complaint, he or she ought to have the power to ask the Lord President to consider that complaint again. Of course, though, they should certainly not look at legal decision making in that way.

The Convener: So, you are saying that, if the JCR is considering a complaint—one that might involve something about rudeness, or something that happened in the court that was not quite right—and the judiciary has, in effect, said, "We are not going to do anything about it", you feel that the JCR should have the power to say, "No, I think this is a legitimate claim" and ask for it to be looked at again?

Moi Ali: Yes, otherwise what is the point of having a JCR? What is the point of having a third tier when the third tier cannot actually do anything? That is why I describe it as window dressing: if you can look at a complaint but you cannot do anything about it, why look at it?

The Convener: That is a helpful clarification.

James Kelly (Glasgow) (Lab): I draw the committee's attention to my previously declared interest, which is that my brother, Tony Kelly, is a sheriff within the sheriffdom of Glasgow and Strathkelvin.

I would like to follow on from what has just been discussed and give a bit more context to the issue

of service complaints. You gave the example of a judge being rude. Can you give any other examples of what would merit a service complaint?

Moi Ali: Let me think. It could be behaviour outside the courtroom. I vaguely remember a complaint where somebody was shouted at by a judge while she was out walking her dog—she was in an isolated place and she felt afraid. I also vaguely remember—you will have to forgive me; it was several years ago that I was the JCR—a complaint where somebody felt that they had been a victim of disability discrimination as their requirements had not been taken on board when they gave evidence in court.

Those are some examples, but it covers a wide range of things. Really, any concern that somebody has that is not a legal concern about their case is a service complaint. It could be to do with the conduct of a judge. If somebody feels that a judge gave one witness more airtime than another, that would be a legal complaint, because it is up to judges to decide how to handle evidence in court. However, if somebody feels that a judge was rude to them but perfectly polite to somebody else, that would be a service complaint.

It is quite difficult to give examples because cases are so varied.

James Kelly: Does a service complaint pertain to a specific legal case or can it relate to a judge's general conduct? You gave the example of something that happens outside the courtroom.

Moi Ali: It can relate to general conduct inside or outside the courtroom. It can be about a specific instance or it can be more general. For example, there could be a concern about bias because a judge is a member of a particular society. It covers a wide range of things.

James Kelly: Okay. I suppose the key questions that the petition raises are whether there is a risk of bias in the judicial system and whether the safeguards in the system are adequate. Those safeguards are: the judicial oath; the "Statement of Principles of Judicial Ethics for the Scottish Judiciary"; and the powers to investigate judges. How effective are they in ensuring that there is no bias in the system and that no conflict of interest arises?

Moi Ali: I will pick up on the third of those things, because my field of expertise is the complaints process, and that is where my concerns lie. We have a system in which, if there is a complaint about a judge, it is investigated by another judge. We live in a small country and we have a small group of judges who are all known to one other. It is quite a difficult scenario when people have to investigate people that they know. Given that the oversight role of the JCR is a

powerless one, I do not think that we have a robust complaints system, and therein lies the problem.

Over and above all of that, however, even if we had a really good, robust system for investigating complaints that had genuine independent oversight, there would still be a requirement for a register of interests. This is the 21st century. Since the 20th century, public board members and politicians have had to register interests, and it is normal, commonplace practice. I cannot understand why we do not require one certain group of people who take very important decisions to do that.

James Kelly: You believe that, because judges are allowed to investigate within their own pool, the process is weak and is not fair or transparent. Do you have any evidence or examples to back that up?

Moi Ali: Their findings are not seen outwith their small circle. While I was the JCR, I was also involved in the system in England and Wales. As the JCR, I did not see the outcome of complaints unless they came to me, whereas I found that, when people challenged decisions in England and Wales, there was genuine independent oversight. There, a panel of people consider the complaint and can overturn the finding or impose a more serious sanction, which has to be accepted by the judiciary. In addition, the findings of investigations are published on a website. It is a bit like the situation with complaints about other professional groups such as doctors, nurses, surveyors and solicitors—in those cases, findings are publicly available and people can see the outcomes. In Scotland, that does not happen with complaints about the judiciary. You cannot look at how many complaints there have been and what the outcome was for particular judicial office-holders. That simply does not happen here, but it happens elsewhere.

