



The Lord President

Parliament House
Edinburgh, EH1 1RQ

David Stewart MSP
Convenor Public Petitions Committee
c/o Public Petitions Clerks
Room T3.40
The Scottish Parliament
Edinburgh

28 May 2013

Dear Mr Stewart,

PUBLIC PETITION PE1458

Thank you for your letter of 18 April 2013.

I regret that I again have to decline your committee's invitation to appear before it. I do so for reasons of constitutional principle. I intend no discourtesy to your committee.

Judges have from time to time given evidence to committees of the Scottish Parliament on matters that affect the administration of justice in Scotland. I hope that that has been helpful in the legislative process. Judicial participation in the work of the committees must however be kept within prudent limits.

Section 23(7) of the Scotland Act provides *inter alia* that the Parliament may not require a judge to attend its proceedings for the purposes of giving evidence. This is not a loophole. It is a necessary part of the constitutional settlement by which the Parliament is established. Its purpose is to protect the independence of the judiciary, a vital constitutional principle that is declared in section 1 of the Judiciary and Courts (Scotland) Act 2008.

When a committee invites a judge to give evidence before it, I have to decide whether the subject matter might infringe the principle of judicial independence; and whether the evidence required could be satisfactorily given in writing.

In my correspondence with you I have set out carefully why I believe that a register of interests for the judiciary is both unnecessary and unworkable. I have directed you to an independent scrutiny of the judiciary in the United Kingdom that has on two occasions considered and rejected the need for such a register. I have also

The Right Honourable Lord Gill

directed you to the decision of the United Kingdom Government to accept that finding, and to the decision of the United Kingdom Supreme Court not to create a register. That I think, is as much useful evidence as I am in a position to give on the subject; but if there is any further information that you feel would be relevant and helpful to the committee, please let me know and I will consider the matter further.

In your letter you have asked whether any central record has been kept of failures by judges to recuse themselves. The Lord President has been responsible for matters concerning the conduct of judicial office holders since April 2010. During that period there has been no case in which a judge has been found guilty of misconduct for a failure to recuse.

If you would find it helpful I would be pleased to meet with you to discuss the constitutional implications of the Committee's invitation.