



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

15th Meeting, 2019 (Session 5)

Tuesday 28 May 2019

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **HM Inspectorate of Prisons for Scotland review of mental health services at HMP YOI Polmont:** The Committee will take evidence from—

Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland, HM Inspectorate of Prisons for Scotland;

Dr Helen Smith, Consultant Forensic Child and Adolescent Psychiatrist, NHS West of Scotland Child and Adolescent Mental Health Service.

2. **Secure care places for children and young people in Scotland:** The Committee will take evidence from—

Alison Gough, Director, The Good Shepherd Centre;

Audrey Baird, Executive Director for Education and Learning and Development, Kibble Education and Care Centre;

David Mitchell, Head of Operations, Rossie Young People's Trust;

Carol Dearie, Head of Service, St Mary's Kenmure;

Colin McConnell, Chief Executive, and Lesley McDowall, Health Strategy and Suicide Prevention Manager, Scottish Prison Service.

3. **Public petitions: PE1458** The Committee will consider the following petition—

PE1458 by Peter Cherbi on a register of interests for members of Scotland's judiciary.

J/S5/19/15/A

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The papers for this meeting are as follows—

Agenda items 1 and 2

Paper by the clerk - HMIPS Report	J/S5/19/15/1
Paper by the clerk - secure care	J/S5/19/15/2
Private paper - HMIPS Report and secure care	J/S5/19/15/3 (P)

Agenda item 3

Paper by the clerk - petition	J/S5/19/15/4
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Justice Committee

15th Meeting, 2019 (Session 5) Tuesday 28 May 2019

Report on Expert Review of Provision of Mental Health Services at HMP YOI Polmont

Background

1. As part of its inquiry on Secure Care for Children and Young People in Scotland, the Committee will take evidence on the recent report from HM Inspector of Prisons in Scotland on the review of mental health provision at Her Majesty's Prison and Young Offender Institute Polmont.
2. The Committee will take evidence at its meeting on 28 May from—
 - Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland, HM Inspectorate of Prisons for Scotland;
 - Dr Helen Smith, Consultant Forensic Child and Adolescent Psychiatrist, NHS West of Scotland Child and Adolescent Mental Health Service.
3. The Cabinet Secretary for Justice, Humza Yousaf, wrote to the Committee on 21 May on the publication of the report. That letter is attached in the annex to this paper, for information.
4. The Executive Summary of the Chief Inspector's report, setting out the recommendations of the report, is also attached in the annex for information.

Justice Committee Clerks
22 May 2019

LETTER FROM THE CABINET SECRETARY FOR JUSTICE ON HMIPS REPORT

Cabinet Secretary for Justice
Humza Yousaf MSP



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Margaret Mitchell MSP
Convenor
Justice Committee
Scottish Parliament
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21 May 2019

Dear Convenor,

EXPERT REVIEW OF MENTAL HEALTH AND WELLBEING SUPPORT FOR YOUNG PEOPLE IN CUSTODY

On 17 January I wrote to you providing Committee Members with an update on the Expert Review of the provision of mental health services and support for young people entering and in custody at HMP&YOI Polmont. I am writing now to update you that Her Majesty's Chief Inspector of Prisons (HMIPS), Wendy Sinclair – Gieben, has concluded her review and has, today, published a report (<https://www.prisonsofscotland.gov.uk/publications/report-expert-review-provision-mental-health-services-hmp-yoi-polmont>) outlining her findings alongside the routine inspection report for HMYOI Polmont

(<https://www.prisonsofscotland.gov.uk/publications/report-full-inspection-hmp-yoi-polmont-29-october-2-november-2018>) following the inspection 29 October -2 November 2018. I understand that Wendy Sinclair–Gieben and Dr Helen Smith, who has overseen the review, will be giving evidence to the Justice Committee regarding their findings on 28 May.

As you are aware, the principal aim of the review was to consider the arrangements for young people both untried and convicted with mental health and wellbeing needs entering and in custody, including the information available to the SPS prior to entering custody; reception, screening and assessment arrangements; staff training and procedures; health and well-being culture and support; and treatment and interventions during their time in custody. This includes suicide prevention measures.

