

Discrimination at the Jersey boardroom table

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At the current rate of change it will take
over 70 years to achieve gender-
balanced boardrooms in the UK*

* Women on Boards
UK Report 2007

The depressing implication is that there may still be a colour bar to management jobs 33 years after the passing of the Race Relations Act.*

*Race to the Top
Report 2009

IS THERE DISCRIMINATION IN THE
JERSEY [LIMITED] BOARDROOM?

“You invite me to provide evidence to demonstrate that a problem exists and you suggest that the test of whether discrimination legislation is successful is whether it solves the problem of inequality in society. I do not believe that the law will, in itself, prevent discrimination or eliminate inequality. The legislation is intended to provide legal protection where a person has, for example, been refused a job, turned away from a restaurant or prevented from renting a house because of their race. In failing to prohibit discrimination of this sort, Jersey falls short of widely recognised international standards and I believe that we must put this right.”

Senator Le Gresley in response to concerns expressed to him by the CIPD following the draft discrimination law scrutiny report

2.3% of board members of the largest companies listed on the London Stock exchange came from ethnic minority backgrounds

Of 1,130 boardroom posts in the FTSE 100 there were only 27 executive or NEDs from ethnic minorities

In 2010 women made up only 12.5% of the members of corporate boards of FTSE 100 companies

**HOW HAS JERSEY [LIMITED] BEEN
DEALING WITH THE DISCRIMINATION
ISSUE UP TO NOW?**

- **1991 – 1993:** Codes of Practice
- **1998:** Fair play in the work place
- **1999:** Race Relations Working Party
- **2002:** Legislation Committee
- **2004:** Jersey Advisory and Conciliation Service (JACS)
- **2006:** First consultation on the draft Law
- **2008:** Second consultation on draft legislation
- **April – July 2010:** Scrutiny
- **2012:** Law Drafting
- **September – October 2012:** consultation
- **December 2012:** The draft law was presented to the Council of Ministers
- **2014** or thereabouts a Race Discrimination law will be on our statute books

Discrimination (Jersey) Law 201[4]

Race discrimination

All Companies whatever size will be covered

The law will outlaw discrimination in relation to employees:

- Recruitment
- Treatment
- Dismissal

Why only race?

“It is considered that introducing protection against discrimination on the grounds of race does not entail the same complexity as sex, age or disability discrimination

In terms of complexity/the need to coordinate with States policy in other areas, we consider that the introduction of race as the first protected characteristic would, in broad terms, be likely to be more straightforward than [age or] sex.”

Senator Le Gresley

What is meant by race?

Colour

Nationality

National origins

Ethnic origins

So what is considered to be discrimination?

The four main types of discrimination areas within the law

Direct discrimination

Indirect discrimination

Harassment

Victimisation

Direct discrimination

- (1) A person discriminates against another person (the “subject”) if, because of a protected characteristic, the person treats the subject less favourably than the person treats or would treat others.
- (2) In relation to the protected characteristic of race, less favourable treatment includes segregating the subject from others.

Race includes one's colour, nationality, ethnic origin and national origin.

Direct discrimination

Examples

Managing Director of Jersey Limited decides to advertise for an NED director to work in the business. He only receives one application – from Hassan. Hassan is very well qualified holding an MBA from Harvard but is Romanian and the MD does not want any one from Romania. He decides not to recruit anyone.

Direct discrimination

Examples

Helier owns a successful company and wants to recruit a new director who can help him with his fulfilment business into Europe.

There are two equally qualified applicants; one born in Jersey and the other born in Poland. Helier recruits the Polish applicant because he has been told that Polish directors are more hardworking than their Jersey-born counterparts.

Direct discrimination

Examples

Neil is black and applied for a directorship with James – Neil has been working at the company for sometime.

James is concerned that the intermediaries that provide business to the firm will not feel comfortable dealing with Neil – personally he has no issues with black directors but from a business perspective he considers that it could affect the business - he turns Neil's application down.

Indirect discrimination

- (1) A person discriminates against another person (the “subject”) if the person applies to the subject a provision, criterion or practice which is discriminatory in relation to the subject’s protected characteristic.
- (2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to a subject’s protected characteristic if –
 - (a) a person applies, or would apply it to other persons who do not share that subject’s characteristic;
 - (b) it puts, or would put, persons with whom the subject shares the characteristic at a particular disadvantage when compared with other persons who do not share the characteristic in question;
 - (c) it puts, or would put the subject at that disadvantage; and
 - (d) a person cannot show it to be a proportionate means of achieving a legitimate aim.

Indirect discrimination

Examples

Jenny the Managing Director of a marketing company advertises for a PR Director and states that the successful applicant must have at least a Grade A in GCSE English and Art

Indirect discrimination

Examples

Jo the managing director of a quarry advertises for a director and states that the successful applicant must be able to speak English.

The workforce is predominantly made up of English speaking workers.

Two people apply for the job – Jim from St Brelade and Jose from Portugal whose English is not very good

Jim gets the position.

Harassment

A person harasses another person (the “subject”) if, the person engages in unwanted conduct towards the subject that is related to a protected characteristic and which has the purpose or effect of –

- (a) violating the subject’s dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the subject.

In deciding whether conduct has the effect described in paragraph above or (b) each of the following must be taken into account –

- (a) the perception of the subject;
- (b) the circumstances of the case; and
- (c) whether a reasonable person could regard the conduct as having that effect.

Harassment

Example

Gina is an accountant working as director for a financial services company.

She is a British citizen of Pakistani heritage and has worked in Jersey for the past eight years. On several occasions she has heard her fellow director, John, refer to her as 'coloured'. When Gina objects to this term, John denies that he is racist and says that the term is not meant in an offensive way. Soon afterwards Gina hears John tell a colleague that he has no problem with coloured people and that Gina is a good accountant.

Victimisation

- (1) Victimization is an act of discrimination prohibited by this Law, where it occurs in any circumstances where an act is prohibited [under Parts 3 to 5].
- (2) A person victimizes another person (the “subject”) if, in the circumstances described in paragraph (1), the person treats the subject less favourably than that person would treat other persons, and does so by reason that the subject has –
 - (a) made a complaint under this Law;
 - (b) instituted proceedings against the person or any other person under this Law;
 - (c) given evidence or information in connection with proceedings brought by any person against the person or any other person under this Law;
 - (d) otherwise done anything for the purposes of or in connection with this Law in relation to the person or any other person;
 - (e) alleged that the person or any other person has committed an act which (whether or not the allegation so states) is prohibited by this Law,

Victimisation

Examples

Norman is taken to a Tribunal accused of selecting a director for redundancy on the grounds that he was of Jersey heritage.

At the Tribunal hearing Robert – one of his other directors – gives evidence of comments that Norman made about Jersey people in the past. The Tribunal upholds the complaint and awards £10,000 compensation.

Norman is furious with Robert for his disloyalty and withholds a pay rise that would normally be given because of the money he believes that Robert has cost him.

Other issues who is liable

As well as being under a duty not to discriminate against employees, an employer company will also be acting unlawfully if it instructs one of its directors to act in a discriminatory manner.

If it does so, then not only may the employer be liable for any discrimination that results, but the director who has been given the instruction may be able to bring tribunal proceedings against the Company.

Are there any exceptions?

There are some circumstances in which it is not unlawful to treat people less favourably on the grounds of race.

complying with an applicable law or court ruling

pursuant to a policy adopted by the States of Jersey or a Ministerial Decision

Genuine Occupational Requirements

REMEDIES FOR DISCRIMINATORY BEHAVIOUR

Make an order declaring the rights of the complainant and the employer;
and/or

Order compensation of up to £10,000 (for financial loss and hurt and
distress); and/or

Recommend that the employer take certain action within a specified
period of time in order to reduce the adverse effect of the
discriminatory act on the complainant.

WHAT OTHER SOLUTIONS ARE
THERE?

QUOTAS

RULES

CODES

DOES IT MATTER?

Companies with more women on their boards were found to outperform their rivals with

- 42% higher return in sales
- 66% higher return on invested capital
- 53% higher return on equity *

*The Bottom Line: Corporate Performance and Women's Representation on Boards 2007

- (1) Improving performance
- (2) Accessing the widest talent pool
- (3) Being more responsive in the market
- (4) Achieving better corporate governance

CONCLUSIONS

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