JUSTICE HOUSE CHAMBERS

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Simon Parsons,
Judicial Conduct Investigation Office,
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1st December 2017

Dear Simon Parsons,

Re: Final response to Report dated 2nd October 2017.

My primary submission is that the initial decision by the JCIO to admit the complaint by Greenhill was itself an act of direct racial discrimination, harassment and victimisation.

The complaint by Greenhill was a rehash of the original complaint received by the JCIO and since a decision and sanction had already been imposed, it should never have been accepted by the JCIO and no further action taken.

The decision to refer this matter to a Nominated Judge imposed on me a further detriment, namely that I was required to make further representations on a complaint that I had already responded to and which is the subject of legal proceedings in the Employment Tribunal. Although at the relevant time the JCIO was relying on judicial immunity in the proceedings, it was aware that the Supreme Court had concluded its deliberations on 4th May. The JCIO knew or ought to have known that the Government's position was vigorously opposed by the Equality and Human Rights Commission and there was a substantial risk that its findings might be ruled unlawful by the courts and the JCIO and any complainant would be bound or affected by any court ruling.

It is clear that Gloster LJ was appraised of this highly relevant litigation but chose to continue with her report regardless. It is my submission that it is custom and practice for any lesser decision maker to await a decision from a higher authority, in this case from the Supreme Court. Speed cannot have been of the essence as she delayed almost five months and it was public knowledge that the decision in P v MPS was to be published in October, only weeks before she issued her final report on 2nd October. Furthermore, as a senior member of the judiciary, she could easily have found this out by making enquiries.

These decisions were careless and deliberate acts of victimisation on racial grounds. The report is based on the presumption that Judicial Immunity acts as a cloak against the actions

of the Lord Chief Justice and the Lord Chancellor which rests in part on whether both are acting in post as Judicial Office holders them selves and exercising their public functions.

The decision in P v MPS has now been published and the Government Legal Service has also conceded on 9th November that immunity does not apply and so I can deal with my points briefly.

The decision of the Supreme Court in P v MPS undermined the whole basis of the report by the nominated Judge. Without reconsidering the matter afresh, having accepted a practically identical complaint, she simply relied on the legal analysis of the previous disciplinary panel at paragraphs 91 to 93 and made no attempt to address her mind as to whether the decision by the Lord Chief Justice and Lord Chancellor was a Judicial decision given that the context was wholly different.

It follows that from the legal position adopted by the JCIO itself on 12th May 2017 (set out in a letter to a fellow complainant), the former Lord Chancellor is not a "Judicial Officer" and therefore cannot enjoy an exemption from the Equality Act 2010 that gives direct effect to the Equality Framework in English law. The JCIO therefore on the same day as it referred the matter to a nominated Judge (12th May 2017), knew or ought to have known the referral itself was fundamentally flawed. My letter of 5th October therefore had every right in law to challenge a decision made by a person who was not a "Judicial office holder". I enjoyed the right to make an allegation of racial discrimination and victimisation in my letter, public or not, without being victimised for alleged "misconduct" contrary to s 27 of the EqA 2010.

The Judicial Conduct and Discipline Regulations 2014 entitle the Lord Chief Justice and Lord Chancellor to make a disciplinary decision based on the recommendations, inter alia of a disciplinary panel. There is no right of Appeal save to the Office of the Judicial Appointments & Conduct Ombudsman which is entitled only to address the "process" by which a decision is arrived at. That body does no pretend to possess any expertise to address issues of discrimination nor can it provide any remedy save to uphold or dismiss the disciplinary finding.

My letter of 5th April announced the fact that I was initiating ET proceedings which I did for a second time on 19th April 2017. It claimed that my disciplinary advice failed to give an apology and failed to investigate the unlawful suspension that I experienced in November 2015. This was a direct comparator of my disciplinary treatment and investigation as I pointed out.

LJ Gloster even included my allegations against Underhill J, which were the subject of my earlier ET1 filed in February 2016. Those legal proceedings are in themselves a "protected act". She was aware of allegations being made against Underhill J, Laing J as well as the Lord Chief Justice and Lord Chancellor but made no attempt to distinguish between proceedings already filed and those that formed the basis for my fresh complaint. All were dismissed as "scandalous", "unwarranted" and "without foundation" when that was a matter for the court to determine.

