

**PE1458/KK**

**Letter from Petitioner Peter Cherbi re: Petition PE1458: Register of Interests  
for members of Scotland's Judiciary**

Response to the Lord President's letter of 21 November 2014

Because there is currently no register of judicial interests, it is difficult to independently verify if members of the judiciary are properly recusing themselves when any instances of conflict of interest arise. The current rules laid down by the Lord President which are continually put forward in letters as "safeguards" allow judges to be judge in their own cause. This is very far from the level of transparency which could be brought in by creating a register of judicial interests.

Lord Gill cites several examples in his letter relating to sheriffs who have recused themselves after they informed parties of interests which they felt may compromise their position hearing the case.

If a register existed there is significant potential for the speeding up of court hearings as litigants, legal teams, prosecutors and accused persons would already be aware of the judiciary's interests and could raise matters in advance, thus saving court time. Additionally, if the judge was aware their interests were in the public domain, a published register would act as an additional encouragement for the judge to step down or ensure another judge hears the case, thus saving court time and preventing unnecessary delays and adjournments, both in civil and criminal proceedings.

There have already been cases reported in the media where senior judges with shareholdings in major supermarkets did not recuse themselves from cases because current rules allow this. While some of these incidents pre-date Lord Gill's publication of recusals, the fact such an instance has occurred in the past with - apparently no record, proves the need for a register of judicial interests for all members of the judiciary to ensure the public themselves have access to such information on the judiciary.

One of the key advantages in creating a register of judicial interests will be to allow the public - directly - to access information on the interests of judges, rather than learn of the particular interest - if the judge feels it necessary. In terms of transparency and ensuring public trust in the judiciary and justice system, this is a must, as there is evidence legal representatives are reluctant even to point out such information to their own clients to enable a recusal motion to be made to a judge.

If a publicly available register existed, the entire process for making a recusal motion would be streamlined, and have an extra layer of transparency ensuring parties are properly heard and the matter can be reported in the public interest, with much fuller

details than are currently provided by the present arrangements for recording recusals.

The Lord President states that "a third situation that could arise is where a judge or sheriff who has an interest that would justify recusal says nothing about it and thereafter has to recuse himself or herself when a party raises the matter. We have no record of any instance of this."

I am not surprised there are no records of any such instances, as there appear to be little obligation (or willingness) on members of the judiciary to disclose their interests, in particular relation to financial, property or investments. For example, in the nine months since records began, there is not one financial recusal of a member of the judiciary, rather all recusals so far relate to familiarity with litigants, legal representatives, or in the one case of Sheriff Cowan, membership of an animal protection society.

Given the sheer value and volume of cases in Scotland's courts and those involved in proceedings - some of whom are already known to have judicial investors, the current recusal data is somewhat difficult to believe given there is currently no register of interests to provide an independently verifiable source of information.

Recently, for example, a judge was found to be a member of a tax avoidance scheme, a fact the judge never declared until it was published in a newspaper <http://www.thetimes.co.uk/tto/money/tax/article4142498.ece> and on television news channels <http://www.channel4.com/news/tax-avoidance-george-michael-melua-arctic-monkeys-liberty>. This is not limited to one instance nor is it limited to England & Wales. If the public have a right to know which major corporations or celebrities avoid paying UK tax, the public surely have a right to know the identities of judges engaged in similar activities.

Even in the SCS Board register rules of declarations, there are references to the disclosure of property and land, yet not one member of the judiciary on the Scottish Court Service Board declares any interest or value of their substantially valued properties, or any land & property related investments.

Clearly a register of interests with proper guidance on what should be declared and in what form, would end such omissions, while providing extra transparency & accountability, and ensuring the privacy of members of the judiciary, just as other registers of interest declare such information while also protecting those who declare it.

The judiciary are not a special case. If anything those at the head of the courts must be more transparent than anyone else, given their power and position which allows

them to affect people's lives, and even overturn legislation passed by our elected representatives.

The question of ethical investments of the judiciary would also be addressed by the creation of a register of judicial interests.

Media reporting has already revealed there are serving members of Scotland's judiciary who have financially benefited through their investments in companies convicted of serious criminal offences both at home and abroad.

There are also serving members of the judiciary identified in media reports who undertake legal representation for Governments of well known tax havens such as the Cayman Islands and clients who invest their money in those countries to avoid paying tax in the UK.

This does not set a good example for honesty and impartiality in the judiciary. The public do not expect the judiciary to work for tax avoiders, nor do they expect judges to have a financial stake in companies convicted of proceeds of crime offences or have investments in companies fined for serious abuses of public contracts & services with a direct benefit in the justice system itself.

It is simply wrong a judge profits from those engaged in crime. It debases the justice system and public respect in it. It is equally wrong the country's top judge feels he cannot come to the Scottish Parliament to answer questions on the interests of members of the judiciary while instead puts forward already existing "safeguards" which appear to be of little value.

Given this is a serious matter, and one alone which makes a good reason for the existence of a register of judicial interests, I suggest the Committee write to the Lord President and ask for his views on the revelations of what many would consider unethical investments & income by members of the judiciary and exactly what he intends to do about it.

I also suggest the Committee ask the Lord President to consider a change in the rules to ensure judges who have shares or investments in companies automatically recuse themselves from hearing such cases, and that any such instances are publicly reported in the recusal data.

Peter Cherbi, Petitioner PE1458