



The Lord President

Parliament House
Edinburgh, EH1 1RQ

21 November 2014

Mr David Stewart
Convenor
Public Petitions Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Mr Stewart,

**Public Petition PE1458 on a Register of Interests for Members of Scotland's
Judiciary**

Thank you for your letter of 3 November.

Judiciary (Scotland) Rules

The new Judiciary (Scotland) Rules have been drafted. My office is now preparing a full response to the consultation that we carried out and is updating the guidance that will accompany the new Rules. The new Rules will simplify the complaints process for all concerned and clarify the matters that can properly be investigated.

The new Rules and accompanying guidance will be published early in 2015. I will send you a copy of them once they are ready.

Recusals by judges and sheriffs

Your Committee is interested to know how many recusals are "voluntary recusals" and how many have "arisen as a result of representations made to the bench". In practice, there are three possibilities.

The first group of cases are cases where judges or sheriffs realise, in advance of the hearing, that they have a personal interest in the case or have had some personal connection with a party or a witness and, without further ado, recuse themselves. This is by far the most common situation. In Annex A to this letter I append details of all such cases that have been reported to me.

The Right Honourable Lord Gill

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The second category are cases where judges or sheriffs realise that there is some factor in the case of which the parties may be unaware, that, while not necessitating recusal, might nevertheless cause them concern. In such situations, the appropriate procedure is for the judge or sheriff to draw the matter to the attention of the parties either before or at the outset of the hearing and invite their comments. If either party should suggest that the judge or sheriff should withdraw from the case, it will then be for the judge or sheriff to decide whether or not to withdraw. The legal principles affecting that decision are well established. In cases of this kind, it cannot be said that the judge or sheriff is recusing as a result of representations made by the bench. In reality, the recusal arises because of the initiative of the judge or sheriff in bringing the matter to the notice of the parties.

There have been only two such cases. They are set out in Annex B. In the first of these the sheriff drew to the attention of the parties a matter of which they were perhaps unaware, namely that a report contained in the process had been written by the wife of one of the other resident sheriffs at his court. He asked if either party wished him to recuse himself. The defenders, having considered the matter, asked him to recuse himself, which he then did. The second example arose at the start of a trial that involved evidence of an investigation carried out by the RSPB and in which many witnesses were officials of the RSPB. On becoming aware of this the sheriff drew to the attention of the parties that she was a member of the RSPB. She invited them to consider whether she should preside. Those representing the accused, having considered the matter, moved the sheriff to recuse herself, which she then did. In both of these cases the sheriff acted entirely properly and commendably in drawing to the attention of the parties a matter of which they were, or might have been, unaware.

The third situation that could arise is where a judge or sheriff who has an interest that would justify recusal says nothing about it and thereafter has to recuse himself or herself when a party raises the matter. We have no record of any instance of this.

DATE	COURT	NAME	TYPE OF ACTION	REASON FOR RECUSAL
24.3.14	Livingston Sheriff Court	Sheriff Edington	Civil	The Sheriff informed parties that the wife of one of the other resident Sheriffs was the author of a report contained with the process. The Sheriff asked parties if they wished him to recuse himself. The defenders then made a motion for the Sheriff to recuse himself which he then did.
8.4.14	Forfar Sheriff Court	Sheriff Veal	Criminal	Sheriff personally known to a witness.
10.4.14	Selkirk Sheriff Court	Sheriff Paterson	Civil	Sheriff had previously acted for a client in dispute against Pursuer.
23.4.14	High Court	Lady Wise	Criminal	Senator had previously acted for a relative of accused.
16.4.14	Glasgow Sheriff Court	Sheriff Cathcart	Criminal	Sheriff personally known to a witness.
13.5.14	Haddington Sheriff Court	Sheriff Braid	Civil	Known to pursuer's family.
14.5.14	High Court	Judge MacIver	Criminal (appeal)	Conflict of Interest.
20.5.14	Court of Session	Lord Matthews	Civil	Senator personally known to a witness.
19.6.14	Dingwall Sheriff Court	Sheriff McPartlin	Criminal	Sheriff presided over a trial involving the accused, where the issue to which the new case relates was spoken to by a witness.
20.6.14	Elgin Sheriff Court	Sheriff Raeburn QC	Criminal	Accused appeared before Sheriff as a witness in recent trial relating to same incident.
24.6.14	Glasgow Sheriff Court	Sheriff Crozier	Criminal	Sheriff personally known to proprietor of premises libelled in the charge.
26.6.14	Court of Session	Lord President	Civil	Relative of Senator acts for the respondent.
27.8.14	Court of Session	Lord Brailsford	Civil	Senator personally known to husband of the pursuer.
28.8.14	Oban Sheriff Court	Sheriff Small	Civil & Criminal	Sheriff personally known to a party.
22.10.14	Aberdeen Sheriff Court	Sheriff Cowan	Criminal	The Sheriff informed parties that she was a member of the RSPB before commencement of a trial as the case involved an investigation carried out by the RSPB. She invited the parties to consider whether she should take the trial. The defenders then made a motion for the Sheriff to recuse herself which she then did.

Sheriff Edington

The Sheriff drew to the parties' attention a possible difficulty, namely the wife of one of the other resident Sheriffs was the author of a report contained with the process. The Sheriff asked parties if they wished him to recuse himself. The defenders, having considered the issue, made a motion for the Sheriff to recuse himself which he then did.

Sheriff Cowan

The Sheriff drew to the parties' attention that she was a member of the RSPB before commencement of a trial as the case involved an investigation carried out by the RSPB and many witnesses were officers from the RSPB. She invited the parties to consider whether she should take the trial. The defenders, having considered the issue, made a motion for the Sheriff to recuse herself which she then did.