

PE1458/WW

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

Response to Letter from Lord President Lord Carloway

Lord Carloway presents the same view of his predecessor Lord Gill in that a register of interests for the judiciary is unnecessary or undesirable. Similarly, as Lord Gill has already inferred, Lord Carloway speaks of constitutional problems if the judges are asked to declare their interests.

In reality, there are no constitutional issues created by this petition, nor is there an impediment to the creation of a register of judicial interests. Such a register already exists for the Scottish Court Service and Tribunals Board, of which Lord Carloway and others declare their interests.

As members of the Petitions Committee have already discussed, it would be no great effort to expand the already existing register to include the entire judiciary. The Committee is also well aware other jurisdictions have implemented registers of judicial interests, without difficulty or an end to justice as we know it.

It is not enough to say, as the Lord President suggests, the judiciary should be excluded from the public's expectation of transparency, simply because the judiciary say so upon their own rules.

If the Lord President's logic is followed, all registers of interest across public life are unnecessary, and anyone can give themselves a pass on declaring an interest due to any unintended consequences, adverse media coverage or detection of conflict of interests.

Thankfully, there is a general realisation, and acceptance, that registers of interest in public life are required, promote transparency and assist in the process of good government and detection of vested interests where they should not be.

I therefore ask members to call Lord Carloway to give evidence before the Committee and take questions on his views.

In his letter to members, Lord Carloway states: **"The petition raises the issue of the balance to be struck between the principles of openness and transparency in public life, on the one hand, and the proper administration of justice, on the other"**

Respectfully, the public's expectation of justice and a fair hearing in our publicly funded courts, cannot exist without the equal application of openness and transparency – which would be served by the creation of a register of judicial interests.

Both of Scotland's independent Judicial Complaints Reviewers agree with this view, as do an overwhelming number of MSPs who supported the Petitions Committee's motion on PE1458 during the full debate in the Scottish Parliament's main chamber in October 2014.

Lord Carloway goes on to claim **“The proper administration of justice could be inhibited by the disclosure of the judiciary's otherwise confidential financial arrangements.”**

Not so, given members of the judiciary already disclose information relating to their financial interests in the Scottish Court Service and Tribunals Board register.

The Committee has been provided with several recent media examples where members of the Scottish judiciary have been revealed to have financial links to offshore financial institutions, some of which have been caught up in liquidation, allegations of tax avoidance, criminal convictions and, criminal investigations.

Particularly where members of the judiciary may have financially lucrative links to property, care providers, companies under contracts with the courts, Police, Crown Office and Prison service, clearly the public have a right to know this information in a publicly available register.

Lord Carloway states he agrees with his predecessor Lord Gill, in that the vast majority of matters that in theory could undermine judicial impartiality, such as familial and social relationships, would not be addressed by such a register.

However, as the Committee are already aware, the register of recusals¹ to which Lord Carloway refers, contains among numerous examples relating to judicial familial & professional links, an entry where Lord Gill recused himself in a court hearing after one of his own sons appeared in a case representing one side in a civil action.

Respectfully, if a register of judges' interests existed, prior availability of this information would have assisted the administration of, and access to justice by providing information on such familial links to legal representatives and court users beforehand, and another judge could have been found to hear the case without additional days in court.

¹ www.scotland-judiciary.org.uk/68/0/Judicial-Recusals

Lord Carloway suggests in his letter judges are unable to speak out in public. Not so. The media have covered numerous examples where members of Scotland's judiciary have spoken out in public, on government policy, reforms in the courts, cuts to legal aid, or more recently where senior members of the judiciary have become embroiled in public arguments with the Police and Prosecutors on evidence presentation in court.²

On the same day the media reported that the Scottish Government announced a moratorium on Shale Gas Fracking³, the previous Lord President Lord Gill spoke out, declaring **"Our resources of energy may be increased by the retrieval of shale gas, if that should be allowed. It seems to me therefore that the opportunity that our natural resources present should be served by the court system."**⁴

The current Lord President himself was recently reported in the media⁵ to have availed himself of opportunities to speak out against certain interests he appeared to believe contributed to blocking Scottish Government policies such as the removal of corroboration – a move rejected by the Scottish Parliament's Justice Committee.

In a recent speech⁶ given by Lord Carloway on planned reforms in the Scottish Courts, the Lord President asks **"Do you see the civil courts as modern institutions which adequately deal with the disputes commonly arising in today's Scotland? Do you consider that the criminal courts are producing fair trials which properly balance the rights of the accused with those of others?"**

While the speech was aimed at legal professionals, the same questions put to members of the public may reveal a very different viewpoint, much of which is reflected in the media and by pleas for help from constituents to elected representatives in cases where access to justice appears out of reach for all but the rich, and more often than not, the courts lack any accountability or transparency.

Transparency underpins our modern democracy, and should underpin our courts and judiciary in equal measure. A register of judicial interests enhances transparency, and is both in the public's interest, and that of the judiciary.

² *Police, judiciary clash after sheriff's 'sweeping generalisation' on force corruption*, The Herald, 9 June 2015

³ *Ewing announces fracking ban in Scotland*, The Herald, 28 January 2015

⁴ *Lord Gill proposes court for renewable energy disputes*, <http://www.bbc.co.uk/news/uk-scotland-scotland-business-31027822>

⁵ *Lawyer: reforming judge wrong to accuse "reactionary lawyers" of self-interest*, The Herald, 17 April 2015

⁶ <http://www.scotland-judiciary.org.uk/Upload/Documents/LPLawSocietyCouncil29January2016.pdf>

I ask the committee to call the Lord President to give evidence and to write to Professor Alan Paterson of the University of Strathclyde for written evidence from an independent academic who has studied & wrote about judicial interests.

I urge the committee to keep the petition open to enable the next parliament after the election to take up the issue once more and study legislation to create a register of judicial interests, building on the three years of work of this committee, the creation of the recusal register, and the considerable information which has been accumulated as a result of this petition.

Peter Cherbi

Petitioner: Petition PE1458 : Register of Interests for Judges Petition