



The Lord President

Parliament House
11 Parliament Square
Edinburgh
EH1 1RQ

5 February 2013

David Stewart MSP
Convenor of the Public Petitions Committee
c/o Mr Andrew Howlett
Assistant Clerk to the Public Petitions Committee
Scottish Parliament, T3.40
Edinburgh
EH99 1SP

Dear Mr Stewart,

PUBLIC PETITION PE1458: REGISTER OF JUDICIAL INTERESTS

Thank you for your letter dated 9 January 2013 in respect of the above. I am firmly of the view that a Register of Judicial Interests is unnecessary and I do not support the terms of the petition.

Is there a practical need for a register of judges' pecuniary interests?

The catalyst for this petition appears to be New Zealand legislation prepared following a case where a judge failed to recuse himself. To my knowledge, no such situation has arisen within my tenure as Lord President. The Council of Europe Group of States against Corruption (GRECO) considered the need for a Judicial Register of interests as part of their First Evaluation Round Report on the United Kingdom dated 14 September 2001¹ and concluded as follows:

"As regards the institutions that are entrusted with the fight against corruption the GET noted that judges in the United Kingdom are not required to register their interests. Given, however, that the United Kingdom judiciary is generally perceived as conforming to social demands for observance of high integrity standards, the GET did not consider it necessary to address a recommendation in this connection." (paragraph 87)

1

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2001\)8_UnitedKingdom_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2001)8_UnitedKingdom_EN.pdf)

The Right Honourable Lord Gill

Telephone 0131 240 6701

Fax 0131 240 6704
lppo@scotcourts.gov.uk

DX549306 Edinburgh 36

Although yet to be published, I understand that having reconsidered this issue in their Fourth Evaluation Round Report last year, they remain of the view that a register or asset declaration system for members of the Judiciary is unnecessary.

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. I refer to the SPICe Briefing which details these provisions but would wish to draw the Committee's attention to the following points.

- The Judicial Oath, is taken by all judicial office holders, and requires judges to do right to all manner of people without fear or favour, affection or ill-will.
- The Statement of Principles of Judicial Ethics², issued in April 2010, states at principle 5 that all judicial office holders have a general duty to act impartially and, in particular, notes that *"Plainly it is not acceptable for a judge to adjudicate upon any matter in which he, or she, or any members of his or her family has a pecuniary interest..."*
- The Judiciary and Courts (Scotland) Act 2008 contains provisions in section 28 and section 35 to regulate and investigate the conduct of judicial office holders. The Complaints about the Judiciary (Scotland) Rules 2011 came into force in 2011. To date there have been no substantiated complaints alleging judicial bias. In addition, the Conduct Committee of the Judicial Council intends to consult in the Spring of this year on rules under section 35 in respect of fitness for judicial office in tribunals.

In my view there is no need for the further measure of a "Register of Judicial Pecuniary Interests" as advocated in this petition.

Misconceptions within the petition

The petition appears to proceed on an apparent misconception that equal treatment in terms of disclosure obligations of each of the three branches of Government is desirable. The three branches have significantly different roles to perform. The judicial role requires independence and impartiality in relation to the individual case which the judge has to decide. In this context, the potential for conflict of interest or apparent bias extends beyond pecuniary interests alone. The judge's duty of disclosure is more far-reaching than a bare listing of particular pecuniary interests identified by legislation as warranting disclosure. For example, a judge's disclosure duties, as set out in the Statement of Principles of Judicial Ethics, will extend to material relationships.

² <http://www.scotland-judiciary.org.uk/Upload/Documents/Principles.pdf>

The petitioner is also incorrect in his assumption that *"being obliged to declare pecuniary interests...would relieve a judge from a repetitive weight of responsibility to make discretionary judgments about his or her personal affairs as each case arises."* This is a naïve interpretation that does not appreciate the role of a judge. Judicial conflicts of interest based on a judge's pecuniary interests arise infrequently but, when they do, the existence of an entry on a judicial register of pecuniary interests would not relieve the judge concerned from his or her obligations to make full disclosure and to reach a principled decision as to whether recusal is warranted. For that reason, I do not consider that the vehicle that the petitioner proposes would achieve its stated purpose of *"providing greater transparency within the judicial system and to avoid any conflict of interest in the judicial role."*

Practical considerations

In practical terms it would be impossible for all judicial office holders to identify all the interests that could conceivably arise in any future case. The terms of the Judicial Oath and the Statement of Principles of Judicial Ethics ensure that such a difficulty does not arise and that the onus is on the judicial office holder to declare any interest at the outset. This is a view shared and supported by the Justices of the Supreme Court who have publicly stated that:

"it would not be appropriate or indeed feasible for them to have a comprehensive Register of Interests, as it would be impossible for them to identify all the interests, which might conceivably arise, in any future case that came before them. To draw up a Register of Interests, which people believe to be complete, could potentially be misleading. Instead the Justices of the Supreme Court have agreed a formal Code of Conduct by which they will all be bound and which is now publically available on the UKSC website."

Unintended consequences

The introduction of such a register could also have unintended consequences. Consideration requires to be given to judges' privacy and freedom from harassment by aggressive media or hostile individuals, including dissatisfied litigants. It is possible that the information held on such a register could be abused. These are significant concerns. If publicly criticised or attacked, the judicial office holder cannot publicly defend himself or herself, unlike a politician. The establishment of such a register therefore may have the unintended consequence of eroding public confidence in the Judiciary. It also raises the question whether such a measure would have an adverse impact on the recruitment and retention of the Judiciary.