

Justice Committee

9th Meeting, 2021 (Session 5), Tuesday 2 March 2021

Petitions – Letters from the petitioners and others

Background

1. This paper consists of letters received from a number of parties in relation to the petitions being considered by the Committee at today's meeting

Action

2. **Members are asked to take the correspondence into account during their deliberations.**

**Clerks to the Committee
March 2021**

Annex

Justice for Megrahi (JfM) submission to the Justice Committee of the Scottish Parliament's consideration of PE 1370 on 2nd March 2021

On 28th June 2011 the Public Petitions Committee referred the Justice for Megrahi (JfM) petition PE1370 to the Justice Committee for consideration. Its terms were as follows.

‘Calling on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.’

On 6th June, 2013, as part of its consideration, the Justice Committee wrote to Kenny MacAskill MSP, then Cabinet Secretary for Justice, asking for the Government’s comments on our request for a public enquiry. In his reply of 24th June 2013, while acknowledging, that under the Inquiries Act 2005, the Scottish Ministers had the power to establish an inquiry, he concluded:

‘Any conclusions reached by an inquiry would not have any effect on either upholding or overturning the conviction as it is appropriately a court of law that has this power. In addition to the matters noted above, we would also note that Lockerbie remains a live ongoing criminal investigation. In light of the above, the Scottish Government has no plans to institute an independent inquiry into the conviction of Mr Al-Megrahi.’

As you are aware the above petition was first heard by the Justice Committee on 8th November 2011 and has been kept open by the committee to allow various developments related to the Lockerbie case to be monitored.

On 6 March 2020 the Scottish Criminal Cases Review Commission (SCCRC), following a submission by the Megrahi family, referred the case back to the Court of Appeal.

On 15 January 2021 that court dismissed the appeal and upheld the original conviction. Aamer Anwar, the Megrahi family lawyer, has stated that the family will now appeal to the UK Supreme Court and will continue pressing for the UK government to release a secret document thought to implicate Iran and a Palestinian terror group.

The Crown Office, Police Scotland and the American law enforcement authorities have all confirmed that the investigation into the bombing remains open and that leads are being actively pursued.

As the Cabinet Secretary for Justice stated on 24th June 2013, the decision whether an independent inquiry should be held in Scotland depends on the criminal investigation being completed and matters having been fully determined judicially. Until this happens we believe it is vital that our petition remains under consideration in the Scottish Parliament.

Deep controversy still surrounds the whole circumstances behind the investigation of the Lockerbie bombing and the conviction of Abdelbaset Ali Mohmed al-Megrahi and until fully resolved this tragedy will continue to cast a shadow over the Scottish Justice System nationally and internationally.

We greatly value the Justice Committee's continuing scrutiny and political oversight, which we believe is very much in the public interest, and we would respectfully urge the Committee to allow Petition PE1370 to remain on the table.

Iain McKie, on behalf of the Committee of Justice for Megrahi.

Consideration of Petition PE1458

I would be grateful if you could please share this brief submission with the Committee.

This petition was lodged some nine years ago, and at the time I was the Judicial Complaints Reviewer for Scotland. I was called to give oral evidence, which I did and I have subsequently written several times to the Petitions Committee in support of the petition as it progressed at a snail's pace through that committee and finally onward to the Justice Committee.

I have some experience in the criminal justice system on both sides of the border, working in both policing and judicial complaints. It is my personal view that the standing of the judiciary, and public trust and confidence in the decisions of our independent judiciary, would be substantially enhanced were a register of judicial interests to be mandatory. Those working in senior positions in other areas of public life, including in the criminal justice system, are required to register their interests and I can see no reason why the judiciary should be exempt.

I hope therefore that a positive conclusion will be reached on this important matter.

Yours sincerely,

Moi Ali

Submission from Peter Cherbi, Petitioner PE1458

Noting the previous decision of the Justice Committee - to seek further evidence and a report on conflicts of interest of key stakeholders in the Scottish judicial system, and my understanding from clerks this has not taken place - I now encourage the Convener and members to commission this informative work to be carried out for the next session of the Scottish Parliament – and that the petition should progress to further debate, scrutiny and work to bring into law.