I very much welcome the findings of this review which recognises HMP & YOI Polmont as a leading-edge prison where the wellbeing opportunities afforded for young people are evidence-based and impressive. Inspectors observed good and respectful

relationships between staff and prisoners with staff, prisoners and visitors feeling safe within the establishment.

I am grateful to HM Chief Inspector for Prisons for the breadth and depth of work that she and Dr Helen Smith and the wider review team have taken forward in just four months. And I am particularly grateful to the SPS and NHS staff at HMP YOI Polmont for the open and constructive way in which they have engaged with the review and also informed the recommendations.

The review makes wide ranging and detailed recommendations for change, which can be grouped under the following thematic recommendations:

- Social isolation, as a key trigger for self-harm and suicide, should be minimised, with a particular focus on those held on remand and during the early weeks in custody.
- To support more effective risk management, the Scottish Government and other agencies should work together to improve the sharing and transmission of information for young people entering and leaving custody.
- A bespoke suicide and self-harm strategy should be developed by the Scottish Prison Service and NHS Forth Valley for young people that builds on the strengths of the existing framework.
- NHS Forth Valley should develop a more strategic and systematic approach to prison health care, with accompanying workforce capacity review and improved adolescent and young people specific training.
- An enhanced approach should be developed, by the Scottish Prison Service, for the Talk to Me Strategy (TTM) suicide prevention work, with more intensive multi-disciplinary training and a more gradual phased removal for those placed on TTM.
- Enhanced and more consistent Death in Prison Learning Audit and Review (DIPLAR) processes, by the Scottish Prison Service, are required to maximise learning from previous incidents.
- Further work should be undertaken by Scottish Government to provide a central coordination point for Government reviews, use the existing analytical expertise to analyse comparative performance on suicides, and consider how the justice system can better respond to international evidence about maturation and alternative models of secure care.

I welcome the findings of the review. The Scottish Government will consider with the Scottish Prison Service, NHS Forth Valley and other partners further immediate actions in light of the review to improve the support and care for young people in custody. We will also reflect fully on the wider strategic recommendations in the report. We will provide an update on our response to the review recommendations by the end of June.

I trust this information is helpful.

EXECUTIVE SUMMARY
HMIPS REPORT ON EXPERT REVIEW OF PROVISION OF MENTAL HEALTH
SERVICES AT HMP YOI POLMONT

1. EXECUTIVE SUMMARY

1.1 Introduction

Every death of a young person is a tragedy, for them, their families and their friends, but also for Scottish society that has lost the opportunity of their talent and potential contribution.

I was asked by the Cabinet Secretary for Justice, Humza Yousaf MSP, to undertake an expert review of the provision of mental health services, for young people entering and in custody at HMP YOI Polmont.

Specifically:

- The information available to the Scottish Prison Service (SPS) prior to entering custody;
- reception, screening and assessment arrangements;
- health and wellbeing culture linked to ongoing support and supervision;
- treatment and interventions during their time in custody; and
- arrangements by SPS for their return to the community.

The full remit is set out in **Appendix A**, and the methodology adopted is described in **Section 6 – The Review Methodology**.

The review explored the wider issues of young people entering custody; it did not consider the specific circumstances or details of individual cases.

1.2 Context

It is important for any review to set its findings in context, in order that its purpose can be fully understood and appreciated.

The World Health Organization highlighted [choose life – A National Strategy and Action Plan to Prevent Suicide in Scotland](#) as exemplary in their approach to improve responses to people in distress.

The 2018 [Scotland’s Suicide Prevention Action Plan: Every Life Matters](#), has been designed to continue the work of the suicide prevention strategy and the strong downward trend in suicide rates in Scotland.

Action 8 of Scotland’s Suicide Action Plan states that the national suicide prevention leadership group will ensure that all of the actions consider the needs of children and young people.

The approach to youth justice in general in Scotland builds on the key principles and ethos of the highly influential [Kilbrandon Report](#), published in 1964. Concerned with legal provisions and systems to treat “children in trouble”, it concluded that there was little distinction between those who commit offences and those in need of care and protection and advocated a welfare-based approach.

Its visionary recommendations led to the establishment of the Children’s Hearing System, a distinct system with the responsibility of making decisions in the best interests of the child and where, for all but the most serious offences, children and young people who commit offences, and those in need of care and protection, are dealt with in the same forum, in the same way.