10:15

Liam McArthur (Orkney Islands) (LD): Ms Ali, you have set out the case for a register of interests. Of course, the petition has already secured the achievement of a register of recusals. What transparency benefits has that register brought to the system, and what is the rationale for going beyond that and having a register of interests? What would a register of interests give you that the register of recusals will never be able to give you, however well it operates?

Moi Ali: The register of recusals is welcome because it is a step forward and probably would not have happened if it had not been for the petition. There are concerns about it, though. For example, as I understand it, there are no justices

of the peace on the list. I found that surprising, given that JPs have another life and lots of contacts in their other life, and in their day job and so on. It is surprising that there have been no recusals there.

For me, the more fundamental issue is that it is up to the judicial office-holder to take the decision. They know what their own interests are, and nobody else has that knowledge. They decide on a case-by-case basis, and if they do not recuse themselves, the people before them do not have the information to challenge them, whereas, if there was a register of interests, the process could be more proactive. People could look at the register, then go to court and say, "Sorry, but I think there's a conflict of interest here. I've consulted the register of interests and you have a connection with this or that, and that concerns me." With the register of recusals, it is up to the judicial office-holder to decide whether there is a conflict of interest, which takes the power out of the hands of the people who appear before the judiciary. I suppose that that is my concern.

I sound a bit like a stuck record, but there is a fundamental principle about openness and transparency that I feel should extend throughout society and public life. Even if the register of recusals worked—I am not convinced that it does—there is still a need for a register of interests.

Liam McArthur: With both the register of interests and the register of recusals, would there not be the same issue of reliance on the individual either to recuse themselves or register their interests? With a register of interests, we would therefore not necessarily find ourselves much further forward.

Moi Ali: I think that we would, because, if clear criteria were set out, and there were clear requirements for what needed to be registered and what did not, judicial office-holders could meet those requirements and register their interests, and that information would then be in the hands of everyone. Anyone could use that information to challenge whether there was an interest in a case. Without a register of interests, we are relying solely on the judicial office-holder to take that decision, and the people appearing before that person do not have that knowledge to make that challenge.

A register of interests would be a step forward because it would be about sharing information that, at the moment, only the judicial office-holder knows. It might be that they feel that they do not have an interest, but somebody else, if they had that information, might feel that they did. At least we could have an open and transparent discussion about it and resolve it before the case. What we do not want is for people to turn up on

the day and find that the judicial office-holder, having looked at the papers for that day, has concerns that they might have an interest. By having those interests publicly declared and available in advance, a lot of that work can be done in advance. I cannot see any disadvantage to such a register; I can see only advantage.

Liam McArthur: There would still be an issue around whether a recusal is appropriate, and one can certainly envisage circumstances in which there could be a difference of opinion about whether an interest merited recusal in a particular case. Ultimately, the decision will have to be taken by somebody, but should it be taken by judges, by individual sheriffs or by the Lord President? Is there a mechanism for arbitrating the matter, or will the decision still rest, as it does at the moment, with individual judges and sheriffs?

Moi Ali: Goodness—you are asking me very detailed questions on issues that I think need to be looked at down the line. The first issue is whether the principle is that people ought to register their interests. If so, let us then look at the detail of how that might work. Of course, there will be scenarios in which one party feels that there is an interest and the judicial office-holder feels that there is not but, if there is a register, there can at least be a discussion. At the moment, that discussion is not even happening, because it is purely for the judicial office-holder to decide and to recuse, without there being an opportunity to discuss or challenge that decision.

Personally, I do not have an issue with the judicial office-holder taking the decision, but it must be taken openly and transparently, and there must be an opportunity for challenge before a case goes ahead.

Liam McArthur: There could be a concern that individuals might see an opportunity to challenge the validity of a judge or sheriff presiding over a case, irrespective of the circumstances of their case, because there would be two separate processes running in parallel. I am sure that there are wider arguments, but there might be a concern that we would have a register that opens up a line of attack on members of the judiciary, which could distract from the facts and circumstances of individual cases.

