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**\*\*\*\*\* THREE BME JUDGES & A FORMER LAY TRIBUNAL MEMBER MAKE LEGAL HISTORY & SUE THE MINISTRY OF JUSTICE FOR RACE DISCRIMINATION AND VICTIMISATION\*\*\*\*\***

**\*\*\*\*\* BME LEGAL GROUPS CONDEMN THE RECOMMENDATION TO DISMISS RECORDER HERBERT O.B.E., A SENIOR BLACK JUDGE, BY DAME LJ GLOSTER SIMPLY FOR CHALLENGING RACISM\*\*\***

Recorder D P. Herbert O.B.E., a former Vice Chair of the Metropolitan Police Authority, has been recommended for immediate dismissal by a nominated Judge High Court Judge, Dame Justice Glossop DBE, who found Herbert's letter of complaint of 5<sup>TH</sup> April 2017 to the Lord Chancellor and Lord Chief Justice, "scandalous" and "completely without foundation". Herbert's letter of complaint was in response to a decision to issue him with "formal advice" for criticising a fellow Judge who had banned the former Muslim Mayor of Tower Hamlets from holding electoral office for five years and annulled his election. The former Lord Chief Justice and Lord Chancellor, had refused to provide Herbert with an apology into his unlawful suspension and failed to investigate the High Court Judges responsible despite a recommendation from the disciplinary panel, Chaired by Justice Laing DBE, he be given an apology.

This investigation was triggered after a second complaint by a Mr Grenhill was pursued by the MOJ despite proceedings having been lodged by Herbert in the Employment Tribunal.

He has, this week, issued proceedings in the Employment Tribunal against LJ Gloster DBE, the Ministry of Justice and a senior caseworker at the Judicial Conduct Investigation Office (JCIO), Simon Parsons. The recent decision of the Supreme Court in P v MPS (2017), UKSC. 65, means that no Judge can hide behind "Judicial Immunity" if involved in disciplining colleagues but are instead bound by the Equality Act 2010.

Recorder D P Herbert, who now faces suspension this month has warned the MOJ that any attempt to suspend him for the second time in two years would be resisted as a blatant act of

victimisation and direct racial discrimination. Herbert cites the case of a senior Black Judge who was suspended in October 2016 and has remained suspended on full pay for over a year despite there being no recommendation from a disciplinary panel to dismiss him.

In his pleaded case D P Herbert, said,

*“The fact that Gloster LJ, in her report of 2<sup>nd</sup> October knew about the case of P v MPS, was aware of the two sets of legal proceedings and had every opportunity to view the evidence of discrimination but nevertheless decided my complaint was “without foundation”, and “scandalous” and “unwarranted” was a deliberate and calculated act of racial discrimination, harassment and victimisation. I have been a part time Judge for over twenty years, sitting for some 3000 days in the three Jurisdictions. I have lost count of the numbers of days spent performing voluntary work both at home and abroad visiting refugee camps in the Lebanon and Sicily or assisting prospective law students and the victims of racial violence and injustice. In all that time I have rarely read a more vitriolic and biased “Jim Crow” judgement, all the more shocking as it emanates from the Vice President of the Court of Appeal who knew exactly what she was doing. This was not a case of unconscious bias.”*

Ismet Rawat, co-founder of BMELawyers4Grenfell and President of the Association of Muslim Lawyers stated, *“We are aware of a number of BME Judges and Magistrates that have suffered discriminatory use of misconduct proceedings in circumstances where their white counterparts have not faced any action whatsoever. “She added, “The current decision suggests that Judges in England and Wales have sought to hide behind Judicial Immunity in any disciplinary proceedings they take against BME Judges, magistrates and Tribunal members. Our legal intervention in the case of P v MPS UKSC (2017), 65 has now overturned that defence.”*

Simon Wooley, Director of Operation Black Vote (OBV) commented, *“That such a respected and long standing Black public servant can be hounded out of office as if he were a common criminal truly beggars belief. What young Black aspiring lawyer would want to be part of such a system after watching one of their role models -Peter Herbert -be treated so badly.”*

