

PE1458/F

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

Response to Lord Gill's letter of 2 April 2013: Lord President declines to attend the Scottish Parliament re PPC's invitation to give oral evidence on Petition PE1458.

In view of the Lord President's strongly worded written submission against a register of interests for the judiciary and taking into account the clear interest and concern expressed by several members of the Committee at the PPC meeting of 5 March 2013, I urge the Petitions Committee to repeat its invitation to the Lord President to discuss matters which clearly require his attendance or, for whatever reason, to allow the Lord President to nominate his representative to attend an evidence session and speak on his behalf.

The widespread and declared public interest in this petition, as demonstrated by the ongoing media attention it has attracted, clearly requires that in the interests of fairness a member of the judiciary attends parliament to explain to MSPs why the transparency and accountability sought by the petitioner is not desirable.

The current Lord President, and the previous Lord Presidents, have attended the Scottish Parliament on numerous occasions prior to this without problem. I would therefore urge Lord Gill to accept the PPC's invitation and attend parliament to give evidence on this petition, as it addresses important issues of transparency and accountability which are very much the focus of public attention today. Surely it cannot be correct that the most senior member of the Scottish Judiciary can refuse to appear before the democratically elected parliament's perfectly proper enquiries into issues which directly concern and involve the judiciary.

I also note that Lord Gill's letter has failed to address or answer questions seeking clarification regarding precisely how the current system of rules & oaths relating to Scottish judges recusing themselves operates, and fails to disclose any results arising from it.

As previously indicated in my submission to the Petitions Committee, there is currently no statistical or analytical information published or made available by the Judiciary of Scotland to document whether such declarations of conflict of interest are being made or can be independently verified to assure their authenticity. I must therefore request the Petitions Committee again request this information from the Lord President and in the light of any shared information, consider matters further.

I note the Lord President again refers to the Council of Europe Group of States against Corruption's (GRECO) Fourth Evaluation Round Report (attached), and quotes a paragraph where the GRECO Evaluation Team (GET) was made aware of my petition on the No.10 website for a register of interests for the judiciary in England & Wales. The GET had gone on to find no change of circumstances that required a recommendation of a register of interests at the time of their report and the Lord President cites this as a reason for not requiring a register of interests of judges.

The Lord President's reliance on this report is challengeable on a number of grounds. Firstly, this report has been compiled by the very people it seeks to assess and consequently there is a clear potential for a conflict of interest which could be seen to possess the same "whiff of vested interests, closing of doors and turning their backs in an effort to shut the matter down" for discussion, mentioned by Mr Jackson Carlaw MSP at the PPC's 5 March meeting.

Secondly I would draw the PPC's attention to the fact there is no mention within the GRECO report of serving judges in the UK or Scotland who have declared criminal convictions, yet are still serving on the bench. The Scottish media has reported such cases do exist in Scotland.

The nature of how those prosecutions were dealt with & handled, the effect of criminal convictions on a judge's fitness to remain on the bench once convicted or awaiting trial, whether those judges ever declared their convictions while sitting in court, and the effect of this on Public confidence and the reputation of the judiciary itself are all points which have not been addressed by GRECO in its report or indeed by any parliamentary or legal authority in Scotland.

I would respectfully point out that while a single EU report expresses one opinion, this does not prevent the Scottish Parliament from considering that same issue, particularly when the reasoning applied is seen to be flawed and a potential for a conflict of interest exists. The issue of a register of judicial interests is one of very significant public interest and fundamental to establish transparency, accountability and confidence in one of the cornerstones of any democratic society, namely the Law.

I would ask the PPC note that on page four of the GRECO report, item 12, GRECO mentions interviews with representatives & officials from the House of Commons & other devolve assemblies of Wales & Northern Ireland, yet it does not refer to any meetings or interviews with officials or representatives of the Scottish Parliament.

Further, on page four of the GRECO report, there is reference to "The GET also met with members of the judiciary and the prosecution service of England and Wales (Crown Prosecution Service – CPS), Scotland and Northern Ireland, as well as with

representatives from the Judicial Appointments Commission (JAC), the Judicial Appointments Board for Scotland, the Judicial College and the Office for Judicial Complaints"

Noting the above, I am somewhat surprised Lord Gill, the Lord President chooses not to attend the Scottish Parliament to give evidence on a register of interests for the judiciary, while he is apparently content for his colleagues in the judiciary and others in the legal system speak to an European body on the subject of transparency and corruption within the judiciary, and then uses the resulting, if flawed, GRECO report to justify his stance against the petition.

Respectfully, if members of the judiciary and prosecution service of Scotland (Crown Office & Procurator Fiscal Service) have make themselves available to be interviewed by GRECO, a European body, these same members of the judiciary and prosecution service, including the Lord President should come forward and make themselves available to attend Scotland's democratically elected Parliament and give testimony on this petition, as well as share with MSPs and the PPC any evidence, submissions interviews or material disclosed to the GRECO Evaluation Team.

Given the involvement of the Judicial Appointments Board for Scotland in the GRECO report, I would like to request the Petitions Committee also ask or invite the JAB for their views on a register of interests of the judiciary, and that the PPC also seek the view of the Judicial Complaints Reviewer as well as any other parties with an interest.