Moi Ali: I will give you an example of a similar situation. For many years, I sat as the chair of disciplinary panels for nurses and midwives, and similar issues came up then. Some of the panel members would know people from a particular health board or health trust, and they would have to declare that openly in a hearing and set out what they believed that their interest was. The declaration could be challenged and, ultimately, the panel that was sitting on the case would decide whether there was an interest. If the

“defendant”—in inverted commas—felt that there was an interest, they could have the decision judicially reviewed. In practice, the process was straightforward: somebody would declare an interest and there would be a discussion about whether it was a material interest. In probably all cases, a view was reached about whether there was a material interest, and the case would either go ahead or be assigned to a different panel on another day. However, the process did not seem to pose a particular problem, so I cannot see that it would not work in practice. There might be challenges but, if we had rules that set out what would happen if there was a challenge, there is no reason why there should be any particular difficulties.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I will you ask a bit more about judicial independence. The Lord President and the Scottish Government argue that judges should not be treated in the same way as other branches of Government, because they have an independent role that is protected in statute. You have said that you believe in judicial independence, so do you think that a register could compromise that?

Moi Ali: No, I do not. Judicial independence and judicial accountability are both absolutely essential to a democratic society, but there is a clear distinction between the two and they are very different. I would not want to live in a society in which politicians, for example, interfere in judicial decisions. That is why we have an independent judiciary and we should all make sure that that independence is maintained.

Accountability is a different matter altogether. Being accountable for fair decisions is important and demonstrating that you are impartial is an important part of accountability. We want impartial judges, but we also want judges who can demonstrate that they are impartial. To me, a register of interests is an opportunity for judges to do that.

I think that it actually enhances the judicial oath. It says, “Not only do we have integrity, not only are we independent, not only are we impartial, but we are demonstrating that. We have nothing to hide. Here are our interests, laid out.” There is no conflict at all between independence and accountability.

Rona Mackay: Do you have an opinion on why judges are reluctant to have such a register? Do you think that they think that they would be compromised, or is it that they just do not want to be accountable? Do you know why they are resistant to the proposal?

Moi Ali: I do not understand it. Traditionally, the judiciary in Scotland is quite conservative and is steeped in tradition. Those are not, in themselves,

bad things, but society has moved on, and I think that the judiciary has failed to keep in step with that. The benefit of the proposal is that it provides members of the judiciary with an opportunity to accept that they are in the 21st century and that they should start to do some of the things that other people in public life have done for quite a few decades, which is to be more open about their interests.

I do not know the what the reluctance is. I am not saying that judges have anything to hide; I am simply saying that they should be more positive about the proposal and show that they do not have anything to hide.

Rona Mackay: Do you think that it comes down to a resistance to change and a wish to stick to the traditional way of doing things?

Moi Ali: I suspect that that is the reason. I think that we can all be a little bit resistant to change and sometimes need a little bit of encouragement in that regard.

The Convener: I have been looking into the risk of abuse. On the surface, a lot of what is being proposed sounds sensible, but, when you get into the detail of it, it perhaps does not seem so sensible. The issue of JPs not being on the list seems strange, given that they are dealing with a local community and they could well have relevant connections there. That certainly seems like something that should be looked at further.

I want to go into the detail around the issue of looking at a judge’s private life. For example, if someone who has nothing to do with a case and to whom the judge has no connection has blocked a judge’s car and he cannot get out and is being rude to the person, would that be a complaint that would be upheld, perhaps on the ground that a judge should not be rude to anyone?

Moi Ali: In all sorts of roles, it is common for one’s conduct in one’s private life to be subject to complaints. I am sure that, as an MSP, you are familiar with that. The behaviour of an MSP or a board member in their normal life outwith their day job can be subject to complaints, just as the behaviour of doctors, nurses, dentists and people in a range of other professions can be. That is normal. However, I do not see the connection between that and the register of interests. What you are talking about is part of the complaints process. It is the sort of complaint that, I suspect, would not be looked into. I have seen similar complaints that have not been looked into by the judicial office.

The Convener: I suppose that I was going back to the JCR’s powers. You said that should extend to looking at a judge’s conduct in their private life.

Moi Ali: The rules that govern complaints against the judiciary in Scotland cover that. People can make complaints about judges' conduct in their private lives as well as their conduct in the courtroom. However, from my former experience as the JCR, I can say that very few complaints about conduct outwith the courtroom are progressed.