Over 50 years later, research has established a strong association between young people who have experienced some form of Adverse Childhood Experiences (ACEs) and those engaging in harmful or risk-taking behaviours, bringing them into contact with the criminal justice system. The [Edinburgh Study](#) evidences that contact with the criminal justice system is often detrimental to young people’s wellbeing and development.

The recognition of the impact of prolonged exposure to stress and trauma in childhood resonates with the central premise of the [Kilbrandon Report](#); that many young people who present a high risk of offending are often highly vulnerable, with complex needs but importantly also resonates with the SPS strategy for young people in custody.

The focus on early intervention and a welfare-centred approach to children and young people saw the development of the Whole System Approach (WSA), Scotland’s framework for young people involved in offending behaviour and the accompanying principles of Getting it Right for Every Child (GIRFEC) – offering the right help at the right time. It is a child-centred, welfare-focused approach, promoting in a multi-agency context early interventions to respond to the first signs of harmful behaviour. All of these issues emphasise the importance of a continued commitment to early and effective interventions and diversion.

The SPS commitment to ‘Unlocking Potential and Transforming Lives’ is echoed in their vision for young people:

“Using the time a young person spends in custody to enable them to prepare for a positive future”.

(SPS Vision for Young People in Custody, published December 2014)

This is in line with the Scottish Government’s national outcomes:

“Our young people are successful learners, confident individuals, effective contributors and responsible citizens”.

“We have improved the life chances for children, young people and families at risk”.

HMP YOI Polmont’s strategic plan is therefore built around the principles of improving life chances, GIRFEC, and the Curriculum for Excellence.

The SPS focus on managing risk within this framework is supported by their regular evaluation of their suicide and self-harm strategy, Talk to Me (TTM)¹ and the analysis of deaths in custody figures across Scottish prisons.

1.3 Findings

What has become clear in the evidence reviews and academic research is that being traumatised, being young, being held on remand and being in the first three months of custody increases the risk of suicide.

In positioning Scotland in comparison with other settings and jurisdictions, previous Council of Europe data indicates that Scotland performs comparatively well in having low levels of suicide in custody in contrast to a wide range of European jurisdictions. However, within the evidence review conducted at my request by the Scottish Centre for Crime and Justice Research (SCCJR) this positive finding is challenged, with their alternative analysis indicating that Scotland may have one of the highest rates of suicide amongst developed countries. This discrepancy only serves to highlight the challenges that exist in comparative analysis of prison suicide; with differing definitions of suicide and the varying quality of data on suicide.

In addition, the very small numbers of young people who take their own life in Scottish prisons inhibits robust extrapolation, and this review was therefore forced to conclude that further work should be undertaken to better understand Scotland’s position relative to other jurisdictions.

The [UK Justice Policy Review](#) notes that in Scotland:

“younger prisoners and ex-prisoners have the highest risk of death relative to people of the same age in the general population”.

Care needs to be taken regarding interpretation of any figures, given the very low numbers and the fact that fluctuation will be significant in percentage terms. For these reasons, there is a need to search for data that throws further light on the vulnerability of young people, levels of suicide and self-harm across their whole justice journey, including in the community, on supervision and in the period following release.

It can be very difficult to identify those who might or intend to take their own life and, despite the best efforts of committed and caring staff; the evidence suggests that not all suicide incidents can be prevented; even though this must remain the aspiration.

¹ Obtainable on request from the SPS

Suicide and self-harm are complex issues and many of those who go on to take their own life in custody do not display any obvious presentation that would identify them as at risk. Recent academic articles suggest:

“That there are no simple ecological explanations for prison suicide. Rather, it is likely to be due to complex interactions between individual-level and ecological factors. Thus, suicide prevention initiatives need to draw on multi-disciplinary approaches that address all parts of the criminal justice system and address individual and system-level risk factors”. (Fazel et al 2017)

During the HMIPS inspection of HMP YOI Polmont, we found that the wellbeing opportunities afforded for young people were evidence-based, leading edge and impressive. However, the take up of the remarkable opportunities remained consistently poor. This was compounded by a high level of staff absence and a cultural acceptance that remand prisoners are not given the same level of opportunities to make the best of their time in custody.

