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Minority ethnic parents, their solicitors and child protection litigation

Julia Brophy, Jagbir Jhutti-Johal, Eleanor McDonald
University of Oxford

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Disclaimer

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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.

  <u>Parents newly or relatively newly arrived in Britain – initial hurdles</u>

  - 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.

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

<u>Solicitors' views about minority ethnic parents' experiences</u>

- 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.

<u>Experiences across different family courts</u>

- 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.

  <u>The impact of conceding the threshold criteria by pre-trial review</u>

  - 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.

  <u>Instructing experts from minority ethnic groups</u>
  - 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.

Introduction The background and the study

I.1 Child protection litigation and diversity: the policy and research contexts

I.1.1 Policy background

The framework for this study arose from several sources. Major concerns were generated by the murder of Stephen Lawrence, a black youth, and the subsequent inquiry and report from Lord Macpherson (Macpherson 1999), which amongst other things cited institutional racism as a factor in the failure of the police enquiry to lead to a prosecution. Lord Macpherson argued that it was incumbent upon every institution to examine their policies and practices to guard against disadvantaging any section of communities, and moreover, that in terms of 'law', justice must not only be done but must be seen to be done. Following that inquiry, the Department for Constitutional Affairs launched a programme of research to explore policy and practices across a range of policy areas in the civil and criminal justice system in England. This study, and its predecessor (Brophy, Jhutti-Johal and Owen, 2003a) have been carried out under that initiative.

I.1.2 The research framework

In the field of family law and within the research agenda, a number of questions had been raised about child protection issues in black and minority ethnic families. For example there was ongoing concern about the numbers of black children in the care system and whether in fact black children were over-represented among those subject to statutory interventions. In addition some concern was expressed about whether professional approaches to child protection in minority ethnic families failed to understand some of the cultural/religious mores and nuances in certain household (e.g. Lau 1998; Maitra 1995; 1996; Hodes 1995) and whether such approaches were associated with Eurocentric practices in the assessment of families. That concern contributed to an international review of research and writing on child maltreatment and diverse cultural contexts (Brophy 2003b; 2005, see Brophy, Jhutti-Johal and Owen 2003a: 231-235 for a summary of this background)

While the review demonstrated that child maltreatment by parents or carers exists in most societies, there is disagreement within and between societies and ethnic groups as to what attitudes, treatments and behaviours constitute child ill-treatment and whether certain kinds of ill-treatment can or should be termed 'abuse'. For example, some contributors argue that children are socialised within socio-cultural and religious frameworks, and what societies regard as desirable will to some extent, be determined not only by generally

acceptable social practices at any given time, but also by what is considered necessary for a child to thrive as a member of a family and a given community.

Thus, although the term child 'abuse' gained a degree of international recognition in research, writing and some legislation, it can have different definitions and meanings for individuals and groups from different cultural and ethnic groups. One further finding from the international review was that there is little dialogue between the major constituent groups in this arena. Family lawyers tend to find the work of cultural anthropologists and psychiatrist difficult to translate into the language and concerns of 'law', cultural anthropologies, psychiatrists, psychologists and sociologists engaged in researching and writing about child abuse seldom address the issue of law and legal sanctions in parenting. One school is too deeply embedded in a legal discourse which others find difficult to penetrate, the other rooted in exploring the socio-cultural contexts to parenting but seldom addressing the legal frameworks and sanctions when parenting 'goes wrong' and children are maltreated.

Additionally, concerns about demonstrating a respect for diverse cultural/religious traditions within an anti-racist framework coupled with concerns about the impact of Article 8 of the European Convention (right to respect for privacy and family life) continued to raise questions for law and welfare practices in this field. As we argued in the first phase of this programme of research (Brophy, Jhutti-Johal and Owen 2003a - see below) multi faith, multi-cultural and multi-ethnic communities make special demands on judges and others in the family justice system. Balancing respect for different approaches to parenting within potentially diverse cultural norms and, at the same time, aiming to protect all children from parental maltreatment is an exacting task. While the conditions for statutory intervention and the exercise of establishing *significant harm* to a child (s.31 (2) (a) (b) Children Act 1989)[1] are generally acknowledged to set a fairly high threshold, law and practice had not been subject to what might be termed a 'cultural lens' in terms of focus and analysis of issues of diversity in the context of allegations of child maltreatment.

[1] A court may only make a care or supervision order if it is satisfied (a) that the child concerned is suffering, or is likely to suffer, significant harm and (b) that the harm or likely harm is attributable to (i) the care given to the child, or likely to be given to him were the order not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control (s. 31(2) Children Act 1989). 'Harm' means ill-treatment' or the impairment of health or development; 'development' means physical, intellectual, emotional, social or behavioural development; 'health' means physical or mental health; and 'ill-treatment' includes sexual abuse and forms of ill-treatment which are not physical (s. 31(9) Children Act 1989).

I.2 Diversity and the Courts: the DCA research programme

Following the Macpherson Report the Department for Constitutional Affairs (DCA) launched a programme of research into issues of 'race' and diversity in the civil, family and criminal justice system in England. In family law this resulted in the first detailed study of the work of the courts with regard to care proceedings involving minority ethnic families under Phase I of the programme. As indicated in the Executive summary, that study (Brophy, Jhutti-Johal and Owen 2003a Significant Harm: Child Protection Litigation in a Multi-cultural Setting,) is referred to throughout this report as the 'Phase I' study; it provided the framework and key questions pursued in this, the Phase II study. Below we outline the work undertaken in Phase I along with key findings, recommendations and changes as a result of that study. We also set out the further questions posed by Phase I; we then turn to this study (Phase II) and outline the final methods, sample and questions pursued.

I.2.1 Phase I: exploring significant harm in a multi cultural setting

In Phase I we undertook a court file study, an observation study of court hearings, and in-depth interviews with judges, magistrates and legal advisers. In the court file study we explored how issues of diversity[2] are recorded and analysed[3] in applications for care orders concerning 182 children in eight ethnic groups, including white British.[4] We also undertook detailed analyses of the allegations of ill-treatment of children and failures of parenting in cases, presenting the picture behind the allegations.[5]

In addition, we observed 36 hearings to explore whether dialogue 'on the day' provided any additional information on issues of diversity to that contained in court files. During that study we also looked at the use of interpreters in court and the degree to which courts might be termed 'family friendly'.[6]

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[2] In the context of this study, 'diversity' encompasses issues of religious persuasion, racial origin and cultural and linguistic background. This is in line with existing legislation under s. 22 (5) (c), 61(3), 64(3), 74(6) and paras. 8, and 11, schedule 2 of the Children Act 1989 (which makes a positive contribution to promoting children's welfare by building on the Race Relations Act and requiring all local authorities, voluntary agencies and private children's homes to consider the child's religious persuasion, racial origin and cultural and linguistic background when making any decision about the child). And under s. 1 (3) (d) of the Act (the welfare checklist) whereby the court is directed to consider 'his age, background and any characteristics of his which the court considers relevant'. Attention to these issues in cases concerning minority ethnic children also underscore approaches to the assessment process of children in need and their families (DoH et al (1999) Working Together Under the Children Act 1989 (paragraph 7.23-4); DoH (2000b) Framework for Assessing Child in need and their families (Chapter 2, pp 37-71). We are aware that further areas of practice, particularly for example, issues is disability remain unexplored and require research.

[3] That is, all documents were read and analysed (the local authority application, social workers' statements and plans, expert reports, parents' and any other statements, and the guardian's report) (Brophy et al 2003, Chapter two, pp 21-87).

[4] The groups were, Indian, Pakistani, Bangladeshi, African, African Caribbean and other Black groups, mixed groups and white British (Brophy et al 2003, pp: 25– 27 and Tables 1.1-1.5). We explain the selection process for the Phase I sample and the problems that precluded the exclusion of other minority groups such as Irish and Chinese at 2003; pp 11-14.

[5] Brophy et al 2003, chapters 3 and 4, pp 88 – 140.

[6] Brophy et al 2003, chapter 5, pp 191-203.

Finally, we undertook 26 in-depth interviews with judges, magistrates and legal advisers exploring views on the location and quality of information on diversity in court files. We also explored views about the significance of diverse cultural and religious contexts in determining questions of harm and risk in minority ethnic households, and with regard to assessments of parents' willingness and capacity for change. In essence therefore in Phase I we began the exercise of bringing a 'cultural lens' to the work of family courts.

In the court file study we examined and categorised the information contained in files on aspects of diversity, as this is available to courts at four key stages in the preparation of cases for trial. In principle, two types of information are available, the first is descriptive, the second substantive or discursive.

So for example, the religion of a family might be recorded in a statement as Sikh; that would be descriptive information. However a statement may go on to say what that means for the everyday practice and organisation of a family. There may, for example, have been a death in a household close to or during proceedings and a statement may outline the impact, procedures and expectations on gendered family members during periods of seclusion and formal mourning. Equally, arising from religious beliefs and practices, there may be information on the organisation of the day around times of prayer, codes of dress, diet and behaviour and religious/cultural mores may dictate a parent's approach to and cooperation with medical treatment. Where these issues are described and explained to the court, information then becomes substantive/discursive.

A further example is that of language; in many second-generation Asian British households some family members may be bi-lingual thus statements for courts note a language as 'English/Bengali'. However, a statement may go on to say whether a language is written and spoken, or only spoken (e.g. in the case of Sylheti), which family members speak English, Bengali, or both – and importantly, the language with which a parent and child is most comfortable.

As outlined above, balancing a respect for different styles of parenting, and cultural norms and guarding against inappropriate inroads into lifestyles and belief systems can be a difficult exercise. It does mean professionals may need to explore whether and how a specific family's beliefs and practices differ from those anticipated in majority White British populations. This necessitates going beyond 'ethnic group' status and views about how different minority ethnic groups *might* organise family life and rear children. It means

identifying any culturally specific information about childcare beliefs and practices with regard to the specific child, parent and household, and clarifying any apparent disjuncture with the parents themselves.

While the findings on some of these issues were better than might have been predicted – most courts had some descriptive information at each of the four key stages in each case – substantive treatment of this information was less impressive at each key stage. Moreover, the findings leave little room for complacency because they were based on a composite picture drawn from all the information available to the court at each key stage, thus some statements and reports filed will have contained both categories of information, and others very little or none.

For example, experts' reports varied in the degree to which they addressed any aspect of diversity; this variation was linked both to the discipline of the expert and the ethnic group of the child/parent. Thus, paediatric reports seldom recorded information on any aspect of diversity. Child and family psychiatrists were more likely to address this area but this varied according to the minority ethnic group of the child/parent; information on diversity was more likely to occur in reports on families of South Asian origin compared with families of African Caribbean origin. In addition, there was high use of adult psychiatric evidence in mothers in all groups but it was slightly higher in the South Asian sample. Nevertheless, there was little substantive attention to issues of cultural diversity in reports on this group of mothers.

In addition, statements from minority ethnic parents also varied in their coverage of information on cultural and religious contexts to family life and child rearing. Further work was undertaken with judges and magistrates and an observation period was undertaken at hearings. This additional work demonstrated that courts remain highly dependent on *written* evidence. Judges have no independent way of knowing whether issues of diversity are important or relevant in the absence of information from parties and experts. If these issues are not documented it will generally be assumed by courts that they have no relevance, indeed some judges and magistrates were reticence to venture into this field 'uninvited by the parties'. Thus, in terms of the professionals at least, the onus is on the author of a report or statement to include or exclude this type of information.

Findings from the Phase I study also indicated that most applications were unlikely to be instigated on the basis of 'conflicts of culture' between parents and professionals. Most cases did not 'turn' on notions of cultural conflict, that is, there were no 'single issue' cases where allegations were played out solely on the notion of diverse values and practices. All

cases in all ethnic groups were complex, containing multiple allegations of child maltreatment and failures of parenting.

That finding did not however mean that cultural conflicts were irrelevant. Such conflicts were, for example more likely to occur in cases concerning parents of South Asian and African origins when compared with cases concerning parents of African Caribbean origins. However, conflicts were seldom pivotal by the time cases reached pre-trial review.

The policy implications of the Phase I study were twofold: while some professionals in some disciplines do address differing cultural contexts during assessments, it is not routine in reports, moreover it was not transparent as to why this information was included in some, but not other cases. In Phase I we argued that this was unlikely to change if left to personal choice or practice, thus some guidance and statutory change was thought to be helpful.

Three further issues influenced recommendations. First, emerging international research on child maltreatment and issues of 'cross cultural' assessments, second, the need to ensure that legal codes setting out thresholds for statutory intervention are sensitive to and sufficiently sophisticated in application to address issues of diversity - not least to enable parents to see that such issues are dealt with in a clear and transparent fashion. Third, in a multi faith multi cultural societies the message from the family justice system needs to be as clear as that emanating from the Macpherson report: the court system needs to be transparent in its treatment of members of minority ethnic communities so that justice is not only done, but is also seen to be done'.

I.3 Taking Phase I recommendations forward

The recommendations outlined above have been implemented in the Protocol for Judicial Case Management in Public Law Children Act cases (DCA 2003). For example, within the designated six steps to the management of cases, there are now four key stages at which professionals should address issues of diversity:

- **The initial social work statement and a 'family profile'** should include information relevant to diversity, along with a narrative description of the social care services that are relevant to these issues.

- **The Case Management Checklist – Evidence: item 50** directs the attention of the court and advocates to issues of diversity: 'Has consideration been given to ethnicity, language, religion and culture of the child and any significant persons and are any directions necessary to ensure that evidence about the same is available to the Court?'

(The CMC to be used for the first hearing in the FPC, the Allocation Hearing (Care Centre), and Allocation Directions in the High Court).

- **Schedule of Issues** to be produced by advocates for the pre-hearing review should include a summary of issues in the case including any diverse cultural or religious contexts.

- **The Code of Guidance for Expert Witnesses** (accompanying the Protocol) now states under the Particular Duties of Experts (para 1.2): 'In expressing an opinion take into consideration all of the material facts including any relevant factors arising from diverse cultural or religious contexts at the time the opinion is expressed, indicating the facts, literature and any other material the expert has relied upon in forming an opinion.

I.4 Outstanding issues

However Phase I also demonstrates that to enable the family justice system to develop to meet the needs of minority ethnic parents and to assess the standard of services courts deliver, at least three further issues need to be addressed. First, ethnic monitoring of cases by courts is essential in order for the Department to comply with obligations under s. 71(1) the Race Relations Amendment Act 2000 (see, Brophy et al 2003a: 16). Moreover, without ethnic monitoring it is not possible to give definitive answers to the question of over-representation of certain black children in the care system. Equally, without ethnic monitoring it is not possible to explore whether any changes to policy and practice are having the desired effect.

Second, it is necessary to explore the views and experiences of minority ethnic parents; their views and experiences of the family justice system are likely to be complex. The degree to which they feel they were fairly treated and understood, the extent to which they consider cultural conflicts underscored major decisions, and the degree to which they consider discriminatory or racist practices existed, remains unexplored.

Third, and inextricably linked to parents' perspectives is the work of their solicitors. Solicitors for parents negotiate and translate the concerns and problems of parents into the discourse (the language and concerns and focus) of family courts. These two perspectives therefore comprise a further part of the 'puzzle' in understanding child maltreatment and the work of law and courts in multi-ethnic and multi-cultural settings. These issues are explored in Phase II of the programme.

I.5 Phase II: The current study – original aims and objectives

Based on information about processes and documents obtained in Phase I we took the view that it would be necessary to try to explore minority ethnic parents' experiences of care proceedings on a number of interconnected levels. Attempting to get a general response about the system would be of little help in understanding and improving specific practices. Nevertheless it was acknowledged this would be difficult: existing research on parents following care proceedings (Freeman and Hunt 1998) demonstrated the complexity of the exercise and the likelihood of much 'scapegoating' of social workers; without careful and detailed questions we were unlikely to get a critical perspective on race and diversity.

It was felt that in order to gain access to the shifting agenda of racism and the dynamics of diversity we needed to develop a methodology which would allow us: (a) to access parents' views and experiences of the legal *process* through their interactions with their solicitor, experiences at court and during assessments by experts, (b) explore understandings of 'significant harm' and whether and how definitions of harm compared with their own views about behaviours constituting child maltreatment, and (c) how parents' views are translated and reconstructed by solicitors to meet the demands of 'law' and legal process. Thus, the original aims for Phase II were:

1 To provide information on how minority ethnic parents experience proceedings based on allegations of maltreatment of their children and whether experiences might differ from those of white British parents.

2 To explore parents' experiences of the legal *process* (e.g. legal advice and support from solicitors, attending court, undergoing expert assessments etc.) and to identify key stages where parents are likely to consider their 'race', culture and/or religion has had a detrimental impact on practices.

3 To examine the relationship between parents' understandings of actions and behaviours which constitute maltreatment, and those likely to meet the threshold criteria and thus a finding of 'significant harm'.

4 To identify to what extent minority ethnic parents believe that cultural differences and/or racism in legal proceedings underscored decisions about inappropriate treatment by them of their children.

5 To explore with advocates (a) specific issues relevant to advising and representing minority ethnic parents, and (b) the reasons why some documentary evidence filed on behalf of some parents provides limited information on cultural/religious contexts to parents' lifestyles, values and child rearing practices.

I.5.1 The original sample - minority ethnic parents

The original aim was for a sample of 45 cases in which we hoped to interview at least one parent/carer. Cases were to be selected in line with those sampled in Phase I, thus we sought five cases from each of the following groups: African, African-Caribbean, other black groups, Indian, Pakistani, Bangladeshi, plus seven cases concerning children of mixed relationships and eight concerning white British parents.

I.5.2 The original sample - solicitors

The aim was to interview a sub-sample of 27 solicitors acting for parents selected from the above 45 cases (the sampling procedure was to be decided once the parent interviews were underway).[7]

I.5.3 Geographical areas for study

Selection of three geographical areas was based on the 1991 Census data on percentage of minority ethnic residents and cost issues; the aim within the resources of the study was to work in those areas with the best chance of obtaining a sample from each of the groups identified above.

I.6 The amended study

The original methodology and the changes subsequently made are outlined in detail in Appendix I. In brief, family courts do not collect data on cases by ethnic group. In order to identify an initial sample in each region therefore, it was intended to use the approach successfully engaged in Phase I (with what were Guardian Panels), thus undertaking initial work with (what became) local CAFCASS offices and databases to identify an active sample in each of the major ethnic groups proposed. Once court file reference numbers had been identified with the help of guardians, this was to be followed by visits to each court by a member of the research team to examine the relevant case files, obtain initial information about the case and contact details for parents' solicitors. It was then intended we would write to solicitors seeking their help by forwarding an information pack to parents detailing the study, and requesting an interview with the parent once their case was completed.

[7] It was felt important to keep options open on this decision since it was felt we may wish to take into account the issues and distribution of minority ethnic groups obtained in the parent sample.

I.6.1 CAFCASS and the judicial review

In practice, in the development and pilot stage of Phase II we ran into serious problems. The dispute between CAFCASS and children's guardians escalated and indeed reached crisis point. Despite early agreement and support from regional CAFCASS managers and local public law managers, as part of the dispute between CAFCASS and the guardian service, many guardians in effect withdrew co-operation with the study.

CAFCASS Public law managers did not have the technical facilities or the information necessary to help locate ongoing cases by ethnic group. Individual guardians and members of NAGALRO did try to help, indeed given their own circumstances some individuals made tremendous efforts to try and help identify cases. However we did not get anywhere near sufficient numbers.

Following discussions with the Department and the project Advisory Group several methods were tried to obtain a reasonable sample. These are detailed in Appendix I but briefly, we wrote to all the solicitors on the Law Society Children Panel in the three regions, explaining the study, enclosing a parent's pack and requesting assistance.[8] We also sought help from the Association of Lawyers for Children. In addition, we spent an enormous amount of time in county courts using a variety of methods including searching *FamilyMan* to try and identify cases. We also developed a tracking document and with the assistance of officers in listing sections of family proceedings courts and we tried to identify cases from listing diaries, case log diaries and indeed in one care centre shelves were physically checked for relevant cases. In addition, some court staff tried to liase with us over transfer lists and tried to work with local authority legal services to identify active relevant cases. This all proved immensely time consuming for them and for us.

Nevertheless, indications were that the sample was going to be considerably smaller than the original study envisaged and some amendments to the methodology and questions to be covered became necessary.

[8] The approach was to using solicitors as a 'letterbox' for parents. Issues of client confidentiality were discussed with professional bodies, as was the content of letters and packs for parents - see Appendix I.

I.6.2 Amended methodology

First, following discussions with the Department and the project Advisory group and positive responses from solicitors regarding a willingness to be interviewed:

- On the basis of positive responses from solicitors we expanded the numbers in the solicitor sample.
- We also expanded the range of issues to be explored to include questions about how parents might experience proceedings, in part to try and retain a strong focus on this issue in the light of anticipated smaller numbers of parents to be interviewed.

Second, we amended some of the methodology to be employed with parents and changed some of the questions:

- We expanded the qualitative study in which we aimed to explore how parents experienced attending court and assessments by experts.
- We dropped the use of a vignette exercise - originally planned to explore attitudes towards children and maltreatment.
- We added a general question about parents' values and approaches to bringing up children and whether parents thought they might differ from White British parents.
- We also dropped most, but not all of the quantitative work.

After much work on the interview schedules we retained most of the key themes from the original - albeit some were explored rather differently.

I.6.3 Amended sample - parents

We recruited a parent or carer from 20 cases for the parent study. In practice, this resulted in twelve interviews. The detail of identifying and tracking cases and parents, along with the reasons for the eight 'lost' respondents is described in Appendix I. As an indication of the difficult task undertaken we would highlight that cases lost or ultimately withdrawn from the study include those where a parent or a child died/was murdered.

I.6.4 Amended sample - solicitors

We undertook in-depth semi-structured interviews with 45 solicitors from three main regions (these comprised 27 individual interviews and two group interviews with a further 18 solicitors).

All interviews were taped and fully transcribed. Some of the interviews with parents were undertaken with an interpreter.

I.7 Structure of the research report

Chapter one begins with a description of the sample solicitors and the areas in which they work using data on ethnicity from the 2001 census. It then addresses the tasks of solicitors, working through interpreters, getting a parent's story, explaining 'law' to parents, addressing issues of cultural variation and looking at the use of experts and attention to issues of diversity.

Chapter two explores the solicitors' views about parents' likely experience of attending court, issues of a fair and just hearing and whether parents were likely to feel heard and understood, whether solicitors think that judges and magistrates sometimes fail to understand culturally diverse contexts, and what family courts and solicitors could do to improve parents' experiences.

Chapter three explores whether solicitors consider the new framework for the assessment of children in need and their families has improved the focus on diversity in core assessments, whether there are any concerns about 'significant harm' as a threshold for harm/risk, and issues of assessing and achieving change where parents come from diverse cultural/religious settings.

Chapter four examines whether, in addition to the areas outlined in chapters one to three, solicitors had further concerns about insensitive or racist attitudes or behaviours toward minority ethnic parents, and details the challenges solicitors perceive in this area of their work.

Chapter five sets out the profile of *cases* in the sample comparing these with case profiles from Phase I and the national survey of cases (Brophy et al 1999; 2003b) in order to see if there are indications of variance between samples which would need to be addressed when discussing the views and experiences of the parents and carers we interviewed.

Chapter six outlines minority ethnic parents' experiences with their solicitors; it looks at parents' understanding of the tasks the solicitor undertook and how well prepared they felt for attending court, it explores parents' views about discussing family histories and 'cultural' contexts with solicitors and describes parents' views and values in childrearing. It also explores parents' satisfaction with their statement(s) and attention to issues of diversity, and views about issues of racism and insensitive treatment by lawyers. Finally it outlines parents' views about whether solicitors could improve their work with minority ethnic parents.

Chapter seven explores parents' experiences of attending family courts; it looks at whether parents consider they had a fair and just hearing and whether they felt heard and understood by judges and magistrates and whether they felt treatment was in any way racist or insensitive. It also examines expectations of family courts and whether parents had anticipated any racism or unfair treatment.

Chapter eight outlines parents' views and experiences of undergoing expert assessments. It explores whether parents felt fairly treated and heard and understood by experts, and whether parents felt able to discuss any issues about their background which they felt to be important.

Chapter nine looks at parents' views about bringing up children and whether they perceive differences between their values and practices compared with white parents or neighbours they know. Finally we explore with parents whether we have missed any aspects of their experience that caused them concern with regard to insensitive, prejudiced or racist attitudes and behaviours, and whether there are any improvements they would like to see in the family justice system.

Chapter ten draws together the key messages and policy implications.

I.8 A note on terms and definitions

As identified in the Phase I report, work in this field demonstrates the difficulties of moving from ethnic group 'categories' to an understanding of identities, lifestyles, belief systems and child rearing practices. These difficulties are exacerbated by the range of terms used to describe some groups. In the Phase I study we used the example of children of 'mixed-parentage' as an example of this; they are sometimes referred to as mixed-race, mixed origin, mixed heritage, bi-racial or dual heritage children.

Moreover, some writers use the term 'Black' and minority ethnic groups interchangeably. 'Race' can be placed in inverted commas indicating that the categorisation of people by race is a social definition utilised to determine social hierarchies in which black people are disadvantaged. Many writers argue there is one 'race': the human race. However, the term continues in general use in part because some writers (e.g. Culley 1996) argue that 'cultural discourses' are masking issues of racism in institutions. To maintain some continuity with the Phase I study we retained broad guidelines from Fernando (1991):

'Race' - is characterised by physical appearance, determined by genetic ancestry and perceived as permanent.

Culture - is characterised by behaviour and attitudes, is determined by upbringing and choice and *perceived as changeable*, for example, perhaps through processes such as 'assimilation' and 'acculturisation' although it is not limited to these process.

Ethnicity - is characterised by a sense of belonging and group identity, determined by social pressures/psychological need, perceived as partially changeable.

As outlined in Phase I, in practice, there is some interrelationship between these terms. The term *ethnicity* is viewed as a safer term than race in that it has both race and cultural connotations. However, its main characteristic is that it implies a sense of belonging. Also, 'ethnic categories' can be a confusing mixture based on skin colour, nationality, and geographical origin. The term 'black' is sometimes used to refer to all minority ethnic groups designating them as a political category who share things in common, particularly experiences of individual and institutional racism. Equally the term 'culture' has received increasing attention in a range of disciplines, as this and other work demonstrates it is in practice a dynamic and changing concept. As with changing identities in a globalised world (Phoenix 2003) it would be a mistake to view cultures as homogeneous categories, rather this concept needs to be analysed by examining 'people's complex, contradictory, socially situated and dynamic everyday practices'. In other words as argued by Phoenix (2003:1) culture multi-layered; as this study demonstrates this is no less the case for parents involved in care proceedings than for people in communities in general.

The term 'diversity'

Legislation and Guidance for all professionals involved in care proceedings identifies that participants need to take account of children's religious persuasion, racial origin and cultural and linguistic background. This list has undergone various abbreviations. Most recently these issues are seen as encapsulated in the term 'diversity'; we used this term in Phase I, it is also used as shorthand in this (Phase II) report but in order to ensure issues of racism are not lost, obscured or subsumed, we also retain a specific focus on race and racism.

Chapter one Representing minority ethnic parents

1.1 Introduction

In this and the following chapters we outline the perspectives of a sample of 45 solicitors who have advised and represented minority ethnic parents in care proceedings. Below we outline how we located the solicitors and provide some background information. We utilise the 2001 population Census and Ward data on local areas by ethnicity and give solicitors' figures/estimates of client groups by ethnicity. We then address the tasks of solicitors exploring where and how issues of 'race' and cultural, religious and linguistic diversity impact on thinking and practices. We begin with solicitors' views about language interpreters, and we then turn to the task of getting a parent's story, preparing statements and using experts. The aim was to explore solicitors' views about issues of diversity and to identify key stages in the task where these issues might be important/relevant.

1.2 The sample solicitors

The sampling procedures are outlined in detail in Appendix I. In line with the amended methodology outlined in the Introduction, briefly, solicitors were drawn from three sources: first, some were identified through the original method (through court records identifying and writing to solicitors acting for parents in care proceedings). Second, some resulted from a letter about the project plus a request for help to all solicitors on the Law Society Children Panel. Finally some solicitors were recruited through the Association of Lawyers for Children following a request to members.

As indicated below, this has implications for the final sample: in the main they are some of the most experienced solicitors in child care[9]; they are also likely to be those with an interest in this field of practice. As indicated in Appendix I, recruitment of solicitors was difficult. We were entirely dependent on their willingness to make the time to be interviewed, and we made this request at a time when morale for many professionals in this field of family law was extremely low. Solicitors were under enormous pressure not least because of the dispute between self-employed guardians and CAFCASS. One consequence of that dispute was that in some areas CAFCASS was unable to supply the court with a guardian at the beginning of cases. This in turn placed enormous pressures on child care solicitors at a time when morale was already at a low ebb and where criticisms of government institutions for the handling of the dispute probably at its highest. However, in terms of our potential sample the aim was to prioritise solicitors identified through court

[9] That is any distortion is likely to be towards more experienced childcare panel practitioners

records as acting in current cases. In practice, we achieved a mixed group with solicitors drawn from each of the 'groups' identified above.

Overall, 45 solicitors were interviewed, this consisted of 27 individual interviews plus two group interviews totalling 18 solicitors.[10] We used an in-depth semi-structured schedule; all interviews were taped and fully transcribed.

1.3 Geographical locations

The study is located in three regions selected on the basis of relatively high representation of minority ethnic populations (see Appendix I). In this section they are referred to as regions 'A', 'B' and 'C'; each is located in a different court circuit. Below we provide some background information for the 27 individual interviews.[11]

1.4 Some background information – solicitors

Region A

- Most solicitors (8/10) interviewed on a one-to-one basis had substantial post qualifying experience (ranging from seven to twenty three years).
- Most (7/10) are on the Law Society Children Panel.
- Most (9/10) represent children and parents (none accepted instructions from local authorities).

Region B

- All the solicitors in this region had substantial post qualifying experience (ranging from six to twenty-six years) three respondents had twenty or more years experience.
- Almost all solicitors (6/7) are on the Law Society Children Panel.
- Most solicitors (6/7) represent parents and children; one solicitor took instructions from all three major parties.

Region C

- All the solicitors in this region were also highly experienced; 6/9 had twenty years or more post-qualifying experience (ranging from a minimum of 10 to 37 years).
- Most solicitors (7/9) were members of the Children Panel.
- Most solicitors (5/9) represent children and parents, one represented only parents'.[12]

[10] Both the Group interviews were undertaken in Region 'A'.
[11] The size of the group and the geographical spread of solicitors in one group interview made it impossible to collect this information within the time frame for the discussion. Thus background details above are restricted to the one-to-one interviews.
[12] One solicitor now represents 'only children', but commented on her early experiences representing parents and observations of practices in cases that involved minority ethnic parents.

1.5 Choosing a solicitor for care proceedings

Parents may apply several criteria in selecting a solicitor including ease of location/proximity to home or workplace, somebody previously instructed in a crime, immigration or housing issue, or someone recommended by friends/family. Equally, a parent may choose a solicitor in a neighbouring borough to try and ensure local communities do not know about allegations regarding ill-treatment of children.

1.6 Local populations by ethnic group

The 2001 Census data provides details of populations by ethnic group according to local authority areas; disaggregating Census data down to Ward level (i.e. by postal code) gives a further indication of potential client groups in a solicitor's local area.[13] This approach to potential client groups however is not without problems; a solicitor's office may be on/near Ward boundaries with quite different minority ethnic communities. Equally, parents may select a solicitor in a different ward of local authority area to where they live. Nevertheless, in the absence of other indicators these data allow some broad comparisons, although at best they can offer only approximate indications of potential client groups by ethnicity.

1.7 Potential client populations: Census and Ward data by ethnic group

Region A

2001 Census data

- Solicitors in this region are drawn from one of the most diverse regions in England.[14] The 2001 Census data demonstrate that in 5/10 local authority areas when minority ethnic groups are aggregated, they constitute at least 44% of census populations (52.7%, 48.5% and 44.9% and 44.23% respectively).

Ward data

- *Aggregated minority ethnic groups:*[15] *Census and Ward data*
  Comparing percentage for aggregated minority ethnic groups with those for white British, there is comparatively little variation (10% or less) between Ward and Census data in almost all areas.
- *Disaggregated minority ethnic groups: Census and Ward data*
  Equally, when comparing Ward and Census data for disaggregated minority ethnic groups, in most areas there is very little difference in representation in communities, with two exceptions:
  - In one area (solicitor 1-S1) at Census level, people of Bangladeshi origin constitute 6.4% of the population, but 15.5% at Ward level.
  - In another area (solicitor 1-S7) at Census level people of Indian origin represent 16.5% of the population, but 5.9% at Ward level.

[13] For ease of presentation when presenting comparisons, we refer to 'Ward data' (i.e. based on postal code) and 'Census data' (where we mean figures based on local authority areas).
[14] And this also applied to the local authority areas in which the solicitors in the group sessions practiced.
[15] That is, combining figures for all minority ethnic groups and comparing with those for White British.

Solicitors' care caseload by ethnic groups in region A

- Most solicitors do not record cases by ethnic group, at least not in an easily accessible form, thus some caution is necessary. Nevertheless, estimates indicate most have a considerable number of cases concerning families from minority ethnic groups:
  - In 2 areas, solicitors estimated 50% of their care caseload concerned families from minority ethnic groups.
  - In 5 areas, solicitors estimated minority ethnic families accounted for between 20 and 40% of their care caseload.

Region B

2001 Census data

- All solicitors in this region practise within the boundaries of a metropolitan city. Census data indicate aggregated minority ethnic groups account for approximately one third of the population; the largest groups are: Pakistani (10.7% of population), Indian (5.7%) and African-Caribbean (4.9%).

Ward data

- *Aggregated minority ethnic groups: Census and Ward data*
  Comparing aggregated minority ethnic groups with white British at Ward level, in 2/7 Wards minority ethnic communities constitute nearly half the Ward population, and in 3/7 Wards they constitute over half the Ward population.[16]
- *Disaggregated minority ethnic groups: Census and Ward data*
  When comparing Ward and Census data for disaggregated minority ethnic groups again there are some substantial differences. For example with regard to people of Pakistani origin, in 3/7 Wards representation was three times that indicated by Census data[17], in 2/7 Wards representation of people of Indian origin was twice that indicated by the Census data[18].

Solicitors' care caseload by ethnic group in region B

- Five solicitors (5/7) were able to give figures for their care cases which involved minority ethnic families. With regard to cases concerning children of Pakistani origin (the largest minority ethnic group in this area) two respondents said their caseload was higher than might be suggested by either Ward or Census data, at 50 and 25% respectively[19].
- Those solicitors in this group who *estimated* their caseload for the Pakistani community (2/7), were in fact very close to the Ward data (in one area (2-S2), Ward data indicate: 37.2%, the solicitor's estimate was 30% of care cases; in another Ward (2-S4), Ward data indicate 40.5%, while the solicitor's estimate was 45% of care cases).

[16] At 45.1%, 59.2%, 45.1%, 61.8% and 59.2% of populations (location of respondents S1, S2, S3, S4 and S7).
[17] Thus for three respondents (2-S2, 2-S4, 2-S7), people of Pakistani origin make up 37.2%, 40.5% and 37.2% of their respective Ward populations; this compares with 10.7% at local authority Census level.
[18] For respondents 2-S1 and 2-S3, the percentage of people of Indian origin at Ward level was 11.7% compared with 5.7% at Census level.
[19] For Respondent 2-S5: Census data indicate 10.7%, Ward data 4.5%, but this solicitor reported 50% of his care cases concerned families of Pakistani origin. For Respondent 2-S3: Census data indicates 10.7%, Ward data 10.6% and he reported 25% of his cases concerned families of Pakistani origin.

Region C

2001 Census data

- Six of the nine solicitors' offices were located in the central city area thus Census data remain the same for each. White British populations account for some 75% of the population, aggregated, minority ethnic groups make up the remaining 25%. People of Pakistani origin are the largest minority ethnic group comprising some 6% of the population.

Ward data

- *Aggregated minority ethnic groups: Census and Ward data*
  Aggregated figures reveal substantial variations between Ward and Census data. In five Wards the aggregated minority ethnic population is at least twice that indicated by the Census data. For example, for respondent 3-S4, the Census indicates 25% of the population is from a minority ethnic group; Ward data puts that figure at 60%.[20]
- *Disaggregated minority ethnic groups: Census and Ward data*
  In some Wards data for disaggregated groups was quite different to Census data. This was particularly so for the Pakistani population: in four Wards Census data was increased at Ward level by 19, 30, 11 and 22% respectively.[21] In two Wards there was an increase over the Census data in the African-Caribbean population (from 2 to 5%, and 2 to 17% respectively). In one Ward the African population also increased (from 2% in the Census to 11% at Ward level).

Solicitors' care caseload by ethnic groups in region C

- Very few solicitors in this region recorded cases by ethnic group. Most (7/9) gave estimates; in most instances (5/7) estimates for cases concerning minority ethnic families were closer to Ward rather than Census data. Estimates ranged from 16–65% of total care caseload.

In summary, most solicitors have extensive experience in child protection litigation; most had pre and post Children Act experience and most represent children and parents. In addition, most solicitors work in areas with considerable minority ethnic communities. Monitoring cases by ethnic group was variable but using estimates *and* figures suggested that applications concerning minority ethnic children constituted between 16 and 65% of work. About one third of solicitors (9/27) had caseloads of 40% or more of minority ethnic children.

1.8 The solicitors' tasks: using interpreters

Overall (that is, in both group and individual interviews), very few solicitors were satisfied with the work of interpreters; criticisms were very similar across all areas.

[20] The figures were: Respondent 3-S5, 14% at Census level compared with 48% at Ward level; Respondent 3-S6, 14% at Census level compared with 29% at Ward level; Respondent 3-S7, 25% at Census level compared with 50% at Ward level; Respondent 3-S8, 25% at Census level compared with 60% at Ward level.
[21] Two Wards were in the central city area (3-S4, 3-S7), and two were in satellite towns (3-S5, 3-S6).

1.8.1 Poor quality interpretation

Solicitors in all areas complained interpreters do not provide 'word-for-word'/simultaneous interpretation, some paraphrased parents' responses undertaking lengthy discussions with a parent, but giving the solicitor a single word/short response. For example, one solicitor complained:

> *'Getting one word answers in conference and there's a whole conversation gone on between the interpreter and the client … and when they've finished this conversation it's come back and the answer's no or yes'*.

1.8.2 Unprofessional conduct

Solicitors in all regions also complained about unprofessional and inappropriate comments being made to or about a parent. Moreover, interpreters become over-involved with a parent:

> *'Some interpreters wind clients up, so once you've got something resolved, particularly if it's a very delicate sort of subject …[they say] "Why are you agreeing to that? You need to do this and this and this", and it causes real difficulty…. In some instances it can just be a misguided attempt to help … sometimes you can lose the focus'*.

1.8.3 Qualified for the task?

Concerns were also expressed about the use of people who are not trained/qualified interpreters, for example, people used by local authorities to assist parents with housing/benefit queries.

Many solicitors said they simply did not know whether people supplied by agencies/local authorities were qualified, or what level of qualification might be appropriate. In all areas solicitors felt interpreters seldom understood the philosophy and concepts applied in Children Act proceedings. For example:

> *'…They've not understood the core process, the evidential process …'*.

A correct translation is crucial, as one solicitor argued:

> '*… There was quite a lot made of the interpretation of the word 'sorcery' and whether it meant witchcraft or spirituality…. Because a case can turn on the client's attitude or the way they view a child's injuries or the local authority's perceptions of a client. And that will depend a great deal on the interpretation'*.

Equally solicitors in the groups expressed particular concern about the difficulties of translating concepts 'cross culturally' – some terms simply do not translate easily and inexperienced interpreters cannot handle this situation.

1.8.4 Interviewing through an interpreter: training for solicitors

Solicitors reported they had not received any training for working through an interpreter and there were no professional guidelines. Several reported varying degrees of experience, some were concerned that with a fluctuating client base it was difficult to build and sustain skills in this field.

1.8.5 Minority ethnic solicitors with multilingual skills

Some solicitors who spoke Hindi, Urdu, and Punjabi undertook interviews with parents in the parents' first language.[22] However they were divided as to whether they interpreted for parents in court; experience had demonstrated to some that they could not undertake advocacy and interpret with equal weight.

1.8.6 Gender and power relationships

Solicitors in all regions raised concerns about issues of gender and power in the use of interpreters:

- Several solicitors in two regions reported difficulties obtaining a female interpreter for women who are Muslim.
- Where a male interpreter is used for parents jointly represented, interpreters have been observed ignoring the mother, speaking to and seeking responses from the father.
- The use of male elders could result in attempts to control or direct what a mother/daughter said; similar situations could also arise when elders interpreted for younger male parents.

1.8.7 Client confidentiality

Solicitors in all regions said parents[23] have expressed concerns about using interpreters from local communities; they feared personal information would be relayed to communities in Britain and 'back home'. For example:

> *'We need a lot of Mirpuri interpretation. Which does cause problems … Um … people are often worried that because it's a relatively small community that what they're going to say is going to get out. And that's comments that we get quite often so we have to check that the client is perfectly happy with the interpreter'*.
>
> *'Everybody knows everybody here … even from different towns, from town to town… It's like the West Indian community – round the country it's very small …'*.

[22] An observation of one such interview was undertaken.
[23] For example, those of Pakistani, Bangladeshi, Nigerian, Somalian, Kurdish, Iraqi and Turkish origins.

Some solicitors strongly suspected certain interpreters had breached client confidentiality.

