[redacted]

**Further evidence from November 2019**

Moi Ali (given orally)

- Purpose of a register is to install confidence, openness and transparency
- Judges deal with complaints about judges; therefore, a register of interests is required. In England and Wales, upheld complaints are published and this would be welcomed in Scotland.
- The Register of Recusals is welcomed but insufficient as it does not include Justices of the Peace which seems strange considering that JP's do make decisions.
- In terms of the information which should be required: family connections - especially those with a legal link, financial data (company shareholdings) and any other roles that JOHs hold.

Peter Cherbi (in writing)

- Stated that the LP's response to the Committee in April did not address the issue of serving members of the Scottish judiciary holding judicial positions in the UAE and other States with poor human rights records. (This was covered by the Daily Record in 2018, one Scottish judge was still sitting as a temporary judge but had not actually sat in the Court of Session, the other was retired).
- As a result of this petition there is now a Register of Recusals - which has existed since April 2014 and now holds over 180 recusals of members of the judiciary and tribunal members - on varying grounds which in itself, does confirm and bolster the need for a full register of judicial interests.
- Some recusals are not being made and some are not being listed.

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| | **Next steps**<br><br>You will be provided with full briefing on the register and the evidence to inform your response to the Justice Committee shortly. |
| REDACTED | [redacted] |

Cabinet Secretary for Justice

**MEETING WITH CHIC BRODIE, ANGUS MACDONALD AND JOHN WILSON (PUBLIC PETITIONS COMMITTEE)**
**WEDNESDAY 7 MAY, 15:30 – 16:15**

| | |
|---|---|
| **Key Message** | Keen to hear views about Judicial Complaints system, which has been in existence for 3 years. |
| **Who** | Meeting Chic Brodie, Angus Macdonald and John Wilson, SNP members of the Public Petitions Committee |
| **What** | REDACTED |
| **Why** | REDACTED |
| **Where** | Parliament, TG:20/21 |
| **When** | WEDNESDAY 7 MAY<br>15:30 – 16:15 |
| **Supporting Officials** | **Name:** REDACTED, Deputy Director, Civil Law and Legal System Division<br>REDACTED, Courts Sponsorship and Appointments Branch, Mob<br>REDACTED |
| **Alternative contact** | |
| **Briefing** | **Annex A:** Agenda and Steering Brief for meeting (if there is no formal agenda, then just a list of topics that can reasonably be expected to come up) |

**Copy to:** **DG Learning and Justice,** REDACTED, REDACTED, REDACTED, REDACTED, **Comms Safer and Stronger**

**ANNEX A**

**MEETING WITH CHIC BRODIE, ANGUS MACDONALD AND JOHN WILSON (PUBLIC PETITIONS COMMITTEE)**

**Agenda & Discussion Points**

1. REDACTED
2. REDACTED
3. **Public Petitions Committee**
4. **Summary and Way Forward**

| | |
|---|---|
| **Item 1:** | REDACTED |
| **Key Message:** | REDACTED |

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| **Item 2:** | REDACTED |
| **Key Messages:** | REDACTED |
| | REDACTED |

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| **Item 3:** | **Public Petitions Committee consideration of Petition PE1458 – Register of Interests for Judges** (Annex C) |
| **Key Messages:** | Scottish Government considers is it not necessary to establish a register of interests for the judiciary. |
| **Discussion:** | • not necessary to establish a register of interests for the judiciary<br>• there are already sufficient safeguards in place - the judicial oath, the Statement of Principles of Judicial Ethics for the Scottish Judiciary and the Rules made under the Judiciary and Courts (Scotland) Act 2008 that relate to investigations into complaints about judicial conduct<br>• Helpful that the Scottish Court Service has set up a system to collect data about the judiciary recusing themselves from cases where there is a conflict of interest<br>• Public Petitions Committee met yesterday, 6 May. Ask how the discussion went at that meeting |
| | **Background briefing for this item is set out in Annex C** |

