

PE1458/OO

**Response to evidence given by Legal Affairs Minister Paul Wheelhouse, 9
December 2014**

Mr Wheelhouse claimed in his evidence a register of judicial interests “is neither practical nor necessary”.

However, the week before Mr Wheelhouse attended the PPC, the Scottish Court Service published their annual report https://www.scotcourts.gov.uk/docs/default-source/SCS-Annual-Report/annual_report_5_nov_14.pdf which contains a limited register of interests of SCS Board members – including several members of the judiciary.

As current and former PPC members have previously observed, this same register as is published annually for the SCS Board members, with enhanced requirements, could be implemented for all members of the judiciary.

Mr Wheelhouse went on to answer questions from Convener David Stewart. The Minister claimed a register of interests may open up members of the judiciary to security concerns and threats.

Mr Wheelhouse said the following: **“As the Lord President outlined, judges are not able to answer for themselves if they are criticised or attacked for their interests, which means that they are vulnerable in that sense. In addition, they or their families might be open to threats or intimidation if property details were registered or if other details were shared that might cause security concerns.”**

Mr Wheelhouse then claimed he had observed similar circumstances during his term as Minister responsible for Climate Change where he alleged SEPA officials were threatened and implied this was regarding their interests.

Mr Wheelhouse said: **“In my previous role, I was aware of Scottish Environment Protection Agency officials who were stalked and harassed on social media, as were their families, and who were being regularly physically and verbally threatened by individuals who were allegedly involved in serious organised crime. I have therefore seen that people of ill intent can attempt to intimidate officials.”**

“The more we protect the privacy of the judiciary in relation to details that could otherwise create security concerns for them, the better, as that will ensure that no one attempts in any way to influence judges’ decisions.”

I would like to draw to members attention a media investigation published by the Sunday Herald <http://www.heraldscotland.com/politics/scottish-politics/gangster-threat-claim-challenged.26263087> into the Ministers claims. The paper revealed there were no gangster threats as a result of any declarations of interests by SEPA staff. An email obtained by the Sunday Herald, attached – gives examples of farmers threatening SEPA staff with sticks and fences, contrary to claims made by Mr Wheelhouse. Enquiries to the Crown Office revealed no gangster threats as described by the Minister in his evidence to the PPC.

Given the evidence published in the media indicates the Minister misled the PPC, I suggest Mr Wheelhouse be recalled to explain himself.

Additionally, I wish to draw attention to the fact all board members of SEPA have their own register of interests and register of gifts & hospitality, published on the SEPA website here <http://www.sepa.org.uk/about-us/how-we-work/our-board/members/>

Regarding Mr Wheelhouse' comments relating to the three safeguards of the oath, the principles of ethics, and the Judiciary & Courts (Scotland) Act 2008, none of these 'safeguards' been effective in allowing court users, legal representatives and the public to scrutinise judicial conduct in an open and transparent way in which a fully published register of interests would allow.

As we have observed in media reports judicial office holders have previously been involved in failures to recuse themselves.

When judicial office holders were challenged where an interest became known, members of the judiciary have on occasion refused to recuse themselves such as the Sheriff Principal who held shares in Tesco <http://www.heraldscotland.com/news/home-news/pressure-grows-for-register-of-judges-interests-as-sheriff-hears-tesco-case-while-hol.24068177>

A recent case in England: Peter Cruddas -v- Jonathan Calvert, Heidi Blake and Times Newspapers Ltd which included a judge failing to declare his interest, allowed the Times newspaper to win an appeal and a reduction of damages. It became clear senior members of the UK judiciary had failed to declare political affiliations.

Publicity to this case <http://www.thesundaytimes.co.uk/sto/news/focus/article1534417.ece> has since led to members of the UK judiciary disclosing undeclared political affiliations & interests. The Sunday Times newspaper has since called for a register of interests of the judiciary in England: <http://www.thesundaytimes.co.uk/sto/comment/leaders/article1534338.ece>

Evidence has already been provided to the PPC of media investigations in Scotland which revealed members of the Scottish judiciary are financial investors in companies with substantial contracts within the justice system, and companies convicted of criminal offences both domestic and abroad.

Evidence has previously been provided to the PPC where, in a criminal case, former Prosecutor Lord Osborne who became a judge heard an appeal relating to a miscarriage of justice of a man he had previously prosecuted. When challenged by the media regarding the failure to declare his interest, Lord Osborne claimed he had forgot his role in the prosecution.

Evidence has also been provided to the PPC some members of the judiciary represent clients in tax avoidance havens. It has also come to light serving members of the judiciary are currently representing accused persons on indictment, known gangsters (in civil and criminal matters), convicted fraudsters and others convicted of serious criminal offences.

The PPC may also be aware of recent media reports where the Lord President was required to suspend a serving judge – Sheriff Peter Black Watson <http://www.scotland-judiciary.org.uk/25/1390/Statement-from-the-Judicial-Office-for-Scotland-on-the-suspension-of-part-time-sheriff-Peter-Watson> after allegations emerged in the Scottish Sun:

<http://www.thescottishsun.co.uk/scotsol/homepage/news/6333509/Writ-hits-the-fan.html> against the Sheriff relating to a multi million pound writ against the Sheriff's former law firm Levy & McRae - which has represented Scottish Ministers in the past. The suspension of Sheriff Watson did not take place until media enquiries to Lord Gill's office drew to the attention of the Lord President the circumstances and existence of the writ, published here: <http://www.thescottishsun.co.uk/scotsol/homepage/news/6345378/Bench-ban-for-sheriff-linked-to-fraud-probe.html>

Investigations published by several newspapers including the Scottish Sun, Sunday Mail <http://www.dailyrecord.co.uk/news/scottish-news/blue-chip-bankers-lose-210m-hedge-5420821> & Sunday Herald have since revealed the now suspended Sheriff was also a director of a private bank and companies operating offshore which formed part of a failed hedge fund empire now at the centre of a Police & Crown Office investigation.

The point being, if a register of interests for members of the judiciary existed, matters such as the Sheriff's directorship of an offshore bank and directorship of companies would have been known to the public and the Lord President, rather than made known to Scotland's top judge by journalists investigating a multi million pound alleged fraud.

The list of recusals referred to by Mr Wheelhouse, published here <http://www.scotland-judiciary.org.uk/68/0/Judicial-Recusals> contains scant information. Much more detailed information could be presented in a fully published register of judicial interests.

Little in the way of identifiable links between members of the judiciary and other walks of life including the legal profession are disclosed in the recusal list. Not one financial linked recusal has been registered in an entire year of the existence of the recusal list, almost equating to bankers claiming they have no relationship with money.

The interests of transparency and accountability in the judiciary are clearly served by creating a register of interests for judges.

Given the overwhelming support for the PPC's debate and subsequent motion during the October 2014 debate in the Parliament's main chamber, I urge the committee to continue the petition, to recall Mr Wheelhouse to explain misleading claims in his previous evidence, and to explain the Scottish Government's current position on the petition.

In the light of the further developments, and increased public interest in the matter of judges failing to declare their interests and the lack of a register, I also suggest members seek further dialogue with Lord Gill on ways to implement a fully published register of judicial interests.

Given the progress in the public debate on the issue of a register of interests serving judicial transparency & accountability and substantial support across the media, perhaps Lord Gill should be given another opportunity to appear before the Public Petitions Committee and take questions from members.

Peter Cherbi, Petitioner PE1458