

Minority ethnic parents, their solicitors and child protection litigation

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Executive Summary

'... you [also] get the impression that some judges are actually really interested in different cultures... ... you know they'll make an effort to make some kind of comment to show that they have some understanding or that they are prepared to understand...'

Solicitor for parent

'[the judge] was disrespectful definitely. Because...I mean, we've only been there once but it was an experience I wouldn't like to have repeated at all. ...[He] was rude, he was arrogant. I remember ...he had a bit of a go at each and every [lawyer] ... over small issues, over little things. And not once did he say hello, you know, welcome me or my husband.'

Parent of Pakistani origin

'[The court] didn't get to hear much about my family lifestyle or my background because [it wasn't in] my statements, like I said before, the solicitor relied heavily on my current mental state...'

Parent of Pakistani origin

- This study is about care proceedings concerning minority ethnic parents. It is a qualitative study based on interviews with solicitors and parents. It is not so much concerned with competing stories between parents and professionals, as with what it takes for parents from diverse ethnic, cultural, religious and linguistic backgrounds to feel that the legal process is fair and just, and that they have been 'heard and understood'.
- It builds on a previous interrelated study of 'significant harm' in minority ethnic families (Brophy, Jhutti-Johal and Owen (2003a) *Significant Harm: Child Protection Litigation in a Multi-Cultural Setting*: London: Department for Constitutional Affairs) under the Courts and Diversity Research Programme (the Phase I study).
- Phase I observed hearings, examined written evidence, and ascertained the views of judges, magistrates and legal advisers. This included an examination of care files concerning 183 children across eight ethnic groups, exploring the information on diversity available to courts at key stages in proceedings.
- Observations were undertaken at thirty-six hearings and twenty five interviews undertaken with judges, magistrates and legal advisers focused on the relevance of issues of diversity to allegations of child maltreatment, failures of parenting and expert assessments. In particular Phase I explored whether the legal criteria for a care order (i.e. the 'significant harm' criteria, s 31 (2) (a)-(b) Children Act 1989) provide a sufficiently sensitive threshold for assessing harm and risks to children in minority ethnic households.

- That study found no evidence to suggest a major review of the law (i.e. 'significant harm' as a threshold criteria) was necessary. However it did identify variations in the focus on issues of diversity in reports according to the ethnicity of the parent and according to the discipline of the expert. The study was unable to explain those differences or to say whether minority ethnic parents were satisfied with their statement and whether they felt the system was fair. Equally the study was not able to say how lawyers approach issues of diversity.
- That work resulted in important changes to procedures aiming to improve the focus on these issues under the Protocol for Judicial Case Management in Public Law Cases (see introductory chapter herein). However, it also identified gaps in information, some of which could only be addressed by minority ethnic parents and their solicitors.

Phase II: Parents and solicitors - issues addressed in this study

- In Phase II we focused on the legal process taking key stages and documents in proceedings. In interviews with solicitors and parents we asked about satisfaction with interpreters and with experts. We also asked about experiences of attending family courts: was it fair and just, did parents feel 'heard and understood', did parents or solicitors observe or experience anything they considered to be racist or insensitive?
- We explored whether solicitors had concerns about the threshold criteria and assessments of change in parenting 'cross culturally'; we explored the format for parents' statements and the inclusion of information on diversity.
- We asked parents whether they were satisfied with their solicitor and with their statement(s) for the court. We also asked about any differences in values and approaches to childrearing. Finally, we asked solicitors and parents whether courts could improve the experiences of parents from minority ethnic groups.

Methodology

- This is primarily a qualitative study in which we interviewed 45 solicitors and 12 respondents in families. The samples were essentially drawn from three diverse regions in England. Interviews were in-depth and semi structured, all were taped and fully transcribed.
- It must be noted with regard to parents - given ongoing sampling problems in the absence of ethnic monitoring by courts – this is a qualitative study about experiences of racism, fairness and feeling heard and understood by family courts. It is about the identification and treatment of 'difference' as experienced by individual parents and not about specific ethnic groups.

