

Trier Conference
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The Role of the Judge in a Diverse Community

It is the right of everyone, without discrimination, to equal treatment before tribunals and all other organs administering justice.

One of our Lord Chancellors once said that “Equality of treatment goes to the very heart of the Judicial Function. Judges have a responsibility not only to apply the law with scrupulous fairness, but also to conduct hearings in a way which ensures that every litigant is treated with courtesy, consideration and understanding.

None of us can ever be sure we fully understand the concerns and expectations of those with very different backgrounds or life experiences from our own. However, it is clear that those of us entrusted with discharging judicial functions can not deliver justice unless we bring to the task an understanding of cultural or any other factors which may have had an important influence upon the way individuals behave, in particular situations”.

Every day in our courtrooms, and elsewhere, we come across diversity in a variety of forms, and particularly in culture. Where ever they are, all human life is there. An unpredictable drama unfolds, with an ever changing cast of characters from the increasingly diverse community in which we function. It is therefore only sensible to invest in the training of Judges to ensure that they are sensitized about considerations which have multiculturalism as foundations and are central to the lives of those who attend court as litigants or witnesses, defendants or jurors.

The start of the 21st Century has witnessed an unprecedented deployment of effort globally towards securing the firm application of the meaning attached to the principles of equality and non-discrimination which form the cornerstones of the judicial profession.

Discrimination we know, is a violation of human rights that is especially insidious in that it can enter the very heart of the most fundamental principles of the justice system, that of equality – by rendering protections and safeguards ineffective and serving as the basis and catalyst for many violations against the same person.

The consistent occurrence of discrimination in its many forms, and the emergence of the more subtle forms of contemporary manifestations of discrimination warrant action. It is not surprising that at the regional level, in Europe, the recently adopted EC Race Equality Directives broke new ground in terms of racial discrimination and protection against discrimination on the basis of religion, sexual orientation, disability and age. The undertaking at the National level of implementation measures to cover these Directives, constitute an essential backdrop to the equality and diversity issues addressed by English Judicial Training on anti-discrimination issues.

The themes that have developed in our training on the prohibition of discrimination cover the following considerations;

- Giving people easy access to justice
- Reinforcing the principle of equality of treatment before the law, by dispelling the myth that the socially and economically disadvantaged in society are similarly disadvantaged before the law.
- Encouraging easy communication with a view to fostering equal treatment by Judgecraft – this includes effective communication which is the basis of the legal process. Everyone involved must understand and be understood, ie, we no longer use Latin expressions in our Judgements.
- Nurturing neutrality and avoiding discrimination whether direct or indirect based on prejudices rooted in assumptions.

‘Judgecraft’, or the Art of being a Judge.

Judgecraft is an important aspect of the role of a judge in a multicultural society. The ability of a judge to demonstrate awareness and secure effective communication in legal processes has echoed through the ages as the key to both substantive and procedural fairness in judicial decision-making.

In this connection it is appropriate to refer to **the Arthashastra** – (Hindu political treatise of 1st Century BC) – which states that “Judges shall discharge their duties objectively and impartially so that they may earn the trust and affection of the people”.

Moreover, **Plato** the great Philosopher/writer of 1st Century AD said “a judge must bear in mind that when he tries a case, he himself is on trial”.

The **Q’Uran (Koran)** also states that “you must do justice even if it is against yourself, your parents, your children or your kin”.

More recently, **Lord Hewart CJ** – in a 1924 Judgement made the famous statement that “it is not merely of some importance, but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done”.

Consistent with those judicial quotations, the **Judicial Oath of Office** – requires a judge to pledge as follows: “I do swear by almighty God that I will well and truly serve our Sovereign Lady Queen Elizabeth II.....and will do right to all manner of people after the laws and usages of this Realm without fear or favour, affection or ill will”.

An effective approach to the **training of Judges** of all levels requires trainees to imagine themselves in court, under constant scrutiny from fair minded people who may be watching their performances. While they have no means of knowing the views or preferences of those watching, they must ensure that their decisions do not result in parties leaving courts with a bitter taste in their mouths by feeling that they have not had a balanced, fair consideration of their cases, irrespective of whether or not they agree or disagree with the decisions.

