

PE1458/TT

Petition PE1458 – Register of interests for members of Scotland’s Judiciary.

Response to letter from Legal Affairs Minister Paul Wheelhouse, 31 July 2015

Noting Mr Wheelhouse’s refusal to disclose the source or content of the legal advice held by the Scottish Government, I urge members to recall the Legal Affairs Minister to face questions before the committee on the content of the legal advice and its impact on Scottish Ministers opposition to the creation of a register of interests for members of the judiciary.

The content of the legal advice and what it says with regards to the application of equivalent levels of transparency & declarations of interest to the judiciary - as exist with others in public life, is sufficiently important to be debated in public.

I would like to draw to the committee’s attention news reports of a recent court case in which a conviction was quashed on appeal, after a court interpreter failed to declare an interest.

A judgement in the case, now published on the Scottish Courts website: <https://www.scotcourts.gov.uk/search-judgments/judgment?id=0983f2a6-8980-69d2-b500-ff0000d74aa7> – relates to an example where a lack of declaration of interests, albeit of a non-judicial court functionary, has directly affected criminal court proceedings, and may impact on further cases.

In the appeal, the appellant’s advocate stated “Another interpreter could have been used. There were viable alternatives which the sheriff did not explore.”

Within the judgement, the court observed: “Here, the interpreter had not only interpreted for the complainer at interview – and was on the Crown list of witnesses – but had also known, assisted and supported the complainer for many years. In all the circumstances, there was a significant risk of prejudice to the appellant which was not outweighed by any risk to the interests of justice. To the contrary, justice was not seen to be done and the appeal should be upheld.”

I urge members write to the new Lord President - upon their appointment, to find out what procedures are currently in place to require members of the judiciary to ensure important court functionaries are required to disclose interests or recuse themselves from cases where conflicts may arise.

Given the work of this committee has previously secured the publication of judicial recusals: <http://www.scotland-judiciary.org.uk/68/0/Judicial-Recusals>, members further engagement with a new Lord President on this matter may help secure

clearer rules and procedures to ensure important court functionaries are required to recuse themselves when appropriate - and such recusals are published.

The committee has previously discussed the existence of a limited register of interests for judicial & non judicial members of the board of the Scottish Court Service. The latest register of interests and disclosure of shareholdings of the new board of the renamed Scottish Courts & Tribunals Service (SCTS) has been released by the SCTS in response to Freedom of Information enquiries.

These detailed declarations - directorships, memberships of bodies & judicial shareholdings in banks & financial institutions heavily fined by financial regulators for exchange rate violations & market rigging, prove a register of interests for the wider judiciary is not unworkable, is in the public interest, and can be achieved.

I urge members to invite the new Lord President upon their appointment to attend the committee, and face questions on the creation of a more detailed register of interests for the wider judiciary.

Peter Cherbi, Petitioner PE1458