

Petition PE1458/EEE: Register of Interests for members of Scotland's Judiciary

Response to Lord President's letter of 27 Feb 2017

Noting Lord Carloway's offer to give evidence in public session, I urge members to invite the Lord President to an evidence session so the Committee and public can hear from the current Lord President on this petition and evidence submitted to the Committee.

Regarding Lord Carloway's concerns about online fraud and the proposal to create a register of judicial interests, I would point out the subject of online fraud has not particularly affected or precluded other branches of public services and government, including the Scottish Parliament, from maintaining registers of interests which include financial and other details - for a considerable length of time.

Online fraud is a matter which everyone in society must deal with. Information readily published by the courts, the Crown Office and other bodies within the justice system in relation to court opinions or verdicts, contain financial, location or other personally identifiable information of significantly greater detail than is currently published about any member of Scotland's judiciary.

With regards to concerns in relation to judges declining positions on public bodies which require the disclosure of financial details, I wish to point out judges are wealthy, well connected and influential members of the most powerful group of people in society – the judiciary. The viewpoints they hold, their status, power, and their part in decision making goes on to form public policy or law, impacting on all areas of public life.

Members of the judiciary who hold positions on public bodies, remunerated or not, should be required to declare their financial and other interests, like other members of those bodies, as there is a public expectation of transparency in all decision making and branches of Government.

Noting Lord Carloway's comments on the current system of judges deciding whether to recuse themselves or not, this system has been proved to hold significant failures, where cases have been heard by judges who refuse to recuse themselves or, have failed to declare an interest.

The Committee has already been made aware of such cases where in one example an individual was denied their liberty, then an appeal judge who threw out the appeal, claimed in a newspaper investigation he forgot he prosecuted the same individual who was appealing his conviction.

A new system of someone else deciding if a judge should recuse themselves, along with a full and open account of the recusal decision, should be created. I do not believe such a system would pose unwarranted financial expense or considerable delays to cases.

Noting Lord Carloway's acceptance of my previous suggestions to widen the scope of the recusals register, I support the inclusion of details where a judge is asked to recuse, considers recusing on his own, or refuses to recuse.

Further, I suggest it would be **no great effort** to include case reference numbers, and parties in the publication of details in the recusals register (the subjects of cases permitting), in similar form as already regularly appears in court opinions on the Scottish Courts website.

The routine publication of such detail and data should be standard practice of a transparent and accountable justice system so when a recusal request or decision occurs, court users, legal representatives, the public and media know exactly why and for what reason a decision was taken.

Response to evidence from Professor Paterson of 19 January 2017.

Noting the Professors' comments **"the strengths of a judicial register is that it allows fair-minded, independent and external observers to say, "Haven't you got a potential interest here?" and the matter can be aired before the case starts. If you do not have a judicial register of interests, everything is left to the judge and the judge's memory"**

This is the aim of this petition, to create a register of judicial interests to afford court users, their legal representatives and external observers the opportunity to scrutinise the judiciary and decisions in court in a way which will bring much needed transparency to the justice system. The strengths in creating a register of judicial interest outweigh any conceivable disadvantages.

In relation to Professor Paterson's evidence on the existence of a register of interests for American judges, members can view an example of such a register at the Centre for Public Integrity

In relation to recusals, Professor Paterson said in his evidence **"We have a register of how often judges recuse themselves but, as I have pointed out, we do not know how often they do not recuse themselves, so we cannot form a view on whether they have always got it right or whether there are situations in which they did not get it right."**

I share the Professor's view the current recusals register lacks considerable detail. This can easily be demonstrated by viewing the limited publication of information relating to judicial recusals here: <http://www.scotland-judiciary.org.uk/68/0/Judicial-Recusals>

I reiterate there are grounds to widen the scope of the recusals register as Lord Carloway now accepts, and expand it to include information commonly published in Court opinions.

Regarding a question from Committee member Rona Mackay MSP to Professor Paterson on the subject of the Scottish Courts & Tribunals Service Board register of interests and relevant judicial office-holder members in being able to hear cases in connection with registered interests, I refer to earlier evidence presented to the

Public Petitions Committee in July 2014

http://www.parliament.scot/S4_PublicPetitionsCommittee/General%20Documents/PE1458_GG_Petitioner_23.07.14.pdf where a former member of the Scottish Courts Service Board (replaced by the new SCTS Board) presided over a hearing involving a supermarket chain, while holding shares in the same company.

The Sheriff Principal did not recuse from the case, which featured in a Sunday Herald investigation http://www.heraldsotland.com/news/13157592.Pressure_grows_for_register_of_judges_interests_as_sheriff_hears_Tesco_case_while_holding_shares_in_company/.

Other financial interests understood to be held by the same Sheriff Principal were commented on in a Scottish Sun investigation in May 2014. The article queried the appropriateness of members of the judiciary having shareholdings in companies that had been convicted of criminal offences in Scotland, and abroad.

The Sheriff Principal subsequently retired from the post during 2015, and now serves in the new Sheriff Appeals Court.

Response to letter from JCR:

I thank the Judicial Complaints Reviewer for her continued support for the creation of a register of judicial interests.

I support the JCR's view where complaints against the judiciary may decline if judges register their interests. The existence of a register sets a standard of openness and is a keen reminder to those who disclose their interests that the public expect transparency and accountability in branches of Government and those in public life.

Response to submission from Melanie Collins:

A submission has been published in relation to a case where a judge presided in court on numerous occasions where his son was linked to and provided legal advice to parties in court without any recusal taking place.

In relation to such conflicts of interest, I noted from Professor Paterson's evidence, he said "**As long as everybody knows about it and it is declared, it should not mean an automatic disqualification. In such situations, all the parties usually know and no objection will be made.**" However having looked further at Ms Collin's submission, it appears her partner was not made aware of any relationship between the judge and his son until years into the court process.

A register of interests and a more transparent system for recusals could have prevented instances such as this, others we already know about, and potentially further cases we are yet to discover.

I note in the submission a comparison and example of good practice is referred to where Lord Brian Gill recused himself from a court case in June 2014, due to a similar scenario where his son represented or was linked to one of the parties in court.

However, while I noted Professor Paterson's comments in relation to relatives appearing in front of their parents on the judiciary happened "**in the past**" I doubt most litigants or members of the public find it acceptable or fair that a judge can hear or play any part in a case where their children or relatives are connected to one of the parties in court.

The potential for bias and an unfair advantage to one party is clear.

In my view, such a case, and, if others exist, make it difficult to justify a position where a judge decides on their own if they have a conflict of interest. This effectively creates a judge acting in their own cause, as in the Hoffman case in relation to General Pinochet.

Such situations could easily be avoided by incorporating links into a register of judicial interests, particularly as Professor Patterson and Lord Carloway accept Scotland has a 'small', connected judiciary - around 700 members or so - a significantly greater number than MSPs or Scottish Ministers who by comparison are required to declare their interests.

The judiciary are, by far, the largest group of individuals from the most powerful branch of the executive who remain without a requirement for public transparency and a register of interests. It is now time to put right this omission, as the gains in transparency outweigh any negatives.

I would like to remind the Committee, if the Lord President is so minded, he could expand the current Scottish Courts & Tribunals Service Board register of judicial interests to apply to all 700 or so members of Scotland's judiciary, with enhanced declarations from the very limited information currently published in the SCTS Board register. Surely a step in the right direction.

As the Lord President has already offered to give evidence before the Committee - an offer I fully endorse, I request the Committee invite Lord Carloway to attend a meeting, then take time to consider any evidence and responses, and consider further how to address the aims of this petition.

Peter Cherbi, Petitioner PE1458