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Senior Black Judge challenges Disciplinary Panel recommendation that he be given formal advice for alleged misconduct as discriminatory on grounds of race, but forces an apology and a change to the procedure by which any Judge can be suspended

The disciplinary panel chaired by Mrs Justice Elisabeth Laing Q.C., and Judicial member Her Honour Judge Anuja Dhir Q.C., and lay members, Commodore Dusty Amroliwala O.B.E., and Victor Marshall O.B.E. met in private on 20th May and then decided after hearing from Herbert on November 3rd to find he was guilty of misconduct for criticising a fellow Judge.

The disciplinary panel decision set out in their draft forty page report (copy attached) that:-

- A) Herbert's conduct amounted to misconduct, to accuse a fellow Judge of race discrimination was "careless" and amounted to an allegation that was "grave....serious and damaging", "a particularly corrosive accusation" to make: and likely to undermine confidence in the administration of justice;
- B) Criticised his judgment for suggesting that the conduct of the panel was itself discriminatory and that any ruling against him would have negative consequences for diversity in the Judiciary itself;
- C) Decided that they would not address the alleged discriminatory aspect of either his suspension or misconduct but claimed they were nevertheless bound by the Equality Act 2010 and @6 of the ECHR;

- D) Found that The President of the South Eastern Circuit had no power in law to suspend Judge Herbert by refusing to permit him to sit at Harrow Crown Court;
- E) Recommended he be given an apology for this treatment by a senior member of the Judiciary;
- F) Recommended that in future no Judge should be subject to threat of suspension without a report being sent to the Lord Chief Justice who has the sole power to suspend a Judge and hear representations.

In his formal response Herbert has called for the employees of the MOJ in the JCIO and the four Judges responsible for his suspension, namely The President for the South Eastern Circuit, the President of the Employment Tribunal, The President of the Immigration Tribunal, and Stuart –Smith J to be investigated forthwith for misconduct and breach of the relevant Equality and Diversity Policy, relating to bullying and harassment.

In a letter dated 27th June 2016 the Panel also decided that in reference to race discrimination and the suspension: ***‘these are matters for which there are other avenues of redress.’*** being the Employment Tribunal and potentially the Judicial Appointments and Conduct Ombudsman (JACO).

Judge Herbert in his response claimed that, “This decision was maintained as they refused to address the issue of race discrimination and/or victimisation and avoided considering whether Judge Herbert was subject to bullying or harassment contrary to the Judicial Diversity and Equality policy that specifically covers such conduct

D Peter Herbert O.B.E. commented,

“It is simply unacceptable to suggest that a part time Judge, no matter how junior, should be told to resort to an Employment Tribunal to seek redress. As one of the few judges of African decent in the United Kingdom, who sits in three different jurisdictions, with a consistent record of fighting within the system for justice and equality, to be treated in this manner is a sad reflection on the Judiciary itself. If this recommendation is maintained by the Lord Chief Justice and Lord Chancellor it will stand in stark contrast to the recent criticism by Lord Neuberger of Lady Justice Hale for her comments on the Brexit decision. I do not expect to be treated above the law that applies to others but I do expect to be treated equally.”

Lord Herman Ouseley commented,

“I am aware of political statements made by others in the judiciary, and criticism made by member of the Supreme Court which have not been the subject of disciplinary action. So why the differential treatment?Any findings on the basis of facts as they exist in this matter would be unfair and potentially discriminatory on racial grounds. Any finding against Judge Herbert would have serious implications for the way the judiciary and the justice system is regarded, making it even harder for those like Judge Herbert, who strive to bring equality, fair treatment and just outcomes in all situations in our Society.

Related Links

<http://www.theguardian.com/uk-news/2016/mar/14/judge-peter-herbert-suing-ministry-justice-race-discrimination>

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<http://criticallegalthinking.com/2015/05/16/why-muslims-cant-trust-the-legal-system/https://www.facebook.com/BBCRadioLondon/videos/10156969773860154/http://www.theguardian.com/law/2016/jun/02/white-lawyers-three-times-more-likely-appointed-recorder>

<http://www.dailymail.co.uk/news/article-2512758/Racist-judges-MORE-likely-jail-black-Asian-criminals-offences--longer-sentences-says-Ministry-Justice.html>

<http://www.legalcheek.com/2016/03/britains-first-black-female-high-court-judge-opens-up-about-racism-at-the-bar/>

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