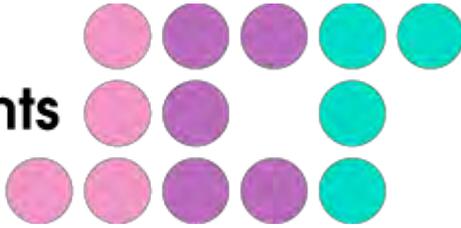


**judicial
complaints
reviewer**



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Andrew Howlett
Assistant Clerk to the Public Petitions Committee
Scottish Parliament
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28th February 2014

Dear Mr Howlett,

Consideration of Petition PE1458

On 9th October 2013 I followed up my evidence to the Petitions Committee with some additional information. I am now in a position to provide a further update which the committee may find helpful in advance of its deliberations this coming Tuesday.

When I wrote in October, it was to inform the Committee that the Lord President had confirmed that he would not be willing to provide me with information on the ultimate outcome of my referrals to him. I am pleased to report that he has since indicated that he recognises that it is helpful for me to be advised of the result of my referrals and that this will now happen. I very much welcome this development.

Another positive development is that the Lord President has agreed to my suggestion that complainers should, as a minimum, be provided with *at least* a summary of the investigation report into their complaint; previously they received no indication of what investigation had been carried out.

I am also pleased to see that the Lord President intends to publish information on recusals. While this is a step in the right direction towards greater transparency and accountability within the judiciary, regrettably it does not go far enough to address the concerns that complainers raise when they contact me.

As I understand it, the Lord President's proposal is simply to publish recusal information, but what about the occasions where a judicial office holder is unwilling to recuse despite being challenged to do so? Will such cases be reported upon publicly?

Since I gave my evidence to the committee last year, I have reviewed further cases in which conflicts of interest have been at the heart of the complaint. The recusal information the Lord President intends to publish will not help in situations where an alleged conflict of interest only comes to light *after* a court case is heard. The publication of a register of interest could actually avert the need for such complaints by enabling participants in a court case to challenge perceived conflicts of interest in advance or at the time, rather than *after* the case is heard. Without the publication of a register of interests, the publication of recusal data, while welcome, is of limited value.

If the issue were solely one of providing public access to recusal data, the Lord President's proposals would be of value. However, the issue from my perspective – as the only individual in Scotland who deals with judicial complaints reviews – is that the concern raised by complainers is failure to recuse; they do not complain about a dearth of recusal data.

It might be helpful if I outlined a typical scenario to help you see how the publication of recusal data alone will fail to address the concerns that those using my service report. Let us say that a defendant appears in court and the case is heard. Later the defendant discovers a potential conflict of interest and makes a complaint about the judge's conduct. In my experience it is likely that the complaint will be dismissed as being about 'judicial decision' (a decision that it is for a judge to make). Even if it proceeds to investigation – and most cases that reach me do not get this far – that investigation will be undertaken by a fellow judge. Should the complainer ask me to undertake a review, my hands are tied because all I can do is check that the complaints handling rules were followed. The rules say that a judge can investigate a complaint in whatever way they wish, so there are severely limited grounds on which I can challenge an investigation. Even if I believe that the wrong decision was reached, I cannot overturn that decision or even ask for it to be reinvestigated. Were there to be a register of judicial interests, individuals would be armed with the information to seek a judge's recusal if necessary, and would not be left having to deal with the matter after the event using the complaints system. This would be in everyone's interests.

I hope that you find the above helpful in your deliberations.

I also wanted to take the opportunity to respond to the Cabinet Secretary for Justice's letter of 31st October 2013 to the Petitions Committee in respect of the comment that "Premises within the Scottish Legal Complaints Commission's offices were secured for the JCR to allow her access to all workplace essentials and some administrative staff support. However, Ms Ali elected to work from home." The situation is that I arranged to use a shared 'hot desk' at the SLCC, but this was unsuitable as I did not know whether it would be available when I needed it and it was difficult to move files and equipment between my home and the SLCC. The SLCC do not believe that they should provide me with any administrative support, as their service is paid for by the legal profession and not the public purse.

You may know that I will not be seeking reappointment when my term of office ends in August. However, I am happy to provide any further information that the committee requires until that time.

Yours sincerely,

Moi Ali
Judicial Complaints Reviewer