

**PE1458/XX**

Professor Alan Paterson Letter of 10 May 2016

Dear Ms Fergusson,

*Judicial Register of Interests [Petition PE1458](#)*

I refer to your letter of 18<sup>th</sup> March 2016 requesting that I write to you indicating my views on the action called for in the petition. I am not sure that I have a great deal to add to what I said in my Hamlyn lecture - A Paterson, *Lawyers and the Public Good* (Cambridge University Press, 2012) at pp.152-4. I indicated there, that at least at the level of final appeal courts there was an argument for enhancing the accountability of the judiciary by introducing greater measures of disclosure and transparency. Each and every Supreme Court justice in the US Supreme Court has to complete a detailed annual return setting out their financial interests including gifts and hospitality. When appointed they also have to complete a comprehensive questionnaire about their interests, publications and memberships of clubs and organisations (including the Masons). I am not aware that these requirements have caused particular problems in the USA.

When they were members of the House of Lords, the Law Lords had to complete a register of interests (which has since been considerably strengthened) and it was therefore a surprise to me that these same judges when they became UK Supreme Court Justices declined to have a Register of Interests, a position which they still adhere to. This despite the fact that Lord Hoffmann by failing to declare his involvement with Amnesty International ( which might now appear in a Register of Interests ) precipitated an unprecedented crisis in the House of Lords, the aftermath of which was felt for nearly a decade. That said, whether a Register of Judicial Interests which is limited to pecuniary interests would be a worthwhile introduction for the Court of Session and the Sheriff Court is a difficult issue (as the evidence provided to the Petitions Committee has demonstrated) and one on which I am not sure I have a concluded view.

However, in terms of accountability there is a clear link between the thinking behind calls for a Register of Judicial Interests and the concept of Judicial Recusal. Here I think there is room for improvement in Scotland, particularly if there is to be no Register of Judicial Interests. The Public Register of Judicial Recusals is indeed to be welcomed but it only records the cases in which Scottish judges have actually recused themselves, not the cases in which they have been asked to recuse themselves and have declined to do so, far less those in which they might reasonably have been asked to recuse themselves but were not. In short, we cannot always tell if judges are recusing themselves or declining to recuse themselves in the right cases. One measure which might assist with that issue is to ask whether the

decision as to recusal should be left to the judge who has been challenged. I am confirmed in this line of thinking by Grant Hammond, the judicial author of what is now the leading textbook in the area *Judicial Recusal* (Oxford: Hart Publishing, 2009). Just as we no longer leave decisions on contempt of court which relate to attacks on the judge to be decided by the judge in question, so it could be argued that requests for judicial recusal should be handled on an expedited basis by a bench of at least two different judges.

I hope these thoughts have been of assistance.

Yours sincerely

Professor Alan Paterson OBE