

Response from Petitioner Peter Cherbi : Petition PE1458 : Register of Interests for Judges

Response to letter from Lord President 5 June 2014

Noting Lord Gill's comments, I believe the creation of a register of judicial interests is both in the public interest and the interests of the judiciary. I am grateful for the support of Moi Ali, the Judicial Complaints Reviewer, who has given her evidence in previous correspondence, has attended an evidence session with the committee, and supports the petition.

In comparison, the Lord President has refused several invitations to attend the committee to face questions from members and publicly justify his opposition to the petition.

The Lord President contends in his latest letter he is not aware of any evidence regarding public concern about the integrity of the judiciary. However, Lord Gill is unable to offer any evidence the public are content to be kept in the dark regarding judges undeclared interests.

Lord Gill's opposition to the petition is based solely on how the best interests of the judiciary are served by maintaining the current secrecy on judges interests. However, Lord Gill declares some of his interests including shareholdings in the SCS Board register and is unwilling to explain in public and face questions on why it is acceptable for some judges in one role to declare, but not the wider judiciary in their court role. The Lord President's position is inconsistent with expectations of transparency in public life.

In view of the existence of the SCS board register, there is no good reason why a more detailed register of judicial interests cannot be applied to all members of the judiciary in Scotland.

Given the framework for the SCS Board register already exists, and which could be improved upon in consultation with the committee to create a more detailed and publicly available register of judicial interests benefiting both the judiciary and the public, I ask the committee to consider writing to the Lord President requesting a more detailed version of the SCS board register be implemented for the remaining members of the judiciary in Scotland.

Regarding public concern about the integrity of the judiciary, members will be aware there is a wider public debate on judicial interests in the media.

Investigations in the media have reported on judges criminal convictions, references to offshore assets including investing in tax efficient trusts, and judges who failed to declare their interests in relation to both civil and criminal cases.

It is a matter of record media outlets who have previously reported on the petition and matters involving judges, have publicly stated their support for the creation of a register of judicial interests. I am grateful for this support as this illustrates making the case for transparency is in the public interest.

Recent investigations by the media with regard to judicial interests featured a case where a judge was challenged regarding his own personal shareholdings in companies appearing as respondents before him. The story featured here <http://www.heraldscotland.com/news/home-news/pressure-grows-for-register-of-judges-interests-as-sheriff-hears-tesco-case-while-hol.24068177> No recusal

was made as the current rules do not require a judge to step down because he has shares in a company.

It is clear the public interest & expectation of transparency does not sit well with judges presiding over cases where it is clear, particularly in the case of shareholdings, a financial conflict of interest may well exist but the judge goes on to deal with the case anyway. Therefore, the current system of oaths & rules written by the judiciary which allow judges to determine their own status with regards to a recusal, effectively making them judge in their own cause, is unfit for purpose.

In a recent development, the Judicial Office acknowledged the Lord President recused himself after "a relative" appeared in court for a respondent. However, media enquiries to the Judicial Office revealed it was actually a son of the Lord President who acted for a respondent appearing before his father.

Any publicly available register of judicial interests created as a result of this petition would seek to include the precise details of such links & relationships of members of the judiciary to others in the legal profession. This arrangement would better inform the public, and give a specific frame of reference to help litigants and legal teams take avoiding action before a case goes to court and is potentially delayed due to a recusal.

Clearly the requirements of the current system of recusals do not go far enough to inform the public on the precise nature & detail of recusals, who asked for the recusal, or if recusals were asked for and refused. I suggest the Committee ask the Lord President to include this additional data in the recusal list as currently published by the Judiciary of Scotland website here <http://www.scotland-judiciary.org.uk/68/0/Judicial-Recusals>

Furthermore, the current rules on recusals exempt a significant number of members of the judiciary, for example - Justices of the Peace. JP's often have similar interests to other members of the judiciary, and there have been recent reports in the media <http://www.heraldscotland.com/news/home-news/top-jps-divided-over-funding-for-african-junket.24677338> of concern regarding JP's conduct and the use of public funds on matters which may well fall within the remit of a register of interests, and recusal.

