

PE1458/UU

Response to evidence given by Lord Brian Gill on Petition PE1458, 10 November 2015

I ask members to invite Professor Alan Paterson of the University of Strathclyde to give evidence to the committee in relation to the petition. Professor Paterson is a well known legal academic who has appeared before Scottish Parliament on previous occasions. Professor Paterson has written at length on judicial interests and the application of transparency to the judiciary.

For members reference, I include material from Professor Paterson's book "**Lawyers and the Public Good: Democracy in Action?**" which goes into considerable detail on judicial interests, in an impartial, independent way.

I believe it would be beneficial for members to hear from an independent academic with experience on this matter and one who can also give the necessary detail to the committee on why a register of judicial interests enhances transparency and public confidence in the judiciary, both at home and abroad.

Having heard the evidence from Lord Gill on the petition, I would like to make the following comments.

Lord Gill said in his evidence "**the petition implies that there are judicial office-holders in this country who are unfit to hold that office.**" This is incorrect.

The petition calls for a register of interests to be applied to members of the judiciary in the same way registers of interest are applied to politicians and many others in public life.

The petition is about transparency. The issue of trust in the judiciary – which Lord Gill raises several times, is enhanced if the same transparency exists for judges as exists for all other branches of Government.

Both of Scotland's independent Judicial Complaints Reviewers have backed this up and supported the petition. The current JCR also suggested expanding any judicial interests register to encompass more information than some currently believe this petition seeks.

The media support the petition and the introduction of a register of judicial interests. MSPs overwhelmingly backed a motion on the petition during the debate on 7 October 2014 in the Parliament's main chamber.

Lord Gill's position is there should be no register of judicial interests and the committee and public should trust the judiciary.

This is not a question of trust over transparency. The public expect and are entitled to expect transparency of all branches of the Executive. Transparency is an advantage, not as Lord Gill believes – a disadvantage.

Freedom of Information has revealed Senior Police Officers of Police Scotland provide more detail in their recorded interests than the few judges who declare their interests in the Scottish Court & Tribunals Service Board register.

2Given the most senior ranks of the Police declare their interests, it is not too much of a stretch to implement a register of interests for the judiciary.

Since the retired Lord President Lord Gill gave his evidence to the committee on Tuesday 10 November 2015, a further situation has arisen where a register of judicial interests would have ensured the public knew details of a serving Scottish judge's political affiliations prior to the Alistair Carmichael case currently in the Election Court – of which there is considerable public interest.

Today it has been widely published in the media Lord Matthews declared links to the SNP in advance of the court sitting. However, only today did the general public find out this information, which could have been publicly available in advance of any court hearings if a register of judicial interests existed.

In the course of providing material to the Petitions Committee for a basis for this petition, members past and present have been provided with:

Evidence in relation to undisclosed criminal charges and criminal records of members of the judiciary.

Evidence of suspensions of judicial figures in relation to matters which have since revealed undeclared involvement in financial institutions and directorships.

Evidence of multiple failures of judges to recuse themselves in both civil and criminal cases, in some instances leading to loss of liberty of members of the public who are backed by miscarriage of justice organisations such as the Scottish Criminal Cases Review Commission.

Evidence of judicial figures participating in offshore tax avoidance schemes and evidence of judicial investments and links to large corporations subjected to regulatory investigations, criminal proceedings and fines for proceeds of crime.

Evidence of judicial figures compromised in party political affiliations – the failure of which to declare has resulted in widely publicised successful appeals in UK courts.

Evidence of disquiet within & outwith the judiciary relating to judges use of taxpayers funds for considerable international air travel.

The material provided to this committee suggests there is ample evidence that a register of judicial interests is required, and such a register will enhance public confidence in the judiciary.

I also draw to the attention of members the Judicial Appointments Board for Scotland – who appoint members of the judiciary, are required to register their interests.

A copy of the Judicial Appointments Board register of interests, attached, is also published online
[http://www.judicialappointmentsscotland.org.uk/About Us/Register of Interests](http://www.judicialappointmentsscotland.org.uk/About_Us/Register_of_Interests)

Given those who appoint judges are required to register their interests, the Judicial Complaints Reviewers publish their register of interests, and board members of the Scottish Courts & Tribunals Service are required to register their interests, it is not a difficult or unworkable proposal to implement an enhanced register of interests for all members of the judiciary. This is an achievable goal, and is the right thing to do.

Given this committee has accumulated considerable experience on this petition, through evidence, hearings and debates, I ask members to continue this petition, to write to the new Lord President seeking their views as a serving member of the judiciary on the petition and declarations of judicial interests, and to invite Professor Paterson to give evidence to the committee.

The following quotes sourced from Professor Paterson's research and publication "Lawyers and the Public Good: Democracy in Action" relating to judicial interests and recusals of judges should be of interest to members as it is clear the Professor supports the implementation of a register of judicial interests.

"Slightly surprisingly, the justices of the UK Supreme Court, who have rightly in my view been praised for being more transparent on a range of fronts than the House of Lords, have chosen on this front to be less transparent than they were in the House. In the House they were subject to a Register of Interests, but in February 2010^{s5} they indicated that they had decided not to have a Register of Interests in the Supreme Court since (1) other judges in the United Kingdom do not have to complete a Register of Interests and (2) it would not be appropriate or indeed feasible for there to be a comprehensive register of the interests of all the justices. With the greatest of respect to the justices, I wonder if they have got this one right."

“The Supreme Court along with the rest of the (senior) judiciary is an arm of government, and democratic accountability normally means that we expect those who govern us to declare their interests - and not just on an as and when basis. A detailed Register of Interests might even have obviated the Pinochet affair.”

“My third route to enhancing the accountability of the judiciary is to introduce greater measures of disclosure and transparency. Each and every justice of the US Supreme Court has to complete a detailed annual return setting out all their financial interests, including all shareholdings and offices held in other organisations. Moreover, when they have been nominated for appointment they are required to complete a very detailed questionnaire about their interests, publications and membership of organisations whether it be the masons, churches or golf clubs (single sex or otherwise).”

“Recusal is a tricky area and I'm not sure that the answer is always to leave it to the judge who has been challenged to determine whether he or she has a disqualifying interest. I am confirmed in this line of thinking by Grant Hammond, the judicial author of what is now the leading textbook in the area/ The legal test is that laid down in *Porter v. Magill namely, would the hypothetical, fair-minded, fully informed independent layperson having considered the facts conclude that there was a real possibility that the tribunal was biased. My difficulty is how the judges are to know the answer to that question.”**

Peter Cherbi
Petitioner, PE 1458