The findings

Language interpreters

- Overall, the views of solicitors in this study replicated findings in Phase I: the system is dogged by poor quality work with instances of unprofessional conduct across all regions, and few interpreters were felt to be familiar with the Children Act 1989. Relatively little attention has been paid to the implications of the Human Rights Act 1998 (Article 6 – rights to a fair trial) and 'equality of arms' (i.e. that both parties come to court on equal terms) in so far as this impacts on the provision - across *all* settings - of high quality interpreters for parents whose first language is not English.

The solicitor's task in getting a minority ethnic parent's story

- Compared with White British parents there are similarities to this task but there can be differences and difficulties. *Difficulties* in this task arise because in certain situations neither the solicitor nor the parent starts this exercise with much of a 'script'. The solicitor does not always know what he/she needs to ask a parent from a diverse background, equally parents may not know what they need to tell their solicitor.

Parents newly or relatively newly arrived in Britain – initial hurdles

- A major hurdle for solicitors to overcome before getting a parent's story is often their total incomprehension at state intervention in parenting practices. Where parents originate from countries with corrupt state apparatus/no welfare or legal system that background can determine how a parent's story is told and how parents respond to agencies – including initial interactions with a solicitor.

Second/third generation Black/Asian British: a different starting place?

- Solicitors tended to make some assumptions about second/third generation Black/Asian British parents regarding their knowledge of welfare and legal systems and *degrees* of integration or 'assimilation' into a predominately white British society. In principle therefore, taking instructions was generally viewed as not very different from the task with White British parents but this may vary where for example one parent is relatively new to the UK.

Explaining law and procedures to parents

- The language and terms used by professionals are reported as difficult for most parents. Some solicitors felt they were often much better at getting a parent's story than they were at explaining 'law' to parents; parents tended to agree, solicitors are not very good at explaining law and procedures.

Responsibility for broaching diverse backgrounds with parents

- Solicitors were divided on responsibility for raising questions of potential cultural variation with parents. Approaches *could* depend on whether parents were 'new arrivals' or second/third generation Black/Asian British.
- Some solicitors were extremely cautious about initiating discussion about cultural diversity where they had little knowledge or training and were unsure how a parent might view issues. There was some concern about being viewed as racist simply by raising this topic. However other solicitors have developed methods of raising this area because it was felt parents simply would not broach issues of diversity 'uninvited'.
- By comparison, some parents were not clear why some solicitors wanted to discuss their childhood, others said solicitors did not venture much beyond specific allegations - and parents felt unable to initiate a discussion about diverse backgrounds.

'Ethnic matching' between parents and solicitors

- Ethnic matching is not a panacea, for example, some minority ethnic solicitors said some parents had unrealistic expectations of a 'matched' solicitor while some parents expressed disappointment with a 'matched' solicitor.

Racism, prejudice or insensitive treatment by solicitors/barristers

- Most parents in this sample did not report any attitudes/behaviours from their solicitor/barrister, which they thought racist. However, three parents reported incidences of disrespectful and uninformed comments.

Cultural variations in parenting and explanations for ill-treatment

- Some solicitors said *some* minority ethnic parents posit 'cultural differences' in the way they bring up children compared with White British parents, but others do not. For example, some parents of African, South Asian and African-Caribbean origins have argued physical 'punishment' is sanctioned by cultural/religious mores. Equally, solicitors have represented parents from the same groups who have not considered it acceptable to beat or hit children.
- Most minority ethnic parents in this sample identified some differences between their values and practices towards childrearing compared with White British parents/neighbours they know. Some parents generalised their views to other parents in the same group, others distanced themselves from what they felt were stereotypes of parents of South Asian and African origins - especially with regard to the issue of hitting/beating children.

4 Parents' statements

- Despite findings in Phase I about use of a 'rebuttal mode' as the format for parents' statements, most solicitors in this sample were critical of that approach. It was described as a 'lawyer's document', too easy to produce, not especially helpful to the court and problematic for some parents.
- However the inclusion of information on 'cultural contexts' in statements could depend on issues of 'strategy' - although most solicitors said the final decision about including this topic remained with parents. Some solicitors argued the importance of 'capturing the client' and would therefore include things which although 'culturally important, may not be legally relevant'.
- Most solicitors in this study had limited experiences of representing parents of African-Caribbean origin and more research is required with this group. Most of the reasons suggested for limited coverage of cultural diversity in parents' statements were based on the fact that African-Caribbean parents present no obvious 'signifiers/triggers' of cultural/linguistic variation. It was felt solicitors might be very cautious about raising this area with African-Caribbean parents for fear of being seen as racist.
- Nevertheless, half the parents in this study were dissatisfied with their statements; diverse cultural/religious backgrounds were not covered, statements were not in a parent's own words or things were said differently, and some were dissatisfied with the way in which physical ill-treatment was addressed.