Lee Jasper, former Policing Director of London and Blacksox sponsor said: *“The British criminal justice system is locked into a 19th century vision of the world as a consequence of its inherent class and racial bias. The Judiciary and Ministry of Justice claim to be committed to equality whilst simultaneously discriminating against black people in the dock or on the bench. We can see that the treatment of Peter Herbert O.B.E., and other BME Judges and magistrates is intended to be a symbolic punishment beating intend to deter, other black people from challenging judicial racism. British justice decides issues of merit and integrity, based on ethnicity of the person before them. White privilege is the norm, differential justice is the outcome. This decision makes a total mockery of Prime Minister, Theresa May much vaunted commitment to a ‘fairer society’ “*

Zita Holbourne of BARAC (UK), stated, *“Prime Minister Theresa May launched her premiership on the promise that she would ensure justice for all regardless of ethnicity, gender or religious conviction. It is important therefore, that when the Lord Chief Justice and Lord Chancellor consider this racially motivated complaint they are guided by their duty under section 149 of the Equality Act 2010”. This requires that they have “due regard to the need to eliminate discrimination, advance quality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”*

David Neita, of SBL commented, *“Recorder Herbert is being silenced as if this was some far right totalitarian dictatorship where dissent was not tolerated. The British Judiciary, who once legitimised slavery and colonial oppression have stooped to new lows. We now call on this senior white Judge to be investigated for alleged misconduct and if she is found guilty of deliberate victimisation on racial grounds it is she who is unfit to hold Judicial Office.”*

### Employment Tribunal Cases v the Ministry of Justice

Daniel Ibekwe, was dismissed as a former lay Tribunal member sitting at Croydon Employment Tribunal. He alleges that he was treated less favourably on account of his race (African origin) and victimised for making allegations of race discrimination. Part of his claim is based on the assertion that he was told not to dissent from majority decisions of the ET finding that no race discrimination had occurred. Due to the appearance of bias his case has been transferred to the Scottish Employment Tribunal due to the potential for bias in his case being decided in England and Wales.

There are two other Judges, (one retired and one still serving), both Tribunal members who have already issued proceedings in the Employment Tribunal with all four cases due to be listed in 2018. In total, a former Lord Chancellor, Lord Chief Justice, and a total of seven High Court Judges & several Heads of the Tribunal service now face being cross examined on race, sex discrimination, harassment and victimisation. This is an unprecedented test for the senior English Judiciary who argued that they had no need of race training in the 1990's when it was rolled out to all other full and part time Judges. The criminal justice review by David Lammy M.P. exposed racism and differential treatment at all levels of the criminal justice system that is the context in which these cases must be viewed.

Judge Patrice Wellesley-Cole (Judge A), a retired First Tier Immigration Judge of African origin, formerly sitting at Taylor House, alleged victimisation against Judge Frank Appleyard over discriminatory remarks and unfair distribution of work. Judge Wellesley-Cole claims that instead of the complaint being treated with due diligence and being given a fair investigation the then senior resident judge, Judge Francis Pinkerton subjected her to a series of bullying and harassing emails which failed to investigate the concerns and then threatened the Judge to withdraw the allegations. She claims they were ostracised by some judicial colleagues as a result of the complaint becoming public knowledge amongst colleagues and she was effectively refused a reference by Judge Jonathan Lewis, who has since retired.

Judge A was compelled to issue a third employment tribunal claim renewing the claim of race discrimination and victimisation against the MOJ based on the allegedly biased and selective report by Mr Justice Langstaff, the former President of the Employment Appeal Tribunal. In an internal process investigating misconduct by three male white judges Langstaff J did not uphold Judge A's grievance of victimisation and discrimination but made partial findings in favour of Judge A against the three male white Judges. Langstaff J did not go so far as to say that their actions amounted to misconduct and rejected any claim of discrimination based on race. The third action criticised several aspects of

Langstaff J's report and alleged his appointment was itself detrimental to her claim. Her pleadings stated,

