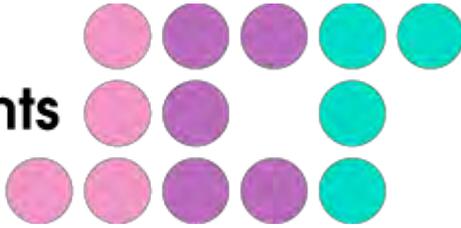


**judicial
complaints
reviewer**



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Andrew Howlett
Assistant Clerk to the Public Petitions Committee
Scottish Parliament
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17th May 2013

Dear Mr Howlett,

Consideration of Petition PE1458

Thank you for your letter of 25th April seeking my views on the above petition.

I am supportive of a register of interests, for the reasons outlined below. I believe that it would be beneficial for any register to encompass more than pecuniary interests. I have set out my thinking on this matter below, but I want to begin with a brief summary of the role of Judicial Complaints Reviewer (JCR), as it is still relatively new.

JCR Background Information

The Judicial Complaints Reviewer (JCR) was established under [The Judiciary and Courts \(Scotland\) Act 2008](#) to review the handling of complaints investigations into members of the judiciary, to ensure that they have been dealt with in accordance with the [Complaints about the Judiciary \(Scotland\) Rules 2011](#) (the Rules).

I was appointed in September 2011 as the first JCR. My service is free, independent and impartial. It is open to those who have complained about a member of the judiciary, and to those who have been the subject of a complaint.

Unlike my counterpart in England and Wales, who is an Ombudsman, the legislation allows me only to review the *handling* of investigations into complaints about members of the judiciary. I cannot review the outcome of those investigations, cannot get decisions overturned and cannot get redress (such as an apology or compensation). If I find that the Rules were not followed, I can make a referral to the Lord President, but thereafter the matter is in his hands.

Response to Petition: View of JCR

The petitioner states that a register of interests would increase the transparency of the judiciary and ensure public confidence in the judiciary's actions and decisions. I agree. Transparency tends to increase trust; conversely, lack of transparency is more likely to create suspicion.

Some of those responding to the petition (such as the Lord President, the Law Society of Scotland and the Scottish Government), argue that a register of interests is unnecessary, referring, among other things, to the complaints process as a safeguard.

In my role as Judicial Complaints Reviewer, I am part of that process. As is the nature of my role as a reviewer, I deal with dissatisfied people. It might be argued that they are not representative of the wider public, although that is not a view that I would take. Some people who contact me write of the judiciary sticking together, defending its own interests, and lacking transparency. If that view is a representative one, anything that increases judicial transparency is good both for the public *and also* for the judiciary. Greater transparency can only boost public trust and confidence and enhance the standing of the judiciary.

One argument put forward against a register of interests is that it is unnecessary, as there is provision under the Judiciary and Courts (Scotland) Act 2008 to regulate and investigate the conduct of judicial office holders, that a complaints process is in place and to date there have been no substantiated complaints alleging judicial bias. I have received requests to review complaints in which allegations of judicial bias have been raised. It may be that no “substantiated” complaints have been made, but that is not to say that no complaints of this nature have been made. I received one such review request a few months ago via a Member of Parliament, and I completed another one in the last few weeks, and there have been others too.

Registers of interest are now a normal part of public life and it seems right that the judiciary should not be out of line with what is required of others who hold high public office. I have completed registers of interest for my roles on public boards such as the Scottish Ambulance Service and Scottish Police Authority. It is not onerous to update this annually or when any changes in circumstance occur. Members of the Petitions Committee will have undertaken something similar themselves in their parliamentary life. Although not required to do so, I have prepared my own register of interest and will shortly be publishing it on my website. I believe that the JCR should be required to do this, either by legislation or as a requirement set out in their letter of appointment from the Minister.

Should a register of interests be limited to pecuniary interests? I believe that it should also encompass non-financial interests such as memberships, unpaid trusteeships, and any relevant close family/friendship links that may be perceived as a potential conflict of interest. One review I undertook last year concerned a complaint about a judge who had allegedly used their judicial position to promote a body that was alleged to have breached international law. Another concerned a sheriff who allegedly participated in a social function organised by the defender during the proof hearing.

We are very lucky in this country to have an independent judiciary. Better transparency would enhance the standing of that judiciary and bring judicial office holders into line with other holders of important roles in public life.

I am happy to provide any further information that you require.

Yours sincerely,

Moi Ali
Judicial Complaints Reviewer