**ANNEX B**

**Role of the Judicial Complaints Reviewer**

1. The Judiciary and Courts (Scotland) Act 2008 (the 2008 Act), which had all party support, places the Lord President as the head of the judiciary in Scotland and with ultimate responsibility for the investigation and determination of any matter concerning judicial conduct. The Lord President made the first rules governing the process for handling complaints against the judiciary in 2011. Under the rules (which are currently being reviewed by the Lord President following a consultation last autumn), complaints about the conduct of the judiciary are made to the Judicial Office for investigation by a nominated judge if the complaint is within the rules.

2. Moi Ali was appointed as the first Judicial Complaints Reviewer (JCR) on 1 September 2011. The complaints and discipline process created by the 2008 Act has been running for a very short time and it would be premature to review the JCR role at this time.

3. The JCR's role is to review independently on the request of a complainer how a complaint have been handled and determine whether the relevant rules of procedure have been followed. Where the JCR concludes that the rules have not been followed (and the breach is not simply minor or technical) she refers the case to the Lord President. The Lord President then decides what action to take following a referral. The JCR does not consider the substance or merits of a complaint: the role is limited to ensuring that the appropriate procedures have been followed.

4. The role of the JCR maintains the independence of the Lord President. It also avoids unnecessary bureaucracy and expense given the relatively small number of reviews. In her annual report for 2012-13 the JCR records having received 43 review requests and enquiries about conduct complaints against the judiciary. The JCR carried out 29 reviews in 2012-13 and reports that she found 20 breaches; sixteen of which were of a minor or technical nature which did not affect the outcome of the complaint and consequently did not need to be referred to the Lord President. Only four cases were referred to the Lord President.

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- The JCR encouraged the SCS in setting up a system to collect data on the occasions when the judiciary recuse themselves from cases where there is a conflict of interest (see details at paragraph 7 of Annex B).

- The Lord President has agreed to inform the JCR of the outcomes of all referrals. (Previously, the position was that if the JCR made a referral to the Lord President she was told the outcome of such a referral. However, where the Lord President ordered a fresh review of the case, following a referral from the JCR, she was not informed of the outcome.)

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**ANNEX C**

**Public Petitions Committee - Register of Pecuniary Interests for the Judiciary**

1. Petition PE1458 calls on the Scottish Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill (as is currently being considered in New Zealand's Parliament) or amend present legislation to require all members of the Judiciary in Scotland to submit their interests and hospitality received to a publicly available Register of Interests. The Scottish Government responded to the issues raised in the petition on 11 February 2013. It concluded that the Scottish Government does not believe that there is currently any evidence to suggest that the existing safeguards are not effective and does not therefore consider that a register such as that advocated in the Petition is necessary.

2. You wrote to the Public Petitions Committee on 22 April 2014, noting the evidence the Committee has gathered, and in particular the arguments presented by the Judicial Complaints Reviewer (see below). You said that it is not necessary to establish a register of interests for the judiciary, and that there are already sufficient safeguards in place - the judicial oath, the Statement of Principles of Judicial Ethics for the Scottish Judiciary and the Rules made under the Judiciary and Courts (Scotland) Act 2008 that relate to investigations into complaints about judicial conduct.

3. At its meeting on 6 March 2014, the Public Petitions Committee agreed that they should seek to have a Parliamentary debate on the issue of a register of judicial interests. The Public Petitions Committee discussed this petition again at its meeting yesterday, 6 May. We have not yet seen the official report.

