

OFFICIAL

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Minister for Community Safety					X

DG Learning and Justice
Director of Justice
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Minister for Community Safety and Legal Affairs

**MEETING GILLIAN THOMPSON, JUDICIAL COMPLAINTS REVIEWER,
THURSDAY 14 JANUARY 2015, 13:45 to 14:30**

Purpose

1. To provide briefing for a meeting with Gillian Thompson, Judicial Complaints Reviewer.

Suggested issues to raise with the JCR

2. This meeting is intended to be an introductory meeting with the JCR who took up her role in September 2014. The Minister may also wish to raise issues discussed when he gave evidence to the Public Petitions Committee in December. Here is a note of suggested issues to raise with the JCR:

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- **JCR's views on a Register of Judicial Interests, and the public register of judges recusals?**

3. I attach a background briefing note, and also attach separately the link to the evidence session with the Public Petitions Committee about a Register of Judicial Interests, news release appointing the JCR, former JCR Annual Report published in early December, Statement of Principles for Judicial Ethics and letter from the JCR to the Public Petitions Committee dated 12 January 2015.

4. I will be in attendance at the meeting on Thursday.

[REDACTED], Civil Law and Legal System Division, Ext **[REDACTED]**
13 January 2015

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Cabinet Secretary for Justice			✓		
DG Learning and Justice REDACTED					

MINISTER MEETING JUDICIAL COMPLAINTS REVIEWER – THURSDAY 14
JANUARY 2014 - BACKGROUND BRIEFING NOTE

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Public Petitions Committee – Petition about Register of Judicial Interests

On 9 December 2014, the Minister gave evidence to the Public Petitions Committee in relation to a petition for a Register of Judicial Interests

Background

This petition was lodged by Peter Cherbi in 8 December 2012. The petition calls on the 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 interest and hospitality received to a publicly available Register of Interests.

Scottish Government (SG) response - SG provided a written response to the Public Petitions Committee (PPC) on 11 February 2013 advising 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 SG does not consider there is currently any evidence to suggest that the existing safeguards are not effective and does not consider that a register of judicial interests is necessary.

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 was issued in 2010 (up-dated in 2013) 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 the subject of consultation in late 2013 – amended Rules are due soon).*

The Lord President's response - the Lord President provided a written response to the PPC on 5 February 2013. The LP's view is 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 LP also cautioned that 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.

Judicial recusals - Public register of judges recusals set up from 1 April 2014

The Scottish Court Service (an independent body corporate whose function is to provide administrative support to Scottish courts and the judiciary of those courts) has set up, from 1 April 2014, a register of judicial recusals which provides the reason why the judge or sheriff formally recuses (withdraws from hearing the case) 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. A couple of examples from the register are: where the sheriff was personally known to a witness, or where a relative of the judge was acting for the other side.

This public register was set up in part due to the Judicial Complaints Reviewer's call for greater transparency and accountability when she gave evidence to the Public Petitions Committee on 17 September 2013. In addition the LP met informally with PPC Convener and deputy convener in January 2014.

The LP wrote to the PPC on 21 November 2014 to provide further information about recusals, and whether they are made on a "voluntary" basis which is the usual case or as a result of representations being made to the bench (2 instances to date). There is no evidence to date of a case where a judge or sheriff has had to recuse him or herself when a party raised the matter.

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What could a Register of Judicial Interests cover?

The petition concerned a register of Judges' pecuniary interests but the debate has widened into discussion of membership of bodies or organisations and material relationships. In the case of financial declaration and material relationships it is not clear how far these would need to extend.

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Civil Law and Legal System Division
March 2022

Cabinet Secretary for Justice and Veterans

SUBMISSION – JUDICIAL REGISTER OF INTEREST

Purpose

1. REDACTED

Priority

2. REDAC

Background

3. REDACTED

4.

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6. REDACTED

7.

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Considerations and next steps

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REDACTED

Recommendation

17. REDACTED

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Courts and Tribunals Unit
March 2022

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Minister for Community Safety			X		

DG Education and Justice
Director of Justice

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The Scottish Parliament
Pàrlamaid na h-Alba

Criminal Justice Committee

Keith Brown MSP
Cabinet Secretary for Justice and
Veterans
The Scottish Government

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27 January, 2022

Dear Cabinet Secretary,

I am writing to you on behalf of the Committee following our consideration of Petition 1458, which calls on the Scottish Government to establish a register of judicial interests. A proposal for the same is included in the Scottish Government's 2021-22 Programme for Government.

As such, it would be helpful if you could provide the Committee with an update on how and when you propose to take this commitment forward. It would be useful to know the expected timetable as well as the form that any proposed register will take, what interests it will cover and how it will work in practice.

I look forward to your response.

Best wishes,

Audrey Nicoll MSP
Convener, Criminal Justice Committee

LETTER FROM PETER CHERBI TO CSJV

For the attention of:
Justice Secretary Keith Brown
Scottish Government

21 January 2022

Dear Mr Brown

In relation to the Scottish Government's commitment to create a Register of Judicial Interests, as per my Petition PE1458 which is currently with the Scottish Parliament's Justice Committee.

I have been informed by the Justice Committee that members will be seeking to ask the Scottish Government for an update on this commitment and any plans in relation to creating the judicial register.

As I am the petitioner, and in my role as a journalist - I have followed the petition and continue to work on cases where judges have either failed to declare interests, or have deliberately concealed their interests in and outside of court.

I also note the Recusals Register, created as a result of Petition PE 1458 in April 2014 - has by itself - with the information contained in why recusals are made and by whom - become an asset to widely held views that judicial transparency must be improved, by the creation and publication of a full Register of Judicial Interests.

The petition's progress through the Scottish Parliament, along with evidence hearings and testimony from all sides, including key testimony from Judicial Complaints Reviewer Moi Ali on the workings of, and expectation of transparency within Scotland's judiciary - created a substantial evidence base of information which should be put to good use in the creation of a judicial register.

Can you inform me of what plans are currently being considered by the Scottish Government for the creation of the judicial register, how much progress has been made on this matter and any timetable envisaged for implementation of a Register of Judicial Interests for all members of Scotland's judiciary.

As the petitioner, I would hope to be afforded the chance to give input on the creation of this judicial register, in terms of what requirements should be imposed on members of the judiciary to declare their interests, links, financial assets & other interests to ensure the commitment to create transparency in Scotland's justice system, judiciary and courts will be a step in the right direction for the public interest, and improvement of public trust in the justice system

Regards

Peter Cherbi
Petitioner PE1458

BACKGROUND INFORMATION ON JUDICIAL REGISTER OF INTERESTS

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I.

II.

III.

IV.