The letter I signed was written in my personal capacity and did not use the title of Recorder. I had no role in deciding how it was published or the title I would be described as. My letter, published in the Guardian was therefore not sent or published with my authority to address

me in any "Judicial capacity" but as a private citizen who was described as holding judicial office. I have no control over how I am described in the print or broadcast media.

My letter was written in my personal capacity as a person taking legal proceedings, and not in any Judicial capacity and the actions by the JCIO, and by LJ Gloster are an infringement of my right to freedom of speech under @10 of the ECHR read together with @14 of the ECHR.

The failure by the JCIO, the referral by the JCIO to the nominated Judge and her report recommending my immediate dismissal all constitute direct racial discrimination, racial harassment and bullying, and victimisation on grounds of race. The cavalier disregard for the law by the JCIO, and by LJ Gloster would not have happened if I had been, for example, a white Judge of my seniority and experience.

Future Conduct of the JCIO

My letter to the LCJ and LC was clearly a "protected act" and the decision taken was not a "Judicial decision" but an employment decision open to scrutiny by the Employment Tribunal and therefore subject to s 27 preventing me and others like me from victimisation for raising an allegation of race discrimination.

There exists a positive duty on the Ministry of Justice and JCO to act now. They are not required to refer this matter to a Disciplinary panel when to do so would subject me to the further detriment of direct racial discrimination, victimisation and racial harassment. The Lord Chief Justice and JCIO have an inherent power to act forthwith without subjecting me to any further detriment.

Given the legal analysis set out and the clarity of the decision in P v MPS the only other alternative is to have this matter decided as a preliminary issue by the Employment Tribunal following my lodging of proceedings.

The matter can be determined at a Pre Hearing Review that can decide this question almost certainly more speedily than an internal Disciplinary Tribunal which is not a specialist tribunal. I would also question the bias of any such panel drawn from the Judiciary of England and Wales and would submit that given the involvement of several High Court Judges to date this matter must be remitted to the Scottish Judiciary to deal with.

Having already sued the former Lord Chief Justice, former Lord Chancellor, and Laing J, LJ Gloster, and named several other Judges in my pleadings before the Employment Tribunal any disciplinary panel comprised of High Court of Circuit Judges of England and Wales would offend against the principles of bias as defined in the case of R v Gough UKHL (1993) I. There would be a real danger of bias and an appearance of bias that would be perceived by any independent, impartial observer of the proceedings.

To be clear, the matter should be referred to the Lord Chief justice to be dismissed or alternatively be adjourned until this matter is dealt with by the Employment Tribunal who are to be seized of this matter. If it is decided to be referred to a disciplinary panel this must only be comprised of Judges who sit outside of England and Wales.

If any action is take to involve the rule 17 on interim suspension of the 2014 Regulations given the strength of evidence that my letter was a "protected act" I would regard this as a very serious act of victimisation and racial harassment and would seek to defend by professional reputation and income by any legal means necessary.

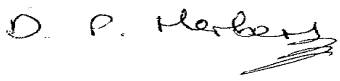
In the light of the concession made by the Ministry of Justice on 9th November I would request that the following actions are taken by the Ministry of Justice:-

a) This disciplinary matter be dismissed within 21 days and my disciplinary record cleared of these allegations or at least the matter be badjourned to be determined by an Employment Tribunal;
b) A public apology be issued to me in relation to these proceedings having been initiated and continued by the JCIO;
c) A disciplinary investigation be conducted into the failure by the JCIO to dismiss or adjourn this allegation pending the decision in P v MPS;
d) A disciplinary investigation be conducted into the actions of LJ Gloster, given the victimisation and discrimination I have been subjected to under the EqA 2010 due to the report filed on 2nd October 2017 as being contrary to the Judicial Diversity and Equality policy 2012, which prohibits discrimination, victimisation and harassment of colleagues.

I look forward to a reasonable and fair decision having full regard to the European Council Directive 2000/78/EU, and the provisions of the EqA 2010.

You should regard this letter and the one of 11th October as part of my statutory representations as an office holder of the Ministry of Justice. I assert that they are individually and collectively "protected acts" under s27 of the EqA 2010.

Regards,



D Peter Herbert O.B.E.

Cc David Isaac, Chair of the Equality and Human Rights Commission