



The Chair of the Equality and Human Rights Commission,
David Isaacs C.B.E.,
Fleetbank House,
2-6 Salisbury Square,
London EC4Y 8JX.

15th January 2018

Dear David Isaacs C.B.E.,

Re : Proposed s 16 EQA 2010 Investigation by the EHRC into the Claims of race discrimination, victimisation, and sex discrimination filed against the Ministry of Justice by Recorder D Peter Herbert O.B.E., Judge Wellesley-Cole (retired), District Judge Nawal Kumrai and Daniel Ibekwe (former lay ET member) and the failure of the Ministry of Justice to adequately and fully address the recommendations of David Lammy M.P.

Recorder Herbert's case has been stayed with three others at the Employment Tribunal and is set to be listed for a series of separate Case Management Reviews in January 2018. Recorder Herbert's Judicial colleagues are Judge Patrice Wellesley-Cole, a full time Immigration Judge (now retired), Mr Nawal Kumrai, a full time District Judge and Mr Daniel Ibekwe, a former lay member of Croydon Employment Tribunal. We are aware that they have written collectively to you today requesting that the ECHR investigate the Ministry of Justice as regards the Judicial Conduct and Investigation Office (JCIO). Over recent years we are aware of a number of Muslim Judges who have reported to the Association of Muslim Lawyers about their collective grievances but have not felt confident to pursue them for fear of victimisation.

It is the combination of these four cases and the issues arising from the recommendations from the Review by David Lammy M.P. that we call on the EHRC to implement its powers under s16 of the EQA 2010 to investigate the Ministry of Justice. This is to ensure the Ministry of Justice meets its legal and moral responsibilities under equality and human rights legislation.

In response to the individual claims, the Ministry of Justice pleaded in each case that in all areas of complaints and discipline, the actions of all Judicial officers, nominated Judges and civil servants in the Judicial Conduct and Investigation Office (JCIO) as well as Disciplinary Conduct Panels, the Lord Chief Justice and Lord Chancellor enjoyed “Judicial Immunity” and could not be challenged under the EQA 2010. On the 17th November 2017, the Ministry of Justice finally conceded that it would not be relying on this defence but nevertheless proposes to defend all four cases which are due to be set down for hearing this year.

This situation also led to our respective BME organisations filing an Amicus brief in the case of P v MPS joined by the EHRC itself given the impact that this defence would have on many BME office holders and employees. The publication of the Review by David Lammy M.P. focusing on the lack of confidence in the justice system by BME communities has simply heightened the concerns to a far more serious level, as have the results of the recent Prime Ministers Race Audit.

The context of my request for intervention is provided for by the findings of the review by David Lammy M.P. As David Lammy M.P. eloquently put it, the failure to tackle racial disparity in the justice system has both a human and an economic cost:

“These disproportionate numbers represent wasted lives, a source of anger and mistrust, and a significant cost to the taxpayer. The economic cost of BAME over representation in our courts, prison and Probation service is estimated to be over 309 million pounds a year.”

The other context for our cases is the backdrop of the fact that in the year 2017 it remains a national scandal that 93% of Britain’s Judges are white. Shockingly there are only 4 Asian or ethnic minority High Court Judges in the UK, as the only African Caribbean female, High Court Judge, Linda Dobbs J, retired after only a relatively short period in office. It is telling that the Lord Chancellor has once again refused to adopt the setting of targets for the recruitment and retention of BME Judges and Magistrates. If one removes lay member tribunals the percentage of BME Judges is just under 4% so an appallingly low figure given the number of BME Court users in the various jurisdictions. This is against approximately 20% of those appearing in Court being members of the BME communities with far higher percentages in the Mental Health, Employment and Immigration Tribunals.

The Stephen Lawrence Inquiry recommended the adoption of targets in the police force, and many parts of the public sector and it is of deep concern that some thirty years after the necessity of adopting Judicial recruitment targets was first raised by the Society of Black Lawyers in a meeting with the former Lord Chancellor, Lord McKay of Clashfern this position is still unchanged. A deeply unrepresentative, majority white, male and upper middle class Judiciary, 90 % of whom are members of the Bar, with over 60% having attended the private school sector continues to seriously undermine the rule of law and the confidence that the Judiciary ought to enjoy in any democracy. The Lammy Review exposes the shameful statistic that BME Judicial candidates, despite meeting the criterion for selection, were twice as likely as their white counterparts to fail to be appointed.

