

INTRODUCTION

In August 2011 I was invited by the First Minister of Scotland to become an independent adviser to him on matters relating to the Ministerial Code along with Dame Elish Angiolini. This was to be an unpaid role. I immediately accepted it not singularly out of a real respect for Dame Angiolini as a former Lord Advocate and our illustrious predecessors George Reid and David Steel but in the Faculty of Advocates of Edinburgh there is an unequivocal duty to respond positively to any request by a democratically elected leader. My learned predecessor Lord Cameron of Lochbroom QC and also my devil master was utterly dismissive. He advised: "Your duty is to do to the best of your ability what is agreed of you and do not telephone me for further advice!"

He was wholly correct but I hope that I can bring some personal experience and expertise to whatever challenges on the Code the First Minister has now or in the future with a fearlessness that has always been the badge of the Faculty of Advocates.

ORIGINAL COMPLAINT

Mr Jim Sheridan MP for Paisley and Renfrewshire North complained to the First Minister concerning the award of an Honour to Brian Souter. As I understood it, his complaint was that directly or indirectly Alex Salmond had intervened to secure a knighthood for Brian Souter not on the basis that he had been a distinguished entrepreneur in Scotland but he had made a substantial contribution to the SNP. Mr Sheridan seized upon the apparent inconsistency that the recommendation of a knighthood came from the Scottish Government whilst Alex Salmond and ministerial colleagues denied any involvement. That complaint was simple enough but after I wrote to Mr Sheridan I received this reply, which to avoid any ambiguity, I set out in full:

TAKE IN

CONCLUSION

To Alex Salmond I wrote that, as I have done in past inquiries, I would leave "no stone unturned". To his credit he replied that was exactly what he had anticipated. As part of that investigation I wrote to the Cabinet Office who responded "In confidence". I take no exception to that qualification but quote the salient section from [REDACTED]'s reply:

"In this particular instance, I have not been able to find any evidence that Mr Salmond approached my office either directly or indirectly with regard to an honour for Sir Brian Souter. There is certainly no written communication from him on our files."

In my time, and as I understand it, as was the practice of the subsequent Labour administration, ministers offered comment to the Committee headed by the Permanent Secretary but never sought to direct it other than in the notorious but unproven allegation that the late Donald Dewar sought to veto any award of an honour to Sean Connery on the basis that he supported the SNP. Whilst aware of that as anyone involved in politics in Scotland would be, it is beyond my remit to determine the truth or falsity of that widespread allegation.

What is clear to me and within my remit is that:

- 1) On taking up office as First Minister Alex Salmond required that neither he nor any of his ministerial colleagues should have any involvement in the grant of a UK Honour beyond a possible letter of congratulations once an honour had been offered and accepted.
- 2) That stern stance was never modified and Alex Salmond did not seek as First Minister nor as leader of the SNP to bypass the Scottish Government by going directly or indirectly to the Honours Unit.

Given those facts checked out with the Permanent Secretary and the Honours Unit there appears to me to have been no breach of the Ministerial Code by Alex Salmond as First Minister and he should be wholly exonerated of any breach.

Mr Sheridan is a respected MP and not a careless populist. He was entitled to assume that when it was asserted that a nomination came from the Scottish government that Scottish Ministers either approved the nomination or at least had some involvement in its submission. In fact he was wrong in that assumption. Scottish ministers, most particularly Alex Salmond, had no involvement.

I have some sympathy with Mr Sheridan in that ministers might have been expected to have had a measure of involvement in the process without directing it. Sir Peter Housden has an unenviable task but I conclude he undertakes that, as he should, without fear or favour. That is, however, beyond my remit as would be the comment that Brian Souter as one of Scotland's leading entrepreneurs is very worthy of any honour.

I would only suggest that to avoid any repetition of this ill-founded complaint that the First Minister take the opportunity before the Scottish Parliament to set out his position and that of his colleagues on Honours. He may feel that his stance is already sufficiently clear although this complaint would demonstrate that it is not unequivocally so.

18 November 2011

IN CONFIDENCE



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The Rt Hon Lord Fraser of Carmyllie QC
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18 November 2011

Dear Lord Fraser,

HONOURS PROCESSES

Thank you for your letter of 8 November 2011.

The answer to your question is not exactly as you surmised. We are happy to receive nominations for honours, or letters of support for nominations, from anyone – including MPs and MSPs. What we do not accept is undue pressure. So we have a system whereby all credible honours nominations are discussed by one of eight specialist committees, each with an independent Chair and a majority of independent members. This ensures that all nominations are considered entirely on their merits and guards against vested interests and lobbying from those who exercise influence in other spheres.

In this particular instance, I have not been able to find any evidence that Mr Salmond approached my office either directly or indirectly with regard to an honour for Sir Brian Souter. There is certainly no written communication from him on our files.

Please do not hesitate to be in touch again if I can help any further.

Yours sincerely

[REDACTED]

[REDACTED]
Head of Honours and Appointments Secretariat



Jim Sheridan MP
Member of Parliament for Paisley and Renfrewshire North



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22 September 2011

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Dear Lord Fraser

Scottish Ministerial Code

Many thanks for your letter of 16 September. I am grateful for the opportunity you have afforded me to present you with any additional information and evidence.

I thought it would be useful if I clarified the specific nature of my concern.

Mr Salmond and his various spokespersons have sought to make great play of the view that, since 2007, Scottish Ministers have not been involved in direction or oversight of the persons recommended for an honour by the Scottish Government. Like you, I share such unease about the refusal of ministers to take such responsibility, and think it would be helpful if you were to comment on this matter when you make your findings, but this a red herring from the substance of my complaint.

My complaint is not whether Alex Salmond did, in fact, instigate the recommendation for the honour, despite the claim that Scottish Ministers have somehow 'removed' themselves from this area of work conducted by their officials. Whilst I harbour a strong suspicion that little happens in the Scottish government without Mr Salmond's blessing, there is nothing in the published paperwork – which so far comprises three short letters – to suggest this, although I am privately led to believe that full publication of all the relevant paperwork and correspondence may well make more interesting reading in this regard.

I note also your proposed explanation of the apparent discrepancy between what the First Minister's adviser had said and the comment from the Cabinet Office. That too, is somewhat more broad an issue than the specific nature of my complaint.



The substance of my letter relates to the First Minister's letter to me dated 14 July. This letter specifically states that, in respect of Mr Brian Souter's case, the recommendation process for honours was dealt with by the UK Government. That is simply false. The recommendation was dealt with by the Scottish government. Simultaneously arguing that Scottish Ministers were not involved in that process does not alter the irrefutable fact that their officials – that is, the Scottish government, not the UK government, made the recommendation.

A reader of that letter could not but conclude that the Scottish government – as well as Scottish Ministers – had no involvement in the nomination of Mr Souter. Only the chance and unusual admission from the Cabinet Office has provided the information by which the reader could ascertain the true involvement of the Scottish government.

It is my view that this letter is, at best, designed to mislead and, at worst, a simple untruth; the claim that Scottish ministers may not have been involved in the decision process is no defence because the clear impression is given that the Scottish government, i.e. officials, was not involved.

Therein lies the breach of the sections of the Code identified in my earlier letter.

Please do not hesitate to contact me if I can be of further assistance.

Yours sincerely,

A handwritten signature in cursive script that reads "Jim Sheridan".

Jim Sheridan MP

Member of Parliament for Paisley and Renfrewshire North