*“(19) The choice of Mr Justice Langstaff was detrimental to the Claimant. He is the former President of the Employment Appeal Tribunal. The Claimant's claim had already been lodged when he was appointed. The aim of the appointment of Mr Justice Langstaff was to suppress her claim. It meant that, when Mr Justice Langstaff dismissed her concerns, an Employment Tribunal would need to make a finding expressly contradicting Mr Justice Langstaff and potentially criticising him. The Claimant asserts that a reasonable Employment Judge would therefore anticipate that this might be personally damaging for his or her career. This situation could have been avoided had the Respondent appointed a different Judge to conduct the investigation.”*

She claimed that after this report was made available Judge Jonathan Lewis (retired) went round the court boasting that, *“It's all over, its finished, we've won”* in a clear breach of Judge A's confidentiality and in a further act of victimisation.

This failure stands in stark contrast to the treatment of Judge Herbert O.B.E., who faced a request by the MOJ to be suspended only a few days after accompanying Judge Wellesley-Cole at the investigation meeting with the then President of the Employment Tribunal, Langstaff J, on 17<sup>th</sup> June 2015. The threat of immediate suspension was made on 7<sup>th</sup> November 2015, and presented to Judge Herbert O.B.E. at a judicial training event by the President of the South Eastern Circuit when he knew as did the JCIO, that they had no intent to request his interim suspension in a report to the Lord Chief Justice as his case was not an “extreme case”. The MOJ have admitted in their defence filed in the Employment Tribunal that such a letter lay *“outside the statutory provisions”*.

Judge Herbert O.B.E. was told in that meeting he would be *“turned away”* if he attempted to attend Harrow Crown Court where he had been booked to sit on the following Monday. That suspension was only lifted after a meeting with the Presiding Judge of the South Eastern Circuit upon Judge Herbert O.B.E. giving an undertaking not to make any *“controversial speeches”* until matters were resolved.

In the third case of alleged race discrimination and victimisation, Judge X, a District Judge of Asian origin, sitting as a Social Security Chair faced a complaint from the appellant whose appeal he allowed, that his questioning had been repetitious. Instead of the matter being handled as one of alleged "competence" it was immediately pursued as a matter of "misconduct" resulting in a disciplinary finding that breached several procedural requirements. Judge X has since had the allegations of misconduct withdrawn by the MOJ after he lodged proceedings in the ET alleging race discrimination but has yet to receive any apology for his distressing treatment. The disciplinary action was pursued against him according to the Investigating Judge as he failed to *“accept the criticism made of him”*. Judge X alleges that a white Judge would not have been treated in that manner with irrelevant references to his previous character and conduct.

The whole process has highlighted differential treatment based on race and victimisation which is not the subject of proceedings against the MOJ with several senior Tribunal

**Judges being named. The District Judge, has suffered from significant ill health as a result of the misconduct proceedings. Judge X stated in his pleadings that the exercise of judicial discretion and independence, which is enshrined as a constitutional right, has been wrongfully fettered as part of a series of serious procedural irregularities and race discrimination for which the MOJ is responsible. There has been a fundamental and serious failure to comply with the public sector equality duty and a breach of the Equality and Diversity Policy for the Judiciary.**

**One of the threads that link the three cases is the consistent failure of the MOJ and JCIO to address or to fairly investigate bullying and harassment by members of the senior Judiciary whilst pursuing minor alleged infractions against BME Judges.**

**ENDS**

**For further information please contact:**

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**Notes to Editors**

**About Race4Justice**

This coalition of BME Organisations successfully filed an Amicus Curiae brief in the case of P v The Metropolitan Police Commissioner heard in the Supreme Court on 4<sup>th</sup> May 2017 challenging the Government submission that professional disciplinary tribunals (such as the Police Misconduct Tribunal) enjoy “Judicial Immunity” from the Equality Act 2010. This coalition has also asked for core status in the Grenfell Inquiry.

Please visit: <https://www.facebook.com/BMELawyers4Grenfell> for further information