I suggest the Committee write to the Lord President asking a way be found to include JPs (and any other members of the judiciary currently exempt from registering a recusal) in the new recusal rules without further delay.

Lord Gill has noted the Judicial Complaints Reviewer suggests the rules about complaints against the judiciary - the Complaints about the Judiciary (Scotland) Rules 2013 - are not fit for purpose. The Lord President disagrees, however he is still unable to disagree in a public session before members unlike the JCR who has offered evidence on this matter in person and in writing.

If members view the website of the Judicial Conduct Investigations Office - which handles complaints against the judiciary for England & Wales, <http://judicialconduct.judiciary.gov.uk/816.htm> a list of Disciplinary statements regarding complaints against members of the Judiciary in England & Wales from 2011 to present day are published.

In Scotland, the Lord President has published no such decisions, and has found against every complaint brought against members of the judiciary in Scotland.

The Committee is already aware the Lord President has previously refused to share information on complaints investigations with the Judicial Complaints Reviewer. Clearly the judiciary in Scotland have little interest in informing the public, on the subject of their own interests, or that of complaints.

Creating a Register of judicial interests will allow the public access to information on which to base their decision on whether to make a complaint, or ask a judge to recuse themselves. A register of judicial interests will also enable legal agents to advise their clients more accurately on matters of requesting a judicial recusal, by referring to a publicly available register of judicial interests in their advice.

Response to letter from Kenny MacAskill, Cabinet Secretary for Justice, 4 June 2014

Noting the Cabinet Secretary's comments in his letter, clearly the debate has moved on from the Justice Secretary's view, mirroring that of the Lord President - that these so called "existing safeguards" created by the judiciary require no change. These 'safeguards' have already been proved to be unfit for purpose.

A higher standard must be set rather than simply accepting judicial opposition to transparency as a reason for doing nothing.

The public are entitled to a higher expectation of transparency & accountability in the judiciary than currently exists. Creating a detailed, publicly available register of judicial interests is a step in the right direction. It is the right thing to do.

Supplementary submission from Peter Cherbi Petition 1458 Register of Interests for Judges

Scottish Court Service Board register of Interests

Members have previously been made aware of the existence of a register of interests for members of the Scottish Court Service Board, which includes seven members of the judiciary including the Lord President, Lord Gill.

Details of shareholdings and investments held by the seven members of the judiciary featuring in this register have been published in the media here <http://www.heraldscotland.com/news/home-news/revealed-shareholdings-of-the-top-judge-opposed-to-register-of-interests.24067838>

The registers as obtained from the Scottish Court Service are attached for the Committee's attention.

In further reports in the media, it has come to light members of the judiciary including those on the SCS Board hold investments in companies which have been involved in criminal investigations both at home and abroad.

These companies include one involved in the biggest proceeds of crime action in Scotland, companies involved in criminal investigations in countries including China - where convictions were secured against company employees on serious charges, and even companies who operate within the justice system who have been fined large sums of money for delays in the Scottish courts system itself. Additionally, several members of the judiciary hold shareholdings in companies who are opposed to, and are sponsoring legal action against Scottish Government policy such as minimum alcohol pricing.

Considering the revelations regarding some of these investments, there is an issue of ethical investments of members of the judiciary which has now emerged through the debate generated by this petition.

It is clear there is a significant public interest in the investments of the judiciary and their impact on cases in the courts, and the wider subject of how the judiciary act in terms of their wider role in the justice system including their own responsibility to set an example both at home and abroad when representing Scotland.

The public are entitled to see this information for all members of the judiciary, and ask questions such as whether it is ethical for a judge to hold investments in companies who are convicted of breaking the law at home or abroad, or investments in companies who are opposed to Government policies and those passed by the Scottish Parliament which are designed to promote the well being and health of Scots (as in the case of minimum alcohol pricing).

Clearly the public would benefit from such disclosures as already made by the seven members of the SCS Board being applied to all members of the judiciary in Scotland, along with an increased level of detail including more precise information on professional & other relationships, property ownership and other interests.