1.8.8 Use of family/friends

Almost all solicitors would not permit family members/friends to interpret for parents. On occasion a parent may bring a family member to a first appointment; solicitors would mostly work with the situation but would insist on a professional interpreter for subsequent meetings:

> *'… Say a client comes in for an initial meeting, they might bring a relative who will interpret, but obviously you can't use that person for going into detailed information or for attending court or taking statements, that sort of thing'*.

Even so, problems could emerge at a first appointment: family members have tried to take charge, correct, coach and disagree with a parent, for example:

> *'… His brother never let him get a word in edgeways, and he hadn't the confidence to speak on his own'*.

1.8.9 Seeking 'gold dust': the good interpreter

Good interpreters were said to be rather like 'gold dust', once found solicitors tried to engage them for work within and outside of courts. Good interpreters were described as totally professional, interpreting word for word 'both ways' without additional materials/gloss. Where a parent enters into a discussion with the interpreter, this dialogue is also interpreted (e.g. an interpreter relays a question to the parent, the parent asks the interpreter: *'what shall I tell her?'* the translator says to the solicitor: *'she says what shall I tell her?'*).

A small number of solicitors gave examples where an interpreter had provided helpful information. For example, one solicitor said that during a discussion with a parent about eating practices an interpreter had added:

> *"In our cultural… this is the way we do it…eating food on the floor…it is quite normal in Somalian culture to sit around and eat on the floor not at a table with a knife and fork, and you feed children with your hands".*

1.8.10 A little English can be a dangerous thing

Some solicitors said parents with 'some English' could present the biggest worries/problems. Initially it can be difficult to determine a parent's real level of understanding especially where a parent insists they understand English. 'Backtracking' can be a delicate exercise:

'It's very difficult, in fact I have a client at the moment where I have [concerns], I'm just not sure that she understands as much as she is pretending she does. And I don't think she can read and she won't admit it to me…. again this isn't necessarily a cultural thing. I think it [happens] across the board…people can't read as well as they say they can [and] its embarrassing so they won't admit it…'.

1.9 Getting the parent's story

1.9.1 Similarities across all ethnic groups

Solicitors in all regions said there were many similarities in the task of getting a parent's story regardless of ethnic group. Difficulties in the task relate to the multiple problems and vulnerabilities of parents likely to be involved in proceedings; the task could be complex, and getting a statement, hard work:

'As with any client you don't know what they can tell you and they don't know what they need to tell you, the same principles would apply across the board'.

However many felt that for *some* minority ethnic parents certain features added to the complexity of the task.

1.9.2 Differences between groups

In discussing approaches to obtaining a parent's story, some solicitors compared 'new arrivals' with second/third and fourth generation black and Asian British. Within those divisions however language, comprehension, education and gender could feature strongly; these 'compounding issues' influenced approaches within and across those initial divisions. For some solicitors as least, establishing a rapport 'cross culturally' and across language barriers present several challenges.[24]

1.9.3 Parents newly arrived in the UK

For 'new arrivals', of whatever race/ethnic group, a major obstacle cited by many solicitors (particularly those in region A) is a parent's understanding of the role/power of the British state to intervene in childrearing. Solicitors said many parents simply could not comprehend that the state should be concerned or involved in their parenting practices. An initial difficulty therefore is getting parents to a stage where they fully understand that the state can and will intervene to remove children if they do not cooperate with professionals:

[24] In practice as solicitors in the groups pointed out, it is not simply the loss of a common spoken language which may hamper the development of rapport and trust, a range of other mechanisms about 'reading' people may also be lost where language is not shared.

'…[However] much you try and explain there can still be disbelief from parents, you know [they say] "In Kosova we wouldn't do this, what you do in your own back room is up to you…"'.

'…[They argue] …this is my child I don't understand why it is anyone's business'.

Parents' incomprehension at state intervention was sometimes described as a 'massive difference' between cultures/countries and thus client groups, and a major obstacle to be addressed before beginning the task of getting a parent's own story and explaining the 'law' and legal processes. Several solicitors reported cases where they were left with considerable doubt as to whether parents had ever really understood why children had been removed.

Moreover, where parents originated from countries where the police and state apparatus including courts were deemed corrupt, that background could determine how a parent's story is told and how easy it is for a solicitor to build trust and obtain a real understanding of the parent. Working through an interpreter can further complicate that process; a parent has to trust the interpreter, the solicitor is highly dependent on the interpreter:

'Well it's just a case of spending more time, but ultimately you are relying on the interpreter understanding it aren't you, and the interpreter explaining it. And to make sure they understand'.

1.9.4 Second/third/fourth generation Black and Asian British

With regard to parents who are second/third/fourth generation black and Asian British, solicitors tended to make certain assumptions about knowledge of welfare/legal systems and about integration/'assimilation' into British culture. It was usually assumed parents are aware of the existence of social workers, if not the detail of social services responsibilities for children

'If you've been brought up in the system you understand much more how it works. Well that's my assumption'.

'Depends how long they've been here quite frankly, it really does. Because if a woman has been born and brought up here and has a more broad (City) accent … then as far as I'm concerned there is no difference in terms of taking instructions. There's a difference in terms of culture, which I've got to be very much aware of, but not in terms of actually practically taking instructions. If on the other hand someone literally has just stepped off the plane it's a totally different thing,' cos they've no idea what on earth's going on'.

Thus, compared with parents relatively new to the UK, solicitors would be unlikely to spend much time explaining the role and powers of the state. Nevertheless, subsequent

discussions indicated several issues influenced the solicitor's task with *some* parents in established groups: language issues, intergenerational issues/tensions,[25] levels of comprehension (depending on language and educational levels) and gender issues could impact on the task. For example, one solicitor said where grandparents exerted pressures on parents not to comply with agencies, he would insist on a meeting with them:

> *'I should say that quite often - maybe it's breaching confidentiality or whatever – [but] I'll get the grandparents in the room when we talk about it. Checking that it's OK, but I'll share it with the grandparents. Because as far as I'm concerned it's a family thing and they perceive it as a family thing and all that'll happen when they get out there is the grandparents will say, "What did the solicitor say?" … I find the grandparents usually … really understand the situation and then they'll say "Well can't we look after the baby?" And I'll say to them "Yeah there's a very real possibility of that, but Social Services will have to check you out first"'.*

Another solicitor described the importance of exploring the dynamics and expectations of extended family members in minority cultures:

> *'That's what you have to say: "This is how it works where I was brought up". For example I had a Zimbabwean lady … it was absolutely a fact that if the family … couldn't look after the child …someone from the extended family would step in … it wasn't a big deal, it wasn't something you had to sort of in any way persuade anyone to do. That was how they're brought up … So yes again that was put in her statement'.*

A further solicitor of Pakistani origin highlighted gender issues that could make the solicitor's task more complex and described his approach:

> *'You see the thing is that that's quite a difficult task, especially I would say for men rather than women, and specially if they're Muslim. The reason I say that is because Pakistani {Shariah] law is very much male oriented … women do not have the same rights as men in Pakistan … [If] they issue proceedings in the Shariah courts… Shariah courts will favour the father straight away. Now a father [in the UK] if he's a traditional chap, [his thinking] will be based upon those traditional laws. And that creates a massive problem [for me] trying to explain: "Hold on, excuse me sunshine, this is not Pakistan and Shariah law, this is English law you're dealing with, and the considerations are far more detailed and you've got to …" – [so you see] that [task] is a difficult job actually'*.

Several solicitors in all regions expressed concerns about the interplay of language and comprehension in the solicitor's task and with some parents in long-established Black/Asian British communities:

> *'… what we tend to do with people where English isn't the first language, you tend to try and gauge the level of understanding that you've got and then build up from there, and it's at different levels, [for] different people.*

[25] Solicitors in all regions discussed intergenerational problems for some young parents where they felt grandparents were in effect 'calling the shots'.

And I'll be honest; sometimes you just don't seem to be able to get it across at all. But again I don't honestly know if that was a cultural thing'.

1.9.5 Building trust

Some solicitors in all areas said more time was necessary to build trust with some minority ethnic parents. In the group discussions in particular some argued more time was necessary to establish a rapport 'cross culturally' However this was essential in keeping parents 'on board' – especially if the solicitor has to deliver difficult messages, for example telling a parent that what they have done is unacceptable, but to be able to say '*and this is what we have to do to remedy it.'*[26]

This exercise could be complex and not *necessarily* any quicker if a parent selected a solicitor of the same ethnic group. For example, in discussing this issue a solicitor of Indian origin in group B commented '*Indians don't trust anybody, including me'*; some parents were said to consciously seek a white solicitor because they feared breaches of confidentiality within local communities. Other British Indian and Pakistani solicitors said they were instructed because they/their families were respected in local communities, thus parents approached them with a degree of trust.

Issues of 'class'/status and gender are also significant factors in establishing trust with parents:

'There are those ethnic minority parents, because [you're] a solicitor you're somebody, especially I find with the Pakistanis ... and the Indians, that you are of a class that are different and therefore it's not too difficult [to establish trust]. West Indians are a very different group altogether. It's male West Indians who struggle in my view because um, they don't think - a) they struggle with the idea of women … you could be a matriarch in a West Indian family, as long as you're doing the things that women do they'll tolerate that. But … the women who are professionally qualified … I mean I may be wrong but it's my experience'.

1.10 Explaining 'law' and care proceedings to parents

1.10.1 Similarities

Most solicitors thought the language, terms and concepts used by professionals are difficult for parents whatever their ethnic group. Solicitors gave several examples:

'In the middle of the meeting the social worker said: "We're following a parallel triple track plan", and you could see this mother sitting there with this look of incomprehension on her face, and understandably so. Because if you are not versed in the ways of Social Services and care that's going to

[26] Group A.

mean nothing to you. And I actually translated it into English if you like for her, into something that was comprehensible'.

'Even the word paediatrician, I've had a few clients who thought that paediatrician meant paedophiles. You know just very basic things. So I don't use the word paediatrician to clients any more, I talk about children's doctors. Because that means something to them, whereas paediatrician means nothing'.

Some parents had particular difficulty grasping that harm may result from their behaviours/attitudes – even though that may not have been their intention, for example:

'… some of the wording can be quite unfortunate. 'Significant harm' [invokes] the inevitable response "I haven't harmed the child" because they equate that with physical violence. And of course harm can be …can be anything from neglect, you know even when there's no fault to be attributed to the parent, where the parent has learning difficulties or something, nonetheless the child has suffered some type of harm but that's often difficult for them to conceptualise'.

Some solicitors felt they were often much better at getting a parent's story than explaining law and legal procedure to them. Moreover, more interviews may be required with parents whose first language is not English but shorter sessions limiting the issues covered:

'… … You spend a shorter time with people who aren't very bright, and we have a lot of those… And some of the Asian clients that may, if you feel that's the problem then you try and limit the issues and you try and see them more often. Because they can't take in very much… And I don't think the [Legal Services Commission] always appreciate how long you have to spend with your client, especially at the initial meeting, because there's so much to discuss'.

1.11 Cultural variations in parenting

1.11.1 Do parents posit cultural variations?

In the light of findings about the variability of information about backgrounds in parents' statements (and anthropological work about the cultural context of parenting), solicitors were asked whether some minority ethnic parents said there were differences in their childrearing compared with white British families. Responses both confirm and challenge certain 'received wisdoms' about culturally diverse attitudes to children/child rearing.

Some solicitors said *some* minority ethnic parents do claim cultural differences in the way they parent;[27] physical punishment was frequently the starting point for discussion.

[27] A solicitor on one group said they were sometimes faced with cultural arguments that are almost 'Victorian' in approach to children: '*children should be seen and not heard; and there was no emotional warmth'.* Others in the group said their Asian clients had been in the UK so long they had adopted much of British culture. One solicitor in this group felt one had to apply the standards of the 'host community' but another responded that care had to be taken 'not to apply white middle class standards'.

Solicitors gave examples of parents from many groups who argued physical 'punishment' was acceptable within their ethnic/cultural group. For example:

> *'…In some African families that I represent there's more acceptance of hitting children as a way of disciplining them. And that's the way it is I'm afraid, It's a question of explaining to them that what might be acceptable in one culture just isn't in another…[but] its one of the things they will fasten on to which they don't agree with - or are quite definite they haven't done [wrong]'*.

A solicitor of Indian origin cited physical punishment but said she was forthright with parents who claimed this is acceptable in South Asian and African-Caribbean communities. For example, with regard to an African-Caribbean father accused of hitting his child with a belt:

> *'I [told him] "This is not acceptable, this is not the way things are done". But they'll say "Well it's the way things are done back home". They have not been 'back home' for so long…and if they did they'd realise things have changed, things are different …'*.

Other solicitors however had different experiences; a solicitor with considerable experience in a longstanding British Pakistani community said:

> *'…although there are cultural issues I have never had a situation where I have had a parent who is saying "Well I can beat my child because its culturally Okay to do so in Pakistan". I have never faced that…. the Pakistani families that I have come across have not wanted to beat their children anymore than anybody else …'*.

Solicitors also gave examples of differences of view *within* groups, between parents/extended family members in the same group, and between parents in ethnically/religiously mixed partnerships. Physical 'punishment' and emotional maltreatment were probably the most common allegations likely to elicit arguments of 'cultural' variation from some parents, home care/hygiene and physical neglect of children could feature but to a lesser degree.

Some solicitors grappled with the complexities of trying to establish what was 'normal' for a family - and with establishing values/attitudes and 'norms' in ethnically/culturally mixed relationships. For example:

> *'…physical abuse and neglect are two major issues that would always emerge from care proceedings involving Asians…I'm thinking of one of my cases where social services had come in and seen the state of the house; they'd gone with an interpreter who was also Bangladeshi and the mother had said "Well this is the way we live". The interpreter was clearly embarrassed about that and had said to the social worker: 'No, this is not the way we live…'.*

1.11.2 Unpacking 'culture' from other issues

Some solicitors highlighted the need to 'unpack' the impact of possible cultural variation from other issues such as socio-economic status, parents' urban/rural origins and education levels and problems of ill health:

> *'…You'll find lots of bits in the papers where [it's said] 'no that's just the way we do it, that's the way we do things' but you know there are masses and masses of other things as to why these parents find themselves in the position that they do, I don't think you could run a case – or I've never experienced it where It's just the local authority not getting it right about the differences in cultural aspects'*.

Where minority ethnic solicitors were instructed by parents from the same/similar ethnic group, approaches to issues of cultural diversity were sometimes somewhat more 'robust' compared with some white colleagues – at least in the initial stages - and certainly with regard to physical punishment.

One solicitor, a British Indian, said many parents of South Asian origin anticipated she would automatically understand their values/practices. And while she acknowledged some shared frameworks/values, she said a shared 'ethnicity' failed to address socio-economic/educational differences. Parents from Pakistani and Bangladeshi communities would 'check her out' in terms of her family background, and were influenced by her status, but when discussing issues such as cultural/religious mores, she commented:

> *'I will have a Pakistani client that will be sitting in front of me and saying "Well, you know what it's like in our culture, this is what we do". And I'll say: "Well I don't know, because this is not what we do…" …You know, I'll be very forthright about certain things…the problem we have in [this area] is that the Pakistanis that we have living here come mostly from Mirpur and we also have a lot of Kashmiris… and they're not well educated…'*.

> *'And this is what I will tell the parents that come to see me. You know [they ask] "where do you think we've gone wrong?" Well I'll tell you where you've gone wrong; you've ignored the needs of your children. And you know only because I can see that, it's so blatant for me…its all to do with education …'*.

This solicitor was especially critical of parents who had spent many years in the UK and had not learned English; she felt it was very hard for their children who experienced difficulties and divided loyalties. She was equally challenging with parents about what really happened 'back home' where she felt parents were utilising 'culture' as an excuse for mistreating children:

> *'…And I do tell them, "I'm not paid for telling you what you want to hear you will always hear the truth from me"…. I can't tell them what they want to hear…'*.

A further solicitor of Pakistani origin and a Muslim was equally 'robust' with parents who he felt attempted to 'hide' behind cultural/religious mores:

> *'…But it's not going to wash, [they may say]…"Well I did this because, you know, this is my religious belief". And I can say "Well hold on, that's not the religious belief and you're not going to convince the court that that's the religious belief - because the religious belief is this…"'.*

This solicitor felt white colleagues with experience and knowledge of South Asian communities (and a basic understanding of diverse religions) could be equally challenging. And indeed, a white solicitor (in another region) with extensive experience living and working in a multicultural community and with a high anti-racist profile in the community was equally quick to challenge parents who attempted to defend maltreatment of women or children in terms of diverse beliefs/cultural mores, and kept a copy of the Qur'an on hand to assist discussions.

1.11.3 Responsibility for broaching diversity

Solicitors were divided regarding responsibility for raising questions of potential cultural variation; approaches could depend on whether parents were 'new arrivals' or second/third generation Black/Asian British. With regard to parents in the latter group – and depending on the nature of allegations – some solicitors may well wait for parents to raise the issue:

> *'With regard to broaching this issue I'd probably wait for them'.*

> *'It wouldn't necessarily be on my checklist to say "Right at this stage we're going to ask them that question". Maybe it should… But I suppose the process is, like with any client, evaluating who you're dealing with and trying to work out whether in the course of answering the case against them there's anything that you think is relevant. I doubt whether I do specifically ask that unless something about that case makes it apparent that you should'.*

> *'I would also try and take some cue from the client as to how important these issues were to them. Just by way of example, if I had a parent of Asian descent who was in front of me who was say third generation, who clearly was very westernised in their upbringing and their outlook, it might be that cultural issues didn't play such a large part in their thinking. And it may be that representing such a client was little different from representing a white client for example. On the other hand if I had somebody who was clearly more steeped in the culture of his or her sort of ethnic origin then perhaps I would take a different approach. But I'd try and take some cue from the client as to what they wanted and what was appropriate for them'.*

> *'…certainly as a white person I would find it quite hard to raise that as an issue [independently] because you're not sure how far they would perceive it is significant themselves…it's a difficult area…'*.

Other solicitors developed methods of broaching the subject with parents. For example, one white solicitor with experience in a long-standing Bangladeshi community said first she would do a home visit, which gave her a first hand picture of lifestyles etc. Second, she took the initiative in raising issues of potential cultural variation with parents because in her experience some parents simply would not/could not raise it with her:

> *' I am happy to raise it [with parents] I think that in some ways it's important to do that otherwise I find often clients won't…. I might say something like: "oh you'd do that differently in your house wouldn't you?" - Or something like that. And so far I have managed to broach things without causing offence but I suppose it's a skill that you build up…. and I think some clients are actually quite surprised – its almost as if they don't expect you to do that, don't expect you to understand or try to understand'*.

Another solicitor also felt it was important to raise issues of diversity – as an 'opener' for parents - but that a solicitor also needed some basic knowledge:

> *'…for example I have just had a client whose daughter was visiting during Ramadan…so, I opened up the discussion with 'oh did you have a feast…were there lots of visitors…were gifts exchanged?' But [as a solicitor for the parent] you need to know something about the culture in order to ask the right questions; I am more confident about some traditions than others but if I thought some cultural background was important and I didn't know about it I would jolly well find out'*.

A further solicitor took a similar line; he said parents did not always know what the issues were and what they should tell their solicitor. Equally, he added: "*and we don't know what we don't know*". He described his approach:

> *'I simply had a lack of knowledge. And I said to the client quite openly. And I said, "So you're going to have to explain these things to me and I'm terribly sorry, but could you bear with me?" And I think she actually really liked that because I was showing respect to her cultural tradition in that I was saying I wanted to understand and I wanted to learn. And I was also being humble enough to say, "I don't know at this stage, so tell me"'.*

1.12 Format for parents' statements

1.12.1 The 'rebuttal' mode

Most solicitors were critical of a 'rebuttal' format for parents' statements. This format was seen as a 'lawyer's document': too easy to produce, not especially helpful to the court and possibly problematic for some parents. Whilst specific local authority allegations had to be addressed, most solicitors felt a 'rebuttal format' inhibited the ability of solicitors to tell a parent's story in narrative form. One solicitor went further, she argued there was a broader question about the role, quality and purpose of parents' statements in general:

> *'I think [the rebuttal format] does limit your capacity to tell the parent's story in a more holistic way, I think there is a whole issue about how useful statements really are in these proceedings, because, they will vary so*

enormously in quality, quantity and in any other way you can think of. There is no consistency in the way parents' stories are presented. Also solicitors' approaches vary considerably, some feel they have to try and speak as near to the voice of the parent as possible.... whereas others take the view that it's simply a legal document [presenting] their client's response'.

Others argued:

'I don't like statements like that, they don't read very well, and I just think they annoy judges. I mean we've all seen these you know "Paragraph 43 – I dispute this" "Paragraph 54…" and they just… I think that's a mistake to file a statement like that. You ought to set out your own case, then within the statement you can have a little section and respond to a few points. But if the whole statement's like that it just doesn't read very well…. I think you've got to be proactive and not just…don't want to use the word 'defend', obviously it's not a criminal, but not just respond'.

'I think that often is a sign of inexperience really. And it's the person who's preparing the statement who's worried about missing anything out. I don't work like that. What I tend to do is I will make a list of what the concerns are and the matters we have to cover in a statement…And then I'll go through it under my headings, my paragraphs. And if I have to reference it within those paragraphs I'll cross-reference it to particular statements'.

1.12.2 Cultural contexts: what goes in/stays out of statement

With regard to decisions about whether information on cultural contexts might be included or excluded from statement, some solicitors broached this issue in terms of 'relevance', 'best case' and strategic decision-making as to whether information would help/hinder a parent's case. In the final analysis however most (but not all)[28] solicitors said it was a parent's decision, for example:

'…It's difficult, one [South Asian] mother was very embarrassed about her 'womanly things' being spoken about…it may be the same for a white British women, I don't know, but you'd take it from the client's instructions… she didn't want it in. I can advise her it would be in her interests…but in the end it's [her decision]'.

'If the parent wanted it in, if there's something the parent wanted to say I would put it in …its very easy to draft statements that sound like a solicitor's statement. [But] I think it's very important to try and capture the 'flavour' of your client and if that involves – and I'm not trivialising it - but if that involves them saying some things that are culturally important, even though legally they are often of no importance whatsoever, I will put it in'.

'...I'm thinking about physical chastisement for example, sometimes people claim that things are culturally acceptable and you need to go back and

[28] For example, one solicitor in the group interviews appeared more predisposed towards a 'rebuttal mode' '*because you're normally dealing with the issues that have been brought up anyway so your statement is restricted to those points…you don't digress into, sort of, cultural differences*'.

check out that is actually the case. And if you have some evidence that you can put to them to say: "You told me that this was acceptable but you know Mrs Bloggs tells me it isn't". That gives them the opportunity to say "oh well perhaps not" or "no no it really is" and I say "Okay fine but you know this is not going to help your case…"'.

1.13 Experts and the relevance of diversity

1.13.1 Paediatricians

There was some variation in views about whether aspects of diversity might be in any sense relevant to the work of paediatricians in care proceedings. In one region most solicitors felt it was probably not relevant:

> *'No [its not relevant] because a paediatrician is commenting on the medical evidence. Not on issues of culture'.*

> *'It's less [relevant] to paediatric assessments…because paediatric assessments tend to be very - how can I put this - factually based. In that what you're looking at is the physical condition of the child. And you're not really … there's a danger in asking an expert to comment on something that falls outside of their area of expertise.*

This solicitor continued

> *'So for example, from the paediatrician I want to know is there an injury, what's the likely mechanism of injury? I'm not going to want the paediatrician to comment on whether they think that perhaps … I've never encountered this but I'm just plucking an example out of the air… supposing a child suffers from genital injury, a female child from genital injury, I'm not going to want the paediatrician to start discussing the female circumcision customs of her ethnic group, I'm simply going to want him to describe what the injuries were and how they're likely to have been caused. Because I feel that it's for other people then to start discussing what interpretation you place upon those. And I wouldn't want that expert to fall outside of his area of expertise'*.

Other solicitors were unsure or had not thought about this issue. One solicitor discussed an example of where cultural contexts might be important in understanding diet/feeding regimes with children who 'fail to thrive'. However, much discussion centred on the physical injury of children and in this context, where issues of diversity were thought to be irrelevant.

1.13.2 Child adolescent/family psychiatrists

By contrast almost all solicitors thought cultural contexts were very relevant to the work of child psychiatrists who are concerned with 'psychological and emotional functioning of children and families'. For example:

> *'…[Yes] very much so. That's an entirely different thing [compared to a paediatric report] - because there you're talking about, putting it crudely, how the child 'ticks' - what's going on internally? And part of their internal*

make-up, their psychological make-up, is going to be whatever cultural baggage and assumptions they have. And I don't think you can divorce that from the rest of their functioning. So there I would say it's very important…'.

1.13.3 Adult Psychiatrists

Almost all solicitors felt cultural contexts were relevant/highly relevant to the work of adult psychiatrists but there was some concern that of those 'people doing the rounds' very few were 'matched' with parents by ethnic group.

1.13.4 Psychologists

Most solicitors also felt cultural contexts were relevant to the work of psychologists although some were highly critical of some work in this field (see below – satisfaction with expert reports).

1.13.5 Family Centre Assessments

Most solicitors also thought that diverse contexts were very relevant to assessments in family centres, some solicitors said some centres did attempt to address the issues - by employing people from minority ethnic backgrounds or those with experience of working with families from diverse backgrounds. Nevertheless, there were examples of failures to address diverse cultural/linguistic contexts; most solicitors identified a lack of resources for this work (see below Chapter three – core assessments).

1.13.6 Developing instructions

In two regions about half the solicitors asked thought that it was the solicitor's responsibility to identify issues/concerns related to cultural/religious contexts, which should be addressed by an expert. In the other region about two-thirds saw this as their responsibility. For example, one solicitor described his approach:

'Well for example I'd always ask questions for instance what's the intellectual and social functioning of the parent, what if any psychological or mental issues may they have, what learning difficulties may they have. And I would always - where the parent comes from a group other than the predominant ethnic group of this country … i.e. a non-white, non-British group …- would ask the question to what extent do cultural and religious issues, if any, have an impact upon this parent's functioning and perceptions…'.

This solicitor continued:

> *'…Because I would want to understand a) so that I could be sensitive to it, and b) if there was issues arising from that which were perhaps problematic in terms of child protection, that I was aware of that … … I think that anything that's focusing upon … how can I put it? … The parent's internal make-up of how they 'tick', you have to be aware of those issues. And you have to ask the question… '*.

Four solicitors felt there was a stronger professional focus on diversity than is indicated by reports/statements or letters of instruction. With regard to instructions one solicitor thought some things were taken 'as read' because a parent had a name indicating a minority ethnic background. He argued:

> *'We don't need to say anything more about it … it's taken as read that the expert will address that issue or at least be aware of that issue as part of the instructions, but it isn't specifically highlighted in my experience as something that the expert should be considering, over and above the general welfare checklist where there's the paragraph about age, sex and background, ethnic background, so I haven't felt it necessary to highlight it as an issue. You're working from the point of view that when you're instructing an expert there's already a lot of information amongst the papers so maybe you'd think that it was churlish to emphasise a fact that was already apparent from the papers*'.

Another argued that in recent years:

> *'…people have been far more switched on about the necessity to ensure that cultural diversity is … recognised and there's different norms, different acceptable … different levels of behaviour, different acceptable ways of going about things*'.

It was argued that these considerations form part of an inter-professional dialogue even where they do not appear in the documentation, for example:

> *'Professionals are very careful to ensure cultural issues are taken on board - everybody is extremely careful to make sure it is all taken into account and that nobody ignores [it]* '.

> *'… I don't know if my experience [in this area] - or a metropolitan experience is different from other areas of the country [but] my experience of [practising here] over 10 years is there is such a diverse group of people who appear before the courts … and the approach of professionals often just take it into account in the way in which they're working without necessarily writing it down…'.*

She continued:

> *'… I mean I'm sure that doesn't assist you a great deal because I know that you're concerned with what's written in the statements – [but] I think that could be an explanation. If you have a second/third generation black family… you very often in [this area] have black social workers; not always, you know, you often have a ghastly case where the whole family's black and every professional is white. But there are many social workers from*

ethnic communities. And it's simply … it's not something that's shouted about, but it … I don't think that you can conclude from [variable coverage in documents] that it's ignored'.

Other solicitors however were wary of that suggestion and felt that the issues/conversations should be recorded:

'I mean a parent can't rely on a discussion outside court to assist them at the final hearing. I don't buy it'.

1.13.7 Satisfaction with attention to diversity in expert reports

Two solicitors were quite positive about attention to diversity in reports. Both felt things had improved over the last few years, indeed one argued '… *I think now some people fall over themselves [to consider diversity] quite frankly'* (3-S4, p8). However other solicitors in all areas expressed concerns about this issue. Some acknowledged that much depended on the quality of instructions; a small number felt a solicitor's understanding of the subtleties involved in this work was crucial. Nevertheless concerns included a lack of preparedness by some experts to consider/understand that people from other cultures might live and understand their lives differently to those 'mainstream cultures'.

Solicitors in all regions expressed concerns about the relevance/validity of psychometric testing with some minority ethnic parents: For example:

'…. … Um, I mean one of the things is usually to ask them to corroborate the findings by use of psychometric testing. Now that's very difficult for ethnic minorities, because the psychometric tests are built on your standard responses or your standard culture that you're in. And also they're not easy to do through an interpreter. So that's a major area you've lost completely when you go outside the language or culture'.

*'…[I] haven't found a satisfactory way of properly psychologically assessing Asian communities in particular. Because a lot of the psychometric testing that's used doesn't work at all, just doesn't apply to the culture. Some of the questions women would not answer in a million years from a white man, a black man or any other man, because they can't talk to men about sexual relations, about anything like tha*t …'.

Concerns were also expressed about a shortage of clinicians from minority ethnic groups with the experience and skills to work effectively in the child protection arena. This meant that 'ethnic matching' was seldom possible:

'I'm not always satisfied [with reports] no. I think that … and again this is … an interesting issue … most of the pool of psychologists and psychiatrists that we have to draw upon are predominantly white, middle aged, middle class, more often female than male. In fact … it's a worryingly homogenous group. [In a recent case] - a very young mum of Pakistan origin - we had to go to London to find a psychologist of Asian descent who

would perhaps have a little bit more insight and understanding of those cultural issues. There wasn't anybody available locally which, when you think of the size of the Asian population here is really quite disturbing'.

'There are no Asian psychologists who are suitable'.

'… you often try and find an expert that can empathise, someone that the clients can understand, that they can feel comfortable with. And I find it a nightmare, I find it an absolute nightmare finding people, because there just are not the professionals out there'.

'My client … said, " this man knows nothing about me, he knows nothing about my society".

In some areas solicitors were concerned that deadlines set by courts under the public law protocol preclude waiting for one of the few minority ethnic experts, thus issues in this field were likely to get worse rather than better.

1.14 Parents of African-Caribbean origin

Phase I identified limited coverage of issues of diversity in statements from parents of African-Caribbean origin compared with the detail in statements from African and South Asian parents. Many solicitors in this study had limited experience of parents of African-Caribbean origin,[29] some had not thought about this issue but discussions indicated a range of issues requiring further exploration.

First, it was suggested that there are often no obvious triggers/signifiers of difference; African-Caribbean parents do not present 'indicators' such as different languages or style of dress. Second, they are a long established Black British community; most parents will have been born and educated in the UK and thus perhaps not generally perceived as having fundamentally different cultural/religious needs to majority white Western Europeans.[30] Third, there was some suggestion that solicitors might be wary of raising issues of diversity for fear of being seen as racist:

'I think people are scared of being racist. If you say that you know "Of course my dad used to whack me" you know. That's what…then you're branding Afro Caribbean's as being whackers, and people are scared to do

[29] The 2001 census indicates that in most of the areas in which the study was undertaken people of African Caribbean origin constitute not more than 5% of populations; in some areas in regions A and C it was under 2.5%. In some Wards however representation is higher, for example in two Wards in Region B, representation is over twice that indicated by the Census (at 13%). in one Ward in Region C, the African Caribbean population is almost double that indicated by the Census figure (5% compared with 2%), in another it is sixteen times higher (17% compared with 2% in the Ward data).

[30] Although there was a view in one of the groups that perhaps one might expect generational differences with grandparents having different and possibly more rigid styles of parenting.

that in a statement, so they won't do it. So it's something we sort of shy away from'.

In addition it was also suggested that perhaps the solicitor's task with regard to African Caribbean parents tends to be less dramatic compared with 'newly arrived' parents who could present profound language difficulties, more obvious cultural 'distance' and no understanding of welfare or legal systems.

1.14.1 Representing parents of African-Caribbean origin

There was some concern by solicitors with some experience of representing African-Caribbean parents that less experienced lawyers could miss certain nuances in parent-children interaction and might therefore fail to interpret aspects of the evidence. Some solicitors also said that on occasion African-Caribbean parents used diverse cultural mores as an excuse for maltreatment. Two solicitors discussed notions of 'chaotic lifestyles' and 'shared parenting' and issues of racism. For example, one solicitor said:

'…I was acting for the child in a black Afro-Caribbean family…basically the care of these children was farmed out very randomly to family members and children would appear and disappear within this household with bewildering rapidity. I was talking to the children and found that they were very unsettled, very uncomfortable, didn't know where they were...'

He continued:

'…the mother was saying "Look you know you're being essentially racist here because this is what black families do, this is totally a cultural norm, that we draw upon the extended family". And it was very interesting there because the guardian … was also black. And I think she took a very balanced and a very sensitive view to this… what she said was "well yes, drawing upon the extended family members is common within this culture and isn't necessarily harmful. But the way in which this mother is doing it clearly is harmful because it's not a structured system of devolved care. It's a chaotic system of random care where these children just don't know where they're going to be from one day to the next"'.

Two solicitors referred to parents' use of canes and sticks to hit/beat children where parents argued that that was culturally acceptable, and where passages from the Bible were used to support actions. Some solicitors anticipated generational differences in attitudes to physical punishment.

Some solicitors discussed the problem of trying to find an African-Caribbean clinician in the face of huge shortages and increasing time restrictions:

'We had a mother with mental health problems and she was African Caribbean…and she was under a male psychiatrist through the NHS and we were a bit concerned that they probably hadn't taken into account her ethnic needs and things. So we actually got a second assessment by an

Afro-Caribbean adult psychiatrist. It was very thorough and helpful to see things'.

'…[We] will not be able to say to the judge "Well actually judge, we want an Afro-Caribbean female psychologist for this [mother] she'll have more confidence…" the judge will say, "Well I'm sorry we haven't got time for that delay, you will have Dr Bloggs and that's it"'.

1.15 Key findings - the tasks of solicitors

Using interpreters

In all areas solicitors expressed serious concerns about the work of interpreters; the system is dogged by poor quality and few interpreters were felt to be well informed about proceedings under the Children Act 1989.

Getting the parents' story - the task

There are similarities in this task across all groups related to the multiple problems and vulnerabilities of parents likely to be involved in care proceedings.

Procedures for getting the story

- The solicitor does not always necessarily know what he/she needs to ask with regard to a parent from a minority ethnic group, equally solicitors reported parents do not know what they need to tell the solicitor.

Conceptual differences

- Some differences in thinking/approaches to tasks were based on whether a parent was new/relatively newly arrived in Britain or a second/third generation Black and Asian British.

Compounding variables

- A parent's language, knowledge about welfare/legal systems, education and gender impacted on the solicitor's initial task; these issues could apply to parents across all minority ethnic groups (and were not necessarily related to length of domicile in the UK).

- The circumstances of some parents and degree of cultural/linguistic distance add further complexity to the task with implications for the length and number of appointments necessary, instruction of experts and attending court. It also added a further dimension to the notion of 'taking instructions'.

For parents new/relatively newly arrived in Britain

- A major problem to overcome before getting a parent's story is often a parent's incomprehension at any state intervention in parenting. Some solicitors were doubtful certain parents ever really understood this issue and why their children had been removed.

- Where parents originate from countries with corrupt state apparatus, that background could determine how a parent's story is told, how parents respond to state agencies and their initial interactions with a solicitor.

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

- Solicitors tended to make certain assumptions about second/third generation Black/Asian British parents. Thus, in principle, taking instructions was not generally viewed as very different from that undertaken with white British groups.

Nevertheless, discussions indicated several issues influenced the solicitor's task with *some* parents in British Black/Asian groups: intergenerational issues, language, education and gender issues could remain important.

Building trust

- Trust is mediated through a parent's framework. Building trust with some parents was seen as a slow and complex exercise where there are added dimensions based on diverse cultural/religious/linguistic backgrounds. This could be especially complex when working through an interpreter.

- There are some issues pertaining to trust which remain where parents select a solicitor from the same ethnic group.

Explaining law and proceedings to parents

The language, terms and concepts used by professionals are difficult for all parents to understand; there is some concern about how/whether some central Children Act concepts are easily/correctly translated.

Solicitors often felt they were much better at getting a parent's story than they were at explaining law and proceedings to parents.

‘Significant harm’ remains a difficult concept for many parents but especially so for some minority ethnic parents where the compounding variables listed above are present.

The notion that harm can result even where no conscious fault/intention can be attributed to a parent was especially hard for all parents.

Do Parents posit cultural variations as explanations for treatment of children

‘Some do some don’t’*:*

- Some solicitors said *some* minority ethnic parents do posit cultural differences in parenting values/practices; others do not. Physical punishment was frequently the starting point for discussion.

Physical punishment – a parent’s right to choose?

- Solicitors gave examples of parents of African, South Asian and African- Caribbean origins who argued physical ‘punishment’ was acceptable within their ethnic/cultural traditions.

- Equally, a smaller number of solicitors represented minority ethnic parents in these groups who do not think it is acceptable to hit/beat children and do not use ‘culture’ as a defence in cases of excessive physical chastisement.

Challenging/verifying cultural norms

- Some solicitors, particularly some minority ethnic solicitors, were very robust in challenging parents who justified physical ill-treatment of children by reference to diverse cultural/religious norms.

- Some solicitors highlighted the problems of trying to establish boundaries of ‘normal’ parenting for certain minority ethnic groups.

- Most solicitors were however in agreement that cases do not ultimately ‘run on culture’ - but issues can be relevant to the case.

Responsibility for broaching 'cultural diversity'

Conceptual divisions

- Solicitors were divided regarding responsibility for raising questions of potential cultural variation; approaches could depend on whether parents were 'new arrivals' or second/third generation Black/Asian British - or those more obviously 'steeped in their own culture'.

- With regard to second/third generation Black and Asian British – and depending on the nature of allegations – some solicitors may well wait for parents to raise this area especially where parents 'appeared to be very Westernised'. Solicitors were concerned that a parent might be perceived as racist for raising the possibility.

- Some solicitors have developed ways of approaching this area with parents regardless of how long a parent has lived in Britain. It was felt parents simply would not/could not raise this area without some indication from a solicitor that it was a valid/important/acceptable area for discussion.

- Solicitors have had little or no training for this aspect of their work.

Early interviews: 'rehearsal without a script'?

- Some solicitors pointed out that certain parents are unlikely to know what the issues are/what they need tell their solicitor. Equally, some solicitors said with regard to some parents from diverse cultures "… *we don't know what we don't know*".

Format for parents' statements

The 'rebuttal' mode

- Most solicitors were highly critical of this format. However a broader question was also posed about the purpose of parents' statements. It was said these statements varied enormously in quality, length and format, with no consistency in the way parents' stories are presented.

Cultural contexts: what goes in/stays out of statements?

- Presenting a 'best case'/'strategic' decisions informed discussions about whether 'cultural contexts' might help/hinder their case and whether they should be included in statements; in the final analysis however this was said to be the parent's decision.

- Some solicitors argued that 'capturing the client' in statements may mean included things which, although 'culturally important', may not be 'legally relevant'.

Expert assessments and cultural diversity

Few solicitors thought issues of diversity were relevant to the work of paediatricians. Most solicitors said issues of diversity were highly relevant for child psychiatrists, psychologists and adult psychiatrists.

Most solicitors highlighted a shortage of experts from minority ethnic groups with the experience to undertake assessments for care proceedings.

'Ethnic matching' was extremely difficult; time scales imposed by courts under the public law protocol were likely to make this even more difficult.

A small number of solicitors said issues of diversity were addressed during inter-professional dialogue without necessarily recording it in documents.

A small number are satisfied attention to diversity in expert reports. Many more however expressed concerns about experts who were not prepared to consider that people from other cultures might live their lives differently. Solicitors in all regions expressed concerns about the validity of psychometric testing of parents from diverse backgrounds.

Parents of African-Caribbean origin

Some solicitors had limited experience of representing parents of African-Caribbean origin. Four issues were however suggested as possibly underscoring a limited focus on cultural diversity in parents' statements.

- Parents present no obvious 'triggers/signifiers' of difference (e.g. language, styles of dress), they are usually part of long established Black British communities and likely to have been born in the UK. Thus certain assumptions of cultural 'assimilation' may be made.
- Solicitors may be cautious about raising potential cultural variations for fear of being seen as racist.
- Compared with other minority ethnic groups, the solicitor's task was perhaps perceived as less dramatic when compared with parents who are newly arrived in the UK.

Chapter two Solicitor's views on diversity and family courts

2.1 Similarities for all parents

Overall, most solicitors thought that parents in all groups shared common responses to attending family courts: they are frightened, anxious, often traumatised:

> *'They're scared to death but compared to white British people 'em, I would say there probably wouldn't be any differences'*.

The system was reported as complex and very hard to understand:

> *'… I just think for any parent it's a very traumatic experience, very hard to understand systems and the way they work…even harder for someone who's got a translator or interpreter to be able to…[well] courts move so quickly [and] the actual process is confusing, [well] not confusing but difficult for parents'.*

Equally, solicitors in all regions reported some parents think they are there to be punished: courts are for criminals.