Attending family courts

Solicitors' views about minority ethnic parents' experiences

- All parents were reported as frightened, anxious and often traumatized by attending family courts. There are however some differences. *Some* minority ethnic parents remain highly suspicious of state agencies; where parents have no experience of state involvement in defining adequate parenting, many express incredulity that courts should be in any way interested in their parenting.

- For some parents (newly arrived and second/third generation Black and Asian British) notions of pride and honour are important in understanding their views. Courts are associated with crime and punishment; attendance is a source of shame and damage to the reputation of families.

Experiences across different family courts

- Comparing courts that combine crime and family work with those restricted to family proceedings, some solicitors felt the latter provided a better experience for most parents.
- Care centres were likely to provide a better experience than family proceedings courts – although this could depend on the particular judge. Some judges were regarded as particularly good with minority ethnic parents but in one region certain judges were avoided because approaches were thought to be racist, dismissive or disrespectful.
- Overall however solicitors reported judges were generally good or excellent with most parents, judges with problematic attitudes could be dismissive and disrespectful of all parents regardless of ethnic group. Some magistrates tried very hard with minority ethnic parents, some were described as excellent others however have made inappropriate comments.

Parents' experiences of racism and insensitive treatment in courts

- Two Black parents felt a judge and a social worker had been racist and as parents they had been stereotyped. Most parents however had not experienced attitudes or behaviour in family courts which they considered to be racist.
- More parents experienced treatment they considered disrespectful or insensitive, for example, not being acknowledged in court, being kept waiting for a judge, being seated at the back of the court, not being able to speak to the judge, and a judge behaving in an angry and arrogant fashion.

Do minority ethnic parents receive a fair and just hearing?

- Overall most *solicitors* felt parents probably did get a fair and just hearing. Nevertheless they had substantial concerns about the *process*. Factors said to influence parents' experiences were: the attitude of some judges, whether courts received a full picture of a parent's diverse background, the use of specialist (Children Panel) solicitors and the attitude of some experts to issues of diversity.
- From the *parents'* perspective, a view that treatment by a court had been unfair (and racist) resulted from a judge's comments to parents prior to hearing their evidence. The parents felt pre-judged, because in Britain 'people think African parents are violent towards their children'.
- Most parents' views about unfair treatment focused on a lack of court time and judges for cases, being kept waiting for long periods then feeling proceedings were rushed once in court, and not being allowed to speak in court. Equally, some parents felt judges lacked understanding with regard to issues of mental illness and drug problems
- Thus, while some minority ethnic parents were dissatisfied with treatment by courts, most in this sample did not put this down to racism/discrimination

based on the fact that they are Black or Asian - they felt most parents suffered similar insensitive and disrespectful treatment.

Feeling 'heard and understood' by courts

- Some solicitors in all regions were doubtful that minority ethnic parents felt heard and understood by courts, it was felt the response of some courts to the detail of diverse cultural contexts was likely to make parents feel they were not understood.
- Solicitors said *some* judges and magistrates do *sometimes* fail to understand issues and thus misinterpret aspects of a parent's behaviour/attitude. For example, courts sometimes failed to understand the complexities of domestic violence for some mothers of South Asian origin and their limited parameters of action and decision-making.
- Overall, however most solicitors felt there had been substantial improvements in this field in recent years. Most examples of behaviours or attitudes that had caused them concern were felt to demonstrate insensitive or uninformed, rather than racist attitudes.
- From *parents'* perspectives, some also felt judges did not understand diverse backgrounds either because the court simply did not get this type of information, or because it failed to understand the information provided, and/or there was a failure to talk directly to parents about these issues.
- Other parents simply did not know if they had been 'heard and understood', judges did not speak to them and where statements were poor on cultural contexts they were unlikely to know if they had been understood'. Other parents felt the judge probably did understand them – even though they disagreed with his/her view.