As our review has progressed, we have identified other themes or issues that either set our work in context or set parameters around our conclusions. Over the last 10 years for example, Scotland has seen a welcome dramatic reduction in the level of children and young people coming into custody, following a decisive shift towards prevention. The reasons behind these reductions is partly attributed to the [Whole System Approach](#) (WSA), but are again likely to represent a more complex combination of government strategies.

What is clear is that as numbers reduce in custody, the needs of those few who are imprisoned are likely to be more complex; with young people reporting multiple types of trauma exposure in their lives and consequent significant vulnerability.

There is increasing evidence and legislative support from the [Children and Young Person’s Act 2018](#) that young people are experiencing later maturation and require individualised age and stage appropriate services and supports. The youth justice processes should therefore be considered for extension to a wider age group, taking advantage of the success of the WSA and the evidence in respect of maturation. In this regard, the Scottish Association for Mental Health (SAMH) report recommends that:

“By 2020, let children and young people stay in specialist services till age 25”.

Including a wider age group raises new possibilities for prison population management and distribution; retaining the possibility for specialism, but potentially allowing young people to be closer to home.

Arguably, there is also a need for a more integrated policy approach to meet the specific needs of adolescents, who too often fall between services designed for either children or adults. The SAMH report also usefully draws attention to this issue as follows:

“The extensive inequalities in mental health outcomes by gender, age and SIMD², demonstrate the need for a range of national policies to give direction to and support this agenda, these include policies on nutrition and physical activity, drugs, alcohol, suicide prevention, poverty, inequality and also many others that less directly shape the context for mental health”. (Tod et al 2013)

A number of previous reports stress the need for a more strategic approach to prison healthcare overall, addressing key service issues such as staff recruitment and retention.

“It was highlighted that nurses working in the prisons had low morale because of recruitment and retention issues and a lack of understanding from the wider NHS of the role of prison healthcare. Furthermore, the Health and Sport Committee (2017) revealed difficulties in recruiting staff to work in prisons and an underutilisation of skills”. (Draft TTM Evaluation 2018)

The well-evidenced background of young people in custody, who are generally from marginalised communities with poor access to primary healthcare, suggests that services should be based on levels of assessed need, which often exceed those within the general population. The Scottish Parliament’s Health and Sport Committee (2017) report concludes that providing prisoners with the best possible healthcare has advantages for the individual, the community, and the NHS, and represents a:

“Unique opportunity to tackle health inequalities within a discrete section of the population”.

Engaging with young people, their families and staff from all agencies has been a critical part of our review process, and we have sought at all times to take account of their views and experiences when considering our conclusions and recommendations. What is remarkable is the extent to which the views and experiences of the different focus groups chimed with each other and with findings in the evidence review.

1.4 Conclusions

Many of our conclusions build on recommendations made previously to the Scottish Government, the SPS and its partner agencies. For some issues, like the capacity to share information electronically between agencies, previous work may have been initiated, but ambitions not yet fully realised. Other recommendations seek to offer fresh perspectives on longstanding challenges that face the many dedicated, caring, and compassionate individuals in the NHS, SPS, and partner agencies who work so hard to help our young people, some with the most complex mental health needs, levels of distress and challenging behaviours.

² Scottish Index of Multiple Deprivation

The Scottish Government is taking forward an ambitious penal reform programme that includes increasing the use of community sentences and reducing the use of short-term sentences and remand. HMIPS welcome this initiative, but to support real progress in penal reform, Scotland will need to make further strategic and cultural shifts. These include maximising support for those held on remand, information sharing to inform the management of young people³, facilitating the maximum use of diversion⁴ (where appropriate) and recognising the growing evidence about maturation.

Some of these shifts have the capacity to change our youth justice landscape substantially but, like the WSA, will take an investment from all partners of time, effort and resources. In a time of increasing pressures on the SPS and its partner agencies, both from rising prison populations and fiscal challenges, that will not be easy. Like the introduction of WSA and accompanying initiatives, the upfront investment of additional resources may yield significant benefits downstream. However, the risk of a further rise in incidents of self-harm and suicide amongst young people in custody will only intensify if action is deferred.