2.2 Differences/compounding problems

As with the task of getting a parent's story most solicitors felt that certain minority ethnic parents might have additional problems/experiences when attending court (compared with white British parents). Again there were some divisions between views about parents who are newly arrived in Britain and those who are second/third/fourth generation Black and Asian British. However, further discussions demonstrated limitations to that division. For example, some parents who have lived in the UK for many years may nevertheless experience language and comprehension problems.

With regard to parents who are relatively new to the UK, solicitors in Region A in particular talked about likely experiences of parents who are asylum seekers and refugees, particularly from several African states but also from, for example, Kosova, Turkey, Albania, Sri Lanka, and Pakistan etc. As indicated earlier often parents do not speak English and this exacerbates other problems they might experience in attending court:

> *'If there's a language problem, definitively a difference but [generally] I think inadequate parents have a problem anyway'.*

Many parents remain highly suspicious of all state agencies and that includes family courts – and judges and magistrates; many remain incredulous that courts would be in any way interested in their parenting. Where children have already been removed under emergency

powers in the UK, feelings of intense fear, anger and mistrust of all professionals were said to run high.

Solicitors also said that while many parents may well feel excluded by advocates' negotiations (see below) certain minority ethnic parents may feel increased alienation by this practice. Where parents do not speak English and fear corruption/punishment they are likely to be doubly frightened:

> *'If they are not English speaking and [during out of court discussions] they're surrounded by a bunch of English speaking professionals who are laughing and joking amongst themselves – that experience for those who don't speak English or are recent immigrants must be bewildering.'.*

Where there is little/no previous experience of state/court involvement in defining adequate parenting and child maltreatment, the concept of assessment – so central to Children Act proceedings – was described as completely alien to many families from other countries/cultures. As one solicitor explained:

> *'…I try to talk to them more about … assessment expectations so that if it is clear there is going to be a real barrier to being assessed and the family is going to find it very difficult to talk about their experiences, we can start trying to put something in place to deal with it, [these parents] just don't understand why they should talk to anyone else about their own experience of growing up, they can't see what possible relevance it would have for their own children… What I want to do is find them a resource… like the [X] centre who have African workers who are skilled at talking to African families and making culturally appropriate and culturally sensitive assessments'.*

Solicitors argued that for some parents - both newly arrived and second/third generation Black and Asian British - notions of pride and family honour were important in understanding parents' experiences and responses to proceedings. Attending court was linked with crime/wrongdoing and punishment and thus a source of shame and considerable social damage to extended families. For example:

> '*I think in some communities there's much more a sense of shame about being anywhere near a court than others, they regard it as shameful [it's] to do with intrusion into family life I think* '.

2.3 Different experiences in different courts

Views about how minority ethnic parents might experience attending family courts indicated variations - between regions, between courts (comparing magistrates' family proceedings courts and county court care centres, and between 'dedicated' family courts and combined courts), and within and between magistrates and judges.

Region A

Many solicitors in this region reported on the benefits of dedicated family courts compared with other (combined) courts they attended in the region. Because dedicated courts hear only family proceedings and do not share premises with other courts, with notable exceptions (see below), the overall 'ethos'[31] and approach to parents was thought to be significantly better.

Magistrates' family proceedings courts

Where parents attended a dedicated family court, experiences for most parents were considered to be an improvement on 'mixed' courts. Some concerns were however expressed about the narrow socio-economic background from which many magistrates are drawn and about a lack of magistrates from minority ethnic groups in all family proceedings courts.

County court care centres

Solicitors in region A were somewhat divided on how minority ethnic parents might experience attending county court care centres. While it was felt there would be common experiences for all parents (see below) nevertheless it was felt some minority ethnic parents were likely to have specific experiences arising from diverse cultural/linguistic backgrounds. These experiences could very much depend on the attitude and behaviour of particular judges, for example:

> *'Some judges are just more polite…you know you don't have to understand the language to understand the body language of people who are being shouted at [in court]. You know if the judge starts the day by shouting at all the advocates he may regard it as a bit of a game, but for the people who are in court watching it, it's their children we're talking about, it's their lives. I think it's that sort of thing [which makes an impression on parents] I think if the judge is going to criticise counsel, it should be done without the parents… he can call counsel into his chambers I think an awful lot goes on in open court…'*

This solicitor reflected on the influence of court layout - and 'judgitis':

> *'…And I think the magistrates are … much better at being sensitive to any parents…but it may be that the [court-room] layout is more helpful, everyone is sitting [on the same level] and it's a slightly less formal atmosphere and magistrates don't suffer from 'judgitis': "I'm a judge and I'm going to throw my weight around". [It's] often the newly appointed, sadly few judges escape it, it's a virulent disease'.*

[31] This term is used as a shorthand for a range of issues incorporated in the philosophy of the Children Act 1989 (and the relationship posed between duties and responsibilities under Parts III and IV – family support and statutory interventions); further it incorporates notions of partnership and transparency in proceedings bearing in mind the requirements of the 'no order principle' and that taking children into care should generally be regarded as a temporary measure undertaken with the objective of rehabilitation wherever possible. This issue and the corresponding ethos of family courts are discussed in more detail in the concluding chapter.

'In the [county court] I think there's a lot of variation…it's just different personalities, different judges…I mean there are some judges we avoid if we're acting for minority ethnic parents quite frankly because they're racist. I mean some judges will – and again this can apply right across the board – they can be dismissive, disrespectful'.

But this solicitor also elaborated on those judges making particular efforts and how important that can be for parents:

'… *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 … some judges will say…"Good morning" "Who have we got here?" and "The parents, whereabouts are the parents – can I be introduced to the parents" [and will say] "Good morning to you Mr 'X' and to you Mrs 'X'"…' 'It's incredibly important for parents to be people in their own right and to be politely addressed by the judge, especially when they feel so backed into a corner, so criticised and some judges are really good at doing this…you know, prepared to be flexible and just to think about how they might make the parents feel included*''.

Another solicitor who worked in a combined county court reported:

'Um, we're quite lucky [here] … having the size of ethnic minority that we do have there is a real cultural awareness. I mean we've been through everything, we've had the riots, we've had…most recently the headscarf war… it's made people very aware of issues. And I think … things are improving here. But I also feel that there is a huge awareness. We're fortunate because we have a Judge of Asian origin, who will conduct most of the ethnic cases… But from what I've seen, particularly recently with [two other judges] - their awareness is very impressive, you know, they really do know what's what'.

Solicitors in one of the groups thought it was highly unusually for a judge to talk to a parent, one commented:

I can't think of any judges we appear before who would actually say directly in care proceedings – directly introduce themselves to a parent – bar one [who] is rather idiosyncratic'

Solicitor: Group A

This group agreed that the one judge who did so was considered fairly idiosyncratic – but this was not related to issues of fairness or ethnicity. This group also felt if judges were going to be polite and talk to parents then they probably do so to all parents.

Region B

Solicitors in this region thought attending family courts was generally a negative experience for most parents, in part because of insensitive approaches and lack of empathy for parents,[32] and in part, because of a failure to provide specialist family courts with the attendant ethos.

Magistrates' family proceedings courts

Some solicitors felt there might be additional pressures for minority ethnic parents if there were language/comprehension problems:

> *'Quite often the hearings will be painfully protracted because the magistrates really don't understand what they're doing and have to be very guided by their clerk, who will often not be very expert in this area'.*

> *'I find that magistrates are more likely to say things that are inappropriate and sometimes grotesquely insensitive [and] are also less likely to explain what's going on to the person'.*

County court care centre

In region B most solicitors thought all parents' experiences of attending the county court were likely to be an improvement compared with the family proceedings courts. It was argued judges have legal training and skills and expertise that magistrates lack; some judges were also more considerate towards parents:

> *'It's shorter; the judge will know what he's doing so things will get dealt with much more swiftly. The judge is more likely to explain things to them. The judge will give an impression of professionalism and expertise that they're unlikely to see in the family proceedings court'.*

Region C

Solicitors reported on the failure to provide separate family courts in this region. Buildings that held both family and criminal courts presented difficulties for parents 'across the board'; they have to pass through, or sit in waiting areas for the criminal courts:

> *'And the Magistrates' Courts, you always seem to have to go through criminal courts or pass the criminal parts and all the rest of it. And most of the parents find that quite disturbing I think and say things like "But we're not criminals, why are we here?"'.*

> *'The courts that we actually use are on the first floor and the criminal courts are on the ground floor, you have to walk through the foyer of the ground floor. You often can't get up to the first floor for a while so you have to hang around with criminals everywhere. And even when you are on the first floor there is a criminal court usually adjacent to the family proceedings court. So*

[32] In particular some solicitors complained about the narrow socio-economic backgrounds of benches, members were likely to take a judgemental approach to parents with, for example, drug or alcohol problems, and a 'likelihood of the bench going along with what local authorities say'.

it's a completely alien culture, so I'm sure it must be more intimidating… It's pretty horrible for the mums and dads, whatever colour'.

Magistrates' family proceedings courts

Some solicitors thought all parents shared similar experiences in magistrates' family courts in this area. Some magistrates were said to try hard to help minority ethnic parents; one solicitor said some magistrates make considerable efforts to help:

'… Will turn somersaults in an effort to be culturally appropriate and to help where they can'.

However most solicitors thought there were compounding problems likely to increase levels of anxiety, anger and fear. Two solicitors raised particular concerns about magistrates' approaches and lack of sensitivity:

'There are some excellent magistrates and there's some you just think, "Oh God, how embarrassing, I want to sink through the floor". [The client] will say "What did he say that for?" and you think, "Yeah, what did he say that for?"'.

'Sometimes you get what I call the sergeant major approach … which makes them think they're in a criminal court, not a family court'.

Several examples of a lack of specialist family court ethos and insensitive/uninformed approaches to minority ethnic parents were given, for example, asking a Muslim parent for his 'Christian' name, talking louder to parents with little/no English. As one solicitor argued:

'The staff in the County Court tend to know more about the general run of family cases where the staff in the family proceedings court, even your specialist staff, I mean it's really not until you get up to the level of the clerks in the family proceedings court that they've really got much idea… And the judges do tend to try a bit harder than the Magistrates do. And they do seem to be more aware of some of the issues'.

County court care centre

Some solicitors in region C felt that minority ethnic parents' experiences in the county court was probably better than in the family proceedings courts. It was felt county court staff were more aware of issues of diversity and language differences. However experiences could depend on the particular judge; some judges are more sensitive in approach than others. Solicitors reported insensitive behaviour was not reserved for ethnic minority parents:

'I don't find it just confined to ethnic minorities at all. There's some judges who are totally insensitive, there's some judges who are absolutely excellent. But I think the constraints of time don't make it possible for the situation to be much better. Except that some people should learn to close their mouths and not come out with daft things. You know, which inflame the situation and make it even worse for people, when it's already bad enough'.

2.4 A fair and just hearing[33]: the solicitors' assessment

In response to the question 'do minority ethnic parents get a fair and just 'hearing'?' overall, most solicitors felt that they probably did. For example, one solicitor of Pakistani origin said he spent time with parents of South Asian origin explaining the system and comparing it to that in other countries in an effort to demonstrate to parents that they would get a fair hearing. He responded:

> *' Well I can tell you they get a better hearing than they would ever get anywhere else in the world, that's what I say to them… … And when you tell them the statistics of how much care proceedings cost then they realise that actually what the government does for you… You see a lot of the people they don't realise these things and I say to them, "Look … in these matters there is a genuine concern. Now let's say for example in Pakistan …(and I say this with all the respect to the welfare system over there … it's not as sort of refined as we have over here) If there's abuse, the government is not going to spend [money] instructing local authorities to take action. [In] this country (and you explain to them) the government is concerned, and if you think that… they've got it wrong, then you have an opportunity, you have a forum and there is a mechanism." When you talk like that they understand that actually you know it makes a big difference, the justice … there is…'*.

However this did not mean there were no concerns about the process. The attitude of some judges, whether courts received the full picture so far as cultural contexts were concerned, whether parents used specialist solicitors and concerns about the attitude/approach of some experts to cultural diversity could all influence how the system is perceived by parents from diverse backgrounds. For example in Region A solicitors added:

> *'Some judges are very aware of the difficulties that minority ethnic parents might experience and try very hard to ensure not just that they get a fair hearing - but that they feel that is'*.
>
> *'Mostly, mostly, [they do] but then you see judges who have an unfortunate manner with white parents… you know if they're good judges they're good judges with everyone. And they are likely to have had more training - or to have understood the training better (Laughter)'*.
>
> *'Difficult question, 'em, … I've had experiences of where some awful things have been said and comments made by judges – more so than by magistrates – but I haven't had a case where the outcome has been wrong or different because of cultural issues… I think parents go entirely on outcome - although it's very difficult to know actually…'*.

[33] In this context as with issues of feeling 'heard and understood', we are not focusing in particular court hearing as such but rather an overall experience of proceedings, as the parents in this study highlight feeling fairly treated and feeling herd and understood is a *process* with several parts not a single event.

While in region B, for example:

> *'Um I'm just trying to think. I haven't had any clients that have complained and feel they weren't treated fairly. Um I did act for a boy a number of years ago now and his father didn't feel he was listened to. And to be honest I don't think he was, properly. The difficulty in that case was the child although teenager had obviously got mental health problems and his father wouldn't accept it. But the judge was quite impatient with him - this was a Muslim family - and the difficulty was the father did not want his son to have mental health problems…'.*

With regard to cultural contexts and specialist solicitors:

> *'My only concern … is whether we are actually getting the full information. I think that's very different to having a fair and just hearing. It's whether we are properly accessing information and understanding the make-up of the individual…. So I'm not sure that injustice is being done, I'm just not sure that we have a full jigsaw… It may be that they [advocates] are not being given the information because the clients are frightened or because they're under pressure…'.*

> *'And the problem is that until such time as there's an absolute insistence … that all parents instruct solicitors who are on the Panel, then you're going to have some minority ethnic parents instructing solicitors of their culture who aren't on the Panel and they think they're OK because they're with friends. But they actually are not getting the proper advice that they would be entitled to'*.

Several solicitors in region C expressed concerns about experts:

> *'It is rare for a psychological assessment to do anything other than condemn them'.*

> '… *they get as fair and just a hearing as anybody. Which doesn't mean they always get a fair and just hearing, no. … I think that in some respects the system leaves a lot to be desired. But I don't think Asian parents suffer any more as a result of that …… I suppose if an Asian family - Asian parents, have problems communicating with a psychologist or a psychiatrist, it's conceivable that they will suffer even more. But you see there are other issues which you may not appreciate, you may not have come across'.*

> *'If you can't get a psychiatrist that understands your cultural background to do a report on you as a mother and your ability to parent … how on earth can you have a fair hearing? If you can't get an expert that understands … the cultural implications of your belief system, yet the judge is being asked to make value judgements on that and your ability to emotionally harm your child, how can you possibly get a fair hearing?'*

2.4.1 Conceding the threshold criteria

In all regions some solicitors raised concerns about the impact on parents of conceding the threshold criteria. An expectation of parents in all groups was that at some point, they would have an opportunity to 'have their say' in court in front of a judge – that was part of

their perception of a fair and just system. In practice, conceding the threshold meant that that expectation was thwarted:

> *'The vast majority of care cases are settled before there is a contested hearing… so the whole concept of having a fair hearing was more difficult because you don't get the hearing but in fact you get a compromise settlement which I would say would be in their best interests'*.

Thus while no solicitor argued that findings of fact had been fundamentally unfair/unjust for a minority ethnic parent, many felt the system 'left a lot to be desired'. As one solicitor argued a better understanding of a parent's background may not make a difference to final outcomes it could nevertheless mean that *'minority ethnic parents might suffer less in the process'*.

2.5 Feeling heard and understood[34]: the solicitors' assessment

The question of whether solicitors thought minority ethnic parents felt heard and understood by courts proved more difficult resulting in much reflective thinking; some solicitors in all regions were doubtful:

> *'No I'm sure a lot of them would think it would be a whitewash and whatever the guardian says, not so much the local authority, the judge is more or less bound to go along with. And I think nine times out of ten that is true really, I have to say'*.

Solicitors frequently reverted to discussing the position of all parents and doubted some courts really understood their background and story. Nevertheless there were some specific – and worrying frameworks:

> *'I think the ones who don't, I don't think that's got anything to do with it, their ethnic background, the parents in care cases often struggle to accept the outcome… Some African Caribbean clients particularly from the West Indies and that kind of area, I think have felt that they are being not so much tarred with an ethnic brush but as a criminal, as associated with the gang culture'.*
>
> *'There are many people who say "Nobody is taking any notice of me" but that isn't restricted to ethnic minority communities. In fact it's probably more prevalent in white parents'.*

One solicitor also highlighted that ethnicity was not necessarily a defining feature in a parent's views about proceedings:

> *'Em, I think that just depends on the personality of the parents. The courts are very very good at letting the parent have their say. They usually bend over backwards to let them say what they want to say. But some parents unless they get what they want would never normally feel satisfied'.*

[34] Again, as argued above this is about a process not a single event.

Although some solicitors in all regions felt some courts tried hard to ensure parents from diverse cultural/religious backgrounds felt heard and understood, overall just over half expressed doubts as to whether parents themselves felt understood. As one solicitor had earlier argued, a lack of understanding of cultural contexts may influence whether/how parents tell their story- and how courts perceive those actions:

> *'I think one of the big misunderstandings is the strength and importance of family and correct behaviour within the family and how it could impact on someone's reluctance to speak about something. So it looks like they're being obstructive, whereas, they're in a completely impossible situation. And I think judges often feel because they're interested in trying to elucidate information, if somebody won't tell you, they interpret that as sort of hostile and defensive…a hostile reaction, and a deliberate concealing of information, whereas, it might be just fear actually'.*

A further solicitor gave examples of where she felt judges failed to understand the values and practices of parents. For example in responding to a parents' decision to use a birch twig to punish a child, the solicitor said it was clear from the parents' discussion that their community would have approved of such action, she continued:

> *'…but the judge was completely scathing about it, had a look of absolute horror…there was no- effort to understand that this might be just a difference of opinion. You know he obviously found it repulsive but he didn't appreciate the possibility…the family were from [the Caribbean] …I mean my understanding is it's fairly normal practice and yet they were absolutely demonised for doing this'.*

Some solicitors again pointed to a lack of feedback or focus on the views of minority ethnic parents in care proceedings. A small minority felt the background of a parent was irrelevant to whether a parent felt heard and understood by courts; what mattered was whether children were returned:

> *'I don't know whether it's easy to differentiate being heard and understood from the judge making the wrong decision…'.*

> *'The only way they can live with what has happened is by blaming somebody or something else and the court process … I think it's very difficult to get behind that and separate out whether they genuinely don't feel they've been listened to'.*

Issues of outcome and having had an opportunity to 'have one's say' were thought to be influential whatever the ethnic group of the parent. For example, one solicitor said:

> '*Yeah I mean certainly often we'll instruct a barrister and if they've made a statement you then have to decide whether they want to actually give evidence. And most of the time they do and I think it's important that they do get that opportunity to say to the judge what it is they want. And we'd certainly never … unless you had a client with a really low, you know IQ rating and this type of thing, it just wouldn't do any good to put them through that. You generally always want them to have their say'.*

However this solicitor argued that in practice there was little difference between white and minority ethnic parents, with one possible exception:

> *'Um, I wouldn't say that there's a huge difference between the, if you like, white UK clients' perception of how they're treated and whether they get justice at the end of the day and minority clients really. With the qualification and the comments I've already made about perhaps Afro-Caribbean [clients] who tend to be a little more on the look out for racism in the system'*.

Equally, whether a parent believed he/she had done anything wrong, and certain barriers to painful information were likely to have an impact on whether a parent felt heard and understood by courts. Whilst these issues were felt to be over-arching themes for most parents, issues of cultural context could be interwoven into each:

> *'Regardless of background parents never in care proceedings feel they're heard and understood because they'll have a reason for doing what they've done and they never perceive what they've done as being wrong – the range of complaints we get from Asian parents is almost the same as we'd get from other clients'*.
>
> *'… sometimes they have actually been heard and understood, but it's their perception … it's this business of not hearing …'.*
>
> *'…And it's this belief in some cases that our children 'belong' to us, that they are our property, and how dare anybody take them… And also it's, you know, how will we face the rest of our community … But I also think we do not want to understand… And of course that actually applies to the [white British] clients as well… We don't want to face our own demons do we? We don't want to face the actual reality of what we've done to our children in the context of the society in which we live. It's to have to come to terms with accepting that the way we've handled the children is wrong*'.

One solicitor added that in practice solicitors know very little about what it takes for a parent from another culture to consider they have been heard and understood, he argued:

> *'…. I don't think that the court system is intentionally prejudiced against them. I've never yet seen anything where I've thought gosh that was racist; you know that was overtly unpleasantly racist. Where I suspect it may, in fairness, may creep in, is simply naivety on the part of the judge and lawyers dealing with the case. Putting it crudely – we don't know what we don't know*'.

2.6 Do judges/magistrates sometimes fail to fully understand issues concerning some minority ethnic families?

As indicated above, there were concerns that magistrates and judges did sometimes fail to fully understand certain issues and their impact on minority ethnic families. Two solicitors felt this could be due to the quality of representation, for example:

> *' I suspect that probably they do I don't think that if they're aware of an issue – as I said a few moments ago – [its] not knowing what you don't know. I suppose a difficulty for me, as a white male, is that quite often I*

probably won't know the same things. So it may be that the judge has missed something and I haven't picked up on it, because I also have missed it'.

'… I think so; I think so. My view is that … well obviously it depends upon the representation they have. Sometimes what I think is the solicitors make a huge mistake … for example … I'm a firm believer that if you instruct one counsel you stick with the same counsel throughout. What really does them injustice is when you have different counsel attending at different hearings and especially at the final hearing you could have a beautiful case you've been preparing for all the directions you've made and everything's okay, representation has been perfect - you come to the last day, final hearing, a new barrister comes. That is actually very upsetting… And this is where there's a problem… … [parents] walk out thinking they've not been heard… [And] it's been very difficult to try and contain the client afterwards; it's been very difficult. Because sometimes the barrister has just not understood the issues … And if the counsel or even the solicitor doesn't understand and appreciate the background … then it just is a problem'.

There was some concern about domestic violence and a failure of courts to understand the interplay of gender and culture, for example:

'I don't think some judges understand what domestic violence can do to women quite frankly … perhaps it's actually magnified with an Asian woman for example who is totally and utterly … controlled by her husband's family …'.

Judges were reported as variable in their knowledge and understanding; some might have an understanding of differences/difficulties, but whether this amounted to empathy for some parents was more difficult to estimate. In one region, solicitors reported there were several Jewish judges who were thought to be *'pretty well up on the major cultures. [But it was] more difficult when you come to the real minority minorities…'.*

When addressing issues of cultural/religious diversity in court some solicitor in all regions reported difficulties with some judges, for example:

'[They] look at you blankly sometimes. Grudgingly they will allow you perhaps to get an expert in a particular area. But, you know, sometimes you feel that you're up against a brick wall, it's not only judges, it's your opponents who don't feel it's relevant'.

Some solicitors in one region felt that magistrates lacked an understanding of diversity and did not have the experience or real opportunities to acquire it:

'They turn up once a fortnight, [and] *most magistrates are from white middle class areas'*.

'They don't get a chance to build up expertise the same'.

2.7 Could family courts improve certain minority ethnic parents' experiences of proceedings?

Almost all solicitors felt that while many judges and magistrates tried hard in this field, judges and magistrates and court services could take several initiatives to improve the experiences of parents from diverse backgrounds.

2.7.1 Engaging directly with parents in court

Solicitors in all regions felt strongly that magistrates and judges should speak directly to parents. Some already do this and some do it exceptionally well, and while it was not suggested practices varied according to the race/ethnic group of a parent, for parents from diverse backgrounds direct engagement may be especially important:

> *'I think different tribunals have a different approach… I mean you can think of judges or magistrates who go to a lot of lengths to talk to the parents directly and explain themselves directly to them… And there are others who hardly notice them on the second row. I think they obviously appreciate being acknowledged, so that's a general point isn't it? But that's a matter of individual sensitivities isn't it? Possible training when they take up this work [but] I've certainly noticed no correlation between a person's background and whether or not a tribunal adopts one approach or the other. I mean I think they're just that person or the other. Yes (Laughter)'.*

> *'Well I'd like to see them talking more directly to the people themselves… an acknowledgement that they're actually there in the room would be nice. I mean some of them are very good and say oh you know "Sit down" or you know "I can see you're distressed, don't worry" or whatever, but there's very little direct acknowledgement of a parent'.*

When asked whether approaches varied between the county court and the family proceedings court, this solicitor said:

> *'I'd say they were equally as bad…But like I say, there are a few district judges who are spot on, on that, but they are very few'*

> *'First, I think that judges and magistrates need to explain more to parents what's going on. Although they hear it from their solicitors I think it carries potency when it comes from the person in authority over the proceedings … secondly, I think that some judges are a little bit dismissive of parents and almost overly sympathetic with Social Services. I saw an interesting example of the opposite of that a couple of days ago and it made a real impact on the parent*'.

All solicitors felt all parents should be acknowledged in court and at the conclusion of hearings the judge/magistrate should explain directly to parents decisions/directions made and the reasons.

2.7.2 Increase understanding of different cultural norms

Respondents argued judicial training should include different cultural 'norms' within families. This should improve awareness of the implications of different belief systems/values on parenting, and how this might influence the behaviour of some parents in court. Solicitors felt there should be a greater willingness on the part of some courts to listen and preparedness to demonstrate an understanding of parents' value systems.

It was also suggested courts should increase their knowledge of religious festivals/calendars, for example checking the dates of Ramadan and Eid before booking hearing dates, for example one solicitor commented:

> *'…I think to be honest with you judges, magistrates, should actually go on courses whereby they are taught. You know where you have the professional development courses where they're taught various disciplines, I think they should go on courses where they ought to be taught about the various minorities, the religions – Islam, Judaism, Sikhism, Hinduism … … not in great depth and detail but at least a basic working knowledge and appreciate … I think that'll be useful. And second, aspects of their culture … I'll give you an example: we were in court and it was the month of Ramadan … I'm not saying that because I'm a Muslim, I'm just saying this is where the understanding of cultural tradition comes … I've been to a case where the judge knows the parties are Muslim and they're fasting and in this case even the lawyers were fasting. (Laughter) … the judge totally ignored the fact that, you know, nobody's drank a sip of water, [while] other judges [have asked] "Are you fasting? - we'll take a short break"' Now if a judge has had that training and understanding he'd stop and say …'.*

2.7.3 Reduce legal jargon and length of statements

Solicitors felt judges should request statements and care plans free from unnecessary jargon and repetition; free of *'hereinafters and theretofores*' and other legal jargon so that parents understand their own statements. Some solicitors thought Directions could also address lengthy care plans: parents are often exhausted by the length and complexity of documentation.

Some terminology used in court (e.g. 'ICO', 'DA' 'listings' 'protocol' etc) is difficult/incomprehensible and excludes most parents. Some solicitors said new procedures under the public law protocol exacerbated the situation:

> *'For example with this protocol, I mean it's quite frankly gobbledegook to these parents sitting there, talking about allocations hearing and case management conferences and this, that and the other, and the core assessment…'.*

2.7.4 The impact of judicial frustration/outbursts in court

Most parents are reported as upset by outbursts/displays of bad temper in court; parents from some backgrounds may be particularly traumatised by displays of anger by judges. Such parents do not understand, or necessarily believe explanations that judges may be angry with advocates (and perhaps on a child or parent's behalf). Judges are often viewed as all-powerful state apparatus and parents fear the judge's bad temper reflects badly on them/their chances of getting their children back, or their choice of solicitor/advocate '*who cannot please the judge'*.

2.7.5 Focus on interpreters in family courts

Solicitors raised almost identical complaints to those of judges and magistrates (Brophy et al 2003a:) regarding the work of some interpreters in court: failures to provide word-for-word interpretation, failure to keep pace with proceedings and many are not considered 'Children Act literate'. Moreover the seating arrangements in higher courts precluded advocates monitoring the work of interpreters. It was suggested judges and magistrates should pay greater attention to interpreters, controlling the speed of proceedings and ensuring everything is interpreted for parents, not simply a summary.

2.7.6 Increases in the number of family judges and improved listings for care centres

In all areas there were criticisms of the lack of court time, the state of court lists, lack of judiciary and insufficient family courts. All parents suffered from these shortcomings, however it was argued some minority ethnic parents, especially those relatively recently arrived in the UK/unfamiliar with the system, find it hard to believe that the system is equally awful for all parents - white as well as black:

> *'Well what I think is really unimaginably difficult from the point of view of all families, but particularly those [minority ethnic parents] in the groups I've talked about… Social Services appear to be able to act instantly from their point of view. They can get an EPO and the child is whipped away that day or the next day. But what they're being told is that the system isn't up to making a decision for about a year. And this is an all powerful system that can do anything it wants and take their child and move them hither and yon…but isn't up to making a decision for the best part of a year or more… how on earth are they supposed to understand that the system is breaking down?'*.

Once in court however the speed of hearings mystified parents and some judges did not take the time to explain things to parents:

> *'Because most of the intercourse in the court is going to go straight over their head. And I don't think enough time is taken because quite frankly the courts don't have the time to explain stuff to them… to give them their due,*

some judges will try very hard to explain. But they literally don't have the time 'cos of the state of the court lists'.

2.7.7 Improve the physical environment of family courtrooms

Many respondents felt improvements to the physical layout of family courtrooms in the higher courts would assist parents. It would also reflect contemporary thinking and demonstrate family proceedings are in practice qualitatively different to criminal proceedings/courts.

In particular it was felt seating arrangements should be inclusive rather than exclusive of parents. The semi-circular arrangement of family proceedings courts was thought infinitely preferable for parents; it also enabled advocates to sit next to their client (and thus easily confer) and to monitor the work of interpreters. It also enabled parents to have a direct line of vision with magistrates (rather than 'over the heads' of other professionals).

2.7.8 Advocates' discussions outside court

Some solicitors acknowledged that the practice of advocates gathering in clusters to chat while waiting to go into court could be disrespectful and unnerving for parents. This was especially so where parents do not speak English, do not understand the system and the 'cab rank culture' and wonder why, when they are there to discuss their children and fight for their return, their solicitor appears '*chummy - even laughing with the opposition'*.

2.7.9 Minority ethnic judges and magistrates

Some solicitors in all regions felt some of the unique experiences of certain minority ethnic parents (of confusion, isolation and not feeling understood) could be exacerbated by an absence of minority ethnic magistrates and judges:

'I mean let's face it; most magistrates' courts are staffed by sort of white people. So if you have an ethnic minority parent they often feel out of place. I think they often feel out of place with people in authority and with institutions of authority because they often feel so alienated from it… Most of the people in the court are white so they often look different to them, they sound different to them, they often wear clothes that are different to them'.

'You are more likely to meet somebody of your own culture across a Magistrates' bench than you are across a circuit judge's bench. We don't have enough black judges, um, any black judges … anybody who looks different to the classic white male/female judge…'.

Solicitors reported the likelihood of appearing before a black or Asian judge or magistrate was said to be poor and none-existent in some courts. In Region B

however solicitors reported there were some Asian magistrates and judges undertaking family work and this was seen as a positive move:

> *'There's a lot of Asian cases … and the fact that we've got Asian magistrates and judges makes it even better…'.*

However the experience and attitude of judges and magistrates was crucial:

> *'It really depends … how much experience each magistrate and judge has… from my experience here magistrates and judges are quite switched on … and I think the key thing is the attitude of the judge'.*

Many solicitors expressed concerns about the narrow background of magistrates and a lack of understanding of the circumstances of many families likely to be involved in care proceedings.

2.8 Key findings - Minority parents likely experiences of attending court

All parents are likely to share similar experiences: most were frightened, anxious often traumatized by attending family courts.

Some differences in experiences may be linked to whether a parent is newly arrived in Britain or second/third/fourth generation Black and Asian British. However as with the exercise of obtaining the parent's story, some of those initial divisions may be limited.

Many minority parents remain highly suspicious of state agencies and that included family courts; many continue to express incredulity that courts should be in any way interested in their parenting.

Where there is no previous experience of state involvement in defining adequate parenting, the concept of assessment is often experienced as completely bizarre by parents from other countries/cultures.

Solicitors argued that for some parents, newly arrived and second/third generation Black and Asian British, notions of pride and family honour were important in understanding parents' experiences of attending court.

Attending court is linked with crime/wrong doing and punishment and thus a source of shame and considerable social damage to some families.

Differences within and between courts

Major differences were cited between likely experiences of attending dedicated family courts compared with combined courts.

Family courts that shared buildings with criminal courts were seen as highly problematic for all parents – but especially difficult for some parents from minority ethnic groups. It was not possible to escape the crime ethos or to ensure a substantively different experience for parents.

Some solicitors also said parents may rightly feel that on occasion magistrates and judges have failed to understand certain cultural contexts and thus misinterpret behaviours.

Some magistrates were said to try very hard to help minority ethnic parents – some were described as excellent. Others however made inappropriate comments or had approaches to parents that gave cause for concern to solicitors and, by report, parents.

Experiences in care centres were on the whole better but this could depend on the particular judge. Some judges were regarded as particularly good with minority ethnic parents, others (a minority) were avoided because approaches were said to be racist, insensitive or disrespectful.

On the whole however solicitors reported good judges were generally good/excellent with most parents, judges with problematic attitudes could be dismissive and disrespectful of all parents regardless of ethnic group.

A fair and just hearing?

A small number of solicitors reported parents in all groups who think they have been treated unfairly by the judiciary and the local authority.

Overall however most solicitors felt minority ethnic parents probably did get a fair and just hearing nevertheless solicitors had substantial concerns about the *process.*

The following issues influenced how the process is experienced by parents from diverse backgrounds and thus whether they felt they had received a fair hearing: the attitude of some judges, whether courts received the full picture so far as cultural contexts were concerned, whether parents used specialist solicitors, and attitude/approach of some experts to diversity.

Impact of conceding the threshold

In all regions solicitors raised concerns about the impact on parents of conceding the threshold criteria. All parents anticipated they would have an opportunity to 'have their say' in court; conceding the threshold thwarted that expectation.

However no solicitor argued that findings of fact had been fundamentally unfair/unjust for minority ethnic parents.

Nevertheless, many felt the system 'left much to be desired'. A better understanding of a parent's background may not change findings of fact but it could mean a better experience and less suffering during the process.

Feeling heard and understood by courts

Some solicitors in all regions were doubtful that minority ethnic parents felt heard and understood by courts: responses to the detail of cultural contexts were likely to make some parents feel they were not understood and were harshly judged.

Issues of outcome and having had an opportunity to 'have one's say' were again thought to influential on whether parents felt heard and understood

Lack of feedback from minority ethnic parents on what it takes for parents from diverse backgrounds to feel heard and understood was highlighted.

Where parents saw children as their property and where parents felt this is supported by cultural/religious mores, it could preclude acceptance of responsibility/culpability for ill-treatment, and thus feelings about whether a parent felt heard and understood.

Do judges/magistrates fail to understand diverse contexts?

Solicitors felt some judges and magistrates do sometimes fail to understand issues/practices for certain minority ethnic parents; sometimes this was put down to naivety and lack of knowledge, sometimes lack of empathy and a desire to understand culturally diverse practices/meanings.

Occasionally solicitors said the failure of courts to understand issues was down to advocates 'not knowing what they don't know'/'failing to pick something up'.

Some judges failed to fully understand the complexities of domestic violence for some mothers of South Asian origin, its impact on their lives and their limited parameters of decision-making.

Some judges (and other parties) are less receptive than others to requests to explore cultural contexts in more detail.

Could family courts improve minority ethnic parents' experiences of attending court?

Almost all respondents felt several initiatives from judges, magistrates, legal advisers and court services could improve the experiences of parents from diverse backgrounds:

- Judges and magistrates could engage directly with parents in court and there should be increased understanding of different cultural norms and contexts to behaviour.
- Judges and magistrates could also improve their focus on the work of interpreters in care proceedings. Real efforts could also be made to reduce legal jargon, outdated terminology and lengthy statements.
- Judges need to be more aware of the impact on parents of angry outbursts in court. If advocates/professionals are to be 'taken to task', this should be done in chambers, not in front of parents.
- Increases the numbers of care judges and improved listing for care centres; improvements in the physical environment of family courtrooms to reflect the philosophy of *family* proceedings.
- Advocates' should reframe from informal/chatty discussions with colleagues outside courtrooms where this is likely to alienate parents
- Improvements in the numbers of judges, magistrates and clerks from minority ethnic communities, and selection of magistrates from a wider socio-economic background along with improved training for magistrates on issues of diversity was felt to important.

Chapter three Core assessments, threshold criteria and achieving change

3.1 Introduction

In the Phase I report we argued that to understand the experiences of minority ethnic families in the child protection arena as a whole, it was necessary to look at practices under Part III of the Act (the duties and work of local authorities) and the work of professionals and courts under Part IV of the Act).

In the Phase I study we examined court records and analysed the attention to diversity in social work statements and in assessments of families by social workers (undertaken under Part III of the Act); we also explored attention to diversity in the process of delineating the facts on which significant harm was to be judged and with regard to potential for change in parents.

We then further explored these issues in interviews with judges and magistrates. That work gave us two perspectives (one from written materials, the other based on views and experiences of judges) regarding assessments and legal thresholds of harm in households where parents/carers may have different values/practices about children and child care to those commonly associated with majority white populations.

In this study we aimed to expand the picture further by seeking the views of solicitors on these issues. We begin below therefore by looking at whether solicitors are generally satisfied with the attention to diversity in core assessments filed in proceedings. We then explore views about the threshold criteria, and finally we examine solicitors' views about the process of trying to assess and achieve changes to parenting where parents come from diverse cultural, religious and linguistic backgrounds.

3.2 Attention to diversity in core assessments

Following the analysis of social work evidence in Phase I we argued that there was some room for improvement in the recorded attention to cultural, religious and linguistic diversity in reports and statements filed with the court. Some reports were very sophisticated in the presentation and analysis of diverse cultural and religious mores, but others were not (Brophy, Jhutti-Johal & Owen 2003a: 229).

Under Part III of the Children Act 1989, with regard to children looked after or whom the local authority proposes to look after, a local authority has a statutory duty in making any decision to give due consideration to the child's religious persuasion, racial origin, cultural and linguistic background.[35] There is no similar *statutory* requirement when providing services for children and families but Guidance[36] has sought to strengthen the focus on this area through several documents[37] aimed at improving the assessment of minority ethnic children in need and their families. At the time of the Phase I fieldwork it was suggested the latest Guidance for social work practice (Framework for the Assessment of Children in Need and their Families (DoH, 2000a) and the accompanying Practice Guidance (Assessing black children in need and their families) (DoH, 2000b: 37)[38] would not have had sufficient time to have any significant impact on practices in the assessment of black and minority ethnic families.[39]

Accepting that Guidance under Volume 2 of the Children Act 1989 (DoH 1991) remains in force, and that local authorities are *expected* to consider issues of diversity from the point of referral, through to core assessment, intervention and planning and review process, some four years after the 'Lilac Book' we asked solicitors whether they had perceived any improvements in the attention to 'diversity' in social work evidence filed with the court.

3.2.1 Improvements

Overall most solicitors had not seen any improvements following the introduction of the new framework for assessments. In regions A and C most solicitors had not seen any improvement, in region B some had noted a slight improvement.

One solicitor said that core assessments could vary enormously despite the fact that workers are supposed to be working from the same guidelines. This solicitor however gave a recent example of what she considered excellent practice:

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[35] Under s 22 (5) (c) (general duty of local authority in relation to children looked after by them).

[36] Guidance is usually issued under section 7 of the Local Authority Social Services Act 1970, which means that 'it must be followed by local authority social services unless there are exceptional circumstances that justify a variation' (DoH, 2000a). Whilst debates about the relative strength and ultimate enforcement of this Direction engage lawyers, we argued in Phase I there is particular value in placing an obligation on the face of the statute.

[37] DoH (1991) The Children Act 1989, Guidance and Regulations, Vol 2, Family Support Day Care and Educational Provision for Young Children; DoH (1988) Protecting Children: A Guide for Social Workers undertaking a Comprehensive Assessment (the 'Orange Book'); DoH (2000a) Framework for the Assessment of Children in Need and their Families (the 'Lilac Book').

[38] This assessment is often referred to as 'the lilac book assessment' (the predecessor being the 'orange book'). Section 2 Practice Guide (Assessing black children in need and their families, pp 37-40) aims to improve the quality of assessments of minority ethnic families.

[39] Although there is some debate at to whether in practice the 'Lilac Book' simply restate approaches outlined in earlier documents.

'… I've got a case where I'm acting for a child who's originally from Latin America, and there really has been some excellent social work practice… the social worker's actually been prepared to do some research about [the country] where this child came from and to actually, you know, say in her statement: [this child] came from [country]… and then actually has - this was the best part of a page - where she talks about religion, culture, the kind of place it is, so giving a really good insight into her background…'.

Overall a majority of solicitors said the problem was not with frameworks but with the resources and skills within local authorities to undertake assessments.

3.2.2 Resource issues and core assessments

A majority of solicitors in two regions felt the assessment process under Part III of the Children Act 1989 was failing parents in all ethnic groups due to lack of resources and inexperienced social workers:

'Well I think [activities] under Part III [of the Act] are currently failing all parents actually for resource related reasons…'.

