

**PE1458/BB**

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

**Response to letter from Lord President Lord Gill 1 April 2014:**

With regard to the Lord President's comments on the requirements of disclosing interests placed upon judicial office holders on the board of the SCS in comparison to judicial office holders in their exercising of judicial functions in court, it is difficult to see that the public interest and expectation of transparency is being served in the Lord President putting forward a position that the duties of a judge on a public body may require greater transparency, in comparison to the ultimate role of a judge in court exercising judicial duty and judicial authority.

Clearly there is a requirement of at least the same level of, or an even greater level of transparency and accountability with regards to the interests of members of the judiciary and their role in the court itself compared to that of a seat on a board or membership of a public body.

The SCS standing orders on the SCS board members declarations, available on the Scottish Courts website <http://www.scotcourts.gov.uk/docs/default-source/scs-board/scs-board-standing-orders-revised.pdf> are by some measure, a model which could be greatly improved upon to create a fully published register of financial and other interests including relationships, directorships, interests in property, earnings, investments and other subjects relevant to a judge's role in court which could easily be applied as a workable model to all members of Scotland's judiciary.

Other branches of Government and public life easily achieve this and there is no justifiable reason to exempt the judiciary from the application of similar levels of transparency in the public interest.

Lord Gill has consistently referred to the position of the UK Government, the Chief Justices of the UK and the EU's GRECO report as being a basis for the Lord President to continue to claim there is no need for transparency in terms of a register of the judiciary's interests.

The GRECO report was compiled mostly by judges who appear to have the same vested interest in not declaring their interests or promoting a wider EU requirement for member states to require their judges to publicly declare all their interests.

The Chief Justices in the UK's other jurisdictions, principally the example of the judges in the UK Supreme Court changed their own requirements of transparency from once declaring their interests as Law Lords in the House of Lords, to claiming

on the UK Supreme Court website that for no given reason they do not require to disclose their interests. For reasons that remain unclear the UK Government has tacitly accepted the position of the judiciary on this issue, without any public debate whatsoever.

Notwithstanding this gathering of vested interests and their positions against a register of judicial interests as stated by Lord Gill, I do not believe Lord Gill has made the case for the judiciary to continue to write their own rule book on what they need not declare by way of their interests, or how transparent or accountable they are or should be to the rest of society.

There have been a number of reports in the media in the past year, where it is very clear a publicly available register of judicial interests would help court users and the public to determine whether a member of the judiciary was in a suitable position to hear a court case.

Responses to those articles by members of the public appear to be overwhelmingly positive and support the introduction of a register of judicial interests, as do the media. Some people who have joined the media debate mistakenly assumed it was already a requirement that judges declare their interests in a register, and some indicated they were puzzled why this is not the case. This is perhaps an indication that a wider debate on this subject is needed.

As the Committee has already indicated in its deliberations, members intend to seek a debate in Parliament's main chamber on the issue of a register of judicial interests. I fully support this move as there is a need for a broader public debate on this issue, which members of the Public Petitions Committee have begun.

The judiciary are an important, independent branch of Government who have the power to change public life, change the law or even throw out legislation passed by elected representatives. Any group with such power cannot be seen to exempt itself from the public's expectation of similar levels of transparency and accountability which apply to other branches of government and public life.

The case remains that Scotland's judiciary should be required to declare their full interests in a regularly updated published register of interests. As other countries have already shown, a register of judicial interests is an entirely workable and beneficial procedure which can help restore public trust in a justice system identified by Lord Gill in his Civil Courts Review as 'failing the litigant and society', and so ensure court users can have faith in the decisions of a more transparent, open and accountable judiciary.

## **Response to the Cabinet Secretary for Justice letter of 22 April 2014:**

I note Lord Gill stated in his letter of 1 April the Scottish Government shared the Lord President's view that a register of judicial interests was not needed. The Cabinet Secretary for Justice in his letter of 22 April appears to confirm this.

Mr MacAskill claims that he does not consider the case has been made that the "existing safeguards" which comprise the judicial oath, the Statement of Principles of Judicial Ethics and the rules made under the 2008 Act "are not effective".

However these "safeguards", which are written by, or written in consultation with the judiciary itself, have already been shown to have failed in cases, and in my opinion do not constitute sufficient reason to justify the judiciary being allowed to write its own rules and in so doing exempt itself from the same levels of transparency, of declarations of interests, and accountability which apply to all others in public life.

It remains the case that a register of judicial interests for members of Scotland's judiciary is necessary and this will help promote public confidence in both the judiciary and the justice system.