1.5 Key recommendations

There are two high level strategic issues that merit specific attention:

1. The lack of proactive attention to the needs, risks and vulnerabilities of those on remand and in early days of custody.
2. The systemic interagency shortcomings of communication and information exchange across justice that inhibits the management and care of young people entering and leaving HMP YOI Polmont.

The review's seven key recommendations, with a wide range of detailed supporting suggestions, are set out with a summary of the findings and conclusions in Section 13.

1. Social isolation, as a key trigger for self-harm and suicide, should be minimised, with a particular focus on those held on remand and during the early weeks in custody.
2. To support more effective risk management, the Scottish Government and other agencies should work together to improve the sharing and transmission of information for young people entering and leaving custody.
3. A bespoke suicide and self-harm strategy should be developed by the Scottish Prison Service and

³ Echoed in recommendation 7 in the IPS Thematic Report on the Prosecution of Young People (2018)

⁴ Recommendation 5 of the IPS Thematic Report on the Prosecution of Young People (2018)

NHS Forth Valley for young people that builds on the strengths of the existing framework.

4. NHS Forth Valley should develop a more strategic and systematic approach to prison healthcare, with accompanying workforce capacity review and improved adolescent and young people specific training.

5. An enhanced approach should be developed, by the Scottish Prison Service, for the Talk to Me Strategy (TTM) suicide prevention work, with more intensive multi-disciplinary training and a more gradual phased removal for those placed on TTM.

6. Enhanced and more consistent Death in Prison Learning Audit and Review (DIPLAR) processes, by the Scottish Prison Service, are required to maximise learning from previous incidents.

7. Further work should be undertaken by Scottish Government to provide a central coordination point for Government reviews, use the existing analytical expertise to analyse comparative performance on suicides, and consider how the justice system can better respond to international evidence about maturation and alternative models of secure care.

Wendy Sinclair-Gieben

Wendy Sinclair-Gieben

Her Majesty's Chief Inspector of Prisons for Scotland

Justice Committee

15th Meeting, 2019 (Session 5) Tuesday 28 May 2019

Inquiry on Secure Care for Children and Young People in Scotland

Background

1. At its meeting on 11 April 2019, the Committee agreed an approach to a short-term inquiry to look at key issues relating to the provision of mental health services and secure care places for children and young people in Scotland, the current and future capacity and structure of secure care.
2. The principle aim of this short-term inquiry is to inform committee and parliamentary debate on the issue, and to seek clarity from the Scottish Government on any issues the Committee believes may require further consideration.

Approach to the inquiry

3. The Committee agreed to seek evidence from the following stakeholders-
 - HM Inspector of Prisons in Scotland on the review of mental health provision at Her Majesty's Prison and Young Offender Institute Polmont;
 - Representatives of the Scottish Prison Service and the independent providers of secure care services in Scotland;
 - Other key stakeholders involved in supporting, monitoring or delivering mental health care provision for children and young people in Scotland.
4. The Committee will take evidence from three panels of witnesses at its meetings on 28 May, and 11 June 2019 respectively. The Committee has also sought written submissions from relevant stakeholders. These [submissions](#) are available on the inquiry website.
5. Following the conclusion of evidence taking, the Committee will consider whether it wishes to write to the Cabinet Secretary for Justice, highlighting any issues and seeking clarification on any questions which may arise as a result of the evidence taking.
6. Following a response from the Scottish Government to any such letter, the Committee would then consider what further action, if any, it wishes to take on the topic.

Evidence taking

7. As its meeting on Tuesday 28 May, the Committee will first take oral evidence from **Wendy Sinclair-Gieben**, HM Chief Inspector of Prisons for Scotland and **Dr Helen Smith**, Consultant Forensic Child and Adolescent Psychiatrist, NHS West of Scotland Child and Adolescent Mental Health Service.

8. This session will focus on the findings of the [recently published report](#) by HM Inspectorate of Prisons for Scotland of mental health services at HMP YOI Polmont. The Cabinet Secretary for Justice, Humza Yousaf MSP, also [wrote to the Committee](#) on 21 May, setting out an initial response to the report from the HMIPS.