'I still think they're just paying lip service. But I have to be frank and say it's not just ethnic minority people… I think it's the pressures [on] Social Services'.

'But again you've got a problem with money because there's not enough experienced social workers to actually carry out the assessments… it's just so undervalued, so underpaid, can't do right for doing wrong, and the calibre of social worker now is just so much less than it was when I first started… they cannot attract the same expertise or the level of intelligence than hitherto, because the job's been devalued… they just haven't got the level of expertise that they should have.'

This solicitor continued:

'And that's where the protocol's gone wrong because you cannot possibly expect social workers to carry out in-depth parenting assessments: one, they've got far too much work to do and two, they haven't got the expertise to do them. So you have to keep going to experts… So again a massive injection of money to make social work far more acceptable as a career. …You have to look at the calibre of the person who's actually carrying out the assessment and are they actually up to doing it?'

Solicitors highlighted the variability in core assessments; what mattered were the resources for services and the experience of the practitioner:

'In some cases it doesn't really make any difference whether it's cultural or not, the matters covered by the lilac book will only be as good or in depth or as relevant as the person using it. … Some [assessments] are excellent and some are very very poor, because there's a tick box, some rely too heavily on the tick boxes. What they do is they answer the questions but they don't pull it together at the end. So it isn't really an assessment it's a collection of information'.

Solicitors in region A highlighted a range of factors adding to complexity. For example parents with little/no understanding of the role of the state or welfare/legal frameworks, parents who do not speak English, mothers who live in closed communities with no access to support and no contact/support with their families of origin, parents experiencing pressures from elders and wider community as to how to respond to professionals could all add to the task of social workers. Equally, where parents saw agencies as racist this made the task of achieving 'openness and co-operation' with professionals more complex.

Solicitors said cases that involved one or more of the above features presented family centres with substantial challenges; such families may require targeted services, skilled workers and more time. For example one solicitor argued:

> *'The cases that I do with … ethnic minorities are harder work than maybe [white British] … you know there's a lot more that needs to be organised, for example, getting interpreters, if the local authority hasn't the time or resources to make sure those things are in place then yeah, I'm sure [attention to issues of diversity] really does fall by the wayside'.*

She continued:

> *'… If you're not used to having the state intervening, you know, in your life and you're not provided with an experienced social worker who is able to explain then you run … I think the local authorities certainly run maybe a risk of these families saying "Well we're not going to cooperate at all" … "I think you need more resources to be able to deal with the family from a minority ethnic group than maybe white British", time to explore the cultural [dimensions] … … 'I think the particular problem is that families get very limited resources and limited investigations which means that they have a limited number of meetings with social workers who expect instant engagement and openness…'.*

3.2.3 Socio-economic status within cultural variation

One solicitor of Indian origin emphasised the importance of addressing socio-economic/educational status in understanding variations in parental attitudes/practices. She referred to a case concerning a mother of Bangladeshi origin in an assessment aiming to achieve change:

> *' [She] really cannot for the life of her understand what she's done wrong. Her house was in a terrible state, her son was eight years old and frequently urinating and soiling himself, so the house smelt. The kitchen was in a real state [and] she was cooking food. But there were no toys in the house, and there was absolutely no communication between mother and son…. So during the course of the contact sessions and the parenting assessment she has tried to improve with the help and guidance of the key workers. But the moment they then stood back and let her get on with it, she reverted back to her old way because that's the way she's always been.*'.

3.2.4 Minority ethnic staff

Some solicitors referred to specialist minority ethnic workers within some family centres, some were considered very good - albeit in short supply:

> *'There aren't enough [specialist] schemes, for example [local authority] has got a really good specialist black family scheme… they organise family group conferences and they've got a Nigerian worker…[but] there aren't enough of those schemes because there isn't the money to provide them….*'.

> *' … My personal experience of being in [local authority] doing care work has only been for a year … …[but] I am quite impressed with assessments.'*

She added however

> '*… the service in this local authority is good – but they're totally overworked and my heart goes out to them'*.

3.2.5 Contracting out to independent social workers and using 'locum' staff from overseas

Solicitors in Region C noted an improvement in core assessments where these had been contracted out to independent social workers:

> *'Some local authorities are actually contracting the core assessments out to people to do as individual pieces of work [and this is] very very successfully*'.

But concerns were raised by some solicitors in all areas about the employment of social workers from overseas from South Africa and Zimbabwe regarding to their approach to parents from minority ethnic groups – but also with regard to white British families:

> *I mean there's deterioration in (this area) because there just aren't the resources, it's difficult to get social workers. And that is a problem because a lot of the social workers … have come from Zimbabwe and they often struggle I think with the system as well… a lot of the social workers in are from Zimbabwe, every other case almost ... a lot of the white clients are finding that you know, they can't follow what they're saying and that they don't know what they're doing, if I can speak honestly really … it's caused a lot of resentment, a lot of problems*'.

Several solicitors in the Group B discussion group were especially concerned about this development in their area. Social workers from South Africa working with British Black and Asian families had no understanding about policy and good practice with regard to working with minority ethnic families: '*they're thrown in at the deep end and haven't a clue about minority ethnic groups and some of the comments I've heard…I've just wanted to die'*. Not surprisingly, solicitors reported much anger and resistance from British Black and Asian parents.

3.2.6 Core assessments, diversity and the Public Law Protocol

Although most solicitors felt it was probably too early to assess whether the provision on attention to diversity in the judicial protocol (DCA 2003)[40] had improved the focus on diversity, several solicitors commented on their experiences to date. In region A, one solicitor (1-S7, p19) raised concerns that the requirements of the protocol to speed up proceedings might have a negative impact on social work practices in relation to assessments of minority ethnic parents where extra time, resources and thinking are sometimes necessary.

In region C, the protocol was perceived as having advantages and disadvantages. It was felt the protocol focused the attention of all professionals on the need to address the issue of diversity in cases:

> *'I think [the protocol] makes you think about [cultural issues]. Whether it means you then start looking for issues because there is a racial or cultural, an ethnic element to the case I don't know. It certainly means that when you fill in your case management questionnaire you have to think about that question on it. But whether you then start searching for "oh yes, well we've got an Asian family here, can we think about anything that is relevant?" … Whereas maybe there aren't those issues … but at least it makes you address it'*.

Nevertheless time constraints were seen as an issue in terms of finding the right expert:

> *'...especially in ethnic minority cases. I prefer to go outside the magic 40 weeks to 52 weeks it if means getting somebody who knows my client and is aware of the cultural and ethnic origins, speaks the language … everybody's so geared to the time-tabling, and are loathe to depart from it'*.

And it was felt expectations about filing core assessments according to the protocol[41] were unrealistic because of the lack of experienced social workers to carry out the assessments:

> *'… because the job's been devalued… they just haven't got the level of expertise that they should have. And that's where the protocol's gone wrong because you cannot possibly expect social workers to carry out in-depth parenting assessments: first, they've got far too much work to do and second, they haven't got the expertise to do them. So you have to keep going to experts… So again a massive injection of money is needed to make social work far more acceptable as a career'*.

[40] See Introduction for the stages at which issues of diversity should be addressed by advocates and courts.
[41] The Protocol specifies that on/before Day 6 part of the actions expected of professionals will include an initial case management checklist that should include a Core Assessment (i.e. core assessment should be filed within six days of the instigation of proceedings (DCA 2003:4, Route Map – The 6 steps).

3.3 The significant harm criteria

3.3.1 Do the criteria offer an appropriate threshold in diverse contexts?

Most solicitors in all areas thought that the significant harm criteria as a threshold for assessing harm/risk to children in different cultural settings was about right – nobody raised serious concerns about the threshold as such.[42]

> *'Not really, [it's about right] It's a bit over worded, it's a bit convoluted, but it's difficult to know how you'd replace it with any other concept. I mean it has to be quite broad really to cover the range of harm that can occur* '.

> *'No I think it's quite fair. That's my personal view; I think it's fair. And I think the court has gone to tremendous lengths to ensure that it is fair, the threshold criteria have been thrashed out. And I think that I would say as a general rule, I've never you know looked at it and said well you know this is something which is not relevant and it's not applicable to my client, I think it's a fair criteria…'.*

This solicitor continued:

> *'… It needs to be developed, but that depends upon you know the type of cases and the type of facts that you know sort of um, you know, are going to be going towards… … so I think it needs to develop slowly but surely, but it can only be developed you know based upon what's been brought before the court*'.

Most solicitors felt 'significant harm' is a difficult concept involving a sophisticated exercise, which was difficult to explain to most parents whatever their ethnic group or cultural context.

3.3.2 Debates about threshold

Some solicitors in all regions felt that by the time most cases got to court there were usually sufficient concerns/evidence and ultimately little professional disagreement about whether the threshold criteria had been breached:

> *' … [Local authorities are] all so strapped for cash, especially in (this area) that by the time they actually hit proceedings the situation is so dire that the threshold is bound to be crossed. It's just a wonder the children aren't dead*'.

> '*… Because of the resources of Social Services, because of the lack of manpower, they cannot do or hope to do their job properly. So those cases that could be brought to court and may be in balance are not brought to court at all. And by the time a parent gets to court for the care proceedings at present, they're well past the criteria. So therefore you never really have to put it to the test*'.

[42] Although one solicitor in Group A, while having no great worries about the criteria, said '*sometimes people talk about 'the child' and its this child – his/he particular needs – and that gives space for bringing in cultural dimension.'* (S1-p24)

Equally 'cultural conflicts' were rarely the focus of split hearings. However this did not mean solicitors had no concerns about practices with some families.

3.3.3 Concerns about practice

In explaining and negotiating the threshold criteria to parents, solicitors identified that there were considerable hurdles for practitioners:

> *'What I would see as clear significant harm, because of their culturally different approach they might not see it as significant harm at all. This is where the basic issue lies of the problem for them is to grasp what we mean by significant'.*

> *'Getting a client to understand why considering that their child has been possessed by their ancestor is causing the child emotional harm, and therefore significant harm, is extremely difficult to get across to a client when that is their cultural belief, when everyone in their society believes in possession … It's their belief, it's a bit like saying to you "Well you're emotionally harming your child by believing in Jesus Christ". It's just so difficult'.*

Substantial hurdles were also identified for some parents where there is a distinction between a parent's expectation of the role of the state in family life, and that of the role of the contemporary British State. This distinction is likely to arise but was *not* restricted to parents who are relatively new to Britain. In all circumstances where families come from countries with no infrastructure through which the state expressed views/control over parenting, interventions in parenting prove a difficult stumbling block for some parents.

Concern was expressed for some mothers of South Asian origin where community pressures were said to make it virtually impossible for them to concede the threshold criteria (see below). That situation has substantial consequences for discussion about determining the next step: 'where do we go from here' (see below).

There was some evidence of variation in judges' approaches to certain issues, some of which arose from diverse cultural practices/values. For example, some judges were known to take a 'hard line' on issues such as 'leaving a child home alone' while others did not. Solicitors also suggested there were broader extenuating circumstances that should be taken into account (e.g. where a parent was preoccupied trying to earn money for food).

Despite some concerns about judicial variation, most solicitors also said that in terms of establishing the threshold criteria, cases do not generally 'turn' on issues of cultural conflicts between professionals and minority ethnic parents.

3.3.4 The significance of differing cultural mores to allegations of child maltreatment

Some solicitors were also cautious about the extent to which parents from diverse cultural/religious traditions in fact argued their case on the basis of cultural variation in attitudes/approaches to childcare.

In response to certain allegations – most notably excessive physical punishment - some parents in some groups may argue their values/practice are acceptable in their 'countries/cultures of origin', but equally some did not. For example, one solicitor with considerable experience working with a long standing British Pakistani community said she did not experience parents using 'culture' as a defence/explanation when faced with allegations which included physical punishment/injury.

Another solicitor said that if a parent argued their behaviour towards children was supported by their cultural/religious background that situation was fully investigated with other sources and then again taken up with the parent; she gave an example of a case where a mother had argued her religion justified her style of parenting; the child's guardian arranged to go and meet her Imam to discuss issues. The Imam gave the guardian a leaflet about how children should be treated:

> *'...I think [according to] about 10 points [tenets], you know, "You should be kind to your children" …etc, the guardian tried to put these tenets to the mother, you know, sort of to help the mother in terms of saying "well actually these aren't really your religion are they?" Nevertheless [in terms of practice] we went through the whole process, we looked at [her reasoning and investigated her religious background] and made sure none of [her behaviour] was because of that'.*

3.4 Conceding the threshold by pre-trial reviews

3.4.1 Conceding responsibility

In the Phase I study we identified that in most cases (in all ethnic groups) the threshold criteria were usually agreed by the time cases reached a pre-trial review. We raised this finding with solicitors and several issues concerned them about the processes involved in conceding the threshold criteria. This process was said to be a dilemma for lawyers and a hurdle for all parents; most solicitors argued most parents do not want to concede they have caused their children harm – whatever their ethnic group.

As indicated above, solicitors expressed real concerns for some mothers of South Asian origin and the particular implications this concession may have for them. Many said that

mothers would be ostracised by their families and communities once they conceded the threshold criteria. For example:

> *'Well I…can think of a case where there was a very serious non-accidental injury to a child. There was a finding of facts that it was the mother. The mother never accepted it, … or admitted it …but … she could never admit it in her community because of the effect it would have …her husband, their children, would be ostracised totally if it was believed by the community that she had inflicted this injury'.*

She continued:

> *'That wouldn't necessarily happen in a white British household ……because our community doesn't work like that. Although perhaps we underestimate the effect [or] it's not as obvious perhaps. But I mean actually we're representing [white/British] parents whose children are in care [and] of course you know, you can't have your children with you one day and [gone the next] without your neighbours noticing …there's only so long that you can say they're staying with granny … But [with South Asian families] there's a lot of emphasis sometimes on, you know, what the community will do'.*

Equally a solicitor of Pakistani origin identified cultural contexts when working with some fathers. He argued:

> *'…one of the biggest problems [to conceding the threshold] is pride within the community I've had a client say to me 'I'd rather have the local authority take the child away than for her to have the child' When you have an attitude like …'But I'm not certainly going to take on the blame', you know 'I will stand my corner but I'm not going to allow …' 'I would rather the local authority take the child away' – that's the type of mentality, where again, pride is a very big thing for them, but if you're able to communicate and say 'Well you know it's not in the best interests of your child… you know you can explain to them the consequences … in a case I was dealing with we had this situation where the father said to me "I'd rather have the local authority have the child rather than the mother. She's been responsible, she's a nutter, I'm not going to allow … she's been responsible for the abuse, I'm not going to …" You know when you sit down and you take out all the emotion and you talk to them and say "Okay, well if she's not going to have the child and you allow the child to go, what type of lifestyle have you created? What type of upbringing this child is going to have?"'.*

3.4.2 Threshold as 'punishment'

Solicitors also reported that some minority ethnic parents think they are being punished but do not always understand why:

> *'I think all parents who have their children taken from them see it as a punishment… I think probably Asian women in particular see it more in terms of a punishment than white women because they don't have experience of a Social Services system in the way that we do … And they probably feel that they haven't ever done anything'*.

3.4.3 Inter-party negotiations

However, two solicitors had no real concerns about this trend. One argued that in her experience issues of diversity were addressed both formally and informally during negotiations in the lead-up to an agreed threshold statement.

Another solicitor of Indian origin felt that proceedings were often something of a 'wake-up' call for many of the Bangladeshi and Pakistani parents she represented. Some eventually conceded the threshold on the basis they would do anything to get their children back, but others continued to deny everything – some on the basis they simply do not believe they have done anything wrong. This solicitor reported that where the evidence was increasingly stacked against such parents and they continued to flatly deny all the allegations she advised them that '*their chances of getting anything other than adoption as the outcome were going to be small*'.

Others however felt that the pressure to reach an early agreement about the threshold could exert an unreasonable burden on certain parents who are bewildered at the power of the state and who are disempowered by their lack of language and reading skills.

> *'The pressure is on to do it very early on. And sometimes it's quite simple and sometimes it's not. Sometimes you almost need time to elapse to be able to get answers to different questions … you need to know how they feel about different things. And if language is a difficulty you're not going to be able to deal with that very quickly'.*

Some solicitors also expressed concerns that some minority ethnic parents may have very different reactions to the process and make decisions on concessions for reasons unintended by the legislation:

> *'… often they've got to admit their guilt, as they see it, in order to get their children back. And I'm pretty sure that in a lot of cases that's the only reason they do it. They don't think they're wrong … Which is a terrible situation to be in … I think with, sort of, ethnic minority clients I think it can work both ways. They can think 'Well I haven't done it, I'm not going to admit it', and they've no understanding of the way the system works'.*

This solicitor continued:

> *'Whereas with other clients from an ethnic minority background, they just feel that they're totally misunderstood and they've no idea what's going on… I think some parents feel really angry that people don't understand their culture and their society and it's very important to the issues in the case, and they fight tooth and nail. And then often they're seen as difficult parents … I don't think any two parents deal with the situation the same'*.

3.4.4 The interests of the parent

Solicitors in all regions also discussed making a judgement about what was likely to be the least harmful to their client: going into the witness box or perhaps settling for something which might be slightly milder in terms of the initial allegations, for example:

> *'Yes I do have concerns about [conceding the threshold] but I think most lawyers would. Because you're pushed into a corner really if you're representing parents, and you've got to make a judgement about whether it's going to be more harmful for them - to actually go into a witness box and defend themselves if you like against allegations [or] agreeing to something which might be milder in terms of what the allegations are.'*

This task applies 'cross culturally' but could have an added complexity for some minority ethnic parents, this solicitor continued:

> *But it's always a bit unsatisfactory ……[and that] applies whatever the parent's ethnic group is. And certainly if there's a language difficulty [I'm] concerned about what their understanding is of agreeing to this rather … whatever your language difficulties, being in a court and giving evidence and having somebody make a decision is understandable, … in a sense is common to most cultures, you tell your version and somebody independent makes a decision'*.

3.5 Assessing change in parenting views/practices

3.5.1 Introduction

For most of the judges and magistrates interviewed during Phase I, the 'test' for judging a parent's willingness/capacity for change was the same for all parents and issues were viewed as in all probability 'cross cultural and relevant to all parents. Tests were usually those of 'trial and error' beginning with an expert (clinical) assessment of potential for change followed by a period in a residential/non residential centre with input by social workers on issues of parenting skills and practices.

Most judges and magistrates felt that whatever the cultural background, a parent had to demonstrate willingness and capacity to do and/or see things differently for a child. Overall, judges and magistrates felt that any diverse cultural context was one of a number of factors to be balanced in this exercise. Where it was felt change required a 'change of mind-set' or 'a mental leap' this could be difficult where parents had very fixed views which were perceived (by parents) as deeply embodied in a religious/cultural framework.

However, on the whole other issues such as mental health, a history of substance abuse and chaotic lifestyles were felt to be more influential. Judges said professionals were usually looking for change across a number of indices and notions of cultural diversity and

cultural conflicts between professionals and parents were unlikely to play a significant part in most cases.

3.5.2 Solicitors' views

Many solicitors expressed concerns about assessing potential for change and exercises trying to achieve changes in certain parents from some minority ethnic groups.

Concerns focused on a range of issues including the difficulties of getting experts with expertise in working 'cross-culturally' with attention to socio-economic/educational backgrounds and the skills necessary to 'engage' parents in the need for change. Some solicitors also expressed concerns about whether some parents really ever understood what was required of them.

3.5.3 Instructing the most appropriate expert

The expertise, experience and knowledge of the person undertaking potentially cross-cultural assessments was seen as central:

> '*It depends so much on a big noisy fuss about getting a decent expert in my case. … What I worry more about are the local authority assessments conducted by individual social workers or conducted by local authority resources, family centres and the like'*.

3.5.4 'Engagement' before change

Some solicitors discussed the need for professionals to 'engage' with parents before embarking on assessing whether a parent has the potential to undergo work aimed at changing some aspects of their parenting, because:

> *'…Before looking at potential for change it is important to look at engagement with professionals, which is [crucial]…and from which change follows. Because somebody has to tell you why you need to change before you can do any changing'.*

This solicitor continued highlighting the difficulties of knowing what aspects of cultural diversity had been considered:

> *'…You can get something into [the letter of instruction], but what you get at the end of a three month wait is a paragraph saying "we have thought very carefully about cultural issues and we don't think they have an impact". So you sort of wonder what you've been waiting for all this time*…'.

Solicitors in other regions were cautious about placing too much emphasis on cultural variations in the face of allegations, for example:

> *'And to explain it by saying "Well mum doesn't understand the concept of sexual abuse … she still believes it's an evil spirit" – that doesn't actually protect the child*".

'… Now whether there are any extra issues that come into play in terms of race and culture I think remains a matter for each individual case … I think there is a danger of making too much allowance for cultural issues and making it too much of a focus'.

3.5.5 Changing parenting, changing 'ways of being'

Solicitors in all areas identified difficulties with certain parents when the change involves not simply practical aspects of care but a shift in values/belief systems. Some solicitors reported that for some parents change is almost inconceivable; they also highlighted the complexities involved in measuring capacity/willingness to change where parents come from diverse belief systems. For example one solicitor reported on a case where:

'The emotional abuse was that her parents were accusing her of witchcraft [being possessed by her grandfather's spirit] … In order for these parents to accept that they have caused this child emotional harm and therefore move on they had to disregard this belief system. This belief system was integral to their life, and it would be impossible to do that. So they were in a no win situation'.

She continued:

'I think sometimes you can change if … the issues are straightforward such as alcohol and drug abuse … perhaps you can deal with some of the issues … but if the issues are your whole belief system – how do you change that? I suppose a clever client would say, "I understand that, I accept it … let's move on". But then you'd have to be a clever client who's just colluding with the system'.

A further solicitor highlighted the 'cultural context' of notions of emotional warmth and stimulation:

I have a client with mental health problems and she's recently started taking her medication…and I expected this miracle whereby…but I still can't get her to understand why people say that she does to contact and she just sits there and lovingly looks at her children, its not acceptable…She sits there like a granny and watches them. And it probably gives her enormous pleasure to sit and watch her child. And you know I'm trying to explain to her why they need you to get down on the floor and lay with them an stuff like that and she just…you know…'

Solicitor, Group A

A further solicitor felt there was a lack of awareness of the lifestyles and pressures on some mothers particularly some mothers of South Asian origin**:**

'They aren't free to go hither and yon alone … Women from ethnic minorities in my experience find it much harder to admit things like domestic violence … They can't just up and go to some parenting classes twice a week in the evening, it's just not on, not allowed'.

Some solicitors working in communities with second/third generation Asian British parents reported that grandparents could present the biggest obstacle to achieving change with young parents. In those circumstances a small number of solicitors tried (some insisted on) meeting grandparents to discuss issues.

One solicitor of Pakistani origin argued that certain things are changing in communities: 'culture' is not static. He argued much depended on the people undertaking the assessment; with the right centre and the right workers, on the whole assessments took account of cultural contexts, at least '*its adequate …it deals with the issues*'. However, parents did not always understand what was required of them, thus he argued the skills of their solicitor were crucial in explaining the consequence for the child if the assessment failed and in addressing issues of pride within the community. He felt these issues had to be addressed 'head-on' by solicitors.

3.5.6 'Talking' therapy

A small number of solicitors raised concerns about what might be called 'underscoring frameworks' in assessments and argued professionals needed to understand the limitations of a talking/counselling approach for some parents. This was often a culturally (and class) specific approach that might be limited/inappropriate/meaningless for certain parents. As one solicitor argued:

> *'I've been thinking about this and I think that some of the solutions that we suggest are very alien to [some] people from other cultures: the talking and counselling style where you know, people are from different cultures/ religions. Different ethnic groups have different processes to get through the difficulties in their lives – they don't go to a psychotherapist, [that's] a very western and quite recent model and one that not everyone thinks is perfect, so I have [some concerns] yes…I've got to say that people from white ethnic backgrounds have that problem as well it's a very difficult thing for people to address…*'.

3.5.7 Family Centre Assessments: culturally informed workers

While most solicitors expressed concerns about assessments of minority ethnic parents, a small number of solicitors identified specialist/targeted services where parents were assigned to programmes where staff were informed and experienced in working with parents from other cultures:

> *'The services [here] are tailored to a specific client… for example we have a service that will only take a client who accepts they need to change. And I can remember with this particular Bangladeshi client … I wanted her to attend 'cos I thought their service was really tailor made for what she needed to improve in. But the fact that she didn't acknowledge what she was doing was wrong made the local authority feel that that service was not appropriate for her'.*

3.5.8 Lost in translation: cultural nuances and clinical assessments

Some solicitors also reported a need to develop a better understanding of the interplay of culture, language and the use of interpreters in assessments by psychologists and psychiatrists. First, it is necessary to understand the cultural pressures experienced by some minority ethnic mothers and thus be aware of possible responses to authority figures (such as experts), second to consider what might get lost in translation:

> *'I think the difficulty [is] if a woman perhaps is not used to talking about private and sensitive things to anybody, to then try and talk about that to a stranger, you know, however expert they might be…I think there would be some dangers in an assessment of somebody who couldn't communicate [in this way] because it's not what they're used to doing [but nevertheless] trying to provide answers to an authority figure which may get lost in translation'*.

3.5.9 Socio-economic/educational contexts in which change is attempted

One solicitor of Indian origin was generally satisfied with the assessments of parenting skills of Pakistani and Bangladeshi parents by her local authority, but she reiterates three points. First, it is necessary to understand the socio-economic and educational background of most of her Pakistani and Bangladeshi parents: they were from poor rural backgrounds with limited education. Second, she was critical of parents who had lived in the UK for many years but had not attempted to learn English; this she argued created problems for their children. Third, she was critical of the lack of support within local minority communities for Pakistani and Bangladeshi mothers subject to domestic violence.

3.6 Key findings - Core assessments, the threshold criteria and achieving changes to parenting

Core assessments and attention to diversity

Overall most solicitors had not seen improvements in the focus on diversity in assessments of minority ethnic families following the introduction of a new framework.

Examples of excellent assessments were relatively rare. Concern was expressed about a 'tick box' approach and a lack of analysis.

A majority of solicitors said the problem was not with frameworks but rather a lack of resources and experienced social workers; the assessment process was failing parents in all groups; many solicitors felt social work has become devalued and under-funded.

Solicitors indicated that where there are compounding issues, minority ethnic families present challenges to thinking/practice for all professionals; they may require

specialist/targeted services and more real social work time. Both these resources are in very short supply.

Contracting in/out assessments

Concerns were expressed about insensitive and racist attitudes to British Black and Asian parents from social workers recruited from overseas.

However indications are that where assessments have been contracted out to experienced independent social workers these have been very successful.

Impact of the public law protocol

Some concern was expressed about the impact of the public law protocol on core assessments: the protocol failed to address the fact that given other pressures many social workers do not have the time/expertise to undertake the detailed in-depth parenting assessments required.

The significant harm criteria

Most solicitors thought the 'significant harm' criteria as a threshold for harm/risk to children in different cultural contexts was about right. Solicitors said cases do not usually 'turn' on culture.

By the time many cases come to court there was often little doubt about whether the threshold had been breached.

Trends in conceding the threshold by pre-trial review

Several issues concerned solicitors about the process involved in conceding the threshold criteria. This process was a dilemma for lawyers and a hurdle for all parents: most parents do not want to concede they have caused their children harm – whatever their ethnic group.

Solicitors expressed concern about the consequences of this concession for some mothers of South Asian origin: they can be ostracised by their families/communities in Britain and elsewhere. For mothers who have lived in largely closed communities, who speak little or no English, have limited or no formal education and no other support, the prospect of conceding was described as almost unimaginable.

Dealing with issues of honour and pride with fathers of South Asian origin was reported as complex, demanding knowledge, understanding and skills.

Nevertheless proceedings can operate as a ‘wake-up call’ for some minority ethnic families as to the serious nature of social workers’ concerns and of the need to co-operate with professionals.

Increased pressure to reach early agreement on a threshold statement can place unacceptable burdens on some minority ethnic parents still struggling to understand what is happening to their children.

Some parents may well agree the threshold – even thought they do not agree they have done anything wrong – as a way of hopefully getting their children returned. Others are angry because they consider their culture has not been understood, thus they fight ‘tooth and nail to the bitter end’.

Assessments of change

Many solicitors expressed concerns about assessing potential for change and exercises aiming to achieve change in certain parents from diverse cultural/religious contexts.

Solicitors raised concerns about the difficulties of getting experts with expertise and experience of working ‘cross-culturally’, and the skills necessary to ‘engage’ parents in the need for change.

A small number of solicitors were cautious about placing too much emphasis on cultural variation in the face of allegations, and in the exercise of attempting change.

Changing parenting, changing ‘ways of being/ways of seeing’

Solicitors in all areas identified difficulties for parents when the change required was not limited to parenting skills but rather required a shift – often a fundamental shift – in values/belief systems. For some parents this could effectively place them in a ‘no win’ situation.

Some solicitors from minority ethnic communities also highlighted the changing nature of ‘culture’ and communities with regard to children and young people.

Some solicitors highlighted the need for a better understanding of the interplay of culture, language and the use of interpreters in assessments by psychologists and psychiatrists.

Chapter four Further reflections on racism and diversity

4.1 Introduction

In Phase I we concluded by discussing the need for transparency in the treatment of diverse cultural, religious and linguistic backgrounds and for an awareness of the shifting agenda of racism. We recognise there is a delicate balance to be struck between useful and important information, and a concern that parents from diverse backgrounds should not feel singled out *because* of that background. We argued for transparency at key stages and in key documents and we suggested a format (in terms of family profiles, see Appendix V, Brophy et al 2003a) and a framework for the treatment of issues under the headings of descriptive and substantive information (see Chapter 2, section G, Brophy et al 2003a).

That framework and the underscoring theoretical perspective (Brophy, in preparation) also informed the construction of this, Phase II, study. As chapters one to three above demonstrate, we broke down the issues and task of solicitors into key stages and documents. We then addressed how issues of diversity and racism might interject into thinking and practices during the process of translating/mediating the issues and concerns of parents into the language and discourses of 'law'.

Nevertheless it would be naïve to think that we have captured all the views that practitioners might have in this field or that they would necessarily be forthcoming on issues in the absence of direct questions. In conclusion therefore, we asked solicitors whether in addition to the issues and key stages we had explored, they had any further views or concerns this field.

4.2 Further causes for concern

4.2.1 Insensitive or racist behaviours/attitudes

A majority of solicitors (15/24) gave further instances of behaviours/attitudes towards minority ethnic parents that caused some concern. Solicitors thought there were more instances of insensitive/uninformed attitudes than individual or institutional racism.[43] Further examples of what solicitors saw as overt racism were relatively rare. In one region, a solicitor reported incidents that caused her concern for example, in one case counsel made some unpleasant comments about gypsy families; in another a judge had muttering about the cloth that a Rastafarian client had wrapped around his locks: '*which made life rather difficult*…'. And in further case, a local authority's approach to a vulnerable woman of

[43] At this point the definitions following from examples are those posed by the solicitors.

South Asian origin who had been raped by a member of her extended family also concerned this solicitor

> '*What I considered to be racist about the local authority's approach to that case was that they wanted to get her away from her family - they saw her family and her culture as the root of all her problems'*.

A further solicitor in this region reiterated concerns about judicial variation in a county court:

> *'… I think there's a lot of variation…it's just different personalities, different judges…I mean there are some judges we avoid if we're acting for minority ethnic parents quite frankly because they're racist. I mean some judges will – and again this can apply right across the board – they can be dismissive, disrespectful. [But] I mean 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 …'.*

Another raised concern about a social worker:

> *'…In a case that I was concerned in [a local authority] I can't remember [quite] what the social worker said, but I can remember an intake of breath… the social worker was a white South African and therefore perhaps her racism was more obvious. You know she was newly in this country and … … I think it was something [along the lines] "Oh well they're all Asian" - as opposed to Pakistani or Bangladeshi, [it was]: "Oh, you know, does it matter 'cos, you know, they're all Asian?" Well it did matter…'*.

In region B three solicitors raised concerns, for example one recalled comments made by a court clerk:

> *'I've had court clerks say things like you know "Well it might not be common from where they come from but you'd have thought they could have had a bath now they're here". Um …so for sure, yeah … … yeah. You know I suppose expecting …the parent not to understand [their comment]. I mean they could have just said "My goodness, you smell" or something, and that wouldn't necessarily (laughter) be racist would it? It would be unpleasant and insensitive but to say … you know to link it [to where they come from]; that's completely unnecessary'.*

In region C examples of individual racism were rare, one solicitor reported:

> *'There is institutional, rather than direct one-to-one, racism: I think these days we've got past the idea of racism as somebody calling somebody else 'Black', that's easy to understand. I think what's more subtle or difficult is the institutional racism or the inadvertent racist attitudes that people will swear blind they're not racist, it's the subliminal messages that are being given, and comments about people's dress, "They are all like that", which in itself isn't racist but it's more subtle…'.*

However most solicitors could not recall examples of individual racism:

> *'I'm glad that I'm struggling to try and think of anything 'cos I don't think that within the legal system racism is an institutional problem…. I think possibly within solicitors' offices it is… certainly within the police force it is. I don't think it is in Social Services…'.*

> *'…I must say, generally speaking the judges who do care cases, they're specialist judges, they are pretty well all of them good. Some could be more sensitive than others. I can think of one or two on a bad day who behave badly …[but] the days of racist judges, openly racist judges, have gone. I could tell you loads of tales about openly racist judges from 20 years ago'*.

4.2.2 Insensitive or thoughtless attitudes/behaviours

Most of the concerns and examples by solicitors ranged from what they felt were insensitive or thoughtless comments to those based on ignorance, which could lead to stereotyping. For example, one solicitor in region A said:

> *'… There are certain people doing the rounds in the family courts who have a very bad attitude…. Some of them they have a very bad attitude towards any parent in care proceedings… lawyers and judges… I mean sometimes it's as simple as just not being courteous I suppose. [But] also not understanding that...people might have different reasons other than being a rubbish parent not for doing something that the local authority usually are expecting them to do'*.

In region B, a solicitor working in a predominantly Pakistani area highlighted how anxieties suffered by many parents can be exacerbated when a parent is faced with a completely foreign environment and an insensitive judge:

> *'I've seen … I'm not sure racist, but I've certainly seen judges being extremely upset with some parents… I'll give you [an example] I acted for a [parent] I have to say he smelt like a chimney… secondly, he was very fidget… some clients are extremely fidgety [and] he is one of these people who is a chain smoker [who] becomes very fidgety if he's not [smoking]. Now, suddenly he's in an environment, it's all a foreign environment, it's a hostile environment… … he's becoming extremely fidgety. He doesn't know how to sit down; he doesn't know how to relax. Now the judge finds that extremely rude; the judge is used to somebody sitting down, you know calmly and quietly. But that's not the way this [man] operates. … I have to be honest, I haven't come across any, you know, direct racism in that respect but I have witnessed … levels of insensitivity to parents yes…*'.

When asked if he had experienced any personal racism, this solicitor said:

> *'Well I was going to go on to that question. You know when I first … started in the legal profession… it was a very racist profession, you don't know. But you know what? Touch wood, I've been to the best law firms… I never experienced [any] racism. I think people realise if you're good, if your abilities are good it's not a problem… And this is what I advocate myself that you know it's based upon ability rather than who you are.*'

A further solicitor (of Indian origin) working in an area with a population of families of Pakistani and Bangladeshi origins and with a history of race riots, talked extensively about what she saw as the real complexities in this field. With regard to whether she had observed anything she considered to be racist or insensitive towards a parent she said:

> *. '… I am aware that it's out there, but I haven't had any personal experience of it. I think it might have something to do with the fact that I'm an Asian myself and maybe they're going to be sensitive. Because I would not stay quiet if I perceived there'd be anything wrong.'*

Equally, she had not experienced any racism herself in the family justice system. With regard to culturally sensitive social work practices in her 'patch', she was also positive:

> '*Everyone is professional. I'm never unhappy with the social workers. I always think they do a good job….'*

When asked about any stereotyping of minority ethnic parents, this solicitor returned to socio-economic issues and generalisations:

> *'Yeah but you see when we say stereotype, I'm guilty of it more than anyone, I always think. Because the only contact I have with this group … it's so difficult to say because … the ethnic group that obviously are involved with the care proceedings are not the ethnic group that I would obviously know on a social level (Laughter) Do you see what I mean? So it's difficult to …*'.

A further solicitor said:

> *'Um, I've never seen, so far fortunately, overt racism. What I have seen I suppose is a more naïve form of racism where people make generalisations based on the person's ethnic origin. Or simply show a lack of awareness that there may be cultural issues going on…[for example] 'em, … [a client] described an experience of two social workers coming round to the house and discussing with her, her life experiences and making what I suspect were well intentioned comments about Afro-Caribbean people, or people of Afro-Caribbean descent, which I thought … were actually quite racist…Not perhaps intentional or overt racism, but that danger of making generalisations about a whole ethnic group…'.*

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In region C, almost all solicitors expressed some concerns about insensitive/inappropriate comments or attitudes, for example:

> *'Yeah, insensitive, wouldn't go as far as racist. Definitely… I would think lack of empathy, which would then become insensitive. But I wouldn't say racist. Unless that is racist'.*

> *'Nobody's going to actually say something which is clearly a racist … to a client because they know it's inappropriate. But it's the indirect comments that they make which show, you know, their own ignorance. They're the ones that you tend to get such as "What's your Christian name?" you know, which a client…could find offensive…. It's the covert things that I think tend to get to people'.*

One solicitor recalled the difficulties of confronting a colleague:

> *'… I thought it was just his manner … he didn't think what he was doing. And because it had been the second client he'd made feel uncomfortable I just asked him to stop making remarks. I think he threatened to sue me for slander - which I thought was a bit over the top. I just said, "If I can't say that what you're saying - [which] you just think is a joke - but is upsetting somebody, the client isn't going to say it". So I felt it was important to have it said… it was sarcastic remarks and throwaway glances and the client felt that it was directed at them and felt very insulted… It was insensitivity, yes. I don't think he saw it as anything more than that'.*

Some solicitors in this region were critical of the approach of certain judges and magistrates for insensitive/unhelpful/ill-informed remarks. However, it was felt that these judges and magistrates were probably insensitive to all parents:

> *'I don't find it just confined to ethnic minorities at all. There's some judges who are totally insensitive, there's some judges who are absolutely excellent. But I think the constraints of time don't make it possible for the situation to be much better. Except that some people should learn to close their mouths and not come out with daft things. You know, which inflame the situation and make it even worse for people, when it's already bad enough'.*

A small number of solicitors also referred to clients from minority ethnic groups as 'the ethnics', 'Asian ethnics', comparing with 'my normal clients' (meaning majority white British). Equally, some solicitors including solicitors from minority ethnic groups discussed the difficulties of recurrent problems experienced with parents from particular groups. For example:

> *'I find the Bengalis difficult … now this is the most dreadful thing, and it's so prejudicial … I think they're more likely in my experience to cover their tracks with a load of deceit'.*

4.3 Solicitors' initiatives in exploring prejudice/racism

One solicitor in the group sessions highlighted the need for solicitors to be very aware of their own anti-discrimination practices. A number of solicitors highlighted the need for parents' solicitors to be aware of less conspicuous/obvious ways in which prejudice might arise – whether or not it might be experienced as such by parents.

For example, one solicitor voiced concerns about more subtle issues or nuances of behaviour that could be missed. This solicitor said it was quite rare for a parent to argue *'… I think I've been treated in a subtly different way and allowances haven't been made for these particular aspects of my culture, and therefore I consider that I've been treated in a*

racist fashion'. Rather, it was felt this type of analysis tended to come more from experienced practitioners or experts.

A further solicitor referred to the need to be aware of more covert racism, which a parent may not identify. She gave an example:

> *'…This may be speculation but my view was that [my client] was being sidelined because his [child] looked white not Asian …I'm absolutely certain my client had been discriminated against [i.e. sidelined in placement plans] because his [child] was very pale. …At the time when I first started the conversation with him I didn't know why, I came to the conclusion afterwards. And … you know I had to tell him why I thought it as well. He didn't comment on that…'.*

4.3.1 Raising the 'race ticket' in the family justice system

A small number of solicitors raised concerns about parents who it was felt used the 'race-ticket' in complaints about family courts/professionals. One solicitor felt that some of the general failures of family courts contributed to that position – some black parents simply could not believe the system was equally awful for white parents:

> *'…I think when parents are being accused of using the race ticket my experience is often that black and minority ethnic parents can't believe that white families are also being treated as badly as they are. And I have to say to them "Look it's not just you. I know the system is appalling, but everybody is getting the same deal". And I find it entirely unsurprising that they don't believe it, because why should they. Um, but it is the failure to take into account subtle differences, the failure to unpack professional assumptions which is what I think does the damage*'.

This solicitor again highlighted how outcomes coupled with exasperation can lead to arguments along the lines: *'I haven't got my child back, I'm completely bewildered and frustrated, people are treating me disrespectfully - that must be because of race'*.

A further solicitor said people in the child protection arena are scared about accusations of racism; he also raised concerns about what he called 'reverse racism', and whether there is a danger of 'over emphasising' issues of race and culture. Generally however this solicitor felt people in his area went out of their way to make sure people are treated fairly:

> *'Um, there's an assessment centre in [local authority] where … I've had several parent clients say that there is reverse racism that some of the Afro-Caribbean staff there have favoured the black residents and have been disparaging, aggressive and generally unhelpful towards some of the white residents, even to the extent that one of them called somebody 'white trash' and this sort of thing. So that's … you know. But I've certainly never observed it the other way round, because I think people are just too petrified of it these days. I mean you know the pendulum's swung well and truly I think … … the resentment as I say can come the other way… … certainly in [this area] people generally tend to go out of their way to make*

sure that they're treated quite fairly … you know, people are having to give some attention to it. I think any more, and you'd be in danger of over-egging the pudding really…that's my own view'.