Having set out the basic principles of the Judge’s function to ensure fairness, I will now outline, briefly the mission of the **Judicial Studies Board (JSB) and Equal Treatment Advisory Committee (ETAC)** of which I am a member. I will also share with you my experiences as a **Diversity & Community Relations Judge (DCRJ)** and highlight some aspects of the unique work those judges undertake.

1. The Judicial Studies Board (JSB)

The Judicial Studies Board is the body responsible for undertaking the training of all the Judiciary in England and Wales. It covers training for all full time High Court Judges, Circuit Judges (such as me), and District Judges in both criminal and civil jurisdictions, Tribunal

Judges and also part-time Judges in all these jurisdictions. The JSB also now has responsibility for training some 30000 lay Magistrates. It fulfils its responsibility with the support of an overarching Executive Committee that deals with the management of all the other committees which provide training in specific legal areas for various jurisdictions.

For example, the Family Committee of which I am also a member delivers training in Family Law to all Judges approved to undertake that work. There are also Committees covering the Criminal, Civil, Magisterial and Tribunal training.

All Judges are required to attend a residential Induction Course in the specific jurisdictions in which they are approved to sit. They must also attend refresher courses in these jurisdictions at least every three years. There are also additional courses when ever there is a major new piece of legislation produced by Parliament, such as the Criminal Justice Act of 2003 which has revolutionised procedure and sentencing in criminal trials, and the Forced Marriages Act 2008. The JSB also maintains a website on which it displays, updates, and disseminates information on new legislation and/or practise.

I have been involved with judicial training for over 15 years. During this time I have witnessed an immense increase in the amount of training given and the amazing level of professionalism and innovation that has emerged as a result.

2. The Equal Treatment Advisory Committee (ETAC)

The Equal Treatment Advisory Committee is a sub-committee of the JSB that was set up to deliver training to the Judiciary at all levels, from High Court to Magistrates. It began life as EMAC (Ethnic Minority Advisory Committee) and has grown in size and remit. ETAC now covers training in the following areas;

- Race
- Religious Diversity (Belief Systems)
- Children
- Disability (both physical and mental)
- Gender inequality
- Sexual Orientation
- Unrepresented Parties

- Social Exclusion and Poverty
- Civil Partnership Legislation

I am a member of this Committee that comprises three Circuit Judges, three District Judges, a Tribunal Judge and eight other members who are either academics or have expertise in the above issues. We are chaired by a female High Court Judge. As a matter of interest, at least three of the major JSB Committees are chaired by female High Court Judges. They are selected for these positions on the basis of their excellence, and not as 'token females'. The complaint about the limited number of women and minority ethnic lawyers appointed as Judges is now being addressed by the increased number of highly qualified women and minorities who came into the Profession in the last 15 years.

In my University year, out of 95 law students there were only 8 women and fewer minority ethnic ones. When I recently returned to my University and saw the latest photographs of the last year, the white males were very much in a minority. This demonstrates the change in student patterns.

Bear in mind that unlike many European Judicial systems where a lawyer can enter the judicial path from University, ours takes 15/20 years of practise before a solicitor/barrister can qualify for appointment. Indeed, it is rare to be appointed a full-time Judge under the age of 45 years. I was appointed at 44 but will not tell you the year.

The Judicial Appointments Commission has been set up by Statute, and this is aimed at creating a more diverse Judiciary. In particular, it is hoped that there will be an increase in the number of minority ethnic judges. At present, whereas there are a number at the lower judicial and tribunal levels, and a few at my Circuit Judge level, here is only 1 black High Court Judge – who also happens to be female.

In England and Wales, all Judges receive regular training in anti-discrimination issues. Representatives from my ETAC Committee are trained and assigned to instruct and advise on these anti-discrimination issues, and to deliver training at all induction and continuation courses organised by the JSB. No one 'escapes'. I am the Course Consultant on the Family Law Courses. It helps that I sit as a Family Judge. We liaise with our Course Directors to

identify and organise the nature of the training to be delivered. We then attend the relevant seminars to assist training which is individually tailored to the type of course and to those attending. All courses include training and exercises with a race and diversity element conducted either through specialist speakers or syndicate exercises interwoven into the course materials.