9. Following this, Committee will then take evidence from a second panel of witnesses, consisting of—

- **Alison Gough**, Director, The Good Shepherd Centre;
- **Audrey Baird**, Executive Director for Education and Learning & Development, Kibble Education and Care Centre;
- **David Mitchell**, Head of Operations, Rossie Young People's Trust;
- **Carol Dearie**, Head of Service, St Mary's Kenmure;
- **Colin McConnell**, Chief Executive, and **Lesley McDowall**, Health Strategy and Suicide Prevention Manager, Scottish Prison Service.

10. These two panels will allow the Committee to consider various issues in relation to the provision of secure care for children and young people in Scotland, for example-

- Any progress made since the Scottish Parliament Health and Sport Committee's 2017 inquiry on Healthcare in Prisons on the development of mental health care for children and young people in HMP YOI Polmont;
- The development of mental health care for children and young people in secure care units;
- Whether Scotland is meeting its international human rights obligations to children and young people in secure care/custody;¹
- Any capacity and demand issues within the sector;
- Any funding, resources and future development issues within the sector.

11. The Committee then expects to hear from a further panel of witnesses at its meeting on 11 June 2019. The organisations represented on that panel will be confirmed in due course.

Further action

12. Following this, the Committee will consider the evidence received and decide whether to write to the Cabinet Secretary for Justice, before the end of June 2019.

Justice Committee clerks
23 May 2019

¹ Scottish Government Progressing Children's human rights (2018): 8.8 Young Offenders Institutions: <https://www.gov.scot/publications/progressing-human-rights-children-scotland-report-2015-2018/pages/11/>

Justice Committee

15th Meeting, 2019 (Session 5), Tuesday 28 May 2019

Petitions

Note by the clerk

Introduction

1. At its meeting on 28 May 2019, the Committee will consider the following petition which has been referred to it by the Public Petitions Committee:

- [PE 1458](#): Register of Interests for members of Scotland's judiciary

2. The Justice Committee webpage summarising its consideration of this petition in this Session can be found [here](#).

3. Further general background information on the petitions process, provided by the Public Petitions Committee, can be accessed on its dedicated [webpage](#).

Options available to Committees considering petitions

4. Once a petition has been referred to a subject Committee it is for the Committee to decide how, or if, it wishes to take the petition forward. Among options open to the Committee are to:

- keep the petition open and write to the Scottish Government or other stakeholders seeking their views on what the petition is calling for, or views on further information to have emerged over the course of considering the petition;
- keep the petition open and take oral evidence from the petitioner, from relevant stakeholders or from the Scottish Government;
- keep the petition open and await the outcome of a specific piece of work, such as a consultation or piece of legislation before deciding what to do next;
- close the petition on the grounds that the Scottish Government has made its position clear, or that the Scottish Government has made some or all of the changes requested by the petition, or that the Committee, after due consideration, has decided it does not support the petition;
- close the petition on the grounds that a current consultation, call for evidence or inquiry gives the petitioner the opportunity to contribute to the policy process.

5. When closing a petition, the Committee should write to the petitioner notifying the decision and setting out its grounds for closure. Closing a petition does not preclude the Committee taking forward matters relevant or partly relevant to the petition in another way.

PE 1458: Register of Interests for members of Scotland's judiciary*Terms of the petition*

[PE 1458 \(lodged 7 December 2012\)](#) Calls on the Scottish Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill (as is currently being considered in New Zealand's Parliament) or amend present legislation to require all members of the Judiciary in Scotland to submit their interests and hospitality received to a publicly available Register of Interests.

6. The petition was introduced to the Parliament in 2012 and has been considered by the Public Petitions Committee between 2012 and 2018. The Public Petitions Committee wrote to the [Lord President](#) and the then [Cabinet Secretary](#) for Justice and in March 2018, recommending that a register of judicial interests should be introduced. The petition was then referred to the Justice Committee on 31 May 2018. The Cabinet Secretary's response to the Public Petitions Committee simply noted the Committee's conclusions and the petition's referral to the Justice Committee. The [webpage for the petition](#) contains information on the Public Petitions Committee's consideration of the petition, as well as all submissions received.

Justice Committee consideration

7. The Justice Committee last considered the petition at its meeting on [5 February 2019](#). In advance of that meeting, clerks contacted key stakeholders¹ who contributed to the Public Petitions Committee's scrutiny of the petition to ask if they had anything further to add to their previous submissions. Only the Scottish Courts and Tribunals Service (SCTS) responded, stating that it had nothing further to add to the submission it made to the Public Petitions Committee in 2013.