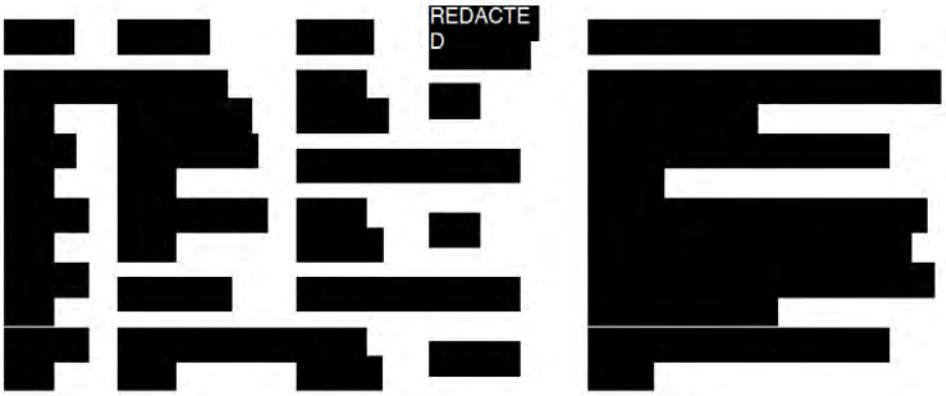
**Judicial Complaints Reviewer (JCR)**

4. The JCR gave evidence to the Public Petitions Committee on 17 September 2013 and subsequently wrote to the Committee by way of follow-up on 9 October 2013 and 28 February and 23 April 2014. Her evidence was to the effect that a Register of Interests would increase transparency and public trust in the judiciary. REDACTED

5. The JCR's letter to the Committee on 23 April 2014 says that "given the position of power held by the judiciary, it is essential not only that they have absolute integrity – but crucially, that they are *seen* to have absolute integrity. Again, a register of interests is a way of demonstrating that a judicial office holder is impartial and has no vested interest in a case – financially, through family connections, club/society membership or in any other way. Conversely, the refusal to institute a register of interests creates suspicion that in turn undermines judicial credibility. So once more, a register of interests is good for the judiciary and good for the public." See attached copy of the JCRs letter (3 page letter only – no need to read attachment).

**The Lord President**

6. The Lord President does not consider that a Register of Interests for the Judiciary is needed. However, following the JCR's call for greater transparency and accountability, the SCS set up a system to collect data about the judiciary recusing themselves from cases where there is a conflict of interest. The fact of recusal and the reason for it is published on the Judiciary website as notification of recusal is received. Here is the data to date:




8. The JCR considers this does not go far enough and that there should be a published register of interests to avoid cases where an alleged conflict of interest only comes to light after a court case is heard.

From: REDACTED
Civil Law and Legal System Division
6 February 2020

Cabinet Secretary for Justice

**PETITION 1458 – PROPOSAL TO ESTABLISH A REGISTER OF JUDICIAL INTERESTS – LETTER FROM CONVENER OF JUSTICE COMMITTEE**

**Purpose**

1. To provide a response to a letter of 22 November 2019 (attached at Annex A) from the Convener of the Justice Committee seeking further views from you on the petition and whether it remains the Scottish Government's position that a register should not be introduced.

**Priority**

2. Immediate. Response to be provided by 7 February.

**Background**

3. Petition PE1458 calls on the Scottish Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill or amend present legislation to require all members of the Judiciary in Scotland to submit their interests and hospitality received to a publicly available Register of Judicial Interests.

**Further Evidence**

4. On 19 November 2019, the Justice Committee held a further evidence session to consider written evidence from the petitioner, Peter Cherbi and oral evidence from one of the previous Judicial Complaints Reviewers, Moi Ali. After considering all the evidence taken at this meeting and previously, the Committee is minded to support the principle behind the petition as it feels it has not yet heard a convincing case against.

5. You have been asked to review all the evidence received on this petition, and to then set out in detail why, as in your letter to the Committee of 3 April 2019 notes, you do not think it necessary to establish a register of interest.

6. You have also been asked to provide further details on the Scottish Government's view of what would be involved in establishing such a register and whether this would require primary legislation or if it could be achieved by some other means.