A further solicitor raised the problem of dealing with insensitive/racist behaviour from white parents aimed at Black/Asian professionals – such behaviour he recalled could be extremely insensitive – '*although by and large I think it is insensitivity rather than racist*'.

4.3.2 Invoking 'culture' as an excuse or justification for maltreatment

Two solicitors returned to concerns about the use of 'cultural/religious' mores as an excuse for maltreatment and whether the 'pendulum' had swung too far:

'I think the word 'culture' is used as an excuse to oppress people, especially women. Even though quite often the people who are using that word 'culture' are women themselves.'

This solicitor discussed a case in which a teenage Muslim boy had been hitting his younger sister and justifying it saying it was his 'culture'. The solicitor asked him to demonstrate where in the Qur'an[44] it says that 'you can hit your sister', he continued:

'… It says that women are weaker than men… So that's a reason for men to protect women more, not beat them up. So when people ask me questions about culture I say, it's used as a means of oppressing women in my experience, or kids or, it's used as a tool'.

4.3.3 Minority ethnic parents with mental health problems

Some concern was expressed about parents with serious mental health problems and the complexity of 'unpacking' accusations of racism in this context. Several solicitors had represented parents ultimately detained under the Mental Health Act; three gave examples where they and the Official Solicitor had been accused of racism: *'because we haven't got their children back to them'.*

Some solicitors in the group sessions also raised concerns about crude matching based on skin colour and subcontinent of origin. Examples were given of a tendency in some social services departments to match a 'non-white' parent with a 'non-white' social worker. For example, one respondent reported having a Muslim client from Pakistan who was allocated a Hindu social worker – the mother asked for a change because as she put it '*They're all very snobby and they don't like us'.*

[44] This solicitor lived and practiced in a long established multi-ethnic multi faith community; he had taken measures to ensure his colleagues and practice staff represented that diversity; he was knowledgeable about the religions of the community and for example, kept a copy of the Qur'an on his desk.

4.4 Improvements in approaches to diversity

Despite the concerns highlighted above, most solicitors felt there had been notable improvements in the attitudes of professionals in recent years:

> *'…I think things have improved in the last two to three years definitely. Judges definitely are much more aware and they get a lot of training now about how to deal appropriately with people from all sorts of backgrounds'.*

> *'Well I'd say in the past 5 years you know people have been far more switched on about the necessity to ensure that cultural diversity is you know recognised and there's different norms*'.

4.4.1 Applications for leave to explore cultural contexts

Most solicitors in Region B felt that family courts were usually receptive to requests to explore diverse cultural/religious aspects in more detail. For example:

> *'My feeling is that the courts in general have, in the past few years, become really quite sensitised towards issues of cultural difference and background. Possibly to the extent of looking for a cultural angle where there may really not be one. And despite eyebrows being slightly raised a court will explore it, even if at the end of the day, as was rather to be expected, it turns out to be a complete red herring…'*

This solicitor continued:

> *' But, if it's flagged up, then people tend to say, "Right, well we'd better look at that". I've never come across a case where someone has said, "we're not going to look at that, this is a complete nonsense; this is a complete red herring". If someone wants to explore it they tend to get the latitude in my experience to do so'.*

4.5 Challenges for solicitors

4.5.1 Increased analytical thinking and practice from solicitors

Solicitors expressed concerns that increased attention to diversity by lawyers did not simply result in a 'tick box' approach, for example as a result of the provisions in the Protocol for public law cases.[45] Rather, solicitors wanted to see statements and reports that demonstrated a clear analytical approach to the issues by all professionals.

4.5.2 Providing a 'bridge'

Some work with certain minority ethnic parents effectively involved providing a bridge between the beliefs and cultural traditions of parents and the court. This task is not without tensions, for example:

[45] For example, Item 50 on case management checklist states: 'has consideration been given to the ethnicity, language, religion and culture of the child and other significant persons and are any directions necessary to ensure that evidence about the same is available to the Court? (Protocol for Judicial Case Management in Public Law Children Act Cases (2003) DCA: London).

'I think the single biggest problem I have is feeling that I'm the bridge between their culture and what's going on in court. And sometimes that can get … not necessarily [in] conflict, but get too entangled with what my role is supposed to be, which is taking their instructions and advising them'.

4.5.3 Professionals' Meetings

Some solicitors felt professionals' meetings could provide a forum and source of information about whether/how professionals approached cultural, religious or linguistic diversity in cases. One solicitor gave a recent example:

'… I mean one of the things that happened in this case was right from the start there was a professionals' meeting where the local authority…and [we] all sat down and said 'Look, this is what we've got. We need to find an expert that can deal with this and this and this. How can we …I mean actually the local authority were [saying] "How can we make these parents' lives as easy as possible? Do they want translation? Do they want the letters recorded and translated so that when we send … because they do not understand English?" I know the language issue is just one of the many issues, but I think … I mean, going on my limited experience … that the local authority were well aware of the cultural issues'.

4.5.4 Children with parents from different ethnic, cultural and religious groups

Some solicitors thought there had been a rise in the number of applications concerning children of mixed unions. In some circumstances this can add to the 'jigsaw', presenting solicitors with new issues. For example:

' Where you can get very complicated mixtures of race and culture. I mean I [had] a case concerning a child whose mother was black Afro-Caribbean/White, so she's mixed race, and the father was [a Muslim of South Asian origin]… …there were some very interesting [and] different problems … because of the Asian grandfather's views about the baby and the circumstances under which that family should be involved or not involved…'.

This solicitor continued:

'... [For example] you may have a white parent who doesn't want to deal with the cultural issues. Does that make sense? And therefore decisions that you're trying to make on behalf of a child … I mean they … they may not want to acknowledge the black heritage or Asian or any other heritage for that matter … for their own reasons… it makes your task quite difficult if you're representing either of those parents. Because … … there may be racial issues between the parents that impinge upon issues… …do you see what I mean?'

Some solicitors argued that professionals do not always understand the issues regarding children of mixed unions:

'… you might get, I don't know, a child that's Black Caribbean and white Irish. If they're placing that child with a foster carer within care proceedings they'll place it with [for example] a Ghanaian family. You may as well place the child with a Chinese family…'

This solicitor continued:

> *'… most mixed race people in this society have perhaps been born over here, raised British, perhaps have all the cultural norms of white society. But then part of them is non-white … so they're sort of caught between … the two cultures… sometimes in proceedings I think that they're in a very difficult position because they sort fall outside both camps… in many ways the white middle class professionals dealing with this child will understand to some extent where he's coming from because he's British. But then on the other side there's a huge glaring hole that they won't understand, such as, you know, the other side of the child's background is maybe his African side or his Caribbean side, or his Pakistani side. And it's 'marrying' the two…'*.

4.5.5 Quality control in the representation of parents

Some solicitors felt that there was a need to exert some 'quality control' over advice and representation for minority ethnic parents by ensuring parents instruct solicitors who were specialists in this field of law:

> ***'** …I mean it turns on solicitors being good solicitors in care proceedings… I think parents should all be represented by Children Panel lawyers. Because there are solicitors out there who will miss things'*.

> *'…the problem is that until such time as there's an absolute insistence … and I don't know how they're going to force that … that all parents instruct solicitors who are on the Panel, then you're going to have some minority ethnic parents instructing solicitors of their culture who aren't on the Panel and they think they're okay because they're with friends. But they actually are not getting the proper advice that they would be entitled to'*.

4.5.6 Training solicitors

Several solicitors highlighted a lack of training for solicitors working 'cross culturally' in child protection litigation. For example one solicitor said:

> *'I wish there was a central way of getting reliable information about ethnic minorities that doesn't make you appear to be either racist or completely bloody ignorant'*.

This solicitor continued:

> *'[For example] I didn't realise that most Chinese women didn't take their husband's name on marriage… I wish they'd put a course on for us. You know, you have to do all these CPD courses? I'd love just a basic course on the different religions… … with more people coming to this country with different cultures it would be helpful, you know, to have somewhere to go. I mean you make a lot of contacts on your own, you know, over time, but there doesn't seem to be anywhere to get reliable information, just neutral factual stuff'.*

4.5.7 The child's guardian

One solicitor expressed concern about poor standards of work from inexperienced guardians:

> *'… a couple of the guardians who work with ethnic minorities, their standards were just not high enough. If there'd been a wider range I don't think they'd have been appointed. Or if they take on too much work you'd find that one person never seemed to get to hearings. Or they were late for things or they didn't see people. And they'd just got too much work on. Because they were of ethnic minority they were asked for in more cases – and that's not a good thing'*.

> *'One of my clients felt that the guardian didn't listen to him, and just listened to mum all the time… He didn't feel that she was taking on board what he was saying… in another case where there's been an Asian guardian I think the client [also] felt that. I think they expected that the guardian would be more sympathetic but she wasn't… didn't take into account the background as such [and] was treating them or expecting them to act as if they were white middle class family as opposed to an Asian family'*.

4.5.8 Domestic violence in South Asian households

Of particular concern in some areas was domestic violence in the South Asian households; the focus was not simply on courts' responses but also a lack of community support for mothers. It was argued elders/community leaders should condemn violence rather than appearing to condone it:

> *'We haven't talked at all about the problems which emanate from Asian men's attitude to women… … and I think that needs to be addressed… 'Cos they don't do the Asian community any good at all. Their attitude to women is appalling, to be honest, at times… I suppose if the care proceedings are taken for reasons of domestic violence the community's got to, the extended family's certainly got to accept that the father's wrong … there's a high incidence of domestic violence within Asian families, a lot higher than anybody's prepared to admit'.*

This solicitor continued*:*

> *But what irritates me is that there is not [community condemnation]… it's pretty rare that women get supported by the community… she's more likely to have the Imam come round and say "I know he might have done you wrong but I think you should get back to him". Or a father-in-law will come round and say "You're bringing shame on our family". … I think there are all sorts of problems within the Asian community which people won't address because they think they'll be criticised as being racist… But Asian leaders should be saying, coming out publicly and condemning it'*.

A solicitor of Indian origin in another region also expressed concerns about the failure of communities to address and support women who suffer male violence.

4.5.9 A Black or Asian solicitor

Some minority ethnic solicitors raised questions about the impact of Black and Asian solicitors on parents and courts. A black solicitor thought there were instances where her 'colour' enabled her to be more effective:

> *'I often wonder what perceptions, you know, the background of the solicitors and the lawyers involved, what sort of impact that has on the case and how parents perceive that… 'Cos I know for example a lot of clients …who are say black will often come to me because of my colour. And they feel more at ease with me or they think that I can empathise more or perhaps understand more…'*

She continued:

> *'So I think sometimes there are points which need to be raised which concern a client's ethnic background, I think sometimes as a black practitioner, I'm able to raise them and the court is not able to ridicule me perhaps in the way that they would if I was a white practitioner… I think it's sometimes easier for me to argue … [for] a particular expert who is knowledgeable about [say] Nigerian children…because of the racial issues in this case, than perhaps if you were a white practitioner'*.

Another solicitor of Pakistani origin raised concerns about the response of judges and understandings of particular cultural/religious practices, especially where a judge's body language indicated perplexity:

> *'… Sometimes as a member of the ethnic minority myself, I'm not exactly sure how the judge … will react to a cultural issue. For example … you're explaining on behalf of a client, issues based on culture. And the judge knows very well that you may belong to the same culture. I'm not sure … sometimes you know you talk about cultural or religious issues, you're not sure whether the judge has taken them on board or not. The judge is listening, there's no indication from the bench [of] you know, "I'm understanding, I'm with you on this". And that silence creates, you know, an ambiguity, I'm thinking: "Is the judge understanding what I'm saying?"*

He continued:

> *'… Secondly if the judge actually understands, … you know… there's [also] a question of being embarrassed talking about certain issues which - although you may not agree with… you come from a cultural environment where you know these things happen. I think that … needs to be [addressed]'.*

He elaborated:

> *'I'll give you an example, you're in court and you talk about the cultural background and the judge looks at you like this: [solicitor gazes over his spectacles, frowns]. Now, what is that indicating? Is the judge saying," Well this is weird" - He's frowning, now does he understand the case? Or is he saying, "Well hold on a second, this is weird. You guys do this?" You see this is the body language. It's a very key feature…. And this is what*

we're [seeing] ...and it needs to be [addressed] … I mean - and I tell you - if we can get it right here this would be [important] for minority ethnic clients '.

4.6 Key Messages - Insensitive or racist attitudes or behaviours

A majority of solicitors gave *further*[46] instances of behaviours/attitudes towards minority ethnic parents that caused them concern.

Examples were said to demonstrate insensitive/uninformed attitudes rather than individual or institutional racism; with notable exceptions most could not recall examples of racism.

There was some overlap in what was considered insensitive/thoughtless and what was racist but most thought examples demonstrated insensitivity rather than racism.

References to minority ethnic parents as 'those people', derogatory comments based on where people come from in, and assumptions made about whole cultures/ethnic groups constituted racism for respondents.

In all regions, where some judges were described as insensitive, thoughtless or uninformed, these judges displayed equally problematic attitudes to all parents; it was not reserved for minority ethnic parents.

Lack of empathy could become insensitivity where there was a failure to understand cultural contexts. The degree to which this results from lack of knowledge and that resulting from racism is debatable but for most respondents it was thought to be the former rather than the latter.

Complaints of racism

A small number of solicitors raised concerns about black parents who it was felt used the 'race ticket' in complaints about professionals. One solicitor highlighted that this response arose partly because of problems in the family justice system (listing problems, delays, lack of experts etc). Black parents may think they are being singled and many simply could not believe that 'white families were treated equally badly'.

[46] That is, in addition to those concerns raised in Chapter seven addressing key stages and documents in the process.

Experiences of complete bewilderment, frustration and incredulity at aspects of the system throw parents back on explanations related to themselves: 'it must be me, it must be because I'm black'.

Some solicitors highlighted concerns about addressing accusations of racism from parents who also had severe mental health problems. Several had represented parents detained under the Mental Health Act; three gave examples where they and the Official Solicitor had been accused of racism: *'because we haven't got their children back to them'.*

Improvements in approaches to diversity

Notwithstanding serious concerns highlighted above, most solicitors had observed improvements in the attitudes of professionals in recent years.

Most solicitors in Region B at least, felt courts were usually receptive to requests to explore issues of cultural/religious diversity in more detail. However concerns arose about the impact of timescales imposed under the on the willingness of courts to wait for appropriate experts.

Failure of certain Asian communities to take male violence towards wormen seriously

Solicitors expressed concern about the failure of elders in some South Asian communities to publicly condemn male violence towards women.

Challenges for solicitors

No more tick boxes: solicitors expressed concerns that an increased focus on diversity should not result in yet a further 'tick box' approach.

Analytical thinking: most solicitors wanted to see statements/reports that demonstrated a clear analytical approach to the issues by all professionals.

Providing a bridge: work with some parents involved providing a 'bridge' between the belief systems/cultural traditions of a parent and the work of courts. This task is not without tensions but it is without training.

Professionals' meetings: some solicitors felt these meetings could provide a forum for discussion about whether/how professionals approached cultural, religious or linguistic diversity in cases.

Obtaining appropriate assessment facilities: this was a key issue. Concern was again expressed at a lack of experienced expert witnesses from minority ethnic backgrounds, and about a lack of skills and expertise for working with parents from diverse backgrounds in some family centres.

Mixed unions: solicitors thought there had been increases in applications concerning children of mixed unions. In some circumstances this can add to the 'jigsaw', presenting solicitors with new issues and challenges to thinking. It was felt that to date this area has received little discussion.

Quality control: given compounding issues in many cases concerning minority ethnic parents, many solicitors felt parents should only instruct solicitors from the Children Panel list.

Chapter five The sample cases

5.1 Introduction

This chapter focuses on the care cases in the sample; it is followed in chapters six to nine with the views and experiences of at least one parent/carer from each case. We begin by outlining the profile of sample cases. We then compare this profile with key findings from cases in the national survey (Brophy, Wales and Bates 1999)[47] and from cases in Phase I (Brophy, Jhutti-Johal and Owen 2003a). The aim in part is to explore whether there are indications that cases in this study might vary in any significant way from information we already know about cases more generally in care proceedings.

Sampling procedures for identifying cases and contacting parents/carers are outlined in the Introduction and discussed in Appendix I. Briefly, most cases were identified through court files but a small number were recruited via a 'letter-box' system utilised with solicitors.[48] The sample resulted in a relatively small but highly detailed qualitative study. As the Appendix highlights this has implications for the study and care is necessary in discussing the findings. We explored parents'/carers' views about the relevance of issues of diversity and views about race and racism but the study makes no claims about the treatment of specific minority ethnic groups in proceedings.

5.2 The sample cases

Court files were analysed and information collected from files using broadly the same approach and schedule as that utilised in Phase I to allow for comparisons between data sets for some qualitative work on the content of certain reports filed in proceeding. Cases were analysed according to the specific headings A – E below. We begin therefore by setting out the profile of cases in a series of bullet points, which are then compared with findings from cases in Phase I and the survey data.

Section A - gives a profile of children in cases (describing ethnic group, numbers of children in each case, the orders requested by local authorities and others, and the interim orders sought along with interim placement plans).

[47] As described in the Introduction, this was a national random study of cases containing expert – 16% of which contained cases involving minority ethnic families these cases were then subject to a secondary analysis (Brophy 1999). For some variables employed in Phase I and II of the DCA programme data is not comparable.
[48] See para 1.6 – Introduction.

Section B – describes the profile of parents/carers (describing ethnic group, parental responsibility for the children, whether parents/carers were living together at the start of proceedings and whether they participated in proceedings through filing statements).

Section C - outlines the local authority allegations with regard to the ill treatment of children and allegations/concerns leading to failures of parenting.

Section D - gives the range and volume of expert evidence filed.

Section E – describes the courts hearing cases and details the outcomes for children with regard to final orders and placement plans.

Section A – The profile of children (see Tables 1.1, 1.3, 1.4)

- The sample consisted of 22 children in ten cases
- Ethnic group:
  - African origin: three children (two Nigerian, one Somalian)
  - South Asian origin: 12 children (three Indian, two Pakistani and seven Bangladeshi)
  - One young person of Iranian origin
  - Six children of mixed-heritage.
- Most cases (7/10 – 70%) concerned no more than two children.
- Most children (17/22 – 77%) were subject to an emergency protection orders at the start of care proceedings.
- Almost all children (90%) were on the child protection register at the start of proceedings.

Applications, interim orders and placements (See Tables 1.2; 1.5; 1.6 and 1.7)

- At the start of proceedings cases containing more than one type of application were rare. Most applications in most cases and for most children were for a care order only (18/22 – 81% of children).

- Almost all children (21/22)[49] were subject to an interim care order (most (16/21) were placed with foster carers throughout proceedings; 4/21 were placed with/eventually moved to extended family members during proceedings, one child was moved to another parent under an interim care order).

- At the start of proceedings, the long-term plan for most children (16/21 – 76%) was deferred until after further assessments.

[49] Data missing in one case concerning one child

Summary: profile of children and applications - indications of variation

In terms of the 'legal' profile of the children in this sample, comparisons with Phase I findings and the national survey indicate profiles are broadly similar with one possible exception. The three studies are similar with regard to the numbers of children in cases: in all three studies most cases concerned no more than two children[50]. They are also similar in that most children were on the child protection register at the start of proceedings (i.e. these are 'known' families with serious child protection concerns).[51] However, more children in this study were subject to an emergency order immediately prior to proceedings (77% of children in this study, compared with about 33% in Phase I).[52]

Most applications for most children were for care orders (82%); most children (96%) were subject to an interim care order during proceedings, and most (76%) were placed with foster carers. These findings concur with those identified in cases in Phase I, and the national survey.[53]

Finally, the long-term plan for most children in this sample (16/22 – 72%) was to be deferred until after further assessments: this figure is broadly similar to that found in Phase I study (at 67%).[54]

Section B - Respondents[55] (see Tables 2.1, 2.2, 2.3, 2.4 2.5 2.6)

- The overall sample consisted of 12 interviewees (11 parents/carers and one young person) in 10 cases:
- The ethnic group of the sample:
  - African origin -five parents/carers (originated from Nigeria, Somalia and Morocco)
  - British African Caribbean - one parent
  - British South Asian - four parents/carers (two Indian, one Bangladeshi and one of Pakistani origin)
  - Iranian - one parent/carer and one young person.

[50] In Phase I: 82% in the aggregated black group, 80% in the aggregated South Asian group and 78% in the mixed group (Table 1.3, Brophy et al. 2003a). In the National survey overall, 80% of cases concerned no more than two children (Brophy et al. 1999:20).
[51] In Phase I, overall 73% were on the child protection register (67% in the black group, 65% in the South Asian and 84% in the mixed group). No data on this issue was collected in the national survey.
[52] Data on this issue was not sought in the national survey.
[53] In Phase I overall, 96% of cases contained applications for a single type of order and most cases (86%) the application was for a care order only - Table 1.2, Brophy et al. 2003. In the national survey 92% of cases contained applications for a single type of order and most of these (79%) were for a care order - Table 4.5, Brophy et al. 1999.
[54] See Table 4.3 (67% - 117/175 children) - Brophy et al 2003a.
[55] Other than the child.

- In most *cases* (8/10 – 80%) parents/carers were the only respondents in cases (i.e. there were no applications from extended family members).
- About one third of cases included parents/carers where immigration status was unclear or where they were asylum seekers/refugees.
- About one third of parents were living together at the start of proceedings.
- At the start of proceedings, both parents held parental responsibility in about 40% of cases; in two cases fathers acquired parental responsibility during proceedings, in two cases no one had parental responsibility for the children.
- Most parents/carers filed at least one statement during proceedings.

Summary: respondent profiles - indications of variation

In most cases (80%) parents/carers were the only respondents in proceedings (this compares with 91% of cases in Phase I). Most parents (9/10 mothers/carers and 8/10 fathers/carers) filed at least one statement in proceedings; care is necessary here but that *suggests* a higher trend of participation through the filing of statements, than found in Phase I.[56]

In about one third of cases in this study parents/carers were asylum seekers/refugees, (compared with 17% in Phase I). A third of parents were also living together at the start of proceedings (compared with 13% in Phase I). Also, at the start of proceedings in 50% of cases both parents held parental responsibility for children (compared with 26% in Phase I).

Thus, in terms of parents/carers' profiles there are four areas *suggesting* some variation between this sample and the phase I sample: at the start of proceedings in this study more parents/carers were asylum seekers/refugees, they were also more likely to file statements, more likely to be living together and hold parental responsibility through marriage. However the figures for this type of comparison are small thus care is necessary. Aspects of this profile may have implications for the 'type' of parent who is ultimately willing discuss issues and this must be born in mind when considering their views.

[56] Overall, 68% of mothers and 47% of fathers filed statements but 50% of mothers in the black group, 88% of mothers in the South Asian group and 88% in the mixed group compared with 32% of black fathers, 68% of fathers of South Asian origin and 44% of fathers of African-Caribbean origin (Tables 3.1a/3.2a, Brophy et al 2003a).

Section C – Ill-treatment of children and failures of parenting (See tables 3.1 and 3.2)

- Categories of alleged ill-treatment amounting to significant harm[57]

  Cases based on one or more children in household *' suffering',* or *'likely to suffer' significant harm'*[58] included allegations of:

  - Non accidental injury to one/more child(ren) - 8/10 cases
  - Emotional abuse of one/more child(ren) - 8/10 cases
  - Neglect of one/more child(ren) – 7/10 cases
  - Other issues - 2/10[59]

- Physical ill-treatment of a child was the most common allegation occurring in almost all cases and almost always coupled with allegations of emotional maltreatment.
- Neglect of a child was alleged in over two-thirds of all cases.
- Multiple categories of child ill-treatment

  In all cases, allegations of significant harm of a child by parent(s)/carer(s) included more than one category of maltreatment (i.e. more than one of physical injury, emotional abuse and neglect[60]):

  - In one case allegations cited four of a possible five categories of ill-treatment[61]
  - In five cases, 3/5 categories of ill-treatment were cited
  - In three cases, 2/5 categories were cited

Allegations and concerns leading to failures of parenting

- Mental illness, inability/failure to protect a child from partner, neglect, lack of co-operation with public agencies and parent/carer unable to control a child were cited in at least half of all case.[62]
- Multiple problems leading to failures of parenting

  Almost all applications[63] contained multiple allegations/concerns contributing to failures of parenting:

  - 4/10 cases were based on at least seven separate areas (one case included nine areas – see Table 3.2)
  - 5/10 cases were based on at least four areas

[57] See Table 3.1; for reasons of confidentiality, allegations relating to harm to a child and failures of parenting are presented in composite Tables giving findings for the sample as a whole.
[58] S.31 (2) (a) Children Act, 1989.
[59] On both cases child/young person was deemed 'beyond parental control'.
[60] There were no cases in this sample that included allegations of sexual abuse.
[61] The possible categories being: non-accidental injury, sexual abuse, emotional abuse, neglect and a child/young person being beyond parental control.
[62] Mental health/illness (occurring in 5/10 cases); inability/failure to protect a child from partner (5/10); Neglect (7/10) lack of co-operation with public agencies (6/10); parental unable to control child (5/10); male violence (4/10); other violence (3/10); Chaotic lifestyle (3/10); accommodation problems (2/10); problems at school including discipline/attendance 2/20; learning disability 2/10; alcohol abuse and refusal to accept professional help for this (1/10) – see Table 3.2.
[63] And all applications (9/9) for which we have data (missing data, one case).

Summary: range and types of allegations and indications of variation

What is immediately striking about this sample is that all cases contained multiple allegations both in relation to ill-treatment of children, and with regard to failures of parenting; this concurs with findings from Phase I.[64] Bearing in mind the small numbers for this exercise, more children in this study were subject to physical ill-treatment compared to the Phase I sample (90% compared with 38% in Phase I). Allegations of emotional abuse were also slightly higher in this sample (80% compared with 72% in Phase I), while the number of children subject to neglect was lower (70% compared with 86% in Phase I).

With regard to local authority concerns/allegations resulting in failures of parenting, mental illness, inability to protect a child from a partner, lack of co-operation with agencies, child beyond control, male violence and chaotic lifestyles were the most common allegations. Most of these factors were also fairly common in the Phase I sample but 'inability/unwillingness to protect a child from a partner' was higher in this sample (at 60% compared with 34% in Phase I).[65]

Thus some features of cases in this sample indicate much similarity with the profiles of larger samples of parents likely to be involved in proceedings. However, some of the features (e.g. a *suggested trend* towards higher high levels of physical ill treatment of children) may have implications for the parents/carers who agreed to be interviewed, and this needs to be born in mind when considering the views of the parents in chapters six to nine below.

Section D - Expert Evidence filed in cases (See table 4.1)

- All cases in this sample contained expert evidence and all cases contained more than one type of expert report:
  - 30% cases included paediatric evidence
  - 80% included Family Centre Assessments (residential/non-residential)
  - 50% included child/child and family psychiatric assessments (40% child and parents; 20% child only)
  - 60% included adult psychiatric assessments (60% on mothers; 20% on fathers)
  - 30% included psychological assessments of children
  - 50% included psychological assessments of adults
  - 5 cases included a report outside the above key categories[66]

[64] See Table 4.4 and 4.5, Brophy et al. 2003a.
[65] Table 4.5, Brophy et al 2003a.
[66] Other reports filed were: DNA report, an independent social work assessment, mental health social work report, report from a child psychotherapist, a GP's report, report of a meeting of experts.

Summary: use of expert evidence - indications of variation

All cases in this sample included some expert evidence; this broadly concurs with Phase I data in which 89% of cases contained expert evidence. Across the two samples (Phase I and II), paediatric reports were filed in about one third of cases. This concurs with national survey data suggesting some consistency over time regarding the use of paediatric evidence in care cases.[67]

Child/child and family psychiatric reports remain at similar levels across the two samples (e.g. 50% in this sample, 45% in the Phase I sample). However, more adult psychiatric reports were filed in this sample (60%, compared with 35% in Phase I). The use of Family Centre assessments was also higher in this sample (80%, compared with 34% in Phase I).

More psychological reports were filed in this sample compared with Phase I; reports based on assessments of children only were filed in 30% of cases (compared with 17% in Phase I), reports based on assessments of adults were filed in 50% of cases (compared with 16% in Phase I).

Section E - Courts hearing cases and outcomes (See tables 5.1, 5.2 and 5.3)

Courts

- Most cases started in the family proceedings court (8/10);[68] all were transferred to a county court care centre/High Court.[69]
- Complexity, number of experts and likely length of final hearing were usually the reason for transfer.[70]
- Four cases [71] had one/more issues contested at the final hearing.

Changes/withdrawal of application for a care order (See tables 5.4, 5.5)

- Changes to an initial application were made in 5/10 cases concerning six children.
  - New orders requested were, Section 8 (residence orders) and a Section 8 plus a supervision order (concerning 4 of 5 cases, five children), and a Family Assistance Order (to a birth parent and concerning one child).[72]

[67] There is evidence of increased use of paediatric evidence in cases concerning children of South Asian origin (52% contained paediatric evidence) see Table 6.2, Brophy et al. 2003a.
[68] One case was consolidated with a case already ongoing in the county court.
[69] Information on one case missing; in a further case the final hearing was adjourned beyond the life of the study but it is likely to remain in the county court.
[70] In one cases number of parties was also cited as a factor in complexity.
[71] For which a final outcome is known.
[72] Outcomes for one case (two children) missing, final hearing adjourned beyond the life of the study.

Court orders where applications remained unchanged (See table 5.6)

- Initial applications for a care order remained unchanged for thirteen children;[73] care orders were made for all these children.

Final placement plans for children (See table 5.5 and 5.7)

- For children subject to new orders: three were placed with extended family members, three were placed with a birth parent (5/10 cases, six children).

- For those children where the application remained unchanged, all thirteen children were either to remain with or be found permanent substitute families.

Summary: courts and outcomes - indicators of variation

Almost all cases in this sample (90%) were transferred and completed in the higher courts (compared with 41% of cases in Phase I). With regard to changes to the original application for a care order, more *cases* in this sample were subject to some change (5/10 - 50%, compared with 24% in Phase I)[74]. However, most *children* (13/22 - 59%) remained subject to a care application, and that was the final order of the court. Moreover, the care plan for all these children was to remain in/find a permanent substitute family. For the same category of cases in Phase I (i.e. 76% of the sample children for whom no change was sought), 70% were subject to care orders and most of those (72%) were to be placed/remain in permanent substitute families.

With regard to those children subject to any change in application (27% - 6/22 children), all were subsequently placed with a parent/relatives most under a section 8 (residence) order (one with a supervision order attached). In comparable cases in Phase I, supervision orders accounted for most changes (68%) to original application – section 8 (residence) orders account for a very small number of cases (about 7%).

Thus, while the overall trend in this sample is for care orders there is some *suggestion* of more change/potential for change in the families in this study. That may need to be taken into account in considering the views of parents/carers who were willing to be interviewed in this study.

[73] In one case three children had different fathers; two were the subject of care orders, one child was placed with a father under a section 8 (residence) order.
[74] Although a further 15% of cases were withdrawn – Tables 8.1 and 8.3 Brophy et al 2003a.

5.3 The sample cases: Phase I and Phase II - overall profiles

The general profile given above provides a backdrop to the views of parents in the following chapters. Much caution is needed given the sample size and selection process but some suggested trends are interesting. There is some continuity with Phase I data, but there is some indication of variance. Variations may be important in thinking about the particular parents who agreed to be interviewed. This remains a question to which we return following the presentation of parents' views and experiences.

Overall, it is worth noting that proportionately more children in this study were subject to emergency protection orders prior to proceedings, more parents/carers filed statements, more were asylum seekers/refugees, more parents were living together at the start of proceedings and a higher percentage of both parents held parental responsibility.

With regard to allegations of child maltreatment and failures of parenting, the profile of cases in this and the Phase I study, are remarkably similar: all cases contained multiple allegations on both counts. In other words, cases were complex with multiple allegations in families with multiple problems and vulnerabilities. However, the trend *suggested* in this sample is that proportionately more children were subject to physical ill-treatment compared with the phase I sample (and more cases in this sample also included allegations that a parent had 'failed to protect a child from a partner').

With regard to expert evidence, proportionately more adult psychiatric evidence and family centre assessments were filed in this sample. In addition, more applications were subject to change in this sample compared with Phase I, although the overall trend remained the same for most *children*: most were subject to care orders and most placed in permanent substitute families.

Chapter five - sample cases - tables

Section A

TABLE 1.1

ETHNIC GROUP OF CHILDREN IN CASES		
Ethnic Group	**Cases**	**Children**
	(n)	**(n)**
Black African	2	3
Black Caribbean	0	0
Black Other	0	0
BLACK	2	3
Indian	2	3
Pakistani	1	2
Bangladeshi	1	7
SOUTH ASIAN	4	12
Mixed Parentage[75]	3	6
Other[76]	1	1
TOTAL	10	22

n=10 cases

TABLE 1.2

TYPES OF ORDERS REQUESTED FOR CHILDREN		
Applications	**Cases (n)**	**Children (n)**
Care order only	7	18
Care order plus another order	3	4 [77]
Sub total - applications including a care order	10	22
Discharge of care order	0	0
Supervision order	0	0
TOTAL	10	22

n=10 cases

TABLE 1.3

IS A CHILD IN THIS CASE ON THE CHILD PROTECTION REGISTER (CPR)	
	Cases (n)
No	3
Yes	6
TOTAL	9

n=9 cases (data missing, one case)

[75] The parents of these children are: Irish and Moroccan; British African-Caribbean and white British; mixed (white British/Jamaican) and Nigerian.
[76] The person in this case is Iranian
[77] In three cases fathers made section 8 (residence) applications, in one case where children had different fathers a further father filed an application for contact with one child.

TABLE 1.4

NUMBER OF CHILDREN IN CASES		
	Cases	**Children**
1 child only	4	4
2 children	4	8
3 children	1	3
4 or more children	1	7
TOTAL	10	22

n=10 cases

TABLE 1.5

INTERIM CARE ORDER MADE DURING PROCEEDINGS		
	Cases (n)	**Children (n)**
No	0	0
Yes	9	21
TOTAL	9	21

n=9 cases (data missing, one case)

TABLE 1.6

PLACEMENT OF CHILD DURING INTERIM ORDER		
	Cases (n)	**Children (n)**
With foster carers throughout proceedings	6	16
With foster carers then extended family	2	3
With parents or moved to a parent	1	1
With extended family	1	1
TOTAL	10	21

n=10 cases (data missing, one child)

TABLE 1.7

TYPE OF PLACEMENT PLANNED IF CARE ORDER GRANTED		
	Cases (n)	**Children (n)**
With permanent substitute family	1	2
With parent(s)	1	1
To be decided after further assessment	7	16
Other	1	2 [78]
TOTAL	10	21

n=10 cases (data missing, one child)

[78] Placement with maternal grandmother.

TABLE 2.1

ETHNIC GROUP OF PARENTS/CARERS INTERVIEWED[79]	
Ethnic Group	**(n)**
Black African	5
Black Caribbean	1
Black Other	0
BLACK	6
Indian	2 [80]
Pakistani	1
Bangladeshi	1 [81]
SOUTH ASIAN	4
Mixed Parentage	0
Other	3 [82]
TOTAL	13

n=13

TABLE 2.2

RESPONDENTS IN CASES OTHER THAN THE CHILD		
Birth parents only	**Cases**	**Children**
Mother only	0	0
Father only	1	1
Mother and father jointly represented	3	11
Mother and father separately represented	4	7
Sub total – birth parents only	8	19
Sub total – birth parents plus others	0	0
Sub total - extended family/others only	2 [83]	3
TOTAL	10	22

n=10 cases

[79] Information here is restricted to those parents/carers who agreed to be interviewed. Hence the figures for the mixed group will not correspond with those for the children described in Table 1.1 (i.e. in Table 2.1 allocation to ethnic group was determined by the ethnic group of the particular parent interviewed). This sample also includes one young person interviewed.
[80] One parent interviewed, another observed during solicitor-parent interview.
[81] This parent had an Irish grandmother.
[82] Interviewees are Iranian.
[83] One application began with a birth parent and extended family members as respondents however the birth parent died shortly after the start of care proceedings; in a further case the relationship between the children and the parents/carers was initially unclear; it became apparent that at least one of the children in the household was unrelated to the parent/carers.

TABLE 2.3

PARENTS/CARERS IDENTIFIED AS ASYLUM SEEKERS OR REFUGEES AT START OF PROCEEDINGS	
	Respondents
Yes	4
No	7
TOTAL	11

n=11 parents/carers (missing data, one parent)

TABLE 2.4

PARENTS/CARERS LIVING TOGETHER AT THE START OF PROCEEDINGS	
	Cases
Yes	4
No	4
Mixed	1
TOTAL	9

n=9 cases (missing data, one case)

TABLE 2.5

PARENT HOLDING PARENTAL RESPONSIBILITY (PR) FOR CHILD(REN)	
Parents:	**Cases**
Mother only	1
Father married to mother	4
No one	2
Father acquired PR during proceedings	2
Other	0
TOTAL	9

n=9 cases (missing data, one case)

TABLE 2.6

CASES IN WHICH PARENT(S)/CARERS FILED AT LEAST ONE STATEMENT DURING PROCEEDINGS		
Statements	**Mothers/carers**	**Fathers/carers**
Statements filed	8	9
No statements filed	1	1
TOTAL	9	10

n=9 cases (data missing on mother in one case)

TABLE 3.1

GROUNDS FOR APPLICATION FOR A CARE ORDER [84]	
One/more children in sample **is suffering** ill-treatment by**:**	Cited in Cases (n=10)
a) Non accidental injury	8
b) Sexual abuse	0
c) Emotional abuse	8
d) Neglect	7
e) Other[85]	2
One/more child **is suffering** impairment of:	
a) Physical health	7
b) Mental health	2
c) Development	1
One/more child is **likely to suffer** ill-treatment by:	
a) Non accidental injury	8
b) Sexual abuse	0
c) Emotional abuse	8
d) Neglect	7
One/more child is **likely to suffer** impairment of:	
a) Physical health	7
b) Mental health	5
c) Development	1

n=10 cases

[84] For reasons of confidentiality, in this study categories are given for the sample as a whole rather than for individual cases, the aim in collecting this data was to check whether there were any indications to suggest that the sample cases might differ in any significant way from the data already held regarding allegations of ill-treatment of children in minority ethnic households under Phase I.

[85] Child/young person beyond parental control.

TABLE 3.2

LOCAL AUTHORITY CONCERNS AND ALLEGATIONS RESULTING IN FAILURES OF PARENTING	
	Number of cases in which cited (n=10)
a) Mental illness	5
b) Refusal to accept professional help/support for this	0
c) Drug abuse	1
d) Refusal to accept professional help/support for this	1
e) Crime	1
f) Inappropriate visitors to home	0
g) Inability/failure to protect child from parent's partner	5
h) Lack of co-operation with public agencies including LA	6
i) Accommodation problems	2
j) Problems at school including discipline/attendance	2
k) Parent unable to cope with/control child	5
l) Learning disability	2
m) Male violence	4
n) Other violence	3
o) Neglect	7
p) Alcohol abuse	1
q) Refusal to accept professional help/support for this	1
r) Chaotic lifestyle	3
s) Frequent changes of carer	0
t) Other issues	5
u) Parent/carer/child has been subjected to racial abuse/harassment	0

n=10 cases

TABLE 4.1

TYPES OF EXPERT REPORTS FILED IN CASES	
Type of report	*Cases in which reports filed n (%)*
Paediatric/other medical reports	3 (30) [86]
Family Centre Assessments (parenting skills, residential/non residential)	8 (80)[87]
Psychiatric report on family (child and parent(s)/carers	5 (50)[88]
Adult psychiatric report on parent(s)	6 (60)[89]
Psychological report on child (educational/clinical)	3 (30)
Psychological report on parent(s)	5(50)[90]
Multidisciplinary assessment	1 (10)[91]
Other expert reports filed	5 (50)[92]

n=10 cases

[86] In all cases where paediatric/other medical evidence was filed, more than one such report was filed.
[87] Most of these were based on an assessment of the mother (2/10 were based on fathers).
[88] In one case, a 'prior' report was filed (i.e. a report based on an assessment undertaken during previous proceedings); the court directed the report be filed in the current application.
[89] In some cases several reports were filed; in some instances more than one adult psychiatrist assessed a parent, for example one mother saw two adult psychiatrists during proceedings, this resulted in four reports; in a further case both current and 'prior' psychiatric reports were filed.
[90] More of these were based on fathers than mothers (2/10 on mothers, 4/10 on fathers). Two cases in this group contained 'prior' psychological reports on mothers (see note 41 above) and most cases contained more than one report. Some cases (3/4 where psychological reports were based on fathers) contained several reports, one case contained a 'prior' psychological report on a father and one further case contained an assessment based on a father and a child.
[91] Although this sample is very small the limited number of multidisciplinary assessments undertaken supports the views and concerns of experts themselves – although this type of assessment is seen as a better approach for parents, children and indeed professionals, its availability is in steep decline, experts argue this is due to a shortage of skills/resources (Brophy, Brown, Cohen and Radcliffe 2001).
[92] Other expert reports filed were: a DNA report, an independent social work assessment, a report from a mental health social worker, a report from a consultant child psychotherapist, a report from a GP, and reports based on a meeting of experts.