8. At its meeting on 5 February 2019, the Committee agreed to keep the petition open while seeking further information in relation to issues raised in the petition.

9. The Committee agreed to write to the now Cabinet Secretary for Justice, Humza Yousaf, to seek his views on the petition. In his response, the Cabinet Secretary [stated](#) that "I don't think it is necessary to establish a register of interests. I share the views of both my predecessors that there are sufficient safeguards in place to ensure the impartiality of the judiciary". A copy of his response is attached at **Annex A**.

10. The Committee also asked for further information on registers of interests in other jurisdictions, as well as the current system in Scotland of a register of recusals.

11. Registers of interests operate successfully in other jurisdictions, including in Norway. Further information on the Norwegian system can be found on this [webpage](#). The petitioner has also highlighted financial disclosure reports for judges in the USA.²

¹ Views were sought from the Minister for Community Safety, Lord President of the Court of Session, the Crown Office and Procurator Fiscal Service, the Law Society of Scotland, the Faculty of Advocates, the Scottish Courts and Tribunals Service and the Judicial Complaints Reviewer.

² See <https://fixthecourt.com/2018/07/fdshortlisters/> and <https://fixthecourt.com/2017disclosures/>

12. A briefing on the Register of Pecuniary Interests of Judges Bill, which was introduced but not passed by the New Zealand Parliament, has previously been produced by SPICe and is available [here](#).

13. In relation to the current system in Scotland, Scottish judges are required to act impartially as a result of the [judicial oath](#), [the Statement of Principles of Judicial Ethics](#) and statutory rules ([for details see the initial SPICe briefing on the petition](#)).

14. When a judge is of the view that participating in a case could threaten this impartiality, or could reasonably be viewed in this way (for example due to a personal connection with a witness/litigant or a conflict of interest, or perceived conflict of interest – including a pecuniary one), then they are required to step down, or recuse themselves, from hearing the case. [More details on the rules on recusals can be found in the Statement of Principles of Judicial Ethics](#) (paras 5.3-5.4).

15. Following issues raised by the petitioner, the Judicial Office for Scotland set up a [register for recording recusals](#) which came into force on 1 April 2014. As of 1 February 2018, the register was extended to include members of the Scottish Tribunals.

16. The register records cases where a judge grants or refuses a formal motion for recusal in open court (including motions on the judge's own initiative or from one of the parties to the case).

17. In advance of the Committee's consideration of the petition at its meeting on 28 May, submissions have been received from the petitioner (see **Annex B**) and Moi Ali, former Judicial Complaints Reviewer (see **Annex C**). In his submission, the petitioner suggests that the Justice Committee should take evidence from Moi Ali.

18. The Committee is asked to consider what, if any, further action it wishes to take in relation to this petition.

PE1458: Register of Interests for members of Scotland's judiciary

Letter from the Cabinet Secretary

Thank you for your letter of 20 February seeking my views on the above petition and whether it remains the Scottish Government's position that a register should not be introduced.

I have given consideration to the matter and I don't think it is necessary to establish a register of interests. I share the views of both of my predecessors that there are sufficient safeguards in place to ensure the impartiality of the judiciary. These safeguards are the judicial oath, the statement of principles of judicial ethics and the various rules made under the Judiciary and Courts (Scotland) Act 2008 which concern complaints about the judiciary and judicial conduct. I note that no further evidence has been provided to the Justice Committee that strengthens the arguments already put forward in favour of the introduction of the register.

Cabinet Secretary for Justice
3 April 2019

PE1458: Register of Interests for members of Scotland's judiciary**Submission from the petitioner**

Noting the previous hearing of the petition, I am grateful to members comments in relation to openness and transparency not being a contradiction to the independence of the judiciary, and proposals by members to investigate the way other jurisdictions handle recusals and judicial declarations.

I would refer members to such jurisdictions as Norway and the USA – which both operate registers of judicial interests, and judicial recusals. I believe both could serve as a model to assist in the creation of a publicly available register of interests for Scotland's judiciary.

Given members comments in relation to evidence collected by the Public Petitions Committee, I do feel it would be productive for the Justice Committee to hear further evidence from Scotland's first Judicial Complaints Reviewer – Moi Ali.