10:30

The Convener: With regard to the suggestion that every complaint should be published, whether it is upheld or not, would that be open to abuse, given that people can make vexatious complaints about someone who is in a position of power, as judges are in relation to their ability to determine issues around people's liberty? Should every complaint be published, or should only those that are upheld be published?

Moi Ali: I have no issue with only upheld complaints being published. At the moment, they are not. I do not think for one minute that every complaint should be published. However, if something has gone through the whole process and, at the end of that, it has been upheld, I do not quite understand why that complaint is not published in the way that it is in England and Wales or the way that it is in Scotland in relation to other professional groups.

The Convener: What kind of things do you think should be included in the register that are not included in it just now? I think that I read in your submission—it might have been in an interview—that you thought that relatives should be included.

Moi Ali: That is right. If people have family connections in the legal world, that ought to be declared. You do not want a scenario in which a judge has a daughter who is a lawyer and they are in the same courtroom together, because that could lead to a perception of bias one way or the other. I think that relevant family connections should be declared. I am not talking about people having to spell out who all of their family members are and what they do. However, if there is close family connection in the legal field, that ought to be declared, because that is relevant to whether people's perception of fairness.

The Convener: Would that not happen just now? At the moment, a judge might say that his wife's job is not a relevant interest because, for example, she works for the national health service, but, if a case comes up that involves the NHS, the judge would say, "Sorry, there is a conflict of interests here." Is it not the case that what you are suggesting involves almost second-guessing what might be a registrable interest?

Moi Ali: No, because I do not think that the fact that a family member works in the NHS would be a

registrable interest. That would be dealt with by a recusal at the time. There is a need for both things to be possible. A relevant interest that would be registered in advance would be a legal link—somebody working in a different part of the legal system or the wider criminal justice system, for example. However, the situation that you are describing—in which a judge who has a family member who works in the NHS is presiding over a case that involves the NHS—would be dealt with by way of recusal.

The Convener: I would like to address the issue in a wider sense. Our judges are the ultimate upholders of the law. They can give life sentences and they are involved on a daily basis with people whom you and I would not like to meet. We already know that our prisons are battling with serious organised crime. Do you have any concerns about the possibility that the level of detail that you are asking to be submitted to the register of interests could put our judges in a position in which they felt threatened or, indeed, in which they were threatened?

Moi Ali: I do not understand how that could happen. For example, in my job with the Crown Prosecution Service, I deal with complaints from defendants, people who are imprisoned and people who have committed serious crimes. I have entries in publicly available registers of interests on a number of different websites. All that information is available for anyone to look up. I do not understand how that would lead to threats being made. That certainly has not happened to me. I do not follow that argument.

The Convener: I was suggesting that members of the judiciary are in a different position from employees of the Crown Office and Procurator Fiscal Service, as they should be. A judge is the ultimate determiner of a sentence. He or she will decide if your liberty is going to be taken away from you and you are going to be sent to prison. That is serious. Do you have any concerns the register of interests, in the form that you are suggesting that it should be implemented, would compromise their safety?

Moi Ali: No, I genuinely do not. I certainly would not be pushing for anything that I felt would put people in danger. I cannot conceive of any situation in which a register of interests could be used in any way that would place somebody in danger. It is simply a list of interests—it might state, for example, that somebody owns a significant number of shares in a company, is a member of a particular group or society in a capacity that might impact on their judicial role, or has family connections in the criminal justice system.

A lot of judges publish such information already in relation to the various roles that they undertake,

and that has not—to my knowledge—placed anybody in danger. I am afraid that that concern is a complete red herring. I genuinely cannot see how a register of interests could be misused to put somebody in danger. I just cannot see what information it might contain therein that would create such a risk.

The Convener: You say that judges already give that detail, which raises another question. Peter Cherbi helpfully provided information on that, and I was struck by the level of detail that is already disclosed—which, as you mentioned, includes information on shares.

Such information is covered just now. However, we know from our work on this committee and on the Justice Sub-Committee on Policing that serious organised crime is always a step ahead. We always need to catch up with the latest way to put pressure on criminals, and to look at where criminal activities can flourish and how they can be halted. That is the difference between the judiciary and COPFS. Do you accept that there is a difference?