**History of the petition**

7. The petition was lodged with the Scottish Parliament on 7 December 2012. The Scottish Government responded to the issues raised in the petition on 11 February 2013.

8. The Scottish Government's written response to the Public Petitions Committee (PPC) on 11 February 2013 advised that there are sufficient safeguards in place to ensure the impartiality of the judiciary in Scotland. Such a register of interests could be established administratively and without legislative provision. That would be a matter for the Lord President as head of the judiciary in Scotland. However, the Scottish Government did not consider there was any evidence to suggest that the existing safeguards were not effective and did not consider that a register of judicial interests was necessary.

9. The current safeguards to ensure that judicial impartiality is maintained are:

1. The Judicial Oath which requires judges to do right to all manner of people without fear or favour, affection or ill-will.
2. The Statement of Principles of Judicial Ethics for the Scottish judiciary. This was first issued in 2010 (up-dated in 2013, 2015 and 2016) by the Judicial Office for Scotland as guidance for judicial office holders in Scotland. Paragraph 5 discussed financial conflicts of interest in the context of judicial impartiality and states 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….."
3. The Judiciary and Courts (Scotland) Act 2008 contains provision in section 28 to investigate the conduct of judicial office holders. The Lord President's Complaints about the Judiciary (Scotland) Rules came into force in 2011 (amended in 2013 and 2017).

10. In addition, a public register of judges recusals was set up from 1 April 2014 by the Scottish Court Service. This provides the reason why the judge or sheriff formally recuses him or herself, for example where they are personally known to the witness. With effect from 1 February 2018 the register was extended to include members of the Scottish Tribunals and Justices of the Peace. The fact of recusal and the reason for it are published in the register.

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[redacted]

[redacted]

[redacted]

**Recommendation**

9. **To invite you to:**

- **Send the attached response to the Convener of the Justice Committee.**

[redacted]
Civil Law and Legal System Division
Ext: [redacted]

| Copy List: | For Action | For Comments | For Information | | |
|---|---|---|---|---|---|
| | | | Portfolio Interest | Constit Interest | General Awareness |
| Minister for Community Safety | | | | | X |
| Lord Advocate | | | | | X |

DG Learning and Justice
Director of Justice
REDACTED

**OFFICIAL**

From: REDACTED
Justice – Civil Law and Legal System Division
3 April 2019

Cabinet Secretary for Justice

**PETITION 1458 – REGISTER OF INTERESTS FOR MEMBERS OF SCOTLAND'S JUDICIARY – LETTER FROM CONVENER OF JUSTICE COMMITTEE**

**Purpose**

1. To respond to a letter of 20 February 2019 from the Convener of the Justice Committee seeking your views on the petition and whether it remains the Scottish Government's position that a register should not be introduced.

**Priority**

2. Routine, although the Committee have asked for a response by 5 April.

**Background**

3. Petition PE1458 calls on the Scottish Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill or amend present legislation to require all members of the Judiciary in Scotland to submit their interests and hospitality received to a publicly available Register of Interests. The petition was lodged with the Scottish Parliament on 7 December 2012. The Scottish Government responded to the issues raised in the petition on 11 February 2013.

4. On 6 March 2014, the Public Petitions Committee wrote to Mr MacAskill, the then Cabinet Secretary for Justice, asking whether the Scottish Government would review its position on whether members of the judiciary ought to register their interests. Mr MacAskill's response, dated 22 April 2014, said that he did not consider it necessary to establish such a register as there are sufficient safeguards in place to ensure the impartiality of the judiciary.

5. The Public Petitions Committee took written submissions, oral submissions, commissioned SPICE briefings and held a debate on the petition. Submissions from the Lord President, the First Minister and the then Minister for Community Safety all concurred with Mr MacAskill's view that there were sufficient safeguards and a register was not necessary.