Recently, my Family Courses have held sessions dealing with domestic violence, same sex relationships, forced marriages, and child residence and contact issues relating to the minority ethnic population. It helps that many of the speakers at the sessions were either black or minority ethnic females, or 'gay', who are able to 'tell it as it really is'. They are able to share with us information and experiences of which we need to be aware, but which could trigger negative reactions on the part of members of the relevant communities should the same be undertaken by outsiders.

It is vital that we have these sessions, as the involvement of members of minority ethnic groups in the judicial system is increasing, and particularly in family courts. It is vital that we understand the family dynamics of various communities to be able to avoid cultural assumptions which could lead to judicial error. When I first started sitting as a Family Court Judge it was rare to find any ethnic minority parties involved in court proceedings, whereas this has now noticeably increased. This may be because parties now have greater confidence in the judicial system. A recent case I dealt with involved a 'clash' between Sunni and Shia cultures and the necessity for consulting several experts in this issue.

At a recent training course, one of the Judges attending was so moved and impressed by a speaker who ran a refuge for battered Asian women, that he donated a financial contribution to that organization.

Judges also profess to believe that by virtue of their position and experience, they do not need this training. Experience has shown that no-one can know everything, and in fact, judges learn something new every time they go into court. We all need reminding of needs, concerns and appreciations of others if we are to maintain the high standards of the judiciary.

It is not long since a major outcry erupted in the English media concerning a public argument in court when an experienced Circuit Judge told a Rastafarian member of the public to remove

his hat. This was insensitive to the Rastafarian beliefs and the judge ended up having to make an apology in court. These things can arise in ‘the heat of the moment’ when we least expect it, and it is hard to know how I or others might react in such situations. However, had that judge listened to our training or read our **Bench Book**, he could have avoided the problem.

The **Bench Book** is an information tool prepared by my Committee and sent to all full and part-time Judges. The Book covers all we hope judges in our jurisdictions need to know about these issues of race and diversity, to enable them to carry out their work fairly and properly. It will also help them to deal with various problems that might occur in court. The contents have been compiled with the experience of our various members gained over the years. The Book reflects a diversity of experience as members of the Committee include some from minority groups. The Book is therefore not prepared by ‘white judges for white judges’.

This Book is constantly updated and the latest version was launched in the summer of 2004. It can be downloaded from the JSB Website. The Bench book is based on the belief that judges need to have access to relevant information about different aspects of society, with a view;

- To improve the quality of justice they administer in court.
- To help them avoid giving an impression, or reinforcing any perceptions that may already exist, that people in their courts are being treated in any way differently because of their race or ethnic origins.
- To help them recognise the challenge and opportunities that exist in society today, and the implications these challenges present to those administering justice.
- To help them appreciate those cases involving people from ethnic minorities and or diversity issues, require a particularly well-informed and sensitive understanding of the multicultural context surrounding such cases.
- To create confidence in the Justice system.

3. Diversity & Community Relations Judges (DCRJJs)

The role of these Judges is a creation of The Lord Chancellor and ‘partly owned’ by ETAC. I was appointed as a DCRJ in The North of England for Leeds, which has a population of three quarters of a million and Bradford with nearly half a million. The demographics of these two cities are very different. Bradford has a population composed of 20% of Asians or persons of

Asian descent and Leeds has a substantial African-Caribbean make-up. In 2001, the city of Bradford experienced the worst riots in England for over 20 years. The riots involved hundreds of Asian youths attacking the police. The Riots were precipitated by some far right organisation holding a demonstration, and then withdrawing, leaving a confrontation between these youths and police. Many injuries, arrests and millions of pounds worth of damage resulted. Since then, many 'bridges have had to be rebuilt'. My role as DCRJ was to try and heal the rift between the Communities and those responsible for the Administration of Justice, as many of these youths felt disenfranchised and harshly treated by the courts which imposed long custodial sentences.

Most major court centres have one of these DCRJs assigned to them. There are about 45 in all, and I am the Lead Judge with a remit to co-ordinate the DCRJs' and organise training. It is important to realise that all these tasks are in addition to our normal court related responsibilities.

The original remit was to 'make of the job what was needed in the various courts to which the DCRJ was appointed. The problems vary from one court centre to another, as not every one has the same ethnic mix and attendant issues. I expanded the remit and created a job description setting out the suggested tasks the DCRJ might find useful to undertake.