Section E - Courts and outcomes

TABLE 5.1

COURT IN WHICH CASES STARTED AND COURT MAKING FINAL ORDER				
Court of Application	*Final Order Court*			
	FPC	CC	HC	Total
Magistrates' Family Proceedings Courts (FPC)	0	4	4	8
County Court Care Centre (CC)	0	1	0	1
Family Division of the High Court (HC)	0	0	0	0
Total	0	5	4	9 [93]

n=9 cases (missing data, one case)

TABLE 5.2

CASES TRANSFERRED/CONSOLIDATED		
	Cases	**Children**
No	1	3
Yes	9	19
TOTAL	10	22

n=10 cases

TABLE 5.3

CASES LISTED FOR A CONTESTED FINAL HEARING		
	Cases	**Children**
No	3	5
Yes	4 [94]	13
TOTAL	7	18

n=7 cases (missing data, three cases)

TABLE 5.4

CHANGES TO APPLICATION (CHANGE/WITHDRAWN/DISMISSED)		
	Cases	**Children**
No change to LA applications	4 [95]	13
Changes to LA application	5	6
TOTAL	9	19

n=9 cases (missing data, one case [96])

[93] In one case the final hearing was adjourned beyond the life of the study, it is likely to remain in the county court.
[94] One case was listed for a five day hearing; one case listed for a ten day hearing; in one case the order on the court file indicates the case was dismissed, further exploration indicated the local authority was invited to withdraw its application - which it did - thus the evidence was not in fact heard/tested; in the final case, the threshold was conceded but placement plans were contested by the mother.
[95] In one case the application for one of three children in a family changed.
[96] One case adjourned; at completion of fieldwork this remained an application for a care order.

TABLE 5.5

NEW ORDER REQUESTED		
Order	**Cases**	**Children**
Care Order	0	0
Supervision Order	0	0
Section 8 Order	2	2
Refusal of Contact Order	0	0
Family Assistance Order	1	1
Supervision Order plus Section 8 Order	2	3
Contact Order plus Section 8 Order	0	0
TOTAL	5	6

n=5 cases

TABLE 5.6

FINAL ORDERS – APPLICATION UNCHANGED		
Orders:	**Cases**	**Children**
Care order	4	12
Care order plus other orders	0	0
Sub-total - Care Orders made	4	12
Supervision order plus other orders	0	0
Others	0	0
TOTAL	4	12

n=4 cases

TABLE 5.7

PLACEMENT PLANS FOR CHILDREN SUBJECT TO A CARE ORDER		
Plan:	**Cases**	**Children**
Find/remain with *permanent substitute family*	3 [97]	11
Stay with parent(s) under a care order	0	0
Immediate placement with parent(s)	0	0
Rehabilitation with parent(s) planned	0	0
Other plan	1 [98]	1
TOTAL	4	12

n=4 cases

[97] In one case, two children to remain with foster parent; in a further case, one child to remain with foster carer; in an additional case, seven children placed with long-term foster parents two of which to be placed for adoption.

[98] One young person in secure accommodation eventually to be moved to a 'therapeutic environment'.

Chapter six Parents' views on advice and representation from their solicitor

6.1 Introduction

In this section we explore parents' understandings of proceedings, discussions with solicitors about early childhood and family histories, satisfaction with the content of their statements for courts, and discussions about values in childrearing and family life.

We also explore whether parents have experienced disrespectful, insensitive or racist behaviour by lawyers and finally, whether parents think solicitors could improve services to parents from diverse backgrounds.

6.2 Explanations of 'law' and the legal process in care proceedings

6.2.1 Use of interpreters in interviews with solicitors

A first step to effective communication between parents and professionals is locating a broadly common language and understanding of terms to obtain communality of meaning. For parents whose first language is not English an interpreter who speaks and understands the language in which parents are most comfortable when discussing personal issues/feelings is a beginning.

Nevertheless, as demonstrated in Phase I, professionals in care proceedings (judges, magistrates and legal advisers) have identified problems with access to and the quality of some interpreters.[99] With some notable exceptions, as Chapter one above illustrates, many solicitors endorsed those concerns.

In interviews with parents/carers therefore we asked whether at each key stage in proceedings (e.g. interviews with solicitors, appearances at court, assessments by experts) they had used an interpreter (professional or otherwise) and whether they were satisfied with the service. We began by asking about the use of interpreters during interviews with their solicitor.

[99] There was little obvious knowledge during the Phase I fieldwork of Guidance from the Civil Business Branch Court Service (2003) of (what at the time was) Court Services Headquarters (now HMCS) with regard to circumstances in which the Court Service will provide an interpreter. It is likely that Human Rights issues have brought this to the fore, however relatively few solicitors highlighted this service some twelve months later – perhaps because the Guidance makes it clear that foreign language interpreters will only be provided where the person cannot get public funding. Parents in care proceedings are usually publicly funded.

Three parents reported using an interpreter during interviews with their solicitor. A further parent of Indian origin had engaged a solicitor who spoke the same first language, thus interviews were undertaken in Punjabi.

Two further parents had considerable comprehension problems suggesting that they may have benefited from an interpreter. As argued by some solicitors in Chapter one, for some parents in this field, a 'little English can be a dangerous thing', it can be difficult to judge just how much a parent really understands once proceedings are underway and 'backtrack' is a sensitive area. Equally during some interviews 'reflecting back answers' as a method for checking accurate understanding of responses is a complex and lengthy procedure.

Those parents who used an interpreter in solicitor-client interviews said they tended to use the same interpreter throughout; for the most part they were generally satisfied with the interpreter. What 'satisfied' means in this context – and whether the quality of interpretation would meet criteria applied by an independent assessor with Children Act knowledge - remains questionable.[100] Some parents reported difficulties with (technical) terms and were confused by some processes involved in preparing cases for trial; this was not always tied to whether a parent spoke English as a first language (see below).

6.2.2 Understanding advice and information from solicitors

Most parents reported some problems in understanding the information given to them by their solicitors. Nevertheless they reported solicitors did try hard to convey information, most parents said solicitors were kind, patient and friendly; most felt able to ask solicitors to go over difficult/complex issues.

Repeating explanations however did not always result in increased understanding; most parents said despite efforts by their solicitors they found the process complex, lengthy and the terms used often baffling:

> *'…You know the case was so long and so complicated…so many twists and turns, there is so much to know, terms, after a while I picked up the terms, on the way…'.*
>
> **Parent of Nigerian origin**

> *'…. My solicitor did try you know, they try, …[but] you know, you can never be prepared for this experience, it's not possible…'.*
>
> **Parent of Nigerian origin**

[100] For example, one parent used a family member on more than one occasion.

Two further parents, one of Pakistani and another of Nigerian Origin said they continually had to ask the meaning of terms used by lawyers. Difficulties with terminology were not simply a product of language barriers: one parent, a post-graduate of a UK university, said she continually had to ask for explanations:

> *'I had to ask, I said "what does this mean?" he didn't explain automatically, I kept having to ask, he gave me long-winded replies, eventually I stopped asking 'cos you'd ask him one question and he'd go on for an hour so I tended to keep my views and questions to myself, he was so long winded he went on and on…'.*
>
> **Mother of Pakistani origin**

This mother did however pursue some questions; her solicitor gave her some legal texts to read, she thought from his law course. She said his communication skills were poor but he was well prepared for court attendances.

6.2.3 Preparation for attending family courts

Most parents attended court on several occasions and at various locations (see Table 5.1-courts hearing cases); most parents said their solicitor did explain why they were going and what was likely to happen.[101] Nevertheless, most parents said little could have prepared them for the subsequent experience; strong concerns were expressed about issues for which they felt unprepared:

- Having to hang around courts waiting for a court room/judge
- Pre-court chatting between lawyers from which they felt excluded
- Not being able to speak once in court – and not being spoken to by judges/magistrates
- The speed with which judges disposed of cases once in court
- The anxiety generated by these issues was exacerbated where parents could not read or communicate comfortably in English

In addition to talking about how solicitors did or did not try to prepare parents for the realities of attending court, some parents reported that their social worker and the children's guardian had been very helpful in explaining what was happening and the legal terms used 'on the day'.

[101] Where this did not happen parents acknowledged difficulties they had engendered, for example, late appointment of a solicitor and failure to keep appointments and thus, lack of time prior to a hearing.

6.3 Discussing early childhood and family histories with solicitors

6.3.3 Introduction

It has been suggested that parents from some minority ethnic groups may be resistant to discussing their own childhood, this resistance being underscored by a range of culturally specific values. For example, intense privacy regarding family matters and notions of pride and honour, and shame where things had in any sense 'gone wrong' in their childhood may inhibit discussion. Equally, different cultures/belief systems offer different explanations about the nature of personal/emotional problems and thus, different views about their resolution.

It has also been suggested that in some cultures notions of the 'self' and the relative importance of the individual compared with the centrality of the family and community means that for some people reflections on formative years holds different meanings/'messages'. In essence this debate centres on cultural contexts to notions of the individual (the literature is reviewed in Brophy et al 2003:232-237).

Nevertheless the notion that a parent's childhood may be important in understanding current parenting problems and motivation to change remains a strong feature in working with child abuse. While certain clinicians usually undertake this work (in the context of assessing harm/risk and a 'prognosis' regarding potential for change), indications are that some solicitors explore *some* of this territory with parents to get a broader picture of their client. We therefore explored parents' views about discussing this issue with their solicitor.

6.3.4 Ascertaining family history

Most parents said their solicitor had asked them about their own childhood, few however were clear about why/how it might be relevant for the issues they had to address. Six parents report feelings of discomfort when talking about their own history with their solicitor (see below).

One parent of African origin - although unclear about why the exercise might be relevant - did not object to discussing his own childhood: he did not see it as a problem, 'why should I?' he argued 'I have nothing to hide'. Others however were more reticent.

Some parents however indicated they did not get sufficient 'opportunity' – or 'openings' from solicitors to enable them to have a meaningful discussion of their cultural/religious background and values (see below).

6.3.5 Discussing diverse backgrounds: parents' sense of ease and trust

Six parents (of Indian, Somalian, African-Caribbean and Nigerian origins) reported varying levels of discomfort in discussing their background with their solicitor. They said they could not see why it might be relevant, or they experienced it as intrusive, or they were embarrassed about discussing it.

For example, one parent of Indian origin felt uncomfortable and judged by her solicitor: she felt that he judged her as a 'druggie' but also as a woman who was falling short of expectations of her as an Asian mother, and thus bringing shame and dishonour on her family and community.

A parent of Somalian origin also reported acute embarrassment at having to discuss her own relatively recent history within her extended family: it had been turbulent with a high level of animosity between different factions; it had involved disputes about her, which she had not generated. Disputes involved a range of issues including some culturally specific elements and expectations of her. This mother felt that history reflected badly on her; she was acutely embarrassed at having to explain it to her solicitor at a time when she herself was under intense scrutiny following allegations of harm to her own child.

One further parent of Nigerian origin said he simply could not talk to his solicitor about 'being African'; he said his solicitor had not addressed these issues with him, he in turn felt unable to broach the issue with his solicitor. He was also unhappy with the content of his statement in this regard – it did not talk about his culture (see below). This father said the only information his solicitor and the court had about his culture and background in Africa was contained in a social work statement.

A further parent of Pakistani origin said that she and her solicitor did not discuss much about her background. This mother said her approach to the control and discipline of her children came directly from her background; she said in Pakistan it was acceptable to hit children. However she reported her solicitor said it was not a good idea to put that in her statement.

Both parents of African origin felt their solicitors did not have a good understanding of their lifestyle, culture and value systems. For example one parent reported that his solicitor had asked him why he had not approached social services when he started having problems with an adolescent. This parent said that his solicitor did not understand that in his

community if a parent had problems with a child they went to the Church: *'going to social workers for help is not our way'*. The other parent felt his solicitor had, in effect, by-passed issues pertaining to his cultural background; the father had felt unable to raise them himself and thus doubted his solicitor had really understood him.

Other parents felt their solicitor probably did have an understanding of their background but it did not necessarily inform/appear in their own statements (see below). Some parents felt that any information the court had on their background and cultural/religious mores was limited to that contained in some social work statements.

6.4 Parents' satisfaction with their statements

6.4.1 Introduction

As indicated above, Phase I findings indicate variability in the extent to which minority ethnic parents' statements contained information about their background and values regarding childrearing/family life. For example in the aggregated Black and South Asian groups,[102] statements filed on behalf of black mothers (and particularly mothers of African origins) were more likely to contain some information on diverse values/practices than those from mothers of South Asian origin. However, statements filed on behalf of fathers of South Asian origin were more likely to include this type of information compared with those filed by black fathers.[103]

We therefore explored with parents, (a) whether they were satisfied with the content of their statements – did it tell the judge everything they wanted the court to know? (b) whether they had told their solicitor anything that they thought relevant but which did not go in their statement and (c) whether in addition to addressing allegations, solicitors explored with parents how they generally cared for their children and the values/practices important to them.

[102] That is, combining findings for the Black African, African Caribbean and other Black Groups in one 'Black' category, and combining Indian, Bangladeshi and Pakistani in a category labelled 'South Asian'. The report for the phase I report (Brophy et al 2003a, pages 11-14) details the terms, definitions and the use of aggregated and disaggregated ethnic groups (when/why that happens and when it is not helpful). We have generally followed the same terms and principles in this second phase of research.

[103] Some 71% of cases in which statements were filed by mothers in the aggregated Black group contained information on diverse cultural/religious contexts (and for mothers of African origin the figure was 100%); this compared with 63% of cases involving statements from mothers in the South Asian group. Taking cases in which fathers filed statements, 64% of statements filed by fathers in the aggregated Black group referred to a cultural/religious context, compared with 71% in the aggregated South Asian group (see Tables 3.1c and 3.2c pages 70 and 71, Brophy et al 2003a).

6.4.2 The content of statements

About half of the parents interviewed were satisfied with the content of statements prepared by their solicitor, for example one parent argued:

> *'The solicitor is a [channel] she can only put in the statement what I tell her…I have nothing to hide, we told her all she needed to know.'.*
>
> **Parent of Nigerian origin**

Other parents however expressed varying degrees of criticism about their statements. For example, a mother of Indian origin felt some bits were inaccurate;[104] what concerned her most however was that the statement was not in her own words:

> *'No [I was not happy with it] it didn't sound like me'.*

When asked: 'did you tell your solicitor anything that you felt relevant but which did not go in your statement? After a pause, she said:

> *'No, no - but it was said differently'.*

As to whether a statement said what she wanted/meant it to say, a mother of Pakistani origin said her solicitor had focused too much on her mental health problems and said too little about her background in explaining her views and use of physical punishment, she responded:

> *'Not really, no, if I'm being honest he relied on my mental health state. Which I feel wasn't an issue, I mean I have been to a psychiatric hospital, I have been sectioned…but I don't feel that this was an issue at the time the accusations were made against me. I don't believe I was depressed when I disciplined my child; I disciplined my child because I wanted to. Mentally I was stable. It's just in my…I don't know if it's in my culture or if it's in my religion, we do discipline children by smacking…I know its frowned upon in the general public but in our Asian culture we do smack, I don't believe it had anything to do with my mental state.'.*
>
> **Mother of Pakistani origin**

A parent of African origin made a similar point about limited attention in his statement regarding attitudes towards the physical punishment of children in his culture: this was why he wanted to talk to the judge himself:

> *'When I explained to my solicitor sometimes her write (sic) everything I say, sometimes not – you understand? [So] I need to talk for myself [to the judge] [to explain] sometimes [my solicitor] never ask me questions like that…she never asked me you know…'*
>
> **Father of Moroccan origin**

However when asked whether he thought important questions were missed he responded instantly: '*No no no*…' his solicitor, he said, understood him because of her experience with his local community.

[104] For example this parent disputed what her solicitor had written with regard to where she wanted the child placed if it was not possible for the child to be returned to her care.

A parent of African-Caribbean origin said that while generally satisfied with her statement, her solicitor failed to 'hear' a central message about her:

> *'…The statement was OK - except he kept putting me down as 'African' and I kept saying - I said - "African-Caribbean!"'*
>
> **Mother of African-Caribbean origin**

A parent of African origin said that with one or two amendments the statement was "OK" but it didn't cover his background. When asked what he would have like to have included, he said:

> *'Em, the way I was brought up, how I deal with child, my culture really you know'.*
>
> **Parent of Nigerian origin**

6.5 General approaches to childrearing

In addition to addressing specific allegations about ill-treatment of a child, three parents said that their solicitors had asked them to explain how they cared for their children in general, and the issues/values important to them as a parent (although the detail varied somewhat).[105] Two further parents, one of African-Caribbean and one of Iranian origin said that these issues, although not raised by their solicitors, were contained in social workers' statements.

Other parents said their solicitor did not raise issues of parenting values/practices more generally (i.e. outside of discussing specific allegation about failures of parenting), for example:

> *'No they didn't ask me that question …'em they didn't say about with me, there wasn't much – more stuff with kids…but they didn't ask me, really ask me these sorts of questions…they were all done by social services not my solicitor…*'.
>
> **Mother of Indian origin**

Thus in summary, notions of 'diversity' - potential or real - were dealt with differently in solicitor-parent interviews in this sample. Parents of African origins had quite different experiences. For example, a parent of Nigerian origin was critical of his solicitor because of a lack of discussion about his background and a lack of detail in his statement about what mattered to him with regard to the rearing of his own children. His said his solicitor had not asked him about these issues, and that his statement lacked detail about what he saw as relevant about his background and culture.

[105] If necessary parents were prompted at this point: 'did the solicitor ask you about X or Y'. Most parents recalled being asked about basic care, safety, feeding, showing pleasure/sadness; some solicitors also explored 'emotional warmth' cuddling etc., some explored the impact of age and gender on parenting.

By contrast, another parent of Nigerian origin said his solicitor had asked about his childhood, he understood why that discussion was necessary; he did not experience the discussions as embarrassing/intrusive. His solicitor had asked about the values and practices important to him in rearing his own children; he had not told his solicitor anything he felt relevant which was missing from his statement, he was satisfied with the content of his statement.

A parent of Somalian origin was asked about her own family history, she didn't like discussing it – *'it was embarrassing'*.[106] She was however satisfied with her statement and had not told her solicitor anything about her background that she felt relevant but which did not go into her statements.

With regard to the parents of South Asian origin, one parent of Indian origin was asked about her childhood, she broadly understood why that information was necessary but she was embarrassed about discussing certain issues - some of which were related to expectation of her as a mother in Asian cultures. She was not asked about her general values on childcare. She was not satisfied with her statement, it was not in her own words, A parent of Pakistani origin was not asked about her own childhood in any detail - and she could not see that this might be relevant. She thought some questions put by her solicitor were too intrusive; she was not satisfied with her statement, she had told her solicitor some information pertaining to her values and background that did not appear in the statement. She was however asked for some basic information about how she generally cared for her children and the issues/values important to her.

A parent of Bangladeshi origin was unclear about whether she had been asked about her childhood but she could see why that information might be relevant. She was asked about her general values on childrearing; she did not experience her solicitor's questions as embarrassing or too intrusive, and she was satisfied with her statement. She did however complain that a barrister rather then her solicitor accompanied her to court.

A parent of African-Caribbean origin said most of the information on her childhood came from social work statements although her solicitor had asked her some questions; she

[106] Some issues that caused embarrassment were arguably 'transcultural' (e.g. about inter family conflicts in private law proceedings); others (about the care of siblings and marriage issues) were more specific to values/practices in her culture. However in the interview this mother focused much more on the former issues and how this conflict reflected on her and professionals' views of her.

presumed they were necessary. She was largely satisfied with her statement – except that her solicitor kept getting her ethnic group wrong.

In other words, there is evidence of different styles and expectations by both solicitors and parents with regard to addressing and documenting issues of diversity. With regard to the approach of solicitors – as reported by parents – some moved beyond the immediate allegations of local authorities, getting a picture of a parent's own childhood along with broader views surrounding parenting of their own children. For some parents this discussion was not a problem, for others it was sometimes intrusive and sometimes embarrassing; some examples parents gave would arguably be a source of discomfort for many parents regardless of ethnic group. Other issues were very specific to the cultural context of a parent and for many in this study these diverse frameworks were an important part of both the specific picture (i.e. that relating to allegations of ill-treatment of children) and the broader picture about childhood, values and belief systems as these are played out in family life and wider communities.

There are indications that in the absence of direct questions from solicitors (and not solely white British solicitors) about cultural/religious diversity and impacts on parenting, some parents will not raise these issues. There is also further evidence from interviews with solicitors (see Chapter one) indicating a range of views/practices on this issue; some solicitors would not raise issues of cultural/religious diversity unless a parent first broaches the subject.

There is also evidence in both samples of a 'strategic' approach on the part of solicitors against a backdrop of anticipated responses from judges/magistrates. We return to this issue and its implications in the concluding chapter.

6.6 Disrespectful, insensitive or racist behaviours

6.6.1 Introduction

As discussed in the Introduction, exploring issues of racism, insensitive behaviours/attitudes, ignorance and stereotyping of black and minority ethnic parents can be a complex exercise where parents are also accused of ill-treating their children. Some diametrically opposed approaches to this area have exerted a powerful control over dialogue. At one end of the spectrum, child abuse in minority ethnic communities is posed in terms of racism, stereotyping and the imposition of Western European values on families/households that do not necessarily share values associated with the white majority populations. At the other end of the spectrum, racism, inequality in access to services, job

opportunities, wider power relationships and social exclusion are seen as having nothing to do with child ill-treatment: 'child abuse is child abuse' any other conceptualisation of the issue is to slide into the realms of 'cultural relativism'.

As outlined in the Introduction, there remained several gaps in this debate; one important absence is the views of parents. Exploring this area with parents is fraught with difficulties - not least of which has been a view about the validity of that endeavour. It has for example been suggested parents' views about racism/insensitive/prejudicial treatment will be mediated through the prism of 'outcomes' and whether children are returned to them.

We took issue with that view first because it has not been tested and second as argued in Phase I, questions about approaches towards ill-treatment of children in minority ethnic families are not only about content but also *transparency* in the way in which family courts address issues of diversity. Third, research on cross-cultural assessments indicates that the challenge to improve transparency in the treatment of these issues remains - whether or not a particular audience (including parents themselves) considers it to be relevant (Brophy et al 2003a: 252-254). We return to this argument in the conclusion.

We therefore sought parents' views about the treatment of 'diversity' on two levels, and in several scenarios. First, we asked parents if they had encountered anything they considered disrespectful, insensitive or racist in their relationship with their solicitor, during their attendances at court, and with experts and others.

Second, we asked parents whether they felt any cultural/religious values, practices/mores – 'their way of doing things' - was relevant to their case and if they were satisfied with the way in which these issues were addressed. Third, we asked parents whether they felt they had had a fair and just 'hearing'[107] and whether they felt heard and understood (see Chapter seven below).

6.6.2 Views and experiences with solicitors

With regard to whether parents considered their solicitor/barrister had said/done anything that a parent considered disrespectful, insensitive or racist, most parents who were asked (7/11) said 'no' they had not experienced anything of that nature from their solicitor. Most parents said solicitors had been kind and patient, to quote a parent of Bangladeshi origin:

[107] In this context we refer to overall experiences in care proceedings – and not simply experiences at contested hearings

'No no, they're doing all right in that department'.

Mother of Bangladeshi origin

Two parents however expressed concerns. One parent of Pakistani origin said she would not call it insensitive or racist but she did feel her advocate lacked an understanding of her culture and value system:

'They could show a little understanding of cultural differences. Maybe they should be made to attend a course (laughter). That would explain you know what each culture does, what we believe in. It's about the value system isn't it? In one culture a certain way of life is more readily acceptable than another culture. And em…yeah, barristers and solicitors they should have some kind of [training]: "This is what happens in Pakistani culture, accept it live with it, don't question it'.

Mother of Pakistani origin

A parent of Moroccan origin said he 'wouldn't necessarily know' whether his solicitor had behaved in any way racist but what bothered him, was that his solicitor ignored him once they got to court ('they all talk [to] each other and ignore me') and had not explained before-hand that he could not speak in court. Asked whether he thought his exclusion from discussions was in any way related to fact that he was from Morocco, this father said he did not know – but he did think it was disrespectful, and it did make him feel excluded.

6.7 Improving legal services for minority ethnic parents

Approaching the issue from a slightly different angle, we then asked parents what improvements solicitors could make when representing parents different ethnic groups/cultural traditions. Most parents had several suggestions for solicitors and for professional bodies responsible for training and accreditation:

- Solicitors should achieve a better understanding of the cultural backgrounds and values of parents from minority ethnic groups.
- Some parents will not necessarily feel able to initiate discussions about their diverse backgrounds without an 'opener' from solicitors. A sensitive but *informed* way of approaching this area should be found.
- An increased recognition among solicitors that the court process, the professionals seen, the language/terms used will be unfamiliar and probably completely incomprehensible to many minority ethnic parents regardless of questions of 'length of residency' in the UK.
- Solicitors should not ignore parents while talking to other lawyers outside the courtroom.
- Solicitors should improve practices in preparing parents for the *realities* of the court process (timetabling listing problems, expert assessments, how long it will all take etc.).

6.8 KEY FINDINGS - PARENTS' VIEWS ABOUT THEIR SOLICITOR

Explaining law and procedure to parents

Most parents were very positive about their solicitor but concerns were expressed about explanations of certain terms, limited communications skills and feeling ill prepared for some of the realities of family courts.

Discussing family histories and 'cultural contexts' with solicitors

Some parents were not clear why solicitors discussed their childhood; some felt uncomfortable discussing their childhood. Some of this discomfort was related to 'culturally diverse' views/practices, some not. However parents did not complain about excessively intrusive questions.

Some parents did not get an opportunity or invitation to discuss diverse backgrounds; some did not feel able to initiate this discussion.

Parents who argued physical punishment of children was 'culturally acceptable' did not agree with their solicitor's approach to addressing this issue.

Discussing parents' general values/approaches to childrearing

Parents said some solicitors did not venture much beyond specific allegations to general discussions about views and approaches to childrearing.

Parents did not generally feel able to initiate this type of discussion without an 'opener' from their solicitor.

Statements

Parents were divided as to whether they were satisfied with their statements. Areas of dissatisfaction were that:

- Statements were not in a parent's own words or things were said differently
- Physical ill-treatment of children was documented in ways with which parents did not necessarily agree
- Diverse cultural/religious values/ backgrounds were not covered.

Racism, prejudice, insensitive treatment by solicitors/barristers

Most parents did not report any experiences with their solicitor/barrister, which they thought racist or insensitive. However three parents reported incidences of disrespectful and uninformed comments.

Interviewing parents: effective communication

Some parents felt solicitors would benefit from training to improve understandings of cultural/religious diversity and improved communications skills would enable solicitors to take the initiative in discussing this area with parents.

Where solicitors and parents were matched by ethnic group, some solicitors may nevertheless benefit from training and communications skills to address directly sensitive issues that may inhibit effective communication between parent and solicitor.

Chapter seven Parents' views on diversity and family courts

7.1 Introduction

Below we explore parents' views and experience of attending family courts. Starting from a framework of access to justice, we explore parent's views about the use of interpreters, understandings of the language and terms used by magistrates and judges, and whether parents generally understood what was happening in court.

We also explore whether parents experienced anything they considered disrespectful, insensitive or racist from judges, magistrates or other court staff; we examine whether parents considered their treatment was in any way unfair or unjust, and whether they felt 'heard and understood' by courts. Finally, we look at any changes minority ethnic parents would like to see in family courts.

At this point it is perhaps worth briefly reiterating two points about this field of inquiry in the family justice system. First, historical analyses of racism demonstrate that it is not a fixed and static phenomenon, it can be contradictory and it is constantly undergoing transformation.[108] Moreover, while the scope of the *concept* is contested in contemporary writing, however notions of racism and racialism are conceptualised in British politics[109] the views and experiences of black and minority ethnic people remain at the heart of understanding and defining racism. Those perspectives – which will also be variable – are central to understanding the terrain of racism and in demonstrating (rather than simply asserting) that practices (and ideologies)[110] embody racism or 'cultural racism'.[111] The distinction between overt individual racism and more covert, institutional racism (one reliant on the views, behaviours and actions of individuals, the other by actions and inactions at institutional levels) is important, but both may *experienced* in similar ways. In both

[108] For example, against a social and 'scientific' history of notions of racial hierarchy Barker (1981) used the concept of the 'new racism' to refer to a new political discourse within Britain in the 1970s which in addressing debates about immigration and utilised notions of the 'naturalness' of wanting to live in 'one's own community' and with 'one's own kind'. Barker argued this theory of 'human nature' was at the core of the new racism. As Miles and Brown highlight (1989:64), this work on the historical specificity of racism was not unproblematic but it was taken up by other writers (e.g. Centre for Contemporary Cultural Studies (CCCS 1982; Gilroy 1987) and it opened up debate to other forms of racism that did not necessarily assert biological superiority but rather 'cultural racism' and 'differentialist racism'. This development is interesting in terms of current debates within child protection arenas about 'culture' and cultural relativism and its relationship to notions of racism. While that discussion necessarily encompasses a debate beyond the realms of this report, the issues are taken forward elsewhere (Brophy, in preparation).

[109] And while some key texts and the development of schools of thought in conceptualising and theorising racism (e.g. Hall 1978; 1980; Barker 1981; CCCS 1982; Gilroy 1987) are summarised, for example by Miles and Brown 1989:58)

[110] For example, ideologies of parenting and 'childhood'.

[111] See note 1 above.

instances dominant and subordinate groups are usually designated by reference to skin colour: – as 'white' and 'black', with black designated as 'other'. It is pertinent at this point to reiterate that Macpherson defines institutional racism as:

> ***'The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic group. It can be seen or detected in processes, attitudes and behaviours which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people'*** Macpherson 1999; p 6.34

And to note that here the definition of institutional racism includes inaction as well as action, ignorance as well as beliefs, processes as well as behaviours.

Thus, we enter this terrain with black and minority ethnic parents involved in care proceedings; we begin by asking whether parents had experienced anything they considered disrespectful, insensitive or racist during court proceedings. Bearing in mind this specific territory is *also* framed by laws relating to the protection of children from maltreatment, equality of arms of parties[112] and Human Rights legislation (Articles 6 and 8 - rights to a fair trial and respect for family life),[113] we also asked whether parents experienced unfairness or injustice. We also enter the largely unexplored domain[114] of cultural contexts, 'cultural racism' and 'cultural relativism' exploring whether parents felt their diverse backgrounds were 'heard and understood' by courts.

7.2 Interpreters in care proceedings

Four parents required interpreters for court attendances; the interpreters used during interviews with solicitors were not necessarily those used in court.

Some parents reported receiving inaccurate information about rights to an interpreter. For example, one father joined as a party during proceedings said that when he told the social worker he needed an interpreter at court,[115]she responded '*If you want an interpreter go back to Somalia and get one'*.[116]

[112] That is, parties (applicants and respondents) come to the court on equal terms.
[113] Human Rights Act 1998 - Article 6 (Right to a fair trial) and Article 8 (Right to respect for family life), but bearing in mind few rights are absolute and need to be balanced with a second limb which sets out the circumstances that would justify an interference with the right.
[114] In this field of law at least - see note 2 above.
[115] This father eventually went to a centre for Somalian refugees who provided an interpreter. It is not clear at this point in proceedings whether the father was represented, he was subsequently separately represented and said he was very happy with his solicitor and with the interpreter.
[116] Father of Somalian origin, No 3, p10.

A mother of Bangladeshi origin said she took her brother to court to interpret for her: 'He explained things, what was happening'. A respondent of Iranian origin said (through the voice of the interpreter)

> *'She says they went to court four times and used an interpreter every-time;*[117] *yes there was an interpreter but their own, the solicitor obtained because I ask if there was, in court, an interpreter, there wasn't.'*
>
> **Carer of Iranian origin**

7.3 Understanding the language and terms used by judges and magistrates

Almost all applications in this sample began in the magistrates' family proceedings courts and all cases were transferred to a county court care centre/High Court.[118]

Whether or not parents used an interpreter most reported difficulties understanding the language and terms used by judges/magistrates (e.g. 'threshold', an 'ICO', 'a directions hearing'):

> *'I found it hard to understand, yea on occasions, I remember the first time I heard the term 'interim care order' I didn't understand what it was …they were going on and on about extending it, I had no idea what it mean for the children and I remember the solicitor turned around and said "is that OK Mrs Begum they're going for another month?" - but I had no idea what an interim care order was. I didn't realise it meant that the social services would be able to keep my children for a further five weeks'.*
>
> **Mother of Pakistani origin**

> *I didn't understand some words they used in the [county court] afterwards I asked him, I asked [my solicitor] explain this to me…'.*
>
> **Mother of Indian origin**

Another parent of Bangladeshi origin said that while in the magistrates' court she became confused and had asked her solicitor: 'what does that mean?', he mumbled something but his response was inaudible/unintelligible to her.

7.4 Attending court hearings

Those parents who reported difficulties with language/terms used by judges/magistrates also reported difficulties in understanding exactly what was happening in court and what the consequences of decisions would be.

[117] This interview was undertaken with a Farsi speaking interpreter; interpretation moved between first and third person responses – see Appendix II, Interpreters.
[118] See Table 5.1 - Courts hearing cases.

Five respondents also reported surprise and frustration at discovering they were not allowed to speak once in court; eight respondents experienced that restriction as unfair (see below).

7.5 Did parents consider judges or magistrates behaved in any way disrespectful, insensitive or racist?

Overall six respondents said they had not experienced anything from judges or magistrates, they considered disrespectful, insensitive or racist – though some felt they had experienced unfair treatment (see below).

One parent argued (on more than one occasion) that our question was 'wrong'; these issues he said, are not about individuals, nor did he think his treatment might have resulted from the fact that he is African (see below), his criticism was not of individual judges but of the 'law' – it did not respect his culture and it stopped him being able to speak in court:

> *'It's the law! – nobody can speak we [the parents] can't speak – I was allowed to talk once - when I was [unrepresented] in court – it was wonderful!'*
>
> **Father of Nigerian origin**

Another African parent made a similar comment in response to whether he felt the attitude/behaviour of judges was in any way insensitive/racist:

> *'No, not really – because they never actually spoke to me, never said a word!'*[119]
>
> **Father of Nigerian origin**

A further parent said she had not experienced any racism but she had anticipated some prejudice based on the social work evidence**:**

> *'No, not racist towards me, but I thought sort of like once they'd read the content of the thing they might be a bit prejudiced'.*
>
> **Mother of African-Caribbean origin**

In practice, she said that turned out not to be the case.

Four parents said they had experienced disrespectful, insensitive or racist behaviour in court. One parent felt magistrates looked down on her and the judge belittled her:

> *'Sometimes I did, they look down on you, 'cos you're in …obviously you're in court because there's a problem and you are trying to sort [it] out…'*

[119] Two further parents of African origin made the same point: asked whether the judge acknowledged them in court, they both said 'no'; nobody spoke to them directly. Asked whether they would have liked some acknowledgement that they were there, the mother responded: 'He didn't speak to anyone, so I wouldn't expect him to'.

Asked whether she thought that approach might in any way be related to the fact that she is Indian and had a drug problem, she said no, it was because she was a 'woman on drugs with kids who should think about her kids first'. She continued:

> *'…but sometimes things just go wrong and people do try and put it right. But if you don't give them a chance…then it won't happen will it?'*

In exploring why she felt belittled by the judge, this mother said the judge failed to understand things about addiction. She reported that at first she and her partner were not ready to cooperate with a rehabilitation programme; by the time they were ready, the judge, in effect, said 'too late':

> *' … And because we wasn't ready we wasn't cooperating with everyone… when we was actually ready, because we didn't cooperate with them the first time they'd said … the judge had just said, 'No help for the parents', and then we'd have to do it ourselves. But if the judge just said 'Yes okay we'll help you one more time, this would be the last time', then maybe my situation could have been maybe a little bit different.'.*

This parent also felt the judge failed to take her ethnic group into account when placing her child with an African-Caribbean carer:

> *'Well sometimes I do [think its to do with race] because …they put my kids with a black family. And the judge thought there was no problem with that, thought there was nothing wrong with that…. he seemed to think it was okay because they were, with a sort of, 'coloured' … I don't know how to explain it...I don't know, its hard to explain...my kids are full Indian. You can't put them with a different culture family …[with] strangers who are completely different coloured and then the court thinks that it wouldn't disturb them! The court should think about the kids because that's what they're there for.'*
>
> **Mother of Indian origin**

A mother of Somalian origin said that the initial comments made by the judge in her case made her feel he had pre-judged her before hearing her story. She thought that was because she is of African origin, and it made her feel that there was little point in going back to court.[120]

> *'The first court that we went …he said - because I said in my statement that I would do anything to have [my child] back…anything - I would do anything for her. …When the judge heard that he said 'Oh I understand that you would do anything for your child, but do you think that you're a suitable mother, and do you think you should go ahead with the court hearing, or do you think you should just stop here and let your child go with [a relative]…'.*

[120] This mother also said she felt he later regretted that approach.

She continued:

> *'It was our first hearing with him and he'd just heard this statement from the Social Services and not mine or the father's…And when he said that, … … I felt gutted and I thought 'that's it you don't have a chance'. Because if the judge is saying this then what's the point of coming back to court next time because he's already made up his mind… … he hasn't heard my statement and he hasn't heard what we've got to say … … Although he's a judge he should get to hear my side of the story and he should get to know the story much better and clearly before he starts saying this stuff.'*

Asked whether at that stage she felt the judge had had sufficient time to understand her background, she thought not:

> *'…at one point I thought he was being racist.'*

Asked what made her think he was being racist she said:

> *'Just the fact that…just the way he said I should give up, stop at that point, yeah because you hear on TV and everything where, that people think African parents are not good parents...just a few days ago I was watching TV, the nurses were saying that African parents are violent and they hit their children. And I was just thinking doesn't matter where you're from no parent…some British parents can be very violent and I just thought maybe its because…he's supporting social services maybe it's because I'm from Somalia. You know you think anything.'*

Asked if she thought he would have made those initial comments had she been white, she thought not:

> '*Yeah. I though if maybe I came from a different place….*'.
>
> **Mother of Somalian origin**

The father in this case reported he got very angry with the judge's comments at that hearing, he added 'we are not violent people towards our children'.

A parent of Pakistani origin felt the county court judge was disrespectful:

> *'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 … he had a bit of a go at each and every solicitor and barrister that was present - over small issues, over little things. And not once did he say hello, you know, welcome me or my husband.'*

This mother said the magistrates had been cold and unwelcoming but the judge in the county court was worse:

> *'Oh he was far worse, … I mean for a start we had to … there wasn't a court available for us, so we were floating for half a day…when we finally got in the solicitors and barristers were tired and fed up, I was tired and fed up. And then we get a judge that was so [pause] oh I hated it! - I hope we*

never have him again… …he attacked the solicitor … verbally that is …the Social Services solicitor.'

This mother was shocked by what she felt was the judges' lack of understanding in setting dates others could not attend:

'… but he wouldn't have it any other way, he wanted it settled on that particular date whether or not the solicitors could attend…he didn't care, I mean he didn't show any understanding, any … God, I hope we … he was very quick as well, in and out with him. Wait half a day for that. And we weren't the only case floating, there were so many others that were floating.'.

Mother of Pakistani origin

Asked how that session had made her feel she said: 'It made me feel like my case wasn't important, my children don't matter…'

7.6 Fair and just treatment and feeling heard and understood by family courts

The question of whether respondents thought courts had treated them in any way unfairly or unjustly, or whether they felt judges/magistrates had failed to understand their background and lifestyle, resulted in some mixed responses.

7.6.1 Parents who felt treatment was unfair and who did not feel heard and understood

Three parents said they felt unfairly treated (two felt this was related to their ethnic group/race, one felt one issue was not), but all three felt the court failed to understand aspects of their background and family lifestyle.

For example, one parent repeated her concern that a judge had failed to understand the nature of addiction and had therefore treated her unfairly by refusing her application for a further attempt on a rehabilitation programme. She did not however think this decision was in any way related to the fact that she is Indian and Sikh: '*not really I don't think so'.*

She did however think the judge had been unfair with regard to a placement decision – and that was to do with race. The judge placed her child with a black foster carer; this demonstrated his failure to understand her background and cultural and religious diversity. But she added it was hard to know just what the judge did understand because:

'They just read the reports and go along from the reports. They don't ask questions to anybody…if they'd asked me questions'.

She also felt part of the problem was the pressure on courts:

'I think 'cos they've got so many cases...so many cases to deal with they just try and get things over and done with so it's just the quicker they get it over and done with the quicker they can start their next one… so they don't have the time…well they should have the time for it but they don't…if they had more time they would sit and…it would be like a proper…you know, like when you see on TV, you see courts that ask you questions and you stand in the dock and then you answer the questions. It wasn't nothing like that. That's how it should be then at least you can say what you want to say and maybe try and make them understand'.

Mother of Indian origin

As described above two parents of Somalian origin felt they were unfairly treated at the beginning of their case: they felt the judge was overly influenced by social work evidence before they had put their case, and he had prejudged them. They thought some of their treatment was due to a failure to understand them and their culture and that was a consequence of negative opinions and images of African parents more generally in Britain**.**

7.6.2 Respondents who felt treatment was fair, and who felt heard and understood

Two respondents of Iranian origin, a birth relative and carer, and a young person were positive about the judge hearing their case.[121] The carer said issues about her culture were not relevant to the case but she would have been happy to discuss them; she was full of praise for the judge.

