

**PE1458/K**

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

**Response to letter from Lord President 28 May 2013**

I note Lord Gill has again declined to attend an evidence session on the petition.

The Lord President attempts to justify his refusal to accept the Committee's invitations by stating "judicial participation in the work of the committees must however be kept within prudent limits", yet only a week later Lord Gill chose to appear before the Justice Committee on Tuesday 4 June 2013 to give evidence on planned court closures.

It is unfortunate that the Lord President has chosen not to openly discuss important, straightforward and pressing questions on fundamental issues of transparency within the judiciary, yet feels sufficiently confident to attend Parliament when the issue is one he feels merits his attendance.

This pick and choose approach to giving evidence in public at the Scottish Parliament does a disservice to the electorate and does absolutely nothing to promote public confidence in the judiciary, nor does it display the courtesy or respect due to our democratically elected representatives in Parliament.

Lord Gill's refusal to attend in person, based on a "loophole" in the Scotland Act and his contention that "independence of the judiciary" and "constitutional principle" may be compromised if the Lord President appears in public to be questioned by elected politicians, contradicts his previously stated aim of improving Scotland's Victorian justice system - which he noted is presently "unfit for purpose, failing litigants, and failing society". Clearly however this ambition does not include introducing openness and accountability into the justice system, far less a judicial register of interests or any record keeping of how judges currently recuse themselves.

Creating a register of interests for members of Scotland's judiciary will not compromise the independence of the judiciary. There is no evidence that a register of interests has compromised any other Public officials, on the contrary these requirements are now commonplace and readily accepted as being required in the interests of transparency, accountability, and maintaining public confidence.

If the justice system presided over by our judges is, in Lord Gill's own words, unfit for purpose, then clearly our judiciary must also change, revise its views and procedures and enter the 21st century by embracing transparency and registering their interests just as many others do already.

Lord Gill has again directed the Petitions Committee to the EU GRECO report on corruption within the judiciary, describing it as an independent scrutiny of the judiciary. It is clearly no such thing. Rather, it is a report written by retired judges who themselves do not comply with a register of interests, and consequently a clear

potential for a conflict of interest exists given that the report's own authors have a vested interest in maintaining the status quo and opposing the creation of a register of interests.

I would also ask the Committee to please note that the GRECO report contains references to members of the judiciary in Scotland who it appears readily participated in interviews with the EU team. In stark contrast however, the most senior member of the same judiciary has repeatedly refused to answer questions at the Scottish Parliament. If the Lord President feels the EU report, written by judges, is so important to his position, then surely he should even at this late date accept the Committee's invitation to discuss it in public.

The Lord President has failed to provide the Petitions Committee with substantive answers to questions raised regarding how the current system of recusals operates. The Lord President merely states that since 2010 **"...there has been no case in which a judge has been found guilty of misconduct for a failure to recuse."**

The Lord President avoids the question put to him and provides absolutely no evidence to demonstrate how any current system of recusals is operating, nor does he offer any substantive detail or case examples on what currently happens where a judge's conduct has been challenged for refusing to recuse themselves. Such evasion does not inspire confidence.

The Judicial Complaints Reviewer has assisted the Committee by providing the Scottish Parliament with a considerable amount of detail about what her role as JCR involves, helping the Committee gain an insight into investigations she has carried out involving members of the judiciary, and the limitations which are imposed upon these enquiries. By contrast, the Lord President continues to resist calls to provide the Committee with any similar level of detail.

The Lord President has persistently refused to provide any statistical or analytical information documenting if such declarations of conflict of interest are even being made by judges, in what types of cases these situations are arising, whether any recusals or lack of recusals have been challenged, or whether any of the recusals have been independently verified to assure their authenticity. This suggests that the current system which is promoted and defended by the Lord President lacks transparency, and for whatever reason does not maintain accurate records or indeed any records which can be subject to scrutiny by either Parliament or the Public.

Clearly, these conspicuous failings serve neither the interests of justice or the Public.

If the Petitions Committee consider it worthwhile writing to Lord Gill once again requesting he disclose in writing detailed information the Judiciary of Scotland holds on declarations of conflict of interest by judges, I would ask that this should be done.

I urge the Petitions Committee to arrange evidence sessions on the petition as has previously been suggested by Committee members, and would welcome others joining the debate, be they members of Consumer Protection organisations, the Scottish Government, the Judicial Complaints Reviewer, the Law Society of Scotland, the Faculty of Advocates, the Lord Advocate and representatives of the media who

might wish to participate in public evidence sessions.

**Response to submission from the Judicial Appointments Board for Scotland:**

The response from the Judicial Appointments Board fails to express any opinion on the desirability of establishing a register of interests for Scotland's judiciary, nor does it give reasons for evading the Committee's questions.

Furthermore it does not address the question put to it regarding how effective or otherwise the present pre-appointment scrutiny process is, far less address those instances recorded in the National Press demonstrating that there is indeed an urgent need for improvement in this area.

It is therefore worrying that the JAB's response contains nothing which suggests it has asked any searching question regarding the interests of prospective members of the judiciary. Since no register of interests for the judiciary currently exists, there is no requirement upon, or motivation for, any prospective candidate to voluntarily declare any interest to the JAB or indeed anyone else - including the Lord President himself.

None of the steps identified by the JAB in their appointments process, which seems to focus on good character, conduct, and a reference from a judge, makes any reference to interests of candidates which would be expected to be lodged in any comparable register of interests in other walks of public life.

In response to the six steps identified by the JAB in their appointments process, I would ask the Public Petitions Committee to seek further information. Obtaining such information in a more detailed and analytical form rather than simple statements offered up by the JAB in its response, would increase transparency and an understanding of the JAB's role in judicial appointments which is presently lacking.

I urge the Petitions Committee to invite the JAB to attend an evidence session at the Parliament.

**Response to submission from the Judicial Complaints Reviewer:**

I note the support of Moi Ali, the independently appointed Judicial Complaints Reviewer for a judicial register of interests. The JCR agrees a register of interests is necessary to establish judicial openness and transparency, and to ensure public confidence in the judiciary's actions and decisions.

The JCR has also stated any such register should also encompass non-financial interests such as memberships, unpaid trusteeships, and any relevant close family/friendship links that may be perceived as a potential conflict of interest. I agree,

and would submit that any system lacking these basic categories would lack credibility and only serve to diminish public confidence.

The JCR has gone one step further and has informed the Parliament in her submission that she has created her own register of interest which will shortly be published on the JCR's website. Moi Ali goes on to state that she believes the JCR should be required to do this, either by legislation or as a requirement set out in their letter of appointment from the Minister. This would be a significant step forward in establishing transparency and a marked contrast to the present culture of secrecy and the open hostility of the judiciary to a register of interests.

Given the JCR's function is directly related to judicial standards and practise, and noting her unambiguous recommendations regarding a register of interests for the judiciary, I urge the Petitions Committee to invite the Judicial Complaints Reviewer to attend an evidence session at the Parliament.