The new assessment framework for families in need

- Most solicitors had not seen improvements in the focus on diversity in core assessments following the new framework and guidance (DoH, 2000a; 2000b). Most said the problem was not with frameworks but rather a lack of resources and experienced social workers; the assessment process was said to be failing parents in all ethnic groups.
- Some solicitors argued that the Protocol for Judicial Case Management in Public Law Children Act Cases (DCA 2003) failed to address the fact that many social workers have neither the time nor expertise to undertake the in-depth parenting assessments required.
- Some concern was expressed about insensitive, uninformed and racist attitudes from social workers recruited from overseas.

The threshold criteria and minority ethnic families

- Most solicitors thought that 'significant harm' as a threshold for assessing harm to children in different cultural contexts was about right. No solicitor argued that findings of fact had been fundamentally unfair/unjust for minority ethnic parents. Equally, solicitors said cases do not usually 'turn' on culture/cultural conflicts.

- Nevertheless, many solicitors felt the system 'left much to be desired'; a better understanding diverse background may not change findings of fact, but it could result in a better experience and less suffering for parents during the process.

The impact of conceding the threshold criteria by pre-trial review

- In all regions solicitors expressed concerns about the impact on parents of conceding the threshold criteria. Parents anticipated they would have an opportunity to 'have their say' in court; in effect, conceding the threshold thwarted that expectation. This was said to have a significant impact on parents' perceptions of having received a 'fair and just hearing'.
- Some solicitors expressed particular concern about the consequences of conceding the threshold for some mothers of South Asian origin; they described these as almost unimaginable.
- Solicitors also reported some minority ethnic parents agree the threshold, in order to get their children returned even though they do not agree they have done anything wrong. Other parents however consider their culture has not been understood and thus fight 'tooth and nail to the bitter end'.

Where do we go from here? Attempting changes to parenting

- A limited number of solicitors were concerned about placing too much emphasis on cultural variation in attempts to change parenting practices (and were also sceptical about its relevance to allegations of harm). Others felt a failure to 'engage' with *some* minority ethnic parents meant parents never really understood what was required of them.
- However, where changes were likely to require a fundamental shift in deeply held values/belief systems this *could* present insurmountable difficulties but also effectively placed some parents in a 'no win' situation.

Expert assessments and reports

- Solicitors felt issues of diversity were probably not relevant for paediatricians but highly relevant for assessments by psychiatrists, psychologists and family centres. However, solicitors expressed concerns about experts who were not prepared to consider that people from other cultures might live and understand their lives differently.
- Parents' views about whether they felt 'heard and understood' by experts depended firstly on whether the expert raised issues of diversity with parents, secondly on whether the expert demonstrated some knowledge and understanding or willingness to discuss this area, and thirdly whether the expert was able to interpret issues accurately in the report.
- Parents' experiences in family centres were variable; there were inconsistent attempts to use interpreters and few opportunities for parents to read reports. However, most parents did not think the assessment was 'unfair' but some felt workers failed to understand their background.
- In all regions solicitors expressed concerns about the validity of psychometric testing on some minority ethnic parents. Parents were also critical of psychologists who they felt failed to understand them, where personal histories were ascertained and used in a crude/problematic way and where psychologists

failed to explore cultural contexts.

Instructing experts from minority ethnic groups

- Most solicitors reported a shortage of experts from minority groups and it was felt time scales imposed under the Protocol for Judicial Case Management (DCA 2003) were likely to exacerbate this situation.