I believe such an evidence session would refresh members views, and support the confidence exhibited in previous expressions of cross party support during the main chamber debate on this petition in October 2014, and enhance the backing of the Public Petitions Committee in requesting the Justice Committee consider this matter.

As I have previously indicated, I believe members would also benefit by hearing in an evidence session - from Petitions Committee members whose work brought this petition forward, and hearing from MSPs such as Alex Neil – who have looked closely at how the judiciary have handled questions of transparency and conflicts of interest.

Noting the Justice Secretary's response to the Committee, it appears unfortunate the Minister was not informed of new and widely reported evidence submitted to members in relation to senior Scottish judges holding dual judicial posts, both in Scotland and in the Gulf states – and notably with no reference to such by the Judiciary of Scotland.

It is worth noting, that due to the passage of time of this petition – considerable, and regular presentations of new evidence to the Public Petitions Committee - in relation to issues such as a lack of judicial transparency, failure of judges to interact or cooperate with parts of the Judiciary & Courts (Scotland) Act 2008 – particularly interaction with the Judicial Complaints Reviewer - and widely reported developments in court proceedings from conflicts of interest to failures to recuse – depict a markedly different view of the current state of judicial transparency, and how a Register of Interests would benefit both judges, and increase public confidence in the justice system.

None of these matters are in doubt. The Public Petitions Committee evidence – both in written form and live evidence sessions with witnesses – including two of Scotland's top judges, both previous Judicial Complaints Reviewers, academics and Ministers, gave the Public Petitions Committee the confidence to support this petition and refer it to the Justice Committee for further action.

This is indeed contrary to the Scottish Government's position that the judicial oath, the statement of principles of judicial ethics and the various rules made under the Judiciary and Courts (Scotland) Act 2008 operate as a 'safeguard' when the overwhelming

evidence is – they do not work in terms of increasing transparency, accountability or public confidence in the judiciary.

Indeed, the statistics in the Register of Recusals – created as a result of this petition – now total well over 100 instances of judicial conflicts of interest – and it is important to note we would not have known about previous to this petition and the investigative work of MSPs and the media who followed these events.

It is also worth noting the Recusals Register started out in April 2014 as a very bare reference log, without much detail - notably excluded tribunal members and still does not appear to include over 400 Justices of the Peace.

The Register of Recusals has only been reformed into the slightly more detailed state in which it currently exists, due to requests from the Public Petitions Committee, MSPs and direct discussions between myself and the Judicial Office – which I have previously provided to the Petitions Committee during their work.

Clearly, there is still much work to do on the Register of Recusals – and this may be an issue which the Justice Committee could investigate further.

Given the work by MSPs on this petition to-date, and the cumulative evidence collected by the Public Petitions Committee from witnesses and written submissions – from both sides of the debate, it is clear there is a considerable benefit to both the justice system and public expectation of transparency - to creating a register of interests for members of Scotland's judiciary, in a form at least as already exists for all other branches of public life, including members of the Scottish Parliament.

Peter Cherbi
21 May 2019

PE1458: Register of Interests for members of Scotland's judiciary

Submission from Moi Ali

The following submission is for the consideration of the Justice Committee when it meets on 28 May 2019 to discuss a register of interests for the judiciary.

In 2014 when I was Judicial Complaints Reviewer, I wrote to the Public Petitions Committee in support of the Register. I was moved at that time to write in response to the then Justice Secretary's submission to the Committee that such a register was unnecessary. He cited the complaints rules as being one of the three safeguards that made a register unnecessary.

Today I have been prompted to write this letter having seen the current Justice Secretary's almost identically-worded submission to this committee. It is simply not the case that the complaints rules offer protections such that a register of interest is not required. Rather than repeat the arguments again, I have attached the letter³ I wrote in 2014. It remains as relevant today as it did at back then.

I hope that the committee will see that requiring the judiciary to meet the same standards of transparency as others in public life will in no way compromise their independence.

Moi Ali
21 May 2019

³ The letter dated 23 April 2014 can be accessed on the Public Petitions Committee webpage here: http://external.parliament.scot/S4_PublicPetitionsCommittee/General%20Documents/PE1458_CC_JudicialComplaints_Reviewer_23.04.14.pdf