One of the few areas where this important report was deficient was in omitting to highlight the suspected disproportionate number of disciplinary investigations faced by black and ethnic minority judges and magistrates and the woeful lack of diversity that still plagues our court rooms and judicial benches. The situation is compounded by the MOJ believing it is not bound by the EQA 2010 when it

comes to conduct and discipline matters together with the fact that it does not monitor the ethnicity of those subject to disciplinary processes and the sanctions applied.

Looking at the JCIO [annual report](#) for 2015/16 they state:

*“During the period covered by this report there were approximately **3,200** members of the full and part time judiciary, approximately **19,300** Magistrates and **5,600** Tribunal members. **43** cases resulted in formal disciplinary action, 32 less than the previous reporting year. Disciplinary sanctions were issued to less than 0.1% of judicial office holders.*

The report states that a total of 43 members of the judiciary were investigated by the JCIO during this period. Strong anecdotal evidence suggests that a disproportionate number were Black, Asian and ethnic minorities, and in terms of outcome, the strong perception is that they are treated more harshly than their white counterparts. On the contrary complaints of racial discrimination are brushed aside or ignored when they are made by BME Judges and Magistrates.

Some of these cases involve complaints of race discrimination against fellow Judicial colleagues not being investigated or upheld. These cases do not just involve disciplinary action being taken against us in circumstances where we would not have faced proceedings if we were white but also the failure to investigate race discrimination, bullying or harassment when we raise it as a problem.

The situation for Recorder D P Herbert O.B.E. is extremely serious given the recommendation made by Lady Justice Gloster on 2nd October DBE that he be dismissed for writing to the previous Lord Chief Justice (LCJ) and Lord Chancellor (LC) expressing his intention to challenge his disciplinary finding of being given “formal advice”. Gloster LJ, DBE, sought to justify this action on the basis that the LCJ and LC enjoy “Judicial Immunity” and therefore the allegation was, “scandalous, unwarranted, and without foundation”.

Recorder Herbert’s ET claim was founded, in part, on the fact that even the Disciplinary Panel had found that several High Court Judges and the Judicial Conduct and Investigations Office (JCIO) had acted unlawfully in attempting to force me to suspend myself from office in November 2015 when they knew they had no power to do so. The panel’s recommendation that he be given a formal apology was ignored by the LCJ and LC and to date no disciplinary investigation has ever been undertaken to discover why these unlawful acts occurred in the first place. That position was also in fundamental contradiction to the Judicial Equality and Diversity Policy 2014 which incorporates a bullying and harassment policy the Judiciary are supposedly bound by.

It is likely that he will now face suspension from all three Judicial offices he holds pending the hearing of a disciplinary panel which may take several months to convene. Cases such as these fill our organisations with little confidence that without the protection of the EQA 2010 these Judicial officers will ever obtain equal treatment.

This pattern of discrimination has been highlighted by the recently published disciplinary finding against the only Coroner of African descent, Chinyere Inyama, of bullying arising from one incident and some text messages. His sanction, as reported on the JCIO website was to have a disciplinary finding of a rebuke, after being suspended for fourteen months. Far more serious conduct was alleged by the three BME complainants, but there has been no investigation and no apology put forward to the BME Judges by the MOJ, despite some internal findings against the perpetrators. The pattern appears to be that bullying is dealt with if the perpetrator is black but not if the perpetrators

are white. One of the alleged white, male perpetrators has been promoted since the incidents were alleged and none were ever made subject to any suspension.

Conclusion

In light of the matters set out above, we believe it is imperative that consideration is given to a formal investigation into the MOJ's ability and commitment to implement the recommendations of David Lammy M.P. and the willingness of the JCIO and MOJ to address the lack of Judicial diversity and equal treatment. This is a request to help protect the rights of thousands of Judges, magistrates and lay Tribunal members as well as the public interest in the proper administration of justice. The MOJ has been well aware of the disproportionate number of BME persons in detention since 1992 and has done little or nothing to address these serious concerns.

We regard it is incumbent on the EHRC to investigate these serious matters to ensure the MOJ addresses the crucial matters of race and diversity going forward. The cost of not doing so will lay the foundation for significant social unrest if these matters are allowed to fester.

A handwritten signature in black ink that reads "D. P. Herbert". The signature is written in a cursive style and is followed by a horizontal line with a small flourish at the end.

D Peter Herbert O.B.E. (SBL)

Viv Ahmun, Blaksox;

Zita Holbourne, BARAC (UK);

Simon Wooley (OBV);

Ismet Rawat, President, Association of Muslim Lawyers