The young person was equally positive but had taken no chances in ensuring she was 'heard and understood'. She said she knew she could not speak in court, she therefore wrote a letter to the judge to ensure her background was clear along with her views about where she wanted to be placed.[122] This respondent thus felt that the judge did understand her; she attended a hearing and said she felt acknowledged by the judge. However she was emphatic about her desire to speak to the judge, it was not enough that everybody 'was very nice, very kind and supportive', she wanted to ensure the judge heard and understood her, and that involved speaking for herself:

'I wanted to speak with the judge, everyone was very polite to us…[but] the judge should speak to us [my [carers] and me]…the judge should speak - not just to me - to others younger than me they are able, they should be able to speak directly to the judge …they should not [simply] seat me at the back [of the court]'.

Young women of Iranian origin

[121] One interview was undertaken with an interpreter; some of the questions were amended to take account of language and comprehension problems thus these respondents were asked more general questions about their views and experiences in the family court (i.e. questions about unfairness and failures to understand were dropped for more general questions about what it was like to be in court).

[122] Proceedings were initiated on the basis of physical ill-treatment and neglect by this young person's father; during proceedings her father died (her mother had died some years previously) she had been and was in the care of maternal relatives who wished to continue to care for her. They were assessed and were supported by the local authority and the guardian in their application for a residence order – other relatives however contested this.

7.6.3 Parents with mixed experiences

Other parents had a mixture of views about how they were treated and whether they felt heard and understood. Two parents (one of Pakistani origin and one of Nigerian origin) felt that while they were not unfairly treated (compared for example, to parents in other ethnic groups) they were not entirely happy with their treatment. For example a mother of Pakistani origin highlighted a need for professionals to understand parents better, and the lack of court time:

> *'Um I wouldn't use the word 'unfair', like I say they could have been more welcoming. They could have…'cos it's a daunting prospect going to court it's the first time I've ever been and they could have shown a little more compassion, understanding. They should realise that it's not just the children involved there's the parents and for the parents it's a difficult time.'*

She continued:

> *'They were very busy… we were always sidelined. My case for some reason was always sidelined. We never had the court space you know, never the time. We always had to wait hours and hours until there was a vacancy, you know. The magistrates courts [however] were very prompt, very efficient, very quick, in and out and that was it.'*

As to whether as a Pakistani Muslim she felt her background and family lifestyle was 'heard and understood' she said that was hard to answer, in part because of the limitations of her statement and in part because she did not have an opportunity to raise this with the court:

> *'They didn't get to hear much about my family lifestyle or my background because in my statements, like I said before, the solicitor relied heavily on my current mental state. So the magistrates weren't aware of...well they could see I was Asian...my social worker did mention my background in her statement mostly in relation to my parents, she felt that it was a cultural thing to discipline children in [the way I had] and she did say that she didn't blame me because I've been brought up in that culture…'*

As to whether the judge understood she said

> *'I can't answer that question because it was so quick, it was over within five minutes, and in those five minutes all he did was have a go at each and every barrister, set a date that was inconvenient for everyone and then that was it. So I really can't answer that question'*
>
> **Mother of Pakistani origin**

Two parents of Nigerian origin raised questions about what constituted fair and just treatment and how a parent might judge this issue. Both parents said the court failed to understand their background and culture but for different reasons, one said the court did not get the information; the other said English law did not in practice understand and respect his culture/value system.

This latter parent repeated his earlier criticism: he was not allowed to speak in court, in his view that was not fair but he said, 'that was the 'law'…I abide by the law in this country'. As to whether he felt there was any unfairness or failure to understand him or racism underscoring his treatment, he again rebutted the questions: 'I wasn't there to judge the judge'. His concern he said was with the 'law', not judges, not his solicitor; the law dictated the way his case was treated by the judge:

> *'…The way they treat the case was unfair. I'm sure they are not looking at the individual they're just looking [at] the factors before them…that's what I'm trying to say [to you], when you talk about [these issues] to me, I say it's not relevant because the judge wasn't looking at me as an individual. I had no problem with the judge, the problem how the case, what was before her…before him. A written statement that a child is this or that ...that's what the judge was judging, not me as an individual…'*

His critique arose from his view about the court's failure to understand his value system. He said when a child complains about being beaten in the UK that is a criminal offence:

> *It wouldn't be treated so in my home country. We're looking at it as a disciplinary action, a way of correcting a child. But because people kill their children here they believe that…a person can kill his child. We don't behave that way; we treasure children more than anything. But even Bible, allows you …to discipline the child so that [it] will know the right way to go. You give love on the one hand and then correction on the other. Even that's God own law, but it's not so in the British law. At all…that's where the law fails completely'.*
>
> **Parent of Nigerian origin**

The other parent of Nigerian origin while saying he had not experienced anything he thought racist again referred to the fact that nobody actually spoke to him in court – how could he make a judgement about whether that was fair?

> *'Most times they never like spoke to me directly. I was never like you know…I didn't have anything to say. All the times I've been to court, I never said a word really'*

With regard to whether he thought the court had understood his background and family lifestyle, he thought not, largely because:

> *'They never got that information really'.*
>
> **Parent of Nigerian origin**

A parent of Moroccan origin felt he had experienced some unfairness: sometimes he really needed to talk in court ('not always but sometimes to be able to speak, just answer something, do you understand? Not shouting you understand').[123] He was also frustrated because he had to wait most of the day for a hearing at which he could not ultimately speak:

[123] Initially this father also felt the social workers had ignored him as a father.

'They never let the parents to talk…they just talk to each other like that. You know the last time I went to the court I can't believe it. You're supposed to have [a] court … I took the day off you know … I had the court [appointment] at 12 o'clock. We went there 12 o'clock, yeah? 12 o'clock, we're waiting until 2 o'clock - and they say 'oh they're going to go for a break'. And then I have to stay there until 4 o'clock…'

He continued:

'When I go to the court I never talk, I only sit down, and is the case finished I go home and that's it… when I go there I have no … I like to say something, do you understand? - in front of the judge, do you understand? But I only stand behind my solicitor and listen, you know. But I don't know maybe this is how it work here, you know, I don't know.[124]

Father of Moroccan origin

This process made him 'feel ill' - but he did not think this treatment was meted out to him because of his 'race' or ethnic group: 'No no, it's not that, it's not that'. He also pointed out that in his country it doesn't work like this - he would have been able to talk to the judge, but he continued: 'I live in this country, I just follow the laws of the country, you know'. Despite those experiences, on the whole this father did feel the judge understood him: 'yes I think they understood'**.**

7.7 Had parents anticipated fair treatment by family courts?

Most parents who addressed this issue expected or at least said they hoped to be treated fairly by judges and magistrates:

'Every family would like to be treated fairly'.

Parent of Nigerian origin

'That is what you would expect in court'.

Parent of Bangladeshi origin

One parent commentated that compared to elsewhere English courts were not corrupt, that things did not depend on how much money a person had and that courts followed 'the law', that surprised and pleased him: 'Yeah this is a good thing, yes. I'm happy with that, you know'.

While no parent had *anticipated* unfair treatment by courts, two parents/carers said they were unsure of what to expect - and they were very frightened**:**

'I was so scared, so very nervous, yes very scared…however everyone was very nice to me, very helpful…'.

Carer of Iranian origin

[124] Asked whether his solicitor had told him he would be unable to speak in court he said not.

'…'em…sometimes when he [the judge] was talking he would always keep his eye on me… I could see he was looking at me, and every-time he looked at me, I thought – oh why is he looking at me? I was really scared of, if I did the wrong thing, or if I looked at him in the wrong way…'.

Parent of Somalian origin

7.8 Family court support staff

Most parents said they were treated with respect, patience and politeness by security guards, reception staff and ushers etc. Staff were reported as mostly polite and helpful – and very apologetic to the 'floaters'. Two parents however encountered impatient and abrupt treatment by ushers in family proceedings courts; they were reported as too busy to help anxious parents find their names on court lists: '*she was too busy to help, some were nice but the majority were not'*.

7.9 Key findings - experiences in family courts

Use of interpreters

There is some evidence of incorrect information being given to parents about rights to have an interpreter in court.

There is some evidence that family members continue to act as interpreters for parents in court.

Regardless of levels of fluency in English some parents had difficulties understand the language used in court; some parents had difficulties following proceedings. No court took time to explain issues to parents.

Insensitive, disrespectful or racist treatment in courts

Most parents (6/11) had not experienced anything they thought racist.

Two parents felt a judge and others had been racist and that as black parents they had been stereotyped.

Some parents (4/11) gave examples of disrespectful/insensitive treatment: not being acknowledged in court, being kept waiting for a judge, not being able to speak once in court, being seated at the back of the court, no direct contact with the judge/magistrate, and a judge behaving in a rude and arrogant fashion.

Fair and just treatment and feeling heard and understood

Unfair and unjust

For most parents views about whether they felt treated unfairly and why, and/or whether the court had failed to understand them, were detailed and thoughtful.

Three parents felt the process was unfair. Notions of unfairness however were not necessarily linked to issues of race/culture; it could result from a perceived lack of understanding/empathy for a parent's problems (e.g. mental health or drug problem) by the court.

A view that treatment by a court was both racist and unfair resulted from a judge's comments to parents prior to the filing of their evidence. The parents felt prejudged, that this was because they are black and in Britain people think African parents as violent towards their children.

Views about unfair treatment by courts also resulted from lack of court time/judges for cases, being kept waiting for long periods, feeling proceedings were rushed once in court and not being allowed to speak in court. These practices made parents feel they and their children were not important.

Thus parents were not happy with their treatment by courts but 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/disrespectful treatment.

Feeling heard and understood

Some parents felt that judges/magistrates did not understand diverse backgrounds. Reasons for this failure ranged from a view that the court simply did not get this type of information, to a failure of courts to understand the information it did receive, and a failure to engage directly with parents about it.

Some parents simply did not know if they were 'heard and understood' by courts; judges and magistrates do not speak to them, and if their statement was poor on cultural contexts, they were unlikely to know if they had been 'heard and understood', or inappropriately blamed.

One parent/carer thought the failure of courts to understand and respect his value system was due to the construction of child law itself, rather than a failure of individual judges.

Some parents however felt the judge probably did understand them – even though they disagreed with the judge.

Expectations of fair treatment by courts

Parents had not anticipated unfair, prejudicial or racist treatment by courts, everybody hoped/expected fair treatment. Courts were not seen as corrupt in that treatment/decisions were not dependent on whether a parent had money.

Parents/carers – including those who were not accused of any mistreatment - were however very scared of attending family courts.

Family court support staff

Security guards, reception, listing staff and ushers were mostly polite, patient and helpful. No parent reported racist behaviour/attitudes. However, two parents experienced ushers in magistrates' courts as impatient and abrupt.

Chapter eight Assessment by experts

8.1 The assessment of minority ethnic parents

8.1.1 Introduction

Prior to setting out parents' views and experiences of being assessed by experts, we provide a research context to this section. From the perspective of child psychiatrists at least, research indicated that part of the 'added value' of the psychiatrist as an expert witness, is a particular skill in taking down, understanding and interpreting family histories (Brophy et al 2001:42). That research with a sample of clinicians in Children Act proceedings indicated that for some at least, there was a preference for a framework that allowed for adaptation of methods and techniques to take account of cultural backgrounds, 'to enable the clinicians to deal differently with families from different parts of the community' (Brophy et al 2001:51).

Subsequent analysis of expert reports for courts in the Phase I study demonstrated variations in the degree to which reports described and analysed the cultural/religious and linguistic backgrounds of parents from minority ethnic groups (see below, para 8.4).

In this study we look at this area of work from the perspective of those 'on the receiving end' of the assessment process, reflecting back to courts and indeed to experts, views from the 'couch'. We again look at whether parents from diverse backgrounds felt they were treated fairly and were 'heard and understood' this time by clinicians. As some parents demonstrate, some 'inactions' and 'unwitting prejudice…ignorance…thoughtlessness and stereotyping' have implications for the service – and in some surprising fields.

We begin by setting out key findings to date in the use of experts in care cases in general and their use in cases concerning minority ethnic families. We then present findings on the use of experts in the current study based on an in-depth analysis of reports in court files.

We then explore with parents their views and experiences about expert assessments taking each of the four major types of expert evidence filed in cases. Finally, we look at parents' views about the need for change in aspects of their parenting and whether they understood this exercise.

8.2 Use of expert evidence – the picture to date

Evidence to date indicates many care applications are likely to involve expert evidence. National survey data[125] on cases which included expert evidence demonstrated that most (over half) were transferred to higher courts (county court care centres/High Court (Brophy, Wales and Bates 1999:20 – Table 4.3).

With regard to cases concerning minority ethnic children, secondary analysis of national survey data demonstrated that transfer pattern also holds if cases for groups are combined and compared with those concerning white British children.[126] Indeed, when minority ethnic cases were disaggregated, those concerning black children and the mixed groups were more likely to be transferred to the High Court (Brophy 1999 – Table 2.2).

The national survey also demonstrated[127] major providers of expert reports are:

- Child/adolescent psychiatric reports[128] - filed in 67% of all cases
- Psychological reports (adults/children) – filed in 63% of all cases
- Paediatric reports - filed in 35% of all cases[129]
- Family Centre Assessment reports filed in 23% of all cases
- Adult psychiatric reports – filed in 32% of all cases

8.2.1 Use of experts by ethnic group

Subsequent research, first in a secondary analysis of the survey data (Brophy 1999:54-55) and second in the Phase I study (Brophy et al 2003a: 81 - Table 6.2) indicate patterns of expert evidence for some minority ethnic groups may be different. Indications are that the use of experts in cases concerning children of South Asian origin is consistently higher across the major disciplines commissioned.[130] For example in Phase I:

- Paediatric reports were filed in some 32% of cases concerning black children but in 52% of cases in the South Asian group.

[125] The national survey of cases involved just under one thousand children (Brophy et al 1999:19).
[126] That is when combining all minority ethnic groups, exploring courts in which cases started and completed and comparing with cases concerning white British children (64% of cases concerning minority ethnic children were transferred, compared with 51% of cases concerned white British children (Brophy 1999, Tables 2.1 – 2.6).
[127] Brophy, et al 1999:24 – Table 4.9.
[128] Includes single practitioner reports at 53% and multi-disciplinary assessments at 15%.
[129] Paediatric radiology reports add a further 10% (Brophy et al 1999:24 – Table 4.9).
[130] Some caution is necessary in comparing data sets, in part because one study was a national random survey which when the data is disaggregated for specific ethnic groups, the numbers in some groups become small (although aggregated groups in the black and mixed parentage category allowed for significance tests in some fields of enquiry (see, Brophy 1999, sections 2 and 3).

- Child and family psychiatric assessments were filed in 39% of cases in the black group but 60% of cases in the South Asian group.[131]
- Adult psychiatric reports were filed in 29% of cases concerning black parents but 54% of cases involving parents of South Asian origin.

The use of paediatric and psychiatric evidence in cases concerning families of South Asian origin was also higher than for white British families. In other words, when compared with both the aggregated black group and the white sample, expert evidence in cases concerning families of South Asian origin was more likely – often much more likely - in most of the major clinical disciplines instructed in care proceedings.

8.3 Focus on diversity in reports

When the content of expert reports was examined during Phase I, results revealed variation in the degree to which experts provided descriptive and substantive information on diverse cultural/religious/linguistic contexts:

- Paediatric reports seldom provided information on any aspect of diversity.
- Family centre assessments varied in this regard: all reports based on families of South Asian origin contained descriptive and some substantive information; just under half of reports on (aggregated) black families contained both categories of information.
- Child and adolescent psychiatric reports also varied in their coverage of issues of diversity: two thirds of reports in the aggregated South Asian group contained both descriptive and substantive information; under half of reports on black families contained both categories of information (and disaggregated, no cases in the African Caribbean group contained both categories of information) (Brophy et al 2003a: 231-232).

[131] With regard to family centre assessments, these were filed in 26% of cases concerning black families and 32% of cases concerning South Asian families.

8.4 Experts in this study: views from the 'couch'

8.4.1 Use of experts

All cases in this sample included expert assessments, all cases involved more than one type of assessment and all cases involved several reports.

8.4.2 Types of expert assessments

As Table 4.1 (Chapter five, above) indicates, 30% of cases in this study included paediatric evidence, 80% included family centre assessments, 50% included child/child and family psychiatric evidence, 60% included adult psychiatric evidence and 60% included psychological evidence (combining child and adult assessments).

8.4.3 Parents on experts

What was often apparent from interviews with parents/carers was that some did not initially have a clear idea of which experts they or their children had seen during proceedings (e.g. they had seen 'doctors', but were unclear about the type/discipline). A small number of parents did not co-operate with assessments planned; others withdrew before the assessment was completed**.**

Paediatricians

About one third of the children and parents in this study had seen at least one paediatrician. In practice, two parents of African origin recalled this event.

a) Fair and just treatment and feeling heard and understood

In response to a question about whether the parent felt they were treated fairly and that their views were heard and understood by the paediatricians they saw, a mother of Somalian origin said that whilst she and the initial paediatrician she saw did not discuss her ethnic group or culture as such, the doctor did address certain information about her background and 'help-seeking behaviour'[132] that she felt relevant in coming to an opinion about whether serious injuries to her child were the result of wilful neglect:

> *'…He said it wasn't my fault…that he wouldn't blame me that I took her to the hospital later than I should have because of the diarrhoea and vomiting, that [taking advice from my auntie] giving her [a medication for diarrhoea]…it was showing that I really was doing my best…. he said he wouldn't blame me…it was more ignorance than deliberate… neglect.'*

[132] In practice, the advice of elders (and in issues concerning children, elder women) usually takes precedence in this young mother's culture.

She continued:

> *'… And even though he said that the Social Services should take that into account, but they weren't. …They were just saying the mother says Professor [Brown's] report – "the mother's saying that it wasn't her fault". And I wasn't saying it's not my 'fault' I still blame myself until now, that she's [suffered permanent damage] as a result. But I know I that I did not do it on purpose…all I was suggesting was that they look at what [the paediatrician] said, even he is saying it's not neglect. But they didn't listen.'*

While this mother did not feel in any way unfairly treated by the paediatrician she saw, she did feel severely judged and harshly treated by nursing staff on a ward to which her child was admitted. She felt they made assumptions about her, not she thought because she was African, but because of her young age.[133] When the child's father eventually arrived she felt their attitude towards her changed:

> *'…When they saw him with me they respected me more because he's much older. But when I was by myself…'.*
>
> **Mother of Somalian origin**

This mother went on to discuss that in her culture she would not necessarily have been considered especially young to have a child. She pointed out the age at which her own mother had started having children (her mother and her partner's mother would have been considered minors according to UK law).

The paediatrician did not specifically ask the mother whether she thought there was anything he needed to know about her background and culture (she said 'he never asked'). She reported she did not feel discomfort or embarrassment about discussing general issues about her child's health with him. She could not/did not however broach the age/culture context.

The father in this case reported language difficulties in a later exchange with nursing staff. [134] He said they dismissed his difficulties and the hospital failed to provide him with an interpreter. Indeed he said nursing staff suggested he was fabricating his inability to understand what was being said.[135]

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[133] In practice, these issues may be related: this mother's true age was unclear (both to her and others, her extended family giving mixed information about her date of birth). At the time of the child's injury there was a two-year discrepancy between opinions, which social services did not appear to have tried to verify. Nevertheless, in her own culture this mother said she would not have been viewed as especially young to have a child. At the time of her child's birth however social workers thought the mother was a minor; this proved not to be the case. This case demonstrates some of the cultural complexities, which if not explored, can lead to prejudicial treatment.

[134] No 4, father of Somalian origin, p 19.

[135] Our interview with this father was undertaken with an interpreter. Some attempts at conversation in English indicated that for complex issues such as these, the father's ability to understand and communicate and the recipient's ability to understand the father's views, an interpreter was necessary.

Family Centre Assessments

Local authority plans for most children in this sample (80%) involved one or more parents/potential carers undergoing an assessment in a family centre (residential or non residential). For the most part the referral was to allow social workers to examine parenting practices in more depth and explore a parent's ability to change views/practices within a timescale deemed appropriate for children. The figure for family centre assessments in this sample is higher than that found in the national data set and Phase I.[136] Indeed the long-term placement plan for most of the children in this sample (16/22 - 73%) was deferred until the outcome of assessments (see Table 1.7 – Chapter five).[137]

For those (four) parents who had already used an interpreter at some point in the process,[138] some reported having undergone a family centre assessment of parenting skills in which some or all of the assessment had been undertaken without an interpreter. For those parents who recalled discussions with workers at the start of the assessment (4/7)[139] they said professionals had explained the purpose of the assessment.

a) Fair and just treatment and feeling heard and understood

With regard to whether parents felt treated in any way unfairly or that the centre workers had failed to understand things about their background, their culture and 'their way of doing things' the picture is complex.

A mother of African origin said that although she was treated fairly (she said "they treated us nicely"), nevertheless she said workers failed to understand and did not acquire information about her background and cultural traditions:

> *'She even mentioned that me and um [my partner] … cos he's older than me, that we had a 'child-father' relationship. And I find that really silly because he's not my father and I'm not his daughter. And we're married, …we're a married couple, and we act like a married couple cos we've got children. Just the fact that the age difference - she shouldn't have the right to say that. And she's even suggested that we wouldn't get far with our relationship. And who is she to suggest that?'*
>
> **Mother of Somalian origin**

[136] In the national survey of cases containing expert evidence, 25% of cases included Family Centre Assessments commissioned within proceedings (Brophy, Wale and Bates 1999:24 – Table 4.9); in Phase I, 34% of cases contained Family Centre Assessments (Brophy et al 2003a: 81 – Table 6.2). While caution is necessary in making certain comparisons (each data set has strengths and weaknesses) looking across the studies, findings suggest an increase in commissioning this type of assessment during proceedings.

[137] However as indicated above, not all plans for family centre assessments were pursued and in practice 70% of those planned were completed.

[138] Parents of Somalian, Iranian, Bangladeshi and Indian origins.

A father also of African origin made similar comments. He said workers tried to understand his background but he felt they really needed to do more to understand his values and particularly his approach to the physical punishment of his children – he also felt workers were too interfering:

> *'She tried…[she] asked colleagues …[but] I think they need to do more about, you know...because its just like telling me how to parent my child, what kind of punishment is good, what is not good, I should stop doing this I should do that…you know when I tried something different that they tell me…And it's not like I am…I also have to adapt to the way of, you know, this country's ways. But it's just too much you know too much telling me how to bring up [my child]…it made me feel handicapped'.*
>
> **Father of Nigerian origin**

This parent felt the subsequent report from the centre did not demonstrate an understanding of his African background and his way of bringing up his children.

b) Ascertaining parents' views, values and backgrounds

Part of the process of obtaining a parent's story and documenting their strengths and limitations means ascertaining parents' views about harm/risk and how parents aim to protect their children. We therefore asked parents whether, in the context of family centre assessments, they were asked for their views about these issues and whether they felt workers had an understanding of their background and culture and whether/how this informed 'their way of doing things'.

One mother of African Caribbean origin was very positive about her experience in a residential centre.[140] She did not feel treated in any way unfairly, she enjoyed the assessment, she was asked about her views and values and she felt the workers had a good understanding of her background and 'my way of doing things':

> *'...It was grand actually [laughter] I actually had a good time …Yeah I didn't have any problems. Like for the first two weeks I had observations, which is how you wash, feed, change your child and stuff. …How I would protect her in the future and stuff...no, no, it was fine, I didn't have any problems. I got taken off it and then moved to the flat next door. So I didn't really … for 2 ½ months I didn't have anything really …'*
>
> **Mother of African Caribbean origin**

Nevertheless this mother was not entirely satisfied with the subsequent report – or the limited time she was given to read a lengthy document:[141]

> *'Um … yeah just before it was submitted, yeah. But I wasn't … even though they say before you go to the assessment centre; they say you can*

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[139] Parents of Nigerian, Somalian and African-Caribbean origins.

[140] This parent was in fact referred to a specialist family centre with a reputation for working with families from diverse backgrounds.

[141] The report was some 48 pages in length.

read it while you're there. But … I don't know about [X local authority] but [Y] sort of didn't want you to do that in case a member of staff said something in the report which you didn't agree with and sort of hassle started through that and stuff.'

She continued:

'Um, I think bits were … I know I wasn't happy with bits, no, not so much what they [included about my background] but their point of view on some bits that I had said had annoyed me… …they sort of suggested that I needed to be watched more because my mum and dad … I grew up with domestic violence and I was prone to it because of that, to relationships with violent men because of my mum and dad - which was really silly'.

She added she was also not happy about being pushed into contact with her own father:

'… And they sort of um … coming up to the middle, the end of my assessment, kind of um pushed me into getting in touch with my dad, knowing that my dad and I have a volatile relationship… well they would say encouraged, I would say pushed [laughter] It's more sort of um … the way they said it was like in my assessment I need to have like family background and family support, and it would help really well if I can get that from my dad. [They said] 'We'll set up weekends for you with him.' So I was like, 'Great okay, if it's going to help' - and then I ended up just getting completely destroyed by my father - again.'

Mother of African Caribbean origin

The father of Nigerian origin referred to above also complained of repetition of questions asked by professionals. Thus, with regard to the approach of workers at the family centre, he said he felt he had already answered many of their questions - he had already seen a child psychologist during proceedings. This father felt his views about child rearing were complicated; he tried to explain but eventually stopped telling the workers.

Child and adolescent/family psychiatrists

Reports from child psychiatrists were filed in most cases (60%) in this study; most assessments involved a parent/carer and a child/children.[142] In practice, few of the parents interviewed could recall or were actually involved in a child and family psychiatric assessment. In one case a parent was unclear about the experts she had seen and could only discuss views regarding the adult psychiatrist she recalled (see below).[143] A further

[142] In four cases assessments included children and parents; in two cases assessments were limited to a child(ren).
[143] File analysis indicated this family had an extensive assessment by a child and adolescent psychiatrist involving both parents and all children.

parent was not in practice involved in an initial child/family psychiatric assessment; he did however undergo a psychological assessment with his child (see below).[144]

In addition a mother of African Caribbean origin reported seeing 'two psychiatrists'.[145] With regard to the assessments this mother said:

> *'They didn't really talk about my issues it was more sort of, they asked me questions and I answered them…One assessment was just to see if whether [a further] assessment would be good, like, would I take it seriously enough?'*

With regard to the child/family psychiatrist she recalled:

> *[He] discussed my childhood with me but not really any relevance it would have had.'*
>
> **Mother of African-Caribbean origin**

One problem for all parents where they see several professionals was evident from interviews. For example, a mother of Bangladeshi origin had problems recalling who she had seen and for what purposes.[146] She recalled one doctor was a 'Muslim Pakistani doctor' who came to her home to see her and the children and that this doctor also went to court.[147]

This mother reported that with regard to 'the doctor who came to her home', he came with an interpreter, he also spoke some 'Pakistani' and she understood everything that was said. Her view/recollection with regard to the content of the report(s) filed was less clear. It is unlikely she would have been able to read the expert reports – of which there were several - but she indicated her solicitor 'made her aware' of the report.[148]
This mother also said she had seen a psychologist who also assessed her and the children – 'to check whether she's good or mental'; she reported this person also spoke 'Pakistani' so she understood.[149]

This mother did not feel she was treated unfairly by 'the doctor(s)',[150] one talked to her about her childhood, she felt he had an accurate picture of her background and culture and

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[144] It had involved the children's mother, his previous partner.
[145] File analysis revealed she saw one adult, and one child and family psychiatrist.
[146] Perhaps not surprising given the range of experts: reports were filed from an adult psychiatrist based on assessments of both parents, a child psychiatrist assessed both parents and children, a psychologist assessing the mother and children and two further 'doctors' visited the family at home. In addition this mother could not speak English and although the experts felt she did not have a learning disability there were considerable communication/comprehension problems.
[147] On the basis of records this is likely to have been the child and adolescent psychiatrist.
[148] Other evidence indicates it is highly likely this mother's solicitor would have used a translator to relay the content of reports to her.
[149] This mother spoke only Bengali; at least one of the experts (the adult psychiatrist) used a Bengali interpreter for the assessment of both parents; the child psychiatrist may also have spoken the same language as the mother, she suggests that was the case. An interpreter was used for this interview.

she felt he supported them. When asked whether she felt her background and culture was in any way relevant to the issues the doctor(s) were exploring with her she responded: 'no that wasn't a problem'.

Adult psychiatrists

Reports from adult psychiatrists were filed in most cases (60%). The numbers are small but suggested 'trends' support findings from Phase I: most adult psychiatric evidence filed in care proceedings is based on assessments of mothers.[151]

Four parents recalled interviews with adult psychiatrists. Two parents said the psychiatrist had discussed why the assessment was necessary; in both cases parents were also *asked* for their own views about their mental health.

a) Fair and just treatment and feeling heard and understood

With regard to whether parents felt their treatment by adult psychiatrists was in any way unfair, or that the psychiatrist failed to understand issues about their background and culture, most (3/4) felt they were treated fairly and that the psychiatrist did have an understanding of their background and culture.

For example, a mother of Pakistani origin said she was assessed by a white male psychiatrist, she understood everything he said, he had asked her for her views of her mental health and she did not feel treated in any way unfairly. It was a very tiring ordeal but she thought he did understand her background:

> *'It was very long, very tiring. He went into my background; in fact he went down to my childhood, asked questions of how I was raised. Oh yeah, yeah I had to do a lot of talking with him. It was a problem, he always asked open questions, you know. Um, even asked about family and friends and how they treated children.'*

[150] Given the number of doctors seen, this mother is not entirely clear about which doctors carry what clinical title. Equally, like other parents she was unclear about the precise reason for some assessments. Working through an interpreter to try and clarify some of these issues proved difficult but hugely enlightening with regard to working though a language intermediary.

[151] Overall, the volume of adult mental health evidence in care cases is relatively high - about 33% of all cases (Brophy et al 1999:24 - Table 4.9; Brophy et al 2003a: 81 - Table 6.2). The latter (regional) Phase I study indicated that whilst the figure for adult mental health evidence in all groups remained broadly the same as the national figure (at 35%), over half of all cases concerning parents of South Asian origin (56%) contained adult mental health evidence (compared with 30% of case concerning white British parents) and most of this evidence related to the mental health of mothers (Brophy et al 2003a: 242).

She continued:

> *'… he was very understanding. In fact a lot of the time he was nodding. He was expecting my … I felt that he was expecting the answers that I was giving. He seemed to know a lot about my culture. Because you can tell [by] the questions that he asked. He asked about my arranged marriage, and I didn't tell him that I had an arranged marriage, he just assumed I had an arranged marriage, which is the truth, I did. And he asked questions about smacking and disciplining. He knew that I had been brought up in that way. He seemed to know a lot about my culture, he seemed to understand a lot about my culture because of the questions he asked me about arranged marriages and smacking children.*'
>
> **Mother of Pakistani origin**

By contrast, a mother of Indian origin felt that her [psychiatrist] had not treated her fairly. She said the report was inaccurate, the psychiatrist had not explored her views about her cultural heritage, and she felt he had made certain assumptions because he too was Indian:

> *'After I read the report I did feel unfairly treated…Well because he was a [psychologist] he thought he knew … he must have thought he knows how to read my mind or something, or he knows … well he made up a load of cobblers really in my report. For an example, because my dad was an alcoholic I don't know where he got I was an alcoholic from. That I've gone from alcohol to drugs, when I've never drunk in my life. So from him talking to me he thought this is what's happened, when it hasn't. So basically it seemed like he made his own sort of report up on what he thinks. Which wasn't true'.*

This mother said the expert had asked her something about her background; this was included in the report but she did not agree with what was recorded:

> *'No. Most of the report was not the way I would have said it. He wrote it in a completely different way. And wrote things which I didn't even say'*

Asked if she could remember anything specific with which she did not agree she said:

> *'Um, well in one bit he said I only go out with unemployed … I've had relationships only with unemployed men. But I never said that to him. I was about to say I can't remember saying it to him, but … I haven't said that to him because I wouldn't … it's just a bit stupid, me … I'm not going to sit there and say 'I only go out with unemployed men' - doesn't make sense, does it? He asked me if I've had relationships in the past but … I've said yeah, but not with unemployed men'.*
>
> **Mother of Indian origin**

This mother felt particularly aggrieved because the psychiatrist was Indian; she argued he should have understood her background and the issues and pressures on her. She thought he pre-judged her, and at one point in the interview she thought he looked at her with disgust when she discussed her drug habit:

'Because he was Indian and I'm Indian. To him it would be like a bit degrading sort of like "Look at her, she's Indian, and look what she is" sort of thing.'

This mother said the psychiatrist did not discuss with her or address in the report what pressures on her might be under, whether she felt these influenced her drug problem, her willingness to seek help, and perceptions of support she might expect from her extended family.

When asked if she thought her background and culture might have been better addressed if the expert had not been Indian she said:

'I think so yeah. Maybe it would have been a little bit different… maybe if he was white or black he would have wrote the bits that I've said about me being Indian, because he [wouldn't] understand what it is to be an Indian person. So whatever I say he's going to go by, sort of thing. Where if it's an Indian they make their own [opinion]… they compare it to themselves'

Mother of Indian origin

One mother did not know why she had been referred to an adult psychiatrist, she said it was a last minute decision: *'I was in court one day and went to see her the next'*. She did however recall one question the adult psychiatrist asked:

'…She just asked me like, a stupid question, if there was any [mental illness] in my family …'.

Mother of African-Caribbean origin

Nevertheless this mother did not think she was treated in any way unfairly, she felt the expert understood her, although that was not an issue which bothered her much because she said she knew she would not have to see this specialist again. Moreover, this mother said she was not embarrassed or uncomfortable with any aspect of the interview but neither did she consider the fact that she is of African-Caribbean origin as relevant to the assessment.

<u>Psychologists</u>

Most cases contained reports from psychologists (60%) and most of these assessments were based on adults.

a) Fair and just treatment and feeling heard and understood

Most of the parents interviewed who had undergone a psychological assessment (3/4) expressed concerns about some of the psychologists they saw. All three parents felt they

had been treated unfairly, that a psychologist had failed to understand their background and culture and they were not 'heard and understood'.[152]

For example, a father from Somalia said a trained interpreter was not used for his psychological assessment. His partner interpreted for him and they were interviewed together. He had some difficulty understanding what the psychologist said and felt the psychologist had difficulties understanding him. This father felt the report did not reflect an understanding of him, his culture, or his understanding of his role and ability to protect his child.[153]

Both the above parents underwent a second psychological assessment; they felt this latter report was more accurate, reflecting a better understanding of their background, religion and culture:[154]

> *'I mean, she understood [some cultural issues] - that fact that I got married when I was young and had a kid when I was younger. And she didn't like what Social Services were saying and she thought…she was black, she was a black person herself …and it's really helpful when you're dealing with people your own…like for example, if you had your child taken away from you I think the best, [pause] what I would suggest was that you deal with people from the same country as you…because they understand…I should deal with people from Somalia…I think my social worker should be from Somalia…'.*
>
> **Mother of Somalian origin**

A parent of Nigerian origin also felt unfairly treated by a psychologist.

> *'Um I saw…I think it's a child psychologist came. That was where an issue came up about my upbringing, my culture and stuff like that…really she just asked me about what I would do to a child. You know it was…it wasn't a direct question it was just, " tell me about what you think about, corporal punishment, what you think about that". You know, "what do you think about." [Pause] you know certain things happened to me when I was young, so they're thinking in a way that since it happened to me I would probably most…it might impact on my daughter as well.'*

When asked whether he had seen the subsequent report, and whether he felt in any way unfairly by the psychologist, he responded:

> *'Yeah I saw the report, it was inaccurate, totally inaccurate…what happened, I just feel she was just…she wasn't rude…what she asked me and what she put in the report was totally different. Just like someone asking about how…for different counties …how …they tell you oh… they're trying to bring out some stuff which made it look like I would act like how*

[152] For two parents this was evident in their responses to the first psychological report and their concerns were substantiated by a second psychological assessment.
[153] The court file exploration supported this view; the children's guardian was also critical of this report.
[154] In practice, it appears it was the children's guardian who sought a second opinion.

people from there live. You know what I'm saying? Because she asked me about how would I feel about corporal punishment about smacking a child? When I was younger I was, you know, when I've been naughty …yeah, I was punished I was smacked I was disciplined. You know how…the kind of school that I went to, you know, 'cos I went to a boarding school.'

He continued:

'Cos like that was then in the report. You know it says that I believe in corporal punishment. She asked if I believe in it I said "well it didn't do me any wrong when I was young" you know. It's not like I was being abused or whatever, yeah? It didn't do me any harm. You know, so it's like, in general, she's just…she just summed it up. You know like I would chastise, you know, I'm strict.'

When asked how the report made him feel he said:

'Very very…I felt betrayed, you know. I just felt…that was not what we talked about in the interview.'

When asked what he thought the reasons might be, he said:

'Maybe she doesn't believe in my culture, maybe she doesn't…'I just believe she's…she just 'em, yeah I think she just doesn't understand, you know. Whatever I said I just looked strange I just looked like you know somebody from out space, you know I just looked silly…she couldn't understand. Probably she did not research in – because she's not going to research of how we deal with, you know how I grew up really…you know she made a report that she didn't think my [child] should stay with me because of my background and things like that…'.

Father of Nigerian origin

8.5 Understanding the need for change

Most parents for whom changes in parenting styles/practices were deemed necessary (7/8) did understand why professionals thought that was necessary – and not all agreed with the decision at least not in the initial stages. Moreover, interviews demonstrated that although some parents had undergone parenting skills sessions, they did not *ever* really agree that they needed to change certain attitudes/practices. Parents who were most critical of attempts by professionals to achieve change were those who, *amongst other things*, had used excessive physical punishment on children.[155] Interviews demonstrate some parents remain committed to the use of severe physical punishment of children.

[155] Parents of Pakistani, Bangladeshi and Nigerian origins.

8.5.1 Help from family/friends

With regard to whether parents thought a partner, family or friends could have helped more, or conversely made the exercise of achieving change difficult, one mother of Indian origin felt that the real problem was her drug addiction; that made it difficult for her. She said she had felt unable to tell her extended family because of their expectations of her:

> *'…I was a bit embarrassed because I am an Indian girl on drugs who's got Social Services involved in their lives. It was a bit hard to tell my mum because I knew that she would be upset… Because my mum… Indian people are brought up not to do things like this. Your husband and your kids are like your world. Once you get married it's your husband, and once you have kids it's your kids. And I went a completely opposite way; it was a bit embarrassing for me actually'.*

When she eventually told her family, her mother was supportive but her husband's family were not:

> *'My mum was like "I'll support you and I'll do whatever I can to help you"…where [as] my husband's parents were like 'How could you have done this? You're Indian, and people are going to talk, and it's going to get around [our community], you know, "It'll be embarrassing for us to show our faces"…'*
>
> **Mother of Indian origin**

A mother of Bangladeshi origin said her stepmother and other family members had tried hard to help her, while a mother of Pakistani origin was reluctance to seek help: '*we keep ourselves to ourselves, we don't talk about these things'.*

8.5.2 Could professionals have done more to help parents?

Most parents (7/11) felt professionals could have done more to help them achieve changes. One parent of Indian origin felt exhausted by the number of professional appointments, often not properly co-ordinated. Two parents of Somalian origin felt professionals could have done more to understand their background and should have sought advice on this. One parent of Pakistani origin said it was simply not enough for professionals to tell parents not to hit their children. A mother of Bangladeshi origin with a large family said a bigger house would have helped. One father of Nigerian origin said social workers should have explaining to his children that a return to their mother was not an option; he felt that might have assisted his relationship with his daughter.

8.6 Key Findings: Parents' views about expert assessments and reports

Paediatricians

Fair assessments, and feeling heard and understood

While two African parents said paediatricians did not *ask* whether there were issues about their background/culture that the doctor needed to know, the mother did not think she was treated unfairly.

Both parents however reported nursing staff as judgemental and arguably influenced by a range of issues including the mother's age/culture and the opinion of social workers. The parents did not feel able to broach issues of cultural diversity with nursing staff or the paediatrician.

The hospital did not provide an interpreter for the father.

Family Centre Assessments

Fair assessments, and feeling heard and understood

Some parents reported inconsistencies and failures to use interpreters where their first language was not English.

Most workers explained the purpose of the assessment but few provided real opportunities for parents to comment on the subsequent report.

With regard to whether parents felt assessments were fair and whether they felt heard and understood the picture was complex. Leaving aside assessments where there were problems with interpreters, while most parents felt their assessment was 'not unfair', some felt workers failed to understand -and failed to acquire - information about a parent's cultural context.

In cases of excessive physical punishment of children some parents said it was not enough for centre workers simply to tell parents not to hit children.

Child and adolescent psychiatrists

Fair assessments, and feeling heard and understood

No parent reported unfairness as such but there was certain a 'vagueness' about some issues – at least with regard to some parents understandings of the focus and aims of assessments.

Parents did not indicate they felt engaged in a real dialogue with child psychiatrists about the issues, there were relatively few examples of 'openers'/invitations to parents to participate in a discussion about diverse backgrounds. Parents generally experienced assessments as a very traditional doctor/patient exercise in which child psychiatrists determine the scope of discussions and parents answered but did not pose questions.

Use of ethnically matched child psychiatrists did not necessary resolve dilemmas about approaching a parent's cultural/religious background; it could make matters more complex for some parents, for example at intersections of gender and ethnicity/culture.

Adult psychiatrists

Fair assessments, and feeling heard and understood

Most parents did feel they had been treated fairly and most felt heard and understood by adult psychiatrists.

Talking about childhood, family histories, personal problems and family dynamics was not necessarily easy for parents. However the exercise was easier if the psychiatrist already had and demonstrated some understanding of cultural/religious frameworks, which might influence a parent's views/lifestyle.