Moi Ali: Yes, of course. My response to your question is that, if someone involved in serious crime decided that they wanted to have a go at a judge who had locked them up, they would not be deterred by the fact that there was not a register of interests. They would not think, “Oh well, I won’t bother then.” If somebody has set their heart on doing someone harm, that is—regrettably—going to happen. It will not be prevented by there not being a register of interests that shows that judges are open and accountable. In fact, it is probably quite the reverse: if judges’ esteem is enhanced by the fact that they are operating more openly and transparently, that will raise the standard of judicial office-holders and enhance public trust and confidence in their role.

I am afraid that, if people are hell-bent on doing bad things, they are going to do those things, whether or not a register of interests exists. I do not, therefore, quite follow the argument that is being made.

The Convener: I suppose that it is a question of balance. How far can we move towards ensuring that there is maximum transparency? We must take into account that, if we go over the line and judges are required potentially to disclose so much about their private life, that might put not necessarily them but their friends and relatives in danger, as they might be open to being blackmailed or whatever. All those things are possible. Have you thought about that at all?

Moi Ali: Yes, I have thought about that, and my answer is the same. We are not asking judges to publish information on where they live or detail that would place them in any danger. We are

simply saying that, if they have business dealings that might be relevant to their role or family connections who are part of the criminal justice system, which might cast doubt on their decision making, such information ought to be declared in a register of interests. In the same way, you and I have to publish similar details of interests that might impact on our roles and on perceptions about our impartiality.

I do not believe that the proposed register would create any danger or difficulty. If I genuinely believed that that was the case, I would not support it; I would not wish to put anybody in danger. I genuinely do not think that there would be any danger at all in having a register—in fact, it is quite the reverse. If trust is enhanced, that surely has to be a good thing.

The Convener: If there was a failure to disclose, what would the sanction be?

Moi Ali: It would be the same as what happens now: the complaints system would be used. A complaint would be lodged, and it would be investigated. I would like to see the complaints system changed, but perhaps that is for another day. There is a complaints system and a clear set of rules, and that system would be used to investigate any complaint about a failure to declare an interest.

The Convener: Would failure to disclose be a criminal offence?

Moi Ali: It is not a criminal offence at present. The complaints procedure is not currently a criminal process, and I am suggesting that that procedure could be used to investigate such a complaint. It would be an internal disciplinary matter for the judiciary.

My reluctance to be pinned down on the detail is due to the fact that this is not my petition. I am here because I support, in principle, the notion of greater openness and transparency. A lot of these questions concern detailed issues that would need to be teased out if the committee decides to take the proposal forward. In my view, it is workable, given that it works in other areas of public life. However, the workings and detail of the proposal would need to be determined, and those questions are not for me to answer; the judiciary would need to look at those issues and consult widely on them.

I see no reason why the proposal could not work. It would not have to involve an extra layer of criminal process; the internal system could be used.

The Convener: For the avoidance of doubt, your evidence today has been very helpful. I appreciate that you support the principle of the proposal but, for the committee, the devil is in the

detail, and we have to look at that. Thank you very much.

Liam Kerr (North East Scotland) (Con): I have a brief supplementary. For complete transparency, I declare that I am a practising solicitor who is registered with the Law Society of Scotland and the Law Society of England and Wales.

The convener suggested that a register might increase transparency and thus public confidence in decisions. However, one can formulate a scenario in which a decision is handed down that might seem—let us say—to be unduly lenient, and the information in the register might show that a judge has another role that could arguably be said to have influenced the decision—at least, the optics might suggest that that is the case. In such a scenario, could transparency undermine confidence in a decision in a way that would not currently happen?

Moi Ali: There may well be cases in which that happens, but people ought to be open to challenge and scrutiny. I genuinely think that, by and large, by laying things bare and being open, credibility is enhanced.

You are right to suggest that, on occasion, people might say that a decision is concerning because of a certain link. Nonetheless, do we not want a society in which people challenge things if they do not look right? It does not mean that they are not right but, in all areas of life, we need to challenge things that may not appear, on the face of it, to be right.

John Finnie: I have a supplementary. It is three weeks short of seven years since the petition was first introduced to Parliament. We are taking evidence today, and we have received written evidence on the matter. The original petition related to pecuniary interests. A lot has been said about bad guys and all sorts of threats, but such issues are perhaps more likely to surface in civil cases than in criminal cases in which judges deliberate.

Given your experience in various other bodies, do you think that there has been any reputational damage to our judiciary as a result of their apparent resistance to move on something—namely, openness and transparency—that is seen as a matter of fact in many jurisdictions?

Moi Ali: Yes, I think that there has been damage; one has only to look at the headlines in the newspapers to see that. Without a shadow of doubt, it has created the perception that there is something to hide. That is unfortunate, because I suspect that, in the majority of cases, there is nothing to hide. That is why I do not understand the resistance to this change. I think that there is simply a concern about things changing, and a lack of acceptance of such change.

Damage has been caused, and there is nothing to lose by publishing judges' interests—it would definitely enhance the standing of the judiciary and build public trust and confidence. At present, the nature of the headlines concerns the question of what there is to hide, and people then dig around to try to find out. If all the information were published, it would put a stop to that practice.

10:45

Shona Robison (Dundee City East) (SNP): Good morning. Lord Carloway said in his written evidence that a register of financial interests could “have a damaging effect on judicial recruitment.”

It is not necessarily the case that anyone would have anything to hide, but there may be such a perception as a result of the extended scrutiny. Would a register of interests have a negative effect on judicial recruitment in any way?

Moi Ali: I honestly do not think that it would. If a lawyer were put off by having to be open and transparent, that would raise questions about their suitability to be a member of the judiciary. If the need for transparency put people off, that might not be a bad thing because they might not be the sort of people whom we want to be sitting in judgment.

By and large, a requirement to register interests does not put large numbers of people off wanting to sit on public boards or build a career in politics. It has not deterred me or any of you—we are all here today, and we all publish declarations in a register of interests.

I do not agree, therefore, that it necessarily follows that people would be put off becoming judges. People do that job because it is a public service and a very worthwhile thing to do. I would hope that the sort of people who want to do that job would want to do it in an open and transparent way.

Liam Kerr: On that point, I want to raise a theoretical possibility. Let us say that Scotland has a register but England—as is currently the case, although a register has been proposed—does not. Is it theoretically possible that England would become a more attractive jurisdiction in which to become a judge if one did not share the belief that such a degree of transparency would be ideal?

Moi Ali: That argument could be applied in reverse. At present, members of the judiciary in England and Wales have a very robust complaints system, and findings against them are published on a website. That has not caused hordes of members of the judiciary to move north of the border to avoid the system. My answer is no, it would not.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a supplementary on an earlier point relating to transparency. I am interested in how the register might impact on the communities that we represent. We often hear that certain communities have less faith in the criminal justice system as a whole, perhaps because of religion, ethnicity, age or social demographics. How might the introduction of such a register, and the transparency that you describe, impact on certain groups?

Moi Ali: I think that it would impact very positively. You are quite right—a number of groups in society are suspicious of the judiciary and feel that it is a closed world that is all very incestuous. It is a world with which they are not familiar, and there is a lot of concern about judicial decisions. The introduction of greater transparency could only have a positive impact in that regard.

If a group of people say, “We’re not going to be open about that. You are open about that, but we’re not going to be,” that creates a suspicion that there is something to hide. If we say that there is nothing to hide and we are quite happy to publish that information, it can do nothing but enhance the standing of judges across society.

Fulton MacGregor: In your role, have you come across any examples of where a situation might have played out differently had there been a register of interests in place?

Moi Ali: It is difficult to think of specific examples. In general, when people get to the stage of escalating their complaint through to the very top of a complaints system—whether it concerns the police, prosecutors or judges—they have lost faith in the process. Anything that can restore faith is a good thing.

Although I cannot think of specific examples in which a register of interests would have helped, it would help in general because it is all about building the standing of judges. A register of interests would clearly do that, and would therefore lead to less of a perception that there is something to hide, whatever that may be.

The Convener: That concludes our questioning. I thank you for a very worthwhile session and for appearing on your own without the petitioner.

That concludes the public part of today’s meeting. Our next meeting will be on Tuesday 26 November, when we will begin our consideration of the Children (Scotland) Bill.

10:50

Meeting continued in private until 11:26.

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