The role of the DCRJ

The primary purpose of a DCRJ is to be a bridge between the judiciary and the community. By forging this link, it is more likely that all sections of the public will better understand what judges do in criminal, civil and family justice settings, and how the justice system is there to serve the whole community. It is also intended that the DCRJs will help to engender good relations with the range of local communities and inspire a positive image of the justice system.

Different approaches may be appropriate for judges conducting community engagement within the family, civil and criminal judicial systems.

What is a ‘community’?

A community is a social group of people who interact and share certain characteristics, experiences or backgrounds, and/or are located in proximity to each other. Communities are fluid and overlapping, and can be defined in many ways. The following are just some examples of the types of communities that are likely to co-exist in any local area:

- **Geographic and physical communities** – people living or working close to each other who share the same physical environment and amenities; e.g. villages, estates, neighbourhoods.
- **Communities of identity** – people who share particular characteristics connected to their heritage, belief system or physical being that define their day to day lives; e.g. ethnic groups, religious groups, disabled people, children, older people.
- **Communities of interest** – people with an identifiable need or interest which may cross other community ‘boundaries’; e.g. support groups, sporting clubs or associations, ex-offenders.
- **Virtual communities** – groups of people who interact primarily via communication media (e.g. telephone, email, Internet). These are sometimes termed ‘social networks’ and have a common interest or goal.

Types of community engagement

The usual broad understanding of community engagement encompasses the involvement of the public, either as individuals or as a community, in policy or service decisions which affect them. Types of engagement range from ‘Informing’ and ‘Consulting’, to ‘Collaborating and ‘Empowering’. Local DCRJ community engagement will normally be towards the informative end of the spectrum. The more all-encompassing definitions of community engagement are not entirely appropriate in relation to judicial (including magisterial) community engagement. Judicial independence requires that actions must be based on the law, not on local public opinion, and judges have limited scope to adapt their services to local need. This should not be used as an argument against judicial community engagement – but it is obviously important for the public to be clear about what community engagement can realistically achieve.

Why engage?

The way forward outlined in the joint diversity strategy is that a better understanding of the judiciary across local communities will help to increase confidence in the wider justice system. Through enhanced community engagement, judges will also be able to obtain a clearer understanding of the impact of the decisions that they make.

Communities will also gain a better understanding of how the courts and the judiciary operate, and of judges' decision-making processes.

Identifying characteristics of local areas

An understanding of local communities may be obtained in formal and informal ways. A mass of official information and statistics is collected and published about national and local communities by the Government and other organisations.

Useful starting points are our Local Criminal Justice Board, and Racial Equality Councils which should be active within the local community. In addition, most local authorities will also have a developed a community profile which they should be using to inform local planning and community strategies.

The U K Audit Commission provides guidance to help local agencies to create their community profiles and to make best use of the information. Such profiles draw on (for example):

- Data from sources such as the Office for National Statistics, the local Community Safety Partnership, the health authority and the Audit Commission;
- Funding and spending information;
- Residents' and service users' views;

Emerging communities

Identifying emerging communities

Many communities are changing and evolving, and understanding this evolution can help to shape community engagement activities. As new communities (of whatever type) start to

emerge, they are at particular risk of being ‘marginalised’ from more mainstream civic society, including from participation in community engagement activities. For example, new communities may have a deep rooted fear or mistrust of the criminal justice system which could lead to increased problems in reporting, detecting and punishing crime.

Observing the trends in migration, employment and interest that are likely to lead to the formation of new communities is therefore beneficial to any form of community engagement. The latest official information about new and changing communities (such as Eastern European migrants) is produced by a variety of agencies, and usually held or published by the local authority. The types of data may include: local National Insurance number registrations, local ‘Workers Registration Scheme’ registrations, local ‘Seasonal Agricultural Workers Scheme’ registrations, work permit entrants, and asylum seeker data.

Identifying these new communities and engaging with them is a fresh challenge for us.

Deciding why and who to engage

Before deciding how to engage, it is important to consider why we want to engage, and who with. A degree of caution is advised when engaging with new contacts, especially when the individuals are from a non-governmental group, or have a unofficial role.

Local trusted contacts and networks are well placed to advise on local issues that could be addressed by engagement. These issues may be those shared by all the local community, or may be particular to a specific group. Being clear about the primary reason for engaging – for example, have we been alerted to a current issue; do you want to raise awareness of a new initiative; have we been invited to attend a community meeting? This will help to plan the event appropriately, communicate it clearly, and resource it proportionately.

Issues that have been identified by DCRJs as providing opportunities for engaging with communities include: process issues such as sentencing, specific issues such as cultural and religious sensitivities in court, and wider issues such as the effects of alcohol on criminality

CASE STUDIES

Community engagement can provide a way of understanding and resolving practical judicial issues. The following case studies provide a number of examples: -

Judge Hammond in Leicester *identified that there was a particular issue of Muslim women wearing the veil in courts and tribunals (as defendants or witnesses), as there were concerns that the veil could make it harder to identify the woman, make it harder to assess her evidence, and possibly lead to a miscarriage of justice. At the time, there was no central guidance for judges on how to approach this situation, so Judge Hammond consulted with a number of his most trusted advisers from the communities affected by this issue. Following this, he put together a proposed solution which he tested with these advisers. Local Imams discussed and agreed this at a city meeting with fellow Imams. A pragmatic solution which met with the approval of both male and female Muslim community leaders and was workable by the courts and the judiciary was developed. The Imams agreed to give guidance to their congregations and relationships with Muslim communities have been strengthened. Some of the other issues that Judge Hammond has identified through community engagement and then addressed in his court include: ensuring that court staff know that non-Muslims cannot touch a Koran when swearing witnesses in, making separate washrooms available where Muslims can make their ablutions, and accommodating Muslim jurors' requirement to attend prayer by altering court sitting times.*

Birmingham Courts Board*

Meetings were arranged with the councillors and MPs for the areas under consideration for community justice. The District Judge, magistrates and community justice staff attended to explain to the elected representatives both the principles behind community justice and the reasons for selecting the proposed areas.

Selecting the target audience(s)

Some groups may have adverse interests, for example a focus on gay issues may offend certain religious communities.

Who is at particular risk of exclusion within a local area?

Several groups are consistently identified as at particular risk of exclusion and discrimination, and these may provide potential target groups for local engagement activity. The groups often identified include: black and minority ethnic communities, people with disabilities, gypsy and traveller communities, lesbian, gay, bisexual and transsexual (LGBT) communities, children

and older people, faith and religious groups, people on low incomes, and asylum and refugee communities.

What's working?

HHJ Cardinal in Birmingham *overcame some initial frustrations in trying to develop his network of community contacts when he was directed to the Inter Faith Adviser to the Bishop of Birmingham. Judge Cardinal was able to make use of the positive community relations already established, and has for two years running held receptions for local religious leaders, involving all the main faith groups. This has also led onto other invitations: to Diwali celebrations, to a major Jewish anniversary, and to speak to a local black group with concerns about civil justice. He has also been promised invitations to speak to local schools and to the central mosque.*

Judge Cardinal (representing the family justice system) has spoken alongside the head of the court's civil work and a senior criminal justice judge to help develop an awareness of all three disciplines.

Mindful of an emerging Polish community in the area, Judge Cardinal has also written to the local Roman Catholic Dean to explore ways of engaging with this community.

Deciding how to engage

Research with the DCRJ community showed certain engagement types to be more prevalent in their use, and we describe these in more detail on the subsequent pages. These activities may be summarised as:

- Community visits to court;
- Judicial visits to communities;
- Mock trials / 'You be the Judge' events; and
- Media involvement

Community visits to court

Community visits to courts are designed to inform various groups about the operations of the court. Visits can cover both civil and criminal courts and can help to educate members of the public about court operations and to increase the willingness of local residents to participate in jury service. A typical event could include a brief tour and overview of the court, talks (e.g. by

a judge, usher, witness support volunteer), a walk-through of the court, and observation of a hearing or trial. This could be a regular event, schools, for example, could be encouraged to make annual visits to the courts as part of the citizenship curriculum, with other visits (aimed more at adults) run throughout the year.

The types of communities best engaged by this method may include: students, local residents and interest groups, new staff (as part of the induction process), staff or volunteers from local partner agencies.

