

Equal Treatment Bench Book corner

NEW SERIES

By Paula Gray



This is the first in a series of short pieces about the Equal Treatment Bench Book (ETBB), which can be accessed, if you are a judicial office holder (JOH) via the Judicial Intranet (JI) or the Judicial College Learning Management System (LMS). If you are not a JOH you can access it on the public-facing [Courts and Tribunals Judiciary](#) website (or simply by searching for 'ETBB England and Wales' in your browser). The advantage of the JI and LMS routes, if you can access it those ways, is the interactivity which we have not (yet) been able to replicate on the public site for technical reasons, but we are trying. The text is the same.

E-Alerts

Those within the 'judicial fold' who pay attention to their emails from the Judicial Office will be aware of the appearance about every six weeks of an E-Alert, which is the ETBB ownership committee's way of keeping the Bench Book within your contemplation. It seemed to the Editorial Board of this Journal that we might share these on a regular basis, both with the readership which is outside that 'fold', and even with those who haven't picked up the Email Alerts ...Let me explain.

We try to find a newsworthy topic that the ETBB might help you probe, or in respect of which you may, on reflection, wish you had. The seven E-Alerts we have had so far are précised below and cover, in the order that they were sent: autism, Ramadan, Litigants in Person, marriage, migraine, trans identity and dyslexia. Some contain links to case law or useful further reading on the topic.

So, the message for this issue, to update what used to be said in the 1970s:

Be E-Alert; our country needs Lerts.

E-Alerts précis

Autism: On 5 February 2018, in [Love v The Government of the United States of America](#), the High Court allowed Mr Love's appeal against extradition to stand trial in the US for cyber-attacks on companies and government agencies. As a result of his serious conditions of Asperger's Syndrome, depression and eczema, the High Court was particularly concerned about the effect of imprisonment on his ability to give evidence at trial and the suicide risk arising from continued incarceration in a foreign country.

Would you know what to do if a party or defendant in front of you was autistic? There are some practical tips in the Equal Treatment Bench Book Disability Glossary that you may never have thought of.

Ramadan: During Ramadan, many Muslims do not eat or drink during the day, having one meal just before sunrise and an evening meal ('iftar') after sunset. Special prayers are read in the mosque after sunset and those who are able are encouraged to attend.

Ramadan in the summer months can be particularly challenging with hot weather and long days. Fasting and lack of sleep can impact on energy and concentration in court. The holy month ends with festivities on Eid al-Fitr. It should not be confused with the other Eid, Eid al-Adha which happens later in the year.

The [Equal Treatment Bench Book's](#) Glossary of Religions gives a brief introduction to Islam with an explanation of Ramadan and guidance on how Muslims might wish to take the oath. The Bench Book also has a new section on

Islamophobia which has recommendations on how to treat Muslim people in court to help give them confidence that they will have a fair hearing.

Litigants in Person: On 21 February 2018, in [Barton v Wright Hassall LLP](#), the Supreme Court recognised that LIPs' lack of representation 'will often justify making allowances in making case management decisions and conducting hearings' even if it won't usually justify applying a lower standard of compliance with rules and orders.

So what can you do to ensure litigants in person understand what is going on and what they have to do? Chapter 1 of the [Equal Treatment Bench Book](#) has practical ideas pooled by a variety of judges.

Marriage: On 27 June 2018, the Supreme Court handed down its judgment in [R \(on the application of Steinfeld and Keidan\) v Secretary of State for International Development \(in substitution for the Home Secretary and the Education Secretary\)](#). The Court ruled that making civil partnerships available only to same-sex couples was a breach of articles 8 with 14 of the European Convention on Human Rights. It said the government's desire for more time to decide what to do was not a justification of the admitted discrimination.

On 25 July 2018, the Supreme Court in [Owens v Owens](#) gave its equally well-publicised ruling on what constitutes breakdown of a marriage.

The [Bench Book](#) discusses same sex civil partnership, marriage and divorce in chapter 10 on sexual orientation. It also has a small section on different cultural approaches to marriage and divorce.

Migraine: The 2 to 8 September 2018 was designated by [The Migraine Trust](#) 'Migraine Awareness Week'. In a 2002 report, the World Health Organisation ranked migraine amongst the world's top 20 disabling conditions. The Migraine Trust estimates that nearly 8 million people in the UK get migraines. More than 75% of people with migraines experience at least one/month and more than half say they experience severe impairment during attacks. Odds are, you will have witnesses, parties, representatives (and even colleagues) who are struggling through a court hearing with a migraine.

The [Equal Treatment Bench Book](#) sets out some of the difficulties and how you can help in the Disability Glossary.

Trans awareness: The Government has been consulting on reform to the [Gender Recognition Act 2004](#). Research suggests many trans people want legal recognition of their acquired gender but have not applied because they find the current process too bureaucratic, expensive and intrusive. The consultation closed 19 October 2018. Not everyone wants to go through a legal process of reassigning gender or classifies themselves as either male or female. There is an introduction to the variety of trans identities in the 'Transgender People' chapter of the [Bench Book](#).

Dyslexia and tape recording proceedings: Would you allow a dyslexic litigant-in-person to make their own tape recording of the hearing? Dyslexia is not just about being bad at spelling and arithmetic. It can have a serious impact on an individual's ability to give evidence if adjustments are not made. On 25 September 2018, an Upper Tribunal Judge in [CH v SSWP \(JSA\) \(No.2\) \[2018\] UKUT 320 \(AAC\)](#) explained why, having consulted the Equal Treatment Bench Book prior to the hearing, he allowed a number of adjustments, including the tape recording of proceedings by an Appellant with cognitive difficulties despite there being an official recording.

The [Equal Treatment Bench Book](#) lists common difficulties associated with Specific Learning Difficulties (including Dyslexia) and their impact in a court setting.

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