



The Scottish Parliament
Pàrlamaid na h-Alba

PUBLIC PETITIONS COMMITTEE

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Cabinet Secretary for Justice
Scottish Government

Public Petitions Committee
Room T3.40
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22 March 2018

Dear Michael,

Petition PE1458: Register of Interests for members of Scotland's judiciary

Calling on the Scottish Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill (as is currently being considered in New Zealand's Parliament) or amend present legislation to require all members of the Judiciary in Scotland to submit their interests & hospitality received to a publicly available Register of Interests.

As you may be aware, the above petition was lodged in December 2012 and has been considered by the current Public Petitions Committee and its Session 4 predecessor. Over this period MSPs have taken on board the arguments for and against a register of interests and the nature of the interests that might be covered in such a register. This letter sets out the conclusions that the Public Petitions Committee has reached on the petition.

In setting out these conclusions, I would emphasise that the Committee absolutely recognises that an independent and well-functioning judiciary is, and must be, an essential part of our system of government.

I also make clear that the Committee's consideration of the petition, and the views set out in this letter, reflect our viewpoint that there is no basis for any suggestion of corruption in respect of Scotland's judiciary or of inappropriate influences on judicial decision making.

The Committee has reached its views based on the wider contemporary picture of transparency and openness in public life wherein preventing the *perception* of any undue influence is important in ensuring confidence in those holding public office.

Register of recusals

One of the welcome developments in the course of this petition has been the introduction of a register of recusals. The Committee notes that this register was brought into effect in April 2014 directly as a result of the petition and a meeting between the then Lord President, Lord Gill, and representatives of the Session 4 Public Petitions Committee. In recent discussions with the Committee, and the petitioner, the current Lord President, Lord Carloway, has agreed to extend the scope of the register of recusals. As a result, the register will now ensure transparency about recusal across courts and tribunals in Scotland. The Committee very much welcomes these measures.

In doing so, we note that this addresses one of the arguments made against a register of financial interests – that it would not capture those instances where consideration of any potential conflict in a case was based on a social or personal connection that may not be known about prior to a case coming to court.

The Committee agrees that the practicalities are such that it would not be possible or proportionate to require advance registration of personal connection with parties that may at some point be relevant within a particular case. However, we do consider that public transparency of such connections is vital and the register of recusals is the tool that strikes an appropriate balance in this regard.

We would also observe that the value of collating information about recusals is that it enables analysis to be undertaken of the way the recusal systems operates and for this analysis to inform ongoing thinking about the administration of justice through the Scottish courts.

Register of financial interests

Turning now to the core question of a register of interests, the Committee's most recent consideration of the petition focussed on seeking to understand and explore some of the arguments put forward against the introduction of such a register.

These arguments have included—

- a risk of online fraud due to retribution from dissatisfied litigants (which, it was argued, may have an inhibitory effect on the administration of justice if judges start to decline roles on public bodies such as the board of the Scottish Courts and Tribunals Service) and,
- the possibility of the existence of a register of interests having a damaging effect on recruitment.

Members do, of course, have an understanding of the practical operation of a register of interests given the duties that apply to elected members. However, in considering the arguments put forward, we have not considered the role of judges as analogous to the role of elected members or had in mind any particular model for a register of interests that might be appropriate for judges.

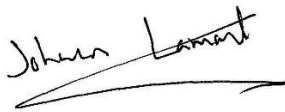
Instead, our consideration has been based on an understanding of the expectations that apply to all holders of public office, whether elected or unelected, in relation to disclosure of financial interests. As we noted above, such disclosures not only allow

for demonstration that decision-making is not influenced by personal interests but also prevent the *perception* of the influence of interests on decision-making.

Having considered these arguments and the thinking behind them, the Committee has not been convinced that a register of interests is an unworkable idea and it is the view of the Committee that such a register should be introduced.

Recognising that the Scottish Government and the Judicial Office for Scotland have indicated that they do not support the introduction of a register, the Committee today agreed to refer the petition to the Justice Committee, inviting that Committee to consider the petition further, in light of our recommendation.

Yours sincerely

A handwritten signature in black ink that reads "Johann Lamont". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Johann Lamont MSP
Convener