We can adapt engagement to be more inclusive by tailoring the content to the needs of a particular audience. For example, visits by schoolchildren will need to be more interactive to keep them engaged – perhaps by setting quizzes or getting them to act out roles in empty court rooms. Language needs must be considered (is an interpreter required?) as must accessibility (e.g. for the elderly or disabled). Including Q&A sessions will help people to feel more involved and can help to identify some of the concerns that may not have been considered in the design of the visit

Bedfordshire LCJB Example of a court visit:

Court open day during Heritage Week

The court replicated a local case from 1872 in full Victorian costume and visitors were able to compare this with a modern magistrates' court in action.

The event attracted a lot of visitors and the judge was able to communicate powerful messages about the value of today's sentencing options

Judicial visits to communities

These could be formal visits to the local community centres or similar neighbourhood forums (e.g. schools; lesbian, gay, bisexual or transgender groups; tenants' federations; disability groups; councils of faith) and are best conducted with other judicial partners. These sessions could include a tour of the community, followed by a talk on a specific subject and Q & A. For example, this could be an introduction to the community justice concept, including what it is, how it is working in other places, the problems it has addressed and the ways that local people can become involved in community justice.

The engagement could be used to engage most types of communities where there is a 'focal point' that brings people together.

These visits can be effective at engaging with a wide range of communities who might not otherwise be able or inclined to visit courts. It is a very personal method of engagement where

individuals can feel comfortable in their own environment. Visits can give the DCRJ a much more real understanding of local communities and the issues they face.

Mock trials / ‘You be the Judge’ events

Mock trials can help raise public awareness about the role of the judge and jury in deciding guilt and sentencing, although they also help to build a general understanding of the judicial process. Any community could be engaged in this way, although it may particularly suit ‘captive’ audiences such as schoolchildren.

We have found that mock trials can be a very effective way of engaging with communities. Using the audience as role players helps to get them more involved with the issues, and can help to build confidence among individual participants. Run successfully, mock trials can help communities to appreciate the issues and challenges faced by the judiciary, and to see cases and sentencing decisions from different perspectives. They may even inspire people to consider a career in the justice system or the magistracy.

Media and e-involvement

The media, both local and national, can provide very effective ways of engaging with a large number of the public – as a single community, but also targeted to specific communities.

Local and specialist media in particular can have excellent reach – perhaps more so than the national media, as the particular common focus makes people feel more included. The media can therefore be a useful way of targeting groups of people; for example, geographically (using the local media) and specific groups (for example, particular ethnic communities).

This type of engagement offers many benefits but also presents a number of risks for the judiciary that need to be understood and managed. The English/Welsh Judicial Communications Office recommends that this activity is only undertaken by local judges after careful planning and consideration of the benefits and risks. In other words, we have to be cautious to avoid being ‘stitched up’ by the media.

Advantages of using the either national or local media include that they can allow two-way communication with a large number of people (such as via a radio phone-in programme), can increase the visibility and profile of judges, and can reach people less easily engaged via more typical methods (e.g. because of physical or social isolation).

What's working?

Radio Merseyside phone-in

Background: Local media 1 hour phone in programme

Approach: The programme was developed by a well-known and respected local investigative journalist. He spent two days at the court prior to the broadcast to understand how the court operated.

The structure of the show was agreed in advance, with clear parameters about what questions could and could not be allowed.

On the show, the presenter interviewed a range of court staff, court users and the judge, and the presenter effectively managed the questions that were posed.

Conclusion

Thus, the role of a judge in our multicultural society is crucial as it can serve effectively to prevent and counter the effect of direct, indirect and multiple forms of discrimination, while contributing to integration and equality in treatment and opportunities.

Our efforts through JSB, ETAC and the DCRJs' do not amount to, 'plain sailing', and progress has been slow. It is however, clear, that these initiatives are quite practical in addressing through the judiciary some of the current acute manifestations of discrimination, by focussing on steps that can prevent situations of discrimination, or reduce their effects.

Agencies need to ensure continuing progress in the elimination of discriminatory practices at all levels. The greater the progress, the more important it becomes to ensure that these achievements are seen and recognised by those to whom services are delivered.

It is my firm belief that our efforts through the training of judges, constitutes one of the most important approaches in building a multicultural society free of discrimination. Discrimination in the administration of justice carries the potential to abrogate the rule of law, undermine faith in the legal system, and victimize individuals and groups by the very institutions responsible for their protection.

His Honour Judge Geoffrey Kamil

October 2008