6. On 22 March 2018 the Committee convener, Johann Lamont, wrote to your predecessor, Mr Matheson setting out their conclusions. The introduction of a register of judicial recusals, which came into effect in April 2014, was welcomed. Ms Lamont went on to say, that the Public Petitions Committee had considered the arguments in favour and against introducing a register of financial interest and had concluded that it was both a workable idea and "such disclosures not only allow for demonstration that decision-making is not influenced by personal interests but also prevent the perception of the influence of interests on decision-making."

7. The letter further advised that as neither the Scottish Government nor the Judicial Office for Scotland supported the introduction of a register, the Committee had agreed to refer the petition to the Justice Committee. Mr Matheson responded on 29 March 2018 acknowledging the issue had been referred to the Justice Committee and expressing his gratitude for the Committee setting out the background to their conclusions.

**Scottish Government's view of petition in earlier written responses**

8. The Scottish Government's written response to the Public Petitions Committee (PPC) on 11 February 2013 advised that there are sufficient safeguards in place to ensure the impartiality of the judiciary in Scotland. Such a register of interests could be established administratively and without legislative provision. That would be a matter for the Lord President as head of the judiciary in Scotland. However, the Scottish Government did not consider there was any evidence to suggest that the existing safeguards were not effective and did not consider that a register of judicial interests was necessary.

9. The current safeguards to ensure that judicial impartiality is maintained are:

1. The Judicial Oath which requires judges to do right to all manner of people without fear or favour, affection or ill-will.
2. The Statement of Principles of Judicial Ethics for the Scottish judiciary. This was first issued in 2010 (up-dated in 2013, 2015 and 2016) by the Judicial Office for Scotland as guidance for judicial office holders in Scotland. Paragraph 5 discussed financial conflicts of interest in the context of judicial impartiality and states 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….."
3. The Judiciary and Courts (Scotland) Act 2008 contains provision in section 28 to investigate the conduct of judicial office holders. The Lord President's Complaints about the Judiciary (Scotland) Rules came into force in 2011 (amended in 2013 and 2017).

10. In addition, a public register of judges recusals was set up from 1 April 2014 by the Scottish Court Service. This provides the reason why the judge or sheriff formally recuses him or herself, for example where they are personally known to the witness. The fact of recusal and the reason for it are published in the register.

**The Lord President's view of petition**

11. The previous Lord President (LP) provided a written response to the PPC on 5 February 2013. The LP's view was that the existing safeguards are sufficient to ensure that judicial impartiality is maintained and there is no need for the further measure of a Register of Judicial Pecuniary Interests. The LP also pointed out that the judge's duty of disclosure is more far-reaching than listing particular pecuniary interests. Material relationships should be disclosed. The current LP wrote to the PPC on 8 February 2016 confirming he agreed with his predecessor and made further

submissions as requested by the PCC in 2017. We have confirmed with his officials that he has not changed his view.

**Justice Committee consideration of Petition PE1458**

12. The petition was referred to the Justice Committee on 31 May 2018. Submissions have been received by the petitioner, Peter Cherbi, and the former Judicial Complaints Reviewer (JCR), Moi Ali in support of the introduction of a register. Both subsequent JCRs have also been in support of the introduction of a register.

13. The Justice Committee first discussed the petition on 25 September 2018 and agreed to keep the petition open and seek further information. On 5 February 2019, the Justice Committee considered the petition and agreed to write to you, to seek your views as a new cabinet secretary. The views expressed by the Committee are included at Annex A. This includes seeking further information on other jurisdictions.

14. At the time of the petition being lodged in 2012 New Zealand was considering introducing a register. This was defeated by their parliament in 2015. Norway has a register of extra- judicial interests activities for their judiciary. This covers membership, offices or other forms of commitment, investments in companies of a certain value, honorary posts, employment and other positions.

REDACTED

**Recommendation**

**16. To invite you to send the attached letter to the Convener of the Justice Committee.**

REDACTED, **Civil Law and Legal System Division, Ext:** REDACTED