Extract from 10 March 2020 minutes: 7. Public petition PE1458: The Committee considered various pieces of correspondence received in relation to its ongoing consideration of the petition. The Committee agreed to keep the petition open and to seek further oral evidence in due course, in round-table format, from constitutional and academic witnesses. The Committee also agreed to seek further written briefings from the Scottish Parliament Information Centre (SPICe) in relation to other potential conflicts of interests relating to key stakeholders in the Scottish judicial system. The Committee will consider the scheduling of this work as part of its work programming up to spring 2021.

With regard to issues currently of interest to MSPs in relation to recent debates in the Scottish Parliament namely the malicious prosecution of Rangers Administrators by the Lord Advocate, the Lord Advocate's statement in the debating chamber, and his letter to the Justice Committee – I would like to take this opportunity to remind the Justice Committee the case of the Rangers Admins prosecution does have a significant interest to the petition and the creation of a register of judges' interests.

Evidence has been previously submitted to the Public Petitions Committee with regard to a scheduling of the Lord Advocate's judge wife in relation to one of the civil damages actions against the Lord Advocate & Chief Constable. This material appeared in the national newspapers and was widely reported at the time, and repeatedly since. A copy of the article is submitted afresh to this Committee given recent developments and member changes.

The scheduling of the Lord Advocate's own judge wife to hear one of the Rangers Administrators- Mr Whitehouse - £9 million damages claim against her own husband, the Lord Advocate – would not have occurred if a register of judges' interests had existed and contained information in relation to what are clear links between the judiciary and the Crown Office and Prosecution Service.

Of further interest in the Rangers admin prosecution case to this petition - is that of the role of former Lord Advocate Frank Mulholland – who initiated the prosecutions of the Rangers Admins during his term at the Crown Office. Mr Mulholland is now a member of Scotland's judiciary, and was given a judicial post almost immediately after he stepped down as Scotland's top law officer in 2016.

It is a matter of record, a number of MSPs have expressed public comments on the Rangers Admin prosecution case and the role of both the Crown Office and judiciary. As members are aware, this particular case strikes at the very heart of the independence, accountability and transparency of Scotland's prosecution service and judiciary.

It is therefore not too difficult a proposal to put forward that - had a register of judges interests existed currently - Lord Mulholland's role in the Rangers Admin prosecution would now be a matter of record within an official document – namely a publicly available register of judges interests – which should contain such information.

The previous Committee Convener Margaret Mitchell indicated in writing the Justice Committee was minded to support this petition as no convincing argument against a register of judges' interests has been made.

In Ms Mitchell's letter to the Lord President of 22 November 2019, the former Convener wrote: "I write regarding the above Petition which the Justice Committee considered on 19 November. After this evidence session and a previous one, the Committee is minded to support the principle behind the petition of a judicial register of interests as it has yet to hear a convincing case against."

The Public Petitions Committee reached the same conclusion after collecting hearings and evidence from 2013 to 2018. Members of the Petitions Committee supported the petition, and concluded a register of interests for Scotland's judiciary should be introduced.

The PPC's decision of 22 March 2018 stated: Decision: PE1458 by Peter Cherbi on Register of Interests for members of Scotland's judiciary. The Committee agreed to write to the Lord President and the Scottish Government setting out its view that a register of interests should be introduced and to refer the petition to the Justice Committee, under Rule 15.6.2 of Standing Orders, for its consideration.

Over the course of six years of work, the Public Petitions Committee amassed significant evidence in relation to issues where a register of judges' interests would assist accountability and transparency in the courts, and contribute to increased fairness in the justice system.

Matters presented to and considered by the Public Petitions Committee and more recently the Justice Committee - include issues such as judges failing to, or refusing to recuse in court cases, recusals not accurately reported by the Judicial Office, Scottish judges serving on dual judicial oaths in Scotland, UK and the Gulf States, and instances such as where judges have been told to ignore declarations of recusals – as the Justice Committee heard in written evidence from the head of the Scottish Justices Association on 27 January 2020.

I now urge the Convener and members to move ahead with this petition, commission the work earlier decided, and take this cross party & Petitions Committee supported public interest petition to the next stage and enable the next Justice Committee to continue work to create a framework for a register of interests for all members of Scotland's judiciary.

Peter Cherbi

Appendix from Mr Cherbi

Article in Sunday Mail/Daily Record – 24 December 2017

<https://www.dailyrecord.co.uk/news/scottish-news/last-minute-judge-swap-rangers-11743341>

Extract from programme by STV

Sent separately to MSPs