Where a parent felt unfairly treated this was largely because cultural heritage was not explored, assumptions were made, parents' responses were not presented in a parent's own words, and views had been misunderstood or misrepresented by the psychiatrist.

'Ethnic matching' did not necessarily alleviate problems. One parent with a 'matched' psychiatrist felt a white psychiatrist might have explored the relevance of diverse views/practices with her and presented her views in the report - and would not have judged her as harshly as a member of her own community.

Psychologists

Fair and jut assessment and feeling heard and understood

Most parents felt unfairly treated by a psychologist and most felt the psychologists had failed to understand them.

Parents felt personal histories were sometimes ascertained and used in a crude/problematic way in addressing the reasons for current problems, and likely future behaviours.

Most psychologists failed to research cultural contexts or explore these issues with parents.

Some parents felt some reports presented them as ‘other’ (that is, ‘the foreigner’, ‘the outsider’, the ‘culturally’ problematic).

Chapter nine Cultural contexts to childrearing and family courts in the future

9.1 Attitudes towards children and childrearing

9.1.1 Introduction

In this chapter we begin by focusing on how parents perceive children/childhood, whether they think there are some differences between their views, values and practices in parenting compared with white parents/neighbours they know, and whether differences were significant in their case. We also explored whether parents thought any differences in views/approaches might be due/influenced by issues such as housing, whether a parent was in employment and how much money they had.

Care must be taken with this qualitative sample, at this point we are simply exploring whether parents perceive any differences and where/how they locate any variation. We are not aiming to make any generalisations about 'normative' values/practices within or between minority ethnic groups.

9.1.2 Differences seen as arising from minority ethnic/cultural contexts

Many parents (7/11) felt that there were differences in their values and approaches to parenting compared to white British families they know; some thought differences were substantial, others thought that although differences existed they were not large.

Some parents identified differences 'grounded' in diverse ethnic/cultural backgrounds, some generalised their approach to parenting to other parents in the same ethnic group. However, some parents felt differences – at least with regard to physical ill-treatment of children - were based on stereotypes and misconceptions about the homogeneous nature parenting in minority ethnic groups.

Parents were asked whether there were any differences between the ways in which they expected to bring-up their children compared with white British parents/neighbours they knew. Discipline and the use of physical punishment featured – although not always in ways that might have been predicted. Respect for elders and for child/adult boundaries was highlighted as a further difference, as was the importance of education. Moreover, views about what might be termed children's rights and seeking children's views/opinions also differentiated some parents from what they perceived in white parents/neighbours. For example, a parent of Indian origin said:

'On some things yeah, like, I do not like swearing some parents don't mind their kids to swear. But I don't like that at all…'

Asked whether she thought there might be any differences in the way she would try to stop children swearing and the way she might discipline her children she said:

'Yes, 'cos I would try and explain it to them, some people just hit you – [the child] I think that's wrong'.

Parent of Indian origin

One parent of Nigerian origin focused on a range of issues which he felt differentiating him from his white neighbours: the role of physical punishment and the influence of both his religious convictions and cultural contexts and views about children's wishes/feelings First, as outlined earlier he again referred to what he saw as his right to use physical punishment:

'What I'm saying is that even from a biblical point of view, from my own cultural point of view, we correct our children by flogging. It doesn't kill. If you don't do it to a child he will not grow up well, and then the parents will pick up the responsibility. But as you're hitting the child, doesn't mean it becomes [an instrument] to kill, it's showing that you're doing it in love, correction. As you are doing it you tell him or her why you are doing it…we live in this society then [but] we don't understand what it is all about'

He felt the law itself did not leave any room for his perspective:

'…Yeah they don't understand…this what we call ethnic diversity it [is] not entrenched in the British system…this law is mainly made for the British. All right? So when you're talking about ethnic background and your own way of life, it hasn't come…it's not there. And I'm not saying things can't be harmonised, that how it's done…can't be how it's done in America. Okay?'

Parent of Nigerian origin

This father also felt his approach to children's opinions also separated his parenting values from that of white British parents:

'I should be able to correct my child if I find it's doing something wrong. You don't correct here. If you do it is an abuse – that's the language. So when the child is doing [something] [they] say 'oh that's his choice, that's her choice'. Can you believe it? At the age of 3, 4, 5, - they have a choice? - A child having a choice!'

Parent of Nigerian origin

Another parent of Nigerian origin felt attitudes towards discipline and physical punishment were also markers of difference, but also attitudes towards education and respect for adult/child boundaries:

'Yeah… I think there are lots of differences…what I think is number one – discipline, … respect… um...I feel white parents give up easily on their children… … like if we have a problem right, your parents are…they're there not for 16 or 18, they're there forever. And respect for elders it's paramount really, its number one. And education…where I'm from even though it's not as developed as this country, but we still feel that's the only way out really, through education, which is totally different here…'

He continued:

> *'When I came to this country I found a lot of parents very strange you know, the way kids speak to their parents…it's good to be free with kids but at times you don't know who the parent is and who the child is in this country… with time I just had to accept that and I had to adapt…[but] deep down that respect is very important because if you do not respect – like they say charity begins at home, if you don't respect at home, if you don't respect your parents you can't respect anybody else…'.*
>
> **Parent of Nigerian origin**

Different approaches to discipline also featured in the responses of two mothers – one of Pakistani and one of African-Caribbean origin. In response to the initial question, one mother said:

> *'A big Yes! (Laughter)… we punish our children physically even the law says we can smack [them] I don't understand that….*'.
>
> **Parent of Pakistani origin**

This mother had expected magistrates to be more understanding of her views about physical punishment '*cos they're Asian themselves … so they definitely should know about the culture…*'

A mother of African-Caribbean origin with a white British partner thought a whole list of values and practices differentiated her from her white neighbours - and from her white partner's views and practices. Stricter styles of parenting, attitudes to children undertaking household chores, and religion featured highly. In answer the initial question, she said:

> *'Yes (laughter) yes… oh boy! Well, like [my child's] dad, he's white basically, and we do find we have a lot of differences. Whereas - I don't know whether it's a black or white thing - but like, from my family experience to his I find that when [my child] … obviously she's only young now, but when she's older …the morals I would have for her is to go to school, come home, study, chores, do what you've got to do before you even think about stepping outside the house. Whereas [her father's] sort of like "Go on, go outside, free" you know, "Take care"…'*

She continued:

> *'And like for me religion's a big part for me, so I expect it. I wouldn't push it on her but would like to her to have the same sort of thing. But I find me and obviously black people are a lot more stricter on kids as in family life, you know home life and stuff, than white families are. Yeah. I'm not going to make her scrub the floor on her hands and knees, but you know … … it's sort of like, after dinner: "wash your dishes up, dry them up, put them away, tidy your own bedroom". [My partner] still tidies his 17-year-old son's bedroom! And boy, that won't be happening for me at home.'*
>
> **Mother of African-Caribbean origin**

While a mother of Bangladeshi origin thought religion differentiated her lifestyle from that of her white neighbours this was not a big difference:

> *'…Yes, there are differences because we have one religion, they're from another…there's not like a big difference or anything like that its like we do our religious practices and praying and fasting and all that, we teach that to our children as well, but they don't have these practices…[so] not big, but some religious differences…'.*
>
> **Mother of Bangladeshi origin**

Two parents of Somalian origin however felt that popular images of African parents in Britain portrayed them as violent towards their children using physical punishment. Both parents said that they did not believe in physical punishment and argued some white British parents can be very violent. In practice they thought that 'country of origin' does not necessarily dictate a parent's views/practices – at least with regard to hitting children.

For some parents differences were relevant to allegations concerning ill-treatment of children. A central issue for some was the right to 'smack', 'hit', 'beat' and 'flog' children as a form of control/punishment.[156] Equally however parents of African and South Asian origin in the sample said they would not use or support the use of physical punishment of children**.**

9.1.3 Other issues influencing childcare practices

Most parents did not think that any of the differences of childrearing they had observed between themselves and white parents were related to issues such as quality of housing, having a paid job or how much money a parent generally had. Some parents felt very strongly money was not the issue:

> *'No it's nothing to do with money'.*
>
> **Parent of Pakistani origin**

> *'No no - its not linked to money'.*
>
> **Parent of Nigerian origin**

One parent however said housing problems had exacerbated her situation; the conditions in her home were poor (damp because of a leaking roof) she argued:

> *'The council don't repair the roof – it makes it bad for the children…'.*
>
> **Parent of Indian origin**

[156] It should be noted that with regard to allegations of maltreatment which included physical ill-treatment in this and Phase I, applications did not rest solely on the inappropriate use of physical punishment (see Table 3.1 herein, and Table 4.4 in Brophy et al 2003)

9.2 Improving the experiences of minority ethnic parents

9.2.1 Introduction

As chapters seven to nine above indicate, we sought the views and experiences of parents about key areas in proceedings. As indicated in chapter 4 (work with solicitors) the framework was based on findings and questions raised by the Phase I study but also from other research and writing in this field. This does not however mean we have tapped all relevant aspects of parents' views about care proceedings.

We therefore concluded interviews with two final questions: (a) had parents experienced any unfairness, discrimination, prejudice or racism we had not covered and (b) could family courts do anything to improve the experiences of families from diverse ethnic groups and cultures. In practice, responses to the former question were very much related to the areas parents raised under the latter, and final question.

9.2.2 Additional views or experiences of unfairness, discrimination, insensitivity

Most parents said there were no further experiences/concerns they wished to raise; four parents did however raise concerns. In practice some issues had already been raised during the interview - but perhaps not in enough detail for the parent, or the parent wanted to emphasise and 'drive home' their views.

One parent of Indian origin raised concerns about the failure of social services to look at cultural issues and to assess her extended family earlier in her case. She re-iterated her objections to the placement of her children with a black foster family: her son would not speak his first language in the foster home, the foster parent had a much stricter approach to discipline with young children, and the diet in the would be difficult for her children. She was especially concerned that her baby daughter would have a primary carer who is black rather than Indian:

> *Yeah, [my son] that he forgot how to speak his language. And my daughter who was only one years … she wasn't even … yeah she was one years old, is around black families. Someone so young, that's what she would think her prime carers are supposed to look … not look like, but are black, not Indian. For a child so young they need to know, from young, … what they are. I mean it's up to my kids when they're older what they want to believe in, whether it's Sikh or Gujarati, but while they're this age until they're old enough to make their own decisions I would teach them both…'*

This mother added that an independent social work assessment of her own mother - albeit late in the day – had improved information on cultural and religious issues:

> *'Yeah. That report actually did … that report was quite good. Because they looked into the family, they looked into the culture, they looked into*

everything. Well, for example my mum, she's Sikh, and my husband's mum and dad are Gujarati. So when they asked my mum questions like "You know the kids are not fully Sikh, they're half Gujarati and half Punjabi, what would you do?" So my mum's answer to that was "Well I'll take the kids to the temple and the temple for the Gujarati people". So they looked into all of that. They looked into both cultures, both Gujarati and Sikh because of the kids.'

Mother of Indian origin

However, this mother argued this work should have been done earlier alongside her own rehabilitation programme so that if things 'broke down' the maternal grandmother would have been ready to take the children and they would not have had to go to foster carers who they did not know.

Two parents of Somalian origin talked about the racism they had experienced from a social worker, the failure of social services generally to explore issues about their culture and the failure of the court to pick this up early in the case. They again emphasised that judges should not always take the views of social workers at face value and 'should not judge you because of where you're from'. A parent of Nigerian origin again focused on approach of the social workers and the psychologist his case; he thought 'approaches to foreigners' was a problem and that they could have done more to understand his culture.

9.3 Could family courts improve services to minority ethnic families?

Most parents raised a range of issues in response to this question; some reiterated early concerns, and several common themes emerged. For example, one parent in particular felt judges should 'have more cultural knowledge' and that there should be training for judges in cultural diversity. This parent argued consistently that it is the 'law' not people who are the problem; the law should reflect the multicultural nature of communities. For this parent that meant included the right of parents to use 'physical punishment' if they saw fit. This parent also argued that judges should understand that in Nigerian culture, if a child is in care it is labelled as a bad child. The aim therefore 'should be to keep children out of care'.

Two parents of Somalian origin reiterated that judges should avail themselves to some information and training, so 'that they are more aware of cultural differences' and thus 'not judge you because of where you are from' Moreover, judges should address cultural issues 'so that parents know they are understood, not pre-judged'. A young person of Iranian origin was adamant: her message for judges was that families should be able to speak in court, 'not just sit us at the back'. She also reiterated her message for judges regarding children and young people involved in proceedings: 'they should, if they want to, be able to speak to the judge – they can speak for themselves.'

A parent of Pakistani origin felt strongly that judges should not be rude and arrogant in court. They should also be 'more welcoming of parents' and 'have more time for cases [and] this is not a cultural thing…they made me feel my case and my children are not important'. This parent also felt judges should have more understanding of cultural issues.

A parent of Moroccan origin reiterated some similar points about how he was treated at court: the lawyers chatted amongst themselves outside the courtroom; nobody spoke to him once in court. His experience was therefore was one of exclusion: he was ignored both in and outside the courtroom. In addition, he reiterated he had spent several hours waiting for a very short hearing, and he needed to speak to the judge for himself – 'in a calm manner'. This parent also said what pleased him was that courts in this country are not corrupt: 'it doesn't matter if you're rich or poor, and that is good'.

9.4 Key findings: differences in attitudes towards children

Differences in attitudes/values towards children/childhood

Bearing in mind this is a qualitative study; most minority ethnic parents identified some differences between their values/practices towards childrearing compared with white British parents/neighbours they know.

Differences for this sample were grounded in diverse cultural mores and belief systems rather than other socio-economic status.

Some parents generalised their views to other parents in the same ethnic groups. However, others distanced themselves from what they felt were stereotypes of South Asian and African parents – especially where issues of hitting/beating children were concerned.

Some parents thought the main markers of difference were:

- Attitudes towards and use of physical punishment of children
- Value placed on education
- Levels of respect required from children for elders and for child/adult boundaries
- Attitudes towards children's wishes and feelings
- Stricter styles of parenting including expectations that children undertaking some household tasks
- The influence of religion on everyday lifestyles.

Additional views or experiences of unfairness, discrimination, or racism

Most parents did not report additional experiences of unfairness, discrimination or racism to those outlined in key areas.

However four parents raised concerns about a failure to address diverse contexts early in cases, a failure to explore implications for children of a trans-racial placement,[157] and over reliance of courts on social worker evidence as providing the court with information on diversity.

Improving experiences of care proceedings

Most parents made suggestions to improve judges' and magistrates' understanding of diverse contexts through training

In terms of 'judge craft', parents felt courts could demonstrate to parents that they do understand diverse backgrounds. Also it was felt judges and magistrates should speak directly to parents (welcoming them, explaining decisions, demonstrating an understanding of diverse backgrounds) and give parents an opportunity to speak.

Courts should also provide parents with written information about care proceedings in languages and terms that parents can understand and to which they can refer.

[157] That is, the placement of a child of Indian origin with African-Caribbean foster carers.

Chapter ten Messages for future policy and practice

10.1 Introduction: parents and solicitors

Overall the solicitors interviewed in this study were very experienced practitioners; most are specialist childcare practitioners; many work in areas with considerable minority ethnic populations. In general terms therefore the views and practices are likely to represent best, or better practice. However the degree to which this is reflected in specific skills with some minority ethnic families is largely down to the thinking and experience of individuals. Neither pre nor post qualifying training prepares those in family work for working with families from diverse contexts.

For many white solicitors, thinking and learning about anti-racist and culturally sensitive practice has largely been done 'on the job' perhaps supplemented by discussions with friends and attendance at conferences/seminars[158] relevant to, but seldom specifically focused on the position of minority ethnic parents accused of child maltreatment. Equally, with regard to minority ethnic solicitors, debate has not moved beyond the presumed benefits of 'ethnic matching' to consider issues which may enhance or inhibit effective communication between solicitors and parents.

With regard to the sample cases, as Chapter five illustrates, with notable exceptions,[159] the general profile of cases is remarkably similar to other data sets: all cases are complex containing multiple allegations of child ill-treatment and failures of parenting. However proportionately more children in this study were subject to physical ill-treatment.

Bearing in mind those features of the sample two further points need to be reiterated. First, as identified in the Introductory chapter, this study is not about testing competing claims to 'truth' (although much of what parents said about expert reports was accurate); nor was the study intended to examine threshold debates and findings of fact in specific cases although we did seek solicitors' views about whether in general there were any problems with the threshold criteria in what might be termed 'cross cultural' contexts.

As outlined in the Introductory chapter we aimed to add two dimensions to the picture provided by Phase I: we were concerned with what might lie behind the documentation and

[158] Accredited for Common Professional Development points through the Law Society.
[159] For example, proportionately more children were subject to emergency orders, parents were more likely to file statements, more parents were living together at the start of proceedings and a higher percentage of both parents held parental responsibility – see Chapter five above).

how the terrain of race and diversity is articulated and negotiated, and how it is experienced by parents. Below therefore we take key tasks and issues raised by solicitors and we compare these with the views and experiences of parents. We then look at the views of both samples with regard to attending family courts, expert assessments, thresholds and cultural diversity and issues of changing parenting practices. We identify primary areas of agreement and disjuncture exploring underlying reasons and complexities. Finally, we draw together views about the need for change in this field of the family justice system.

10.2 Preparing parents for court and being prepared for proceedings

As Chapter one outlined, there are several issues in advising and representing parents in care proceedings, which apply to all parents regardless of ethnic group. Most parents are highly vulnerable on a number of social, economic, and health indices: facing the legal arena they are usually afraid, angry and extremely anxious.

In thinking about the relevance of issues of diversity to solicitors' tasks, 'conceptual' divisions between parents who are new/relatively newly to the UK, and second/third/fourth generation Black and Asian British could be a starting point. In practice, parents from both categories often felt ill prepared for the realities of proceedings; they often did not understand the language and concepts used in court, equally they could not always follow what was happening in court. This was not necessarily due to lack of a common language or a good interpreter, although clearly that influenced some experiences.

Although current (post Children Act) procedures have many advantages for parents (Brophy & Bates 1998; Brophy et al 2003a), their knowledge of family courts is usually non-existent or drawn from depictions of criminal courts on television, with juries, a judge and people in the witness box giving their story. Such depictions (in television dramas and 'soaps') give the impression of very short timescales between incidence and a court hearing; hearings are depicted as short (two episodes at the most) and decisions are relatively quick. Thus, parents' views of care proceedings are understandably inaccurate and their expectations often unrealistic.

Indications were that most solicitors tried to prepare parents for court, but the harsh reality is that the family court system is itself also experiencing a range of institutional problems for which parents cannot really be prepared. Do minority ethnic parents experience this aspect of the family justice system as discriminatory? Some parents may well do. As one solicitor reported, when the system at one point appears all powerful (children are removed, often

under emergency powers) but then appears unable to make a final decision for many months, one response of some parents may well be incredulity: '*it must be me, it must be because I'm black'*.

What is perhaps surprising is that parents in this study at least did not see these institutional, resources and procedural problems in terms of race. Parents did indeed complain bitterly about the system (the shortage of care judges/courts, long waits before going in to court, not being spoken to in court, being seated at the back of the court, and not getting an opportunity to 'have their say' or speak to the judge etc,) and those issues were experienced as disrespectful and insensitive. Nevertheless over the period it took to resolve cases most parents were sufficiently observant to note this treatment was not reserved for them; as one solicitor tried to explain to an angry and frustrated black client '*I know its awful, but all parents - white and black - get the same 'deal*''.

10.3 Getting the story: parents on solicitors, solicitors on parents

Despite feeling unprepared for some of the realities of court hearings, most parents were mostly positive about their solicitor. Solicitors were seen as patient, kind and supportive; no parent expressed concerns about racist or discriminatory behaviours on the part of their own solicitor.

However, different perspectives between parents and solicitors arose with regard to dealing with diverse cultural mores, discussing a parent's family history and approaches to children, deciding what information about 'cultural contexts' goes in or stays out of statements, and how statements are written.

As indicated in Chapter one, some interviews are likely to start without much of a 'script': some minority ethnic parents don't necessarily know what they need to tell their solicitor, but equally, some solicitors 'don't know what they don't know'. Arguably solicitors require an understanding of the frameworks through which parents live and understand their lives in order to begin what one solicitor described as 'bridge building' (between the world of the parent and the concerns of courts). For certain minority ethnic clients this places a different complexion on the notion of their solicitor '*taking instructions'*. It certainly indicates some movement beyond traditional 'scripts' for this task.[160]

[160] For example, Eekelaar and Maclean (2000:72) describes the process as one in which the lawyer operates rather like a doctor taking a history to seek information that will be useful.

For some parents the task of discussing early childhood was difficult; some parents did not really know why their history was relevant to the task of getting their children back. Discussing issues with solicitors could be embarrassing for some parents, some issues were culturally specific, others had elements of 'cross cultural' features in that interpersonal tensions and conflicts exist in most families. However how these tensions are handled in families may be culturally specific, discussing issues with a virtual stranger is not easy. Where a parent considers aspects of their background might appear strange, 'exotic' or that the detail of disputes will pander to stereotypes about their culture/ethnic group or increase their sense of shame, the knowledge and interviewing skills of the solicitor becomes crucial.

What appears helpful to parents is when a solicitor has some general knowledge about a parent's background, culture and religion and can thus ask meaningful questions and explore responses with some knowledge and sensitivity. And as some solicitors argued, it is alright – indeed it can be helpful to a parent - to acknowledge a lack of direct knowledge or understanding of particular complexities for example: *"look I'm awfully sorry but I don't know much about this - can you help me here - could you just explain a bit more about what this means for you*'. But in addition, as some parents argued, solicitors need to provide parents with initial 'openers' indicating it is valid and indeed important to discuss the possibility of different ways of living and thinking about children and family life.

In some instances it may be a case of 'who goes first' but tensions exist because the indications are that some parents will not feel able to initiate this type of discussion. If their solicitor is of the view that the onus is on a parent to raise issues of cultural/religious diversity, it may not get raised at all. Such issues may turn out to be 'legally irrelevant' but as the study demonstrates they can be culturally important.

As this study indicates some solicitors have developed ways of broaching this area with parents because they know parents will be unlikely to raise it of their own volition. Equally these solicitors approach this area with some parents who have lived in Britain for many years. Work with some parents of South Asian origin demonstrates the enduring but also the negotiated and changing nature of 'culture' and identity. Parents may negotiate identities and cultures, acquiring some attributes of Western society (e.g. speaking English outside the home, adopting a Western dress style etc.) whilst retaining many unique cultural/religious/linguistic traditions at home. This *may* be especially the case regarding values/practices regarding children and perhaps especially went parenting under pressure. For some solicitors this exercise – coupled with a knowledge base about diverse groups in

their area - also enabled them to identify real differences from 'culture as an excuse' for ill treatment, and thus a way forward in terms of appropriate challenges to parents.

10.4 The parent's statement – negotiated territory?

Some differences of view in how the parent's story is or should be told in statements emerged between solicitors and some parents – and also between solicitors. As Chapter six demonstrates, parents were divided on whether they were satisfied with their statement. For those who were dissatisfied, areas of dissatisfaction were, that statements were not in the parent's own words, or things were said rather differently, in particular those parents accused of physically ill-treating their children were not happy with the way this issue was presented in their statement (see below). Also, diverse cultural/religious backgrounds were not sufficiently understood by their solicitor and/or were not covered sufficiently in statements.

While the Phase I study (based on 182 applications) identified that many statements for parents conformed to a 'rebuttal mode', solicitors in this sample strongly rejected that approach. Overall most aimed for a more holistic document presenting a parent's story in narrative form. With regard to whether information on diverse cultural contexts was included most solicitors discussed this issue with parents based on what would help or hinder their case but most said the final decision remained with the parent.

In practice there are indications of tensions here: some parents were dissatisfied because cultural contexts were excluded - either they told their solicitor but it was excluded from the statement, or the solicitor didn't ask about these issues and the parent did not feel able to broach the area.

However the tension goes further; some minority ethnic parents wanted their statement to include their view that it was acceptable to hit or beat children – that was posed as acceptable behaviour within cultural/religious traditions - and they wanted that framework included. It appears some solicitors engaged in some 'skilful' drafting about this activity in statements but this did not necessarily meet the approval of parents. In strategic terms, parents are likely to have been advised aspects of their behaviour 'are unacceptable, and this is what we need to do to remedy it' – in order to have any chance of children being returned. In other words solicitors negotiated this issue within the 'parameters of the possible' (that is, against a background in which the judge will put the welfare and safety of the child first).

Some parents may undergo parenting skills programmes to change this aspect of their parenting. In practice however, interviews indicate this exercise does not *necessarily* change parents' views about the benefits of hitting/beating children. Care must be taken here but even in this sample this issue was not limited to parents who are relatively new to Britain, some parents had lived in the UK for many years.[161] As Chapter five demonstrated, in practice physical ill treatment of children was usually not the only allegation in cases but was part of broader picture of problems in parenting. It is also the case that very little has been written from an evidence-based perspective about parenting programmes which address physical maltreatment in 'cross cultural' contexts.

10.5 Minority ethnic parents' experiences in family courts

While parents had substantial criticisms of family courts, examples of racism were rare. Parents were thoughtful and reflective about this issue; most felt family courts were insensitive and disrespectful but not racist. As described above, being kept waiting for a judge/court, not being acknowledged in court, feeling proceedings were rushed and an outburst of temper by a judge all led parents to feel they were treated insensitively and with disrespect by courts.

There were more examples from solicitors than parents of attitudes and behaviours which they considered to be racist – although most felt things had improved considerably over the last four or five years. Many solicitors were emphatic about this issue: they would not stand for racist/offensive behaviour towards their clients. On occasion however it appeared some 'unnecessary', 'unhelpful' or 'uninformed' comments may have gone unchallenged.

Although there were some regional variations within and between courts, solicitors with experience of dedicated family courts and courts which combined crime and family work thought the former courts was probably a better overall experience for most parents but perhaps especially some minority ethnic parents. Nevertheless, some magistrates and judges in all courts tried very hard to be sensitive with minority ethnic parents. They could not however make up for the impact of the institutional 'bottleneck' parents and solicitors described. Equally, as both the parents and solicitors demonstrate, experiences in some courts could depend on the particular judge – many were excellent with parents and thus with parents from other cultures and religions – some were not.

[161] And of course some white British parents use severe physical punishment of children which results in 'significant harm' and some of thee parents also claim the right to hit/beat and 'chastise' children as they see fit claiming cultural mores and support from religious texts.

10.6 A fair and just hearing, and feeling heard and understood

It might be thought that responses from parents to issues of 'fairness and justice' and feeling 'heard and understood' by courts would be likely only to elicit complaints about unfair outcomes, possibly racism and certainly much 'scapegoating' of social workers. In practice most parents – regardless of outcome - were remarkably thoughtful about the process and the issues.

As Chapter two demonstrates, *solicitors* thought that minority ethnic parents probably did get a fair and just hearing; more however were doubtful about whether many were in fact 'heard and understood' by courts. Some solicitors felt some parents would not consider they had had a fair hearing or that they had been heard and understood and this was due to some of the inherent problems – of denial, pain and 'blame shifting'– frequently associated with parents accused of ill-treating their children.[162] *Some* solicitors felt that some black parents – and especially perhaps some parents of African Caribbean origin - might consider the exercise something of a 'whitewash'. In this sample – bearing in mind the limitations of sample size - there was not outright rejection of the system as inherently racist by these parents at least.

However much remains to be done in this field. This study presents a framework for that work but it depends on ethnic monitoring by courts[163] to enable a larger sample to be identified (particularly with regard to parents of African Caribbean origin) to test further the issues and concerns raised by parents. Nevertheless, parents and solicitors in this study had some remarkably similar criticisms of both the 'process and content' of care proceedings.

First, as outlined in Chapter seven, two black parents said that they had not been treated fairly in the early part of proceedings, the judge had made comments before they had filed any evidence and they thought comments were based on stereotypes of African parents. As described above other parents described some features of unfairness and insensitivity towards them in terms of a 'bottleneck', a failure of the court service. Solicitors also referred to the problems in the court system – which affected all parents. But as described above, some black parents may perceive failures in the court administration as directed at them.

[162] Both clinical and socio-legal research and writing in this field indicate some parents place the blame for mistreating children on the child – it is the child who is 'the problem', and which professionals need to 'sort out'. (Freeman and Hunt 1998; Glazer, Prior and Lynch 2001)
[163] And indeed that is a requirement of the Race Relations (Amendment) Act 2000.

Second, some minority ethnic parents discussed unfairness/unjust treatment in court in terms of '*never had an opportunity to have my say'.* Some parents felt they were effectively silenced by the system: expectations of justice included having an opportunity to speak to the judge as the independent arbiter. Solicitors were very aware of this issue for parents; it was articulated in discussions about the impact on parents of conceding the threshold criteria and was said to be a dilemma for most lawyers. They were likely to tell irate parents that eventually they would have an opportunity to 'have their say'. In practice however most acknowledged that a contested threshold hearing (and thus an opportunity for a parent to speak in court) was unlikely. Moreover, solicitors discussed balancing issues at this point, including the desire to protect highly vulnerable parents from cross-examination in the witness box –precisely the experience many parents felt they wanted.

There is a further area of court practice that resulted in concurrence of views between parents and solicitors. This relates to the response of some courts to issues of cultural/religious diversity. Some parents felt judges had failed to understand their backgrounds. Some parents described judges as 'judgemental' 'didn't understand' or 'didn't respect my culture'. Some solicitors described experiences appearing before particular judges (and magistrates) that supported those views.

Some parents felt the problem was with the attitude of a particular judge, others felt the blame could lie with their solicitor: because information was simply not detailed in their statements. Some solicitors agreed that that might be the case, they might miss something but as indicated above reasons for inclusion or exclusion of 'cultural contexts' in statements can be complex. One parent blamed the construction of child care law itself; solicitors did not demonstrate any support for that view. Solicitors acknowledged some judges and magistrates tried very hard in this area but some do not understand the ways in which aspects of diverse cultural/religious values and practices structured lifestyles and ways of thinking and behaviour – and some do not demonstrate to parents that they are understood. As one solicitor highlighted, in practice, we do not know what it takes for a parent from another culture to feel heard and understood. At the completion of this study however that picture is beginning to change – and we do know that some judges are better at this than others (see below).

10.7 Expert assessments

There were some very similar criticisms and concerns from both parents and solicitors regarding the focus on diversity in the work of various clinical experts. Information is severely limited with regard to information from parents about the work of paediatricians, and most solicitors felt issues of background and cultural/religious contexts were probably irrelevant to this work. However discussions with two African parents indicated how cultural contexts could be interwoven into the work of hospitals, nurses and paediatricians. For example, the mother said that nursing staff on her child's ward were judgemental, the hospital failed to provide an interpreter for her partner, the paediatrician did not ask her about her background and what might help him better understand the parents. The parents did not feel able to raise issues about *'what* was *normal for us'.* This is **not** to suggest that such information would have changed the medical diagnosis as such, but it could (and ultimately did) add light to the circumstances surrounding a child's condition (and eventually changed an application from a care order to a supervision order under which the child was eventually returned to the parents).

With regard to the work of psychiatrists and psychologists there was remarkable agreement between parents and solicitors. Solicitors felt issues of diversity were highly relevant for the work of these clinicians and they were critical of experts who were not prepared to consider/understand that people from other cultural contexts may live and understand their lives differently.

Parents were critical of experts who did not explore cultural contexts with them. A failure of professionals to take the initiative and provide 'openers' for parents to discuss these issues is a recurrent theme; parents did not feel any more able to broach this area with a doctor than they did with their solicitor. Interviews were generally experienced as a traditional patient/doctor scenario; experts ask the questions, parents respond. Indications are that if an expert did raise issues of potential cultural variation, parents found it easier to discuss if the expert had some prior knowledge of issues and practices – and demonstrated real interest and a need to know.

Both samples were critical of the work of some psychologists; parents said they felt unfairly treated and that psychologists had failed to understand them – and reports provided some evidence to support that view (some were indeed devoid of *any* information on diversity). Solicitors in turn doubted the validity of much psychometric testing with parents from other cultures and linguistic traditions.

Solicitors highlighted the shortage of experts from minority ethnic groups; tight time scales imposed by the public law protocol may well exacerbate problems in this field. Parents' experiences also presented a note of caution about expectations of 'ethnic matching'. It cannot be assumed that a 'matched' expert will automatically ask the right questions about diverse values and contexts; some may not and that can leave a parent feeling that perhaps a white British clinician would have been better. Some solicitors raised concerns about whether some minority ethnic experts were 'too Westernised'.

10.8 Thresholds of harm and risk in minority ethnic households

From the perspective of parents' solicitors, 'significant harm' as a threshold for harm/risk to children from minority ethnic households was deemed about right; no solicitor expressed doubts or concerns about the threshold as such. Views confirmed findings from Phase I (based on an analysis of evidence and interviews with judges), cases don't 'run' on culture (that is, threshold issues are not usually played out on the basis of 'conflicts of culture'). That is not to say that such conflicts are irrelevant or that the process is generally working well for minority ethnic parents – both solicitors and parents raised concerns.

As indicated above however some parents accused of physical ill-treatment of children continued to defend their views and practices and did not accept (despite medical evidence) that physical maltreatment caused significant harm to children. There were also indications that some parents did not accept the concept of emotional abuse (resulting from terrorising, threatening and beating a child). Some solicitors confirmed that this concept was especially difficult for *some* minority ethnic parents; some judges also expressed similar views in Phase I.[164] This area is however complex, and some parents' responses – given the degree of physical maltreated indicated - may be more closely associated with a combination of individual psycho-social characteristics rather than notions of diverse cultural/religious mores per se. In this regard, some minority ethnic parents who physically ill-treat children to the extent that this results in care proceedings, may not differ enormously from parents in similar cases who are white British albeit the *justifications* may be routed in different traditions. That hypothesis requires testing; the variables associated with high levels of physical maltreatment – and achieving changes to this aspect of parenting - need further study.

[164] It should be noted however this response is not limited to some minority ethnic parents (Glaser et al 2001).

10.9 Did parents consider their parenting values/practices were different to white British parents they know?

Most parents in this sample at least readily identified *some* difference between their values and practices towards children compared with white British parents/neighbours they know. Some issues, for example the use of physical punishment and attitudes towards the importance/relevance of children's wishes and feelings, posed challenges for professionals and courts. In effect, *some* views indicated a rather different construction of 'childhood' and the task of parents, compared for example to some of those likely to be held by professional/clinicians involved in child protection work. However *extreme* care is necessary with this information; much work remains to be done before one can talk in terms of 'normative' patterns in the control and punishment of children across different ethnic groups in Britain and how or why those patterns are breached in cases that result in care proceedings. As we argued in Phase I, it would be a grave mistake to see data drawn from care proceedings as representative of parenting more generally in any ethnic group.

As with white British parents, not all minority ethnic parents participate in or support physical punishment of children. The sample - albeit small - contains examples of parents of South Asian and African origins who reject the use of physical punishment as a method of controlling, disciplining and socialising children. Equally, Chapter one highlights solicitors who argued that not all minority ethnic parents defended physical maltreatment of children in terms of different cultural mores – some do, many don't.

10.10 Other concerns about unfairness, insensitive, or racist attitudes/practices

The penultimate question we asked both samples - 'have we missed anything in this area which you think is important?' - raised more concerns from solicitors than parents. Some solicitors said it was necessary for parents' solicitors to be aware of the subtle avenues through which prejudice can occur - parents may not know or may not be able to articulate the less conspicuous or less obvious ways in which prejudice or racism might operate. However most solicitors felt the further examples or concerns they gave at this final point demonstrated insensitive and uninformed attitudes rather than individual or institutional racism. But a reference to parents as 'those people' and a comment based on where parents came from in terms of 'countries of origin', or an assumption based on notions of what whole cultures/ethnic groups do - were seen as racist. Notwithstanding those examples most solicitors said these were unusual and they had observed improvements in the attitude of professionals and courts in recent years.

Four parents raised further concerns to those already discussed at key stages in cases, these covering the late instruction of an independent social worker to address cultural context, failure of a judge to consider the implications for children of a transracial placement and the over-reliance of a judge on the evidence of social workers.

10.11 What could the family justice system do to improve the experiences of minority ethnic parents?

Respondents had many thoughtful and challenging suggestions for courts and court services in this field and there is considerable overlap in what solicitors and parents felt would improve the experience of many minority ethnic parents in order that they feel – and the system can demonstrate – appropriate attention has been given to issues of diversity.

Solicitors also perceived several challenges to their own practices with regard to minority ethnic parents:

- Many said training had not prepared them for working 'cross culturally', some wished to improve their knowledge, skills and confidence in discussing this area with parents.

- Solicitors also felt that advocates' should refrain from informal/chatty discussions with colleagues outside courtrooms where this is likely to alienate parents. Parents also indicted this activity is problematic.

Parents in turn felt some solicitors would benefit from training:

- To improve understandings of cultural/religious diversity

- To increase knowledge and communications skills enabling solicitors to take the initiative and make sensitive and informed 'openings' for parents to discuss aspects of diversity.

- Parents also felt that some substantial improvements are needed in the preparation of parents for attending court; parents needed more realistic expectations of the process and procedures.

- Where solicitors are 'matched' by ethnic group with parents, some may nevertheless benefit from training to assess those aspects of cultural/religious contexts that enhance and inhibit effective communication between a parent and his/her solicitor.

- Almost all solicitors and parents felt several initiatives from judges, magistrates and court services could help improve the experiences of parents from diverse backgrounds.

- It would help minority ethnic parents enormously if judges and magistrates could talk directly to parents, welcoming them in court and explaining decisions and plans to them.

- Parents also felt they should be given an opportunity to speak to the judge.

- Training for judges and magistrates could improve knowledge and understanding of different cultural/religious contexts and how aspects of diverse backgrounds can impact on the views, attitudes and behaviours of parents in certain circumstances.

- Training might also help courts to *demonstrate* to parents that diverse contexts are understood, and that parents from diverse backgrounds are 'heard and understood' during the process.

- Training could also improve an awareness of the impact on parents of angry outbursts in court. Solicitors felt that if advocates are to be 'taken to task' by a judge, this ought to be undertaken in chambers rather than in front of confused and frightened parents.

- Changes to the physical environment of family courtrooms should reflect the philosophy of *family* proceedings, thus seating arrangements in county courts should be revised and parents should be moved forward from the back of the court.

- Solicitors felt if would help minority ethnic parents with language problems if judges and magistrates improved their focus on and understanding of the work of interpreters in care proceedings.

- Increases the numbers of care judges and improved listing for care centres would also address some of the complaints about insensitive and disrespectful treatment that result from institutional failures.

- Increase in the numbers of judges, magistrates and clerks from minority ethnic communities, and recruitment of magistrates from a wider socio-economic background than at present would demonstrate that the family justice system is committed to increasing diversity and recognises the need for tribunals to be more representative.

- Solicitors also felt there should be real efforts to reduce legal jargon, outdated terminology and lengthy statements in proceedings.

- Parents felt it would be enormously helpful if courts provided minority ethnic parents with information about care proceedings in languages and terms they can understand, and to which they can refer.

10.12 Judge craft, personal styles and judicial neutrality

Acknowledging parents in court and explaining issues and decisions to them is arguably not especially challenging – and some judges already do some/all of this. However, it may take more time in a court system already dominated by concerns about delay and therefore increased 'throughput' of cases by courts for which tight timescales and Protocols have been developed (DCA 2003).

Some recommendations however go further; they address models of family justice and the evolving role of judges. The role of judges in this sphere was addressed in Phase I (Brophy et al 2003a; 217). In that study some members of the judiciary expressed caution

about judges venturing into questions about issues of diversity, 'uninvited' by parties. This view reflected a more general division between those judges whose personal style was interventionist (and thus would ask questions including questions about aspects of cultural/religious diversity), and others who were non-interventionist in style and who for example argued that tremendous care has to be taken over what might be described as 'judges' initiatives'.

Thus some judges – like some solicitors – are extremely cautious in this field; there are undeniable concerns that any intervention carries a risk of at best 'getting it wrong' and at worst being perceived as racist. Nevertheless, solicitors and parents indicate that in certain circumstances – and with sufficient sensitivity and training – a more proactive approach from some judges might be helpful and would indeed be welcomed by some parents and lawyers. The aim with regard to issues of fairness and ensuring parents feeling heard and understood is to improve internal transparency (see below) but to translate that into an 'external' transparency.

A mechanism for improving internal transparency is now in place; the Protocol for Judicial Case Management in Public Law Caw (DCA 2003) clearly identifies[165] that advocates *and the court*[166] have a responsibility in the new procedure to ensure that issues of diversity are addressed. In the longer term that should where necessary improve the focus on diversity in the documentation filed in courts.

Translating a legal discourse about internal transparency into 'external' transparency for minority ethnic parents has some implications for what might be called judge craft. Thus it might be argued that some of the recommendations made by minority ethnic parents and their solicitors in fact address a broader debate about the role of judges in family proceedings and the interplay between substantive and procedural justice, and neutral and non-neutral interventions.

Translating an understanding of diverse contexts into judicial discourse with parents demonstrating that they are 'heard and understood' by courts without transgressing the judicial role as independent arbiter may require wider discussion. However, some of this

[165] See Introductory chapter, page 8.
[166] The Case Management Checklist – Evidence: Item 50 - directions the attention of the court and advocates to issues of diversity, this checklist is for use at the first hearing in the FPC, the Allocations Hearing in the Care Centre and Allocations Directions in the High Court, it states: 'Has consideration been given to ethnicity, language, religