



LORD CHIEF JUSTICE
OF ENGLAND AND WALES



SENIOR PRESIDENT
OF TRIBUNALS

Equality and Diversity Policy for the Judiciary

October
2012

Contents

Letter to all judicial office-holders from the Lord Chief Justice and the Senior President of Tribunals	3
Dignity at Work statement	5
A Brief Guide to the Equality Act 2010	8

Letter to all judicial office-holders

To all judicial office-holders,

As the words of the judicial oath make clear, the principles of exercising equality and fairness of treatment have always been fundamental to the role and conduct of the judiciary when carrying out their judicial functions. As all judges will recognise, these principles should be also reflected in conduct outside court. However, in order to comply with s109 of the Equality Act 2010 we consider it appropriate to issue written guidance on equality and diversity.

The Judicial Executive Board has therefore approved the following two documents:

- A Dignity at Work statement setting out the standards of conduct we expect judicial office-holders to maintain in their dealings with one another and with members of staff¹
- A Brief Guide to the Equality Act 2010 outlining the major provisions within the Act as they may affect the judiciary².

Together with this covering statement, these two documents set out our policy on equality and diversity. This policy applies to all members of the courts and tribunals judiciary in England and Wales, including fee paid, non legal office-holders, magistrates and all other lay office-holders, and to reserved tribunals' judiciary operating in Scotland and Northern Ireland. Whilst we are ultimately responsible for its implementation, every office-holder has an individual responsibility to abide by it.

At all times when discharging any administrative, leadership or management function in connection with their judicial office, members of the judiciary will treat everyone equally³. In particular:

- Members of the judiciary involved in the selection and appointment of applicants for judicial office, for promotion to higher judicial office and/or for specific roles within the judiciary will make their decisions by reference to sound, objective criteria, on the basis of each candidate's personal merit, experience, competence, performance, skills and abilities;
- Members of the judiciary involved in the training, mentoring, appraisal, deployment and/or pastoral care of judicial colleagues will act so as to promote equality of opportunity and treatment for all those in respect of whom they have responsibility;

1. Developed by the Standing Committee of the Judges' Council on Judicial Support and Welfare

2. Developed by the Standing Committee of the Judges' Council on the Guide to Judicial Conduct and the then Equal Treatment Advisory Committee of the Judicial College

3. Save insofar as required by statute to act otherwise

- Members of the judiciary will treat all members of the court staff, judicial colleagues and other individuals with whom they come into contact in the course of performing their extra-judicial functions with courtesy and with due respect for their personal dignity.

Where a person raises a concern about discrimination in the above context, members of the judiciary will not treat that person any differently on that account.

Failure or alleged failure to comply with the terms of this policy may be dealt with, as appropriate, pursuant to the relevant procedures⁴.

This policy will be kept under review.



Rt Hon Lord Judge
Lord Chief Justice



Rt Hon Sir Jeremy Sullivan
Senior President of Tribunals

4. The Judicial Grievance Procedures govern complaints made by one member of the judiciary against a judicial colleague; the disciplinary regulations governing allegations of misconduct against a member of the judiciary http://judicialcomplaints.judiciary.gov.uk/docs/Judicial_discipline_regs_-_consolidated_version.pdf

Dignity at work statement

This document sets out the standards of conduct that the Lord Chief Justice and the Senior President of Tribunals expect judicial office-holders to maintain in their dealings with one another and with members of staff. It supplements the *Guide to Judicial Conduct* and should be read in conjunction with the Lord Chief Justice's and the Senior President of Tribunals' covering letter on equality and diversity for the judiciary.

The Lord Chief Justice and the Senior President of Tribunals expect all judicial office-holders to treat their colleagues and members of staff decently and with respect. They are committed to ensuring that the environment in which judicial office-holders and staff work is free from harassment, victimisation and bullying and that everyone is able to work in an atmosphere in which they can develop professionally and use their abilities to their full potential.

Allegations of such conduct will be investigated and, if substantiated, appropriate action will be taken to prevent a recurrence.

In accordance with the equality and diversity policy for the judiciary, judicial office-holders are expected to treat everyone with the same attention, courtesy, consideration and respect, regardless of age, disability, gender reassignment, marital or civil partnership status, pregnancy or maternity, race, religion, sex and/or sexual orientation (known collectively as "protected characteristics").

Harassment, victimisation and bullying of others by means of words and/or behaviour are unacceptable.

Conduct giving rise to harassment, victimisation and/or bullying may take place face to face, or by other means of communication such as a telephone call, letter, text message, email or entry on a social networking site. The conduct may consist of a continuous course of conduct or a one-off incident. It may be directed by one individual against another individual or involve a group or groups of individuals.

Definitions

"Harassment" occurs when one person perpetrates unwanted conduct (including sexual conduct) related to one or more of another person's protected characteristics which has the purpose or effect of violating that other person's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for that other person.

"Victimisation" occurs when one person subjects another person to a detriment because that other person has brought proceedings under the Equality Act 2010, has given evidence or information in connection with any such proceedings, has made an allegation that someone has contravened the Act, or has done any other thing for the purposes of or in connection with the Act.

"Bullying" carries its normal meaning. It consists of conduct that is offensive, intimidating, malicious and/or insulting and which has the purpose or effect of undermining, humiliating, and/or frightening another person. It may amount to a misuse or abuse of power. Unlike harassment and victimisation, the conduct need not be related to one of the "protected characteristics" of the person against whom it is directed.

Any judicial office-holder who becomes aware of behaviour on the part of any other judicial office-holder or member of staff which he or she considers to have breached the standards of conduct set out in this Statement should discuss the matter with his/her senior judicial office holder¹.

1. The appropriate relevant senior judge will be for:

- Court of Appeal and High Court judiciary; together with the Senior Master, Chief Master, Chief Bankruptcy Registrar, Senior District Judge (PRFD) and Senior Costs Judge – the appropriate Head of Division
- Queen’s Bench Masters – the Senior Master; Chancery Masters – the Chief Master; Bankruptcy Registrars – the Chief Bankruptcy Registrar; District Judges at the Principal Registry of the Family Division (PRFD) – the Senior District Judge (PRFD); Costs Judges – the Senior Costs Judge
- Circuit and District Benches – the Presiding Judge on circuit or his or her delegate
- District Judges (Magistrates Courts) – the Senior District Judge (Chief Magistrate)
- Tribunals’ judiciary – chamber/tribunal president or deputy president; in tribunals with a regional structure, your leadership judge
- Magistrates – the Bench Chair; Bench Chairs – the Magistrates’ Liaison Judge.

A brief guide to the Equality Act 2010

Most of the Equality Act 2010 is now in force. The Act not only harmonises and consolidates previous anti-discrimination legislation, it also strengthens legal rights to equality and increases the range of unlawful acts of discrimination outside the employment field. In addition it places a new set of statutory equality duties on public authorities. The equality duty (s.149) requires public authorities, in the exercise of their public functions, to have due regard to eliminate prohibited discrimination, harassment and victimisation, and advance equality of opportunity and foster good relations between different groups of people.

Whilst the “judicial function” is exempt from the prohibition on discrimination in the exercise of public functions, this exemption is likely to be limited to the core, adjudicative function. Ancillary functions, e.g. training, mentoring, conducting appraisals, managerial or committee functions and conduct towards colleagues or court staff will not be exempt.

This guide is an outline of the major provisions within the Act as they may affect the judiciary and is not intended as a definitive statement of the law. It also includes some examples showing how the Act may impact on the judiciary.

Protected characteristics

The Equality Act identifies nine protected characteristics, or specific grounds of discrimination which it treats as suspect grounds, or suspect classifications, which are intrinsic to an individual’s dignity and autonomy. The protected characteristics are:

- age
- disability
- gender reassignment
- marital or civil partnership status
- pregnancy and maternity
- race
- religion
- sex
- sexual orientation

(s.4EqA 2010)

The Act makes it unlawful, in a variety of ways and contexts, to discriminate against someone by reason of any one of these characteristics.

Types of discrimination as defined in the Act

Direct discrimination (s.13) occurs if a person is treated less favourably than another person is or would be treated because of their possession of one of the protected characteristics. In general, direct discrimination cannot be justified.

This form of discrimination also extends to cases where someone is perceived to have the relevant characteristic.

e.g. A judge of Iraqi origin, unlike her colleagues, is not invited to the cathedral court service at the start of the legal year “because she is Muslim”. In fact she is not Muslim, but is perceived as such and treated less favourably because of this perception.

Discrimination by association occurs if a person is treated less favourably, not because of a protected characteristic that she or he personally has but because they are linked or associated with someone who has a protected characteristic.

e.g. A carer for a disabled person is passed over for advancement because they are perceived as having responsibilities which will not allow them to concentrate fully on their role.

Indirect discrimination (s.19) occurs if a rule or practice which applies to everyone across the board has the effect of disadvantaging people possessing a particular protected characteristic and the rule or practice cannot be justified as being a proportionate means of achieving a legitimate aim.

e.g. A rule is made that a particular training session will be held between 6 and 8 p.m. Although the rule is applied across the judiciary, it places those with caring responsibilities at a particular disadvantage because they need to be at home before 8pm. The training organisers would be required to demonstrate that the indirectly discriminatory timing of this particular session was a proportionate means of achieving the legitimate aim of judicial training on this topic.

Special provisions now govern the different forms of disability discrimination. The Equality Act 2010 recognises that more than formal equality is required to enable disabled people to participate as fully as possible in society. In addition to protection from direct and indirect discrimination, reasonable adjustments may be required to assist a disabled person who, because of his or her disability, is placed at a substantial disadvantage in comparison to others without that disability (s.20). These may be, for example, by adaptations or modifications to premises, physical features or different arrangements, such as sitting times.

Making such adjustments may involve the judicial office-holder and/or HMCTS; and, depending upon the circumstances, this will often require the office-holder and the administration to liaise.

Unlawful discrimination may also occur if a disabled person is treated unfavourably because of something arising in consequence of his or her disability, which cannot be shown to be a proportionate means of achieving a legitimate aim (s.15).

e.g. A judge is diagnosed as having a visual impairment and requires adapted IT equipment, but is told that funding is not available for a “non-standard” kit. The Ministry of Justice may be required to make the necessary adaptations to the equipment for the judge.

Pregnancy and maternity-related discrimination occur if a woman is unfavourably treated because of a current or previous pregnancy, or because she has given birth (ss.17 & 18).

e.g. A judge is told she will not be authorised to sit in a particular jurisdiction because she is pregnant and will be unable to sit while on maternity leave.

Finally, harassment and victimisation are specific forms of prohibited conduct defined in the Act. Harassment is unwanted conduct related to the protected characteristic of age, disability, gender reassignment, race, religion or belief, sex or sexual orientation, which has the purpose or effect of violating the other person’s dignity or creating an unpleasant environment (s.26).

e.g. A member of court staff is repeatedly praised for her sweet nature and when she complains about being patronised, it does not cease. This is likely to be unlawful harassment.

Victimisation occurs when one person subjects another person to a detriment because that other person has brought proceedings under the Equality Act 2010, has given evidence or information in connection with any such proceedings, has made an allegation that someone has contravened the Act, or has done any other thing for the purposes of or in connection with the Act (s.27).

e.g. A magistrate supports a fellow magistrate who makes a complaint of discrimination against another magistrate. When she makes enquiries about applying to sit in the Youth Court she is told that her application will probably fail. If this is because of her involvement in the previous case it is likely to constitute unlawful victimisation.

For further, more detailed information, please see Equality Act Codes of Practice:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/>