



The Scottish Parliament  
Pàrlamaid na h-Alba

**JUSTICE COMMITTEE**

**AGENDA**

**28th Meeting, 2019 (Session 5)**

**Tuesday 19 November 2019**

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

1. **Decision on taking business in private:** The Committee will decide whether to take items 3 and 4 in private.
2. **Public petition PE1458:** The Committee will take evidence on petition PE1458 by Peter Cherbi, on a Register of Interests for members of Scotland's judiciary from—

Moi Ali, former Judicial Complaints Reviewer.

3. **Public petition PE1458:** The Committee will consider the evidence heard on petition PE1458.
4. **Secure care places for children and young people in Scotland:** The Committee will consider a draft report.

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The papers for this meeting are as follows—

**Agenda item 2**

Paper by the Clerk

J/S5/19/28/1

PRIVATE PAPER

J/S5/19/28/2 (P)

**Agenda item 4**

PRIVATE PAPER

J/S5/19/28/3 (P)

## Justice Committee

28th Meeting, 2019 (Session 5), Tuesday 19 November 2019

Petition PE 1458

Note by the clerk

### Introduction

1. At its meeting on 19 November 2019 the Committee will take oral evidence on Public Petition PE 1458 on a Register of Interests for members of Scotland's judiciary. The paper sets out the Committee's consideration of this petition to date.
2. This evidence session follows a decision of the Committee to invite the petitioner, along with the former Judicial Complaints Reviewer, to give oral evidence on the petition.
3. At its meeting on 19 November the Committee will take evidence on the petition from:
  - Peter Cherbi, petitioner; and
  - Moi Ali, former Judicial Complaints Reviewer.
4. The Committee also invited the Lord President of the Court of Session, Rt Hon Lord Carloway to give oral evidence on the petition. Lord Carloway declined the invitation, setting out his reasons in a [letter to the Committee on 23 August 2019](#).

### Background to the petition

5. The terms of the petition are as follows-

[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.
7. 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 all information of the consideration of the petition to date, as well as all submissions received.

*Justice Committee consideration to date*

8. The Justice Committee considered the petition for the first time on 25 September 2018, and again on 5 February 2019. In advance of that meeting, clerks contacted key stakeholders<sup>1</sup> 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.

9. A response was received from the Scottish Courts and Tribunals Service (SCTS), confirming it had nothing further to add to on the petition, over and above the [submission](#) it made to the Public Petitions Committee in 2013.

10. Further submissions were received from the Cabinet Secretary for Justice, the petitioner and Moi Ali. These were considered on 28 May 2019 and are attached again, for information, in the annex to this paper.

### **Judicial Complaints Reviewer**

11. The Judicial Complaints Reviewer ("JCR") was set up by the Judiciary and Courts (Scotland) Act 2008. The [role of the JCR is to review complaints](#) about Judicial Office for Scotland investigations into the conduct of the judiciary to check that they have been carried out in accordance with the rules.

12. The JCR cannot review the outcome of investigations or get decisions overturned. The JCR can only make written representations to the Lord President about the handling of investigations. The Lord President must have regard to the JCR's representations.

13. The JCR role is a part time one. Moi Ali was the first JCR, having been appointed in September 2011. The second JCR was Gillian Thompson OBE. The current JCR is [Ian Gordon](#) OBE.

14. Further information on the role of the JCR can be found in the [JCR's annual report for 2017/2018](#).

### **For decision**

**15. The Committee is invited to question the witnesses and then decide what further action, if any, it wishes to take on the petition.**

**Justice Committee clerks  
14 November 2019**

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<sup>1</sup> 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.

**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 letter<sup>2</sup> 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

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<sup>2</sup> 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\\_Judicial\\_Complaints\\_Reviewer\\_23.04.14.pdf](http://external.parliament.scot/S4_PublicPetitionsCommittee/General%20Documents/PE1458_CC_Judicial_Complaints_Reviewer_23.04.14.pdf)