Improving parents' experience of proceedings

- Training has not prepared solicitors for working 'cross culturally' and some wished to improve their knowledge and interviewing skills. Parents also felt some solicitors would benefit from training to improve their knowledge of diverse contexts and their communications skills.
- Most solicitors and parents felt several initiatives from courts and the court service could improve the experiences of minority ethnic parents. Most focused on improved training to increase knowledge and understanding of diverse contexts, along with innovative case management to enable judges to demonstrate to parents that they are indeed 'heard and understood'.
- Solicitors also said it was time to change the layout in county courtrooms bringing parents forward from their seating at the back of the courtroom.
- Solicitors and parents also felt it would assist minority ethnic parents enormously if judges and magistrates engaged directly with parents, welcomed them in court, and explained issues and decisions to them. Parents in particular wanted the option of being able to speak to the judge.
- Solicitors and parents wanted more judges and improved listings in care centres, more minority ethnic judges and magistrates and recruitment of magistrates from a wider socio-economic background.
- Solicitors also wanted a reduction in jargon, outdated terminology and lengthy statements; parents felt courts could provide information in languages and terms they could understand and to which they can refer.

Key policy issues

Interpreters

- Interpreting in public law proceedings should be a distinct training domain for those wishing to work in this field of law with modules and assessments of performance developed. This module should eventually be mandatory for those wishing to undertake this work.

The solicitor's tasks

- There can be differences and difficulties in this task with *some* minority ethnic parents. In a complex and contested political climate, exploring this area is not an easy territory for many solicitors and some are not comfortable initiating discussions. Equally, however indications are minority ethnic parents are unlikely to feel able to initiate this discussion.
- A balance has to be struck between too much emphasis on cultural/religious diversity so that a parent feels inappropriately 'singled out' on grounds of 'race' or culture, and ignoring issues unless and until they become obvious, unavoidable or are raised by a parent.

- For some solicitors a fear of 'getting it wrong' (looking 'stupid or completely uninformed') or offending a parent, has constrained some practices. It is somewhat bizarre that the very behaviour most practitioners wish to avoid (racism and stereotyping of minority ethnic parents) could result in an avoidance of discussions that some parents clearly wanted.
- With regard to including everything a parent might want in a statement, there are undeniable tensions. There is *some* agreement in this sample of solicitors that a parent's statement should 'capture the client' and thus include things that may be 'legally irrelevant' but nevertheless important for a client.
- However 'capturing the client' may be problematic; when issues viewed by a parent as 'culturally relevant', become 'legally disastrous' so far as possibilities for future rehabilitation are concerned.

Cultural variations and the use of physical 'punishment'

- Debates about physical 'punishment' dominated discussion with some solicitors and parents. The parent sample is however small and views *cannot* be generalised. They do however highlight the need for robust 'normative' studies on this issue, and for a much larger representative sample drawn from care proceedings.
- However it should also be noted that where cases contained allegations of physical maltreatment this was severe, often resulting in injuries to children. Equally, as with the phase I sample, physical maltreatment was not the only allegation of child ill treatment in cases.

The threshold criteria in multi-cultural contexts

- Both studies (Phase I and Phase II) concur: cases do not 'run' on 'cultural conflicts', the 'significant harm' criteria are about right and provide an appropriate framework for assessing maltreatment of minority ethnic children. Nevertheless the *process* can be problematic. These factors require verification with a larger parent sample but for these parents, cultural contexts were central to notions of 'fairness' and feeling heard understood.

Family courts and judge craft in the 21 century

- Phase I highlighted variation in styles of what might be called 'judge craft'; this study confirms that finding. Some judges are excellent with all parents and solicitors and parents wanted an extension of this style for two reasons; first, to improve the experience of parents so that they *feel* understood and fairly treated, second, because conceding the threshold means in practice most parents never get a chance to speak to the judge.
- A central question is whether progress could be made on these issues without diminishing the gravity and importance of proceedings, or jeopardising the independence of the judiciary. It should however be noted some judges have *already* developed approaches that are considered helpful and productive. A pilot study with the judiciary and if appropriate, training through the Judicial Studies Board might be a helpful way forward.

Competing 'truths', process and transparency

- It is important to note that this study is not about competing 'truths' – although some of what parents said about the limitations of expert reports was verified. Nor is it about revisiting final decisions – although that was not precluded. Rather, it is about mechanisms that obscure and reveal issues of diversity and racism – about *external as well as internal transparency* – in order to demonstrate fairness and justice to minority ethnic parents.

Taken together the studies demonstrate that fairness and justice is about *process* as well as outcome. However, in order to examine whether objectives in this field are being met – to assess the impact of a diversity strategy for the family justice system – ethnic monitoring of applications is an immediate priority.