

PE1458/III

Petitioner submission of 4 September 2017

I would like to draw to the attention of members the appointment of Baroness Hale as President of the UK Supreme Court, which also serves as the most senior court in the UK for appeals from Scotland.

Noting Baroness Hale's recent comments in relation to the appointment of judges (*Let ministers pick judges, says Supreme Court chief Baroness Hale, The Times, 23 August 2017*) and other matters, I request Baroness Hale be invited to give evidence before the Petitions Committee.

As the President of the UK Supreme Court, Baroness Hale will be able to give a substantive account of why UKSC Judges no longer consider they require to adhere to the expectation of completing a register of interests as they did pre-UKSC days as Law Lords in the House of Lords.

Members may also wish to raise questions to Baroness Hale on the disparity of judicial transparency between Scotland and UKSC on judicial recusals, where as members are aware, the Judiciary of Scotland now list details of recusals, compared to the UKSC in London - where this information has not yet been made available to all UK users of the Supreme Court.

The position of the UKSC on the current lack of a register of judicial interests has entered Committee discussions on numerous occasions, and in evidence. Lady Hale's appointment as President would be a significant opportunity for this Committee to hear from the top UKSC judge on a court which also serves the interests of Scotland.

Lord Carloway evidence to Petitions Committee 29 June 2017

In response to evidence given by Lord Carloway to members I note Lord Carloway claims the creation of a register of interests would deter recruitment of candidates to become judges.

In no other walk of life including politics - does the existence of a register of interests deter recruitment of individuals to a profession or industry. A register of interests is designed to promote accountability and transparency. If someone were to be deterred from a job due to the existence of a register of interests there would quite properly be questions on why transparency would hinder someone from applying for a position of such authority, power – and – responsibility to serve the community.

Lord Carloway stated the critical distinction for judges in this case is that the judiciary require to be independent of any form of government – a point no one on this petition is questioning.

However, and to quote Scotland's first JCR Moi Ali in a letter to the Petitions Committee of 23 April 2014 **"The position of the judiciary is incredibly powerful. They have the power to take away people's assets, to separate families, to lock people away for years. Some of these people will not have committed a crime."**

To add to Ms Ali's comments, members will be aware a decision by the judiciary can effectively revoke an item of legislation created by the Scottish Parliament, or the House of Commons if a legal challenge in court to a law is successful. Examples of such cases - including *HMA V Cadder* – have occurred over recent years, requiring emergency legislation to address issues of successful judicial challenges.

One branch of the Executive which can overturn legislation from another branch, or our elected Parliaments, clearly requires the same implementation of transparency as the other.

In light of the judiciary's position as the most powerful branch of the Executive - and their considerable effect on public life, policy and legislation, an equivalent, or even greater level of transparency is required to be applied to the judiciary by way of creating a register of judicial interests.

In his evidence, Lord Carloway goes on to claim a register of judicial interests should only be created if the judiciary detect corruption within its own ranks.

This is not a credible position in terms of public expectation of transparency in 2017.

Registers of interest exist to ensure transparency and accountability in public life and there is now clearly a requirement for members of the judiciary to declare their interests as practiced by all others in public life.

In conclusion of Lord Carloway's evidence, I note the Lord President was unable to provide a single legitimate example of harm caused to the judiciary by the creation of a register of interests, nor one single reason why the judiciary should be exempt from the same levels of public transparency which rightly apply to everyone else.

There is cross party backing for the creation of a register of judicial interests, as has already been demonstrated at Holyrood during the motion debate of October 2014, and widespread support in the media and public, and from both Judicial Complaints Reviewers for judges to be required to declare their interests.

Creating a register of interests for members of Scotland's judiciary is the right thing to do.

Members will also be aware of the appointment of a new Judicial Complaints Reviewer – Mr Ian Gordon, formerly the Convener of the Standards Commission for Scotland.

Mr Gordon's appointment, along with concerns from the outgoing JCR Gillian Thompson, and calls for a review of the role and powers of the JCR - were reported in the *Sunday Herald* (*Calls for more funding as new judicial watchdog appointed, Sunday Herald, 15 August 2017*).

As Mr Gordon is well versed in standards, and public expectation of transparency, I ask the Committee call Mr Gordon to give evidence on his experience in relation to standards in public life, and any thoughts he may have as the new Judicial Complaints Reviewer - with regards to the creation of a register of judicial interests.

Members may also wish to note the retiring JCR - Gillian Thompson who gave evidence to the Committee in July 2015 has published information in her 2014/15 annual report in relation to her continued support for this petition, which available on the JCR's website here: <http://www.judicialcomplaintsreviewer.org.uk/judicial-complaints-reviewer-annual-report-20142015>

All annual reports from the Judicial Complaints Reviewer including those from Moi Ali, are available here: <http://www.judicialcomplaintsreviewer.org.uk/publications>

In light of the progress on this petition, public interest, and public debate, I would like to encourage this Committee to begin discussions with other Committees to determine which is the best way to advance this petition forward.

There is now five years of work, from MSPs, Public Petitions Committee members past & present, PPC clerks, two Judicial Complaints Reviewers, Parliamentarians from other jurisdictions, legal academics, submissions from members of the public, wide support in the media and across the spectrum of politics & public for the implementation of a register of judicial interests.

This team effort should rightly culminate in what will be a significant gain for the justice system, judiciary and courts – in terms of transparency and accountability, and a gain for this Parliament in creating the legislation to bring about such judicial transparency, and increase public confidence in our courts.

Finally, as Lord Carloway raised the subject of *problems in judicial recruitment if a register is created*, I urge the Committee write to the Sheriff's Association, the Scottish Justices Association, the Law Society of Scotland and the Faculty of Advocates on this particular subject, seeking their views in writing, so these issues can become a matter of public record in this debate.

References to coverage of Lord Carloway's evidence to this Petition in the media:

1. *Fresh call for all UK judges to register interests*, The National, 3 August 2017
2. *Herald View: Judges' arguments over register lack conviction*, The Herald, 30 June 2017
3. *Leader comment: Justice must be seen to be even-handed*, The Scotsman, 30 June 2017
4. *DON'T JUDGE Scotland's top judge sparks fury by rejecting calls for beaks to declare financial interests – in case it hits recruitment*, The Scottish Sun, 29 June 2017
5. *Victory for Scottish information campaigner in battle with Supreme Court*, The National, 31 August 2017
6. *More transparency, m'luds, will win you deeper trust*, The Times, 15 August 2017
7. *Lord Carloway tells MSPs: Register of interests would deter recruitment of judges*, The National, 30 June 2017
8. *Scotland's top judge claims judicial transparency would help "paranoid" revenge-seekers*, The Herald, 29 June 2017

9. *Call for judges to register all financial interests and investments*, The Herald, 27 June 2017
10. *Register whose time has come*, The Herald, 27 June 2017
11. *Holyrood first as Scotland's top judge addresses committee over call for register of interests*, The National, 29 June 2017
12. *Lord Carloway to appear at Holyrood over judges' register of interests*, The National, 24 June 2017
13. *Scotland's top judge hits out at "Register of Interest" for bench*, The Scotsman, 29 June 2017
14. *Sunday Herald View: Scrutiny of judiciary must be taken seriously*, The Sunday Herald, 13 August 2017

Judicial Complaints Reviewer coverage in media:

1. *Calls for more funding as new judicial watchdog appointed*, The Herald, 15 August 2017
2. *Former top policeman appointed as judicial complaints reviewer*, The Herald, 14 August 2017
3. *Judicial watchdog confesses to providing "poor service" due to the limitations of the role*, The Herald, 13 August 2017