

PE1458/S

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

**Response to letter of 9 October 2013 from the Judicial Complaints Reviewer**

Noting comments from the JCR in relation to contact made with her office by "a member of the public" who proposed a change in the rules of the court of "placing an express duty on a judge to declare any potential conflict in open court" I respectfully point out to members this idea appears little different from the current rules of the judiciary, as put forward by the Lord President in his earlier letters to the PPC which Lord Gill.

In the Lord President's letter of 5 February 2013 to the PPC, Lord Gill states **"Another reason why there is no practical need for this measure is that there are currently sufficient safeguards to ensure that judicial impartiality is maintained. The current safeguards in place in Scotland are established by the terms of the Judicial Oath, the Statement of Principles of Judicial Ethics for the Scottish Judiciary and the Judiciary and Courts (Scotland) Act 2008."**

However, it appears that the current combination of rules of the court and judicial oaths as advocated by the Lord President have clearly not enabled Lord Gill to acknowledge the existence of, or produce any statistical or analytical information to the Committee on recusals of judges, how many times judges are asked to recuse themselves, in what circumstances, etc.

I would also respectfully point out that although the Lord President has advocated the combination of judicial oaths and rules as a safeguard, he has not felt it sufficiently safe to attend the Committee on each occasion he was invited, to give evidence or face questions on the merits of his claims.

I therefore do not believe such a proposal as has been raised in the JCR's letter is markedly different or much of an improvement to the current combination of judicial oaths and rules of the court which are rather vague, not very transparent and do not allow litigants or members of the public to examine the interests of the judiciary in a properly maintained and published register of judicial interests, as this petition proposes.

Turning to the remaining issue raised in the JCR's letter, that of the refusal of the Lord President to keep the JCR informed of what action the Lord President will take after a complaints referral by the JCR, I am surprised the Lord President is treating an office created by statute, which has a role intended to bring greater transparency to the judiciary, as a "third party". This appears to run counter to the aspirations of

increased transparency in the judiciary, afforded by the creation of the JCR and the public's expectation of accountability in public life.

Given it appears there is greater transparency in how the equivalent complaints and review process works in England & Wales, with outcomes of upheld investigations published online by the Judicial Conduct and Investigations Office as opposed to the process in Scotland, there appears to be merit in strengthening the powers and resources of the JCR to promote greater transparency in matters relating to the judiciary and falling within the JCR's remit.

**Responding to New Zealand MP Dr Kennedy Graham's email of 15 October 2013**, it would be fair to say I share Dr Graham's motivation for a register of judicial interests, relevant of course to Scotland.

I too believe that a register of judicial interests would seek to ensure that judges are assisted through institutional means, rather than relying purely on personal discretion & judgement, in determining whether they should handle a case or not. A fully maintained and published register of judicial interests would protect judiciary from accusations or insinuations that their judgement was poor, and clearly such a register would promote transparency for public confidence in the judiciary.

I note from Dr Graham's letter that both the Chief Justice and the President of Court of Appeal testified before the New Zealand Parliamentary Select Committee on the New Zealand Government's bill which has come about as a result of Dr Graham's work.

Clearly it would assist matters if our own Lord President and other representatives of the judiciary could make the same effort and attend the Petitions Committee to give members and the wider public an understanding of their opposition to the petition's proposal for a register of interests, a requirement which many others in public life have little difficulty with.

**Responding to the Chief Executive of the Scottish Court Service Mr Eric McQueen's letter to the Committee of 23 October 2013**, and noting his confirmation the Scottish Court Service has maintained a register of interests for staff which has not posed any difficulties, it may help the public debate on this petition if Mr McQueen were invited to give evidence to the Committee on how the SCS register of interests operates, given the key role the staff of the SCS play in maintaining the function of our courts.

I note that no response has been received from the Lord Advocate, regarding how the Crown Office maintain and operate their own register of interests. In the interests of the debate, and given the key role the Crown Office play in our justice system, it

may be beneficial for the Committee to invite the Lord Advocate to give evidence on the Crown Office implementation and operation of a register of interests.

**Finally, responding to the letter of 31 October 2013 from the Cabinet Secretary for Justice, Mr Kenny MacAskill**, I simply wish to point out that the current situation in relation to judicial complaints where the JCR has informed the Committee that her office is being treated as a "third party" by the Lord President, appears to be against the spirit of the JCR's role, at some odds to the equivalent process in England & Wales, and therefore not conducive to enhancing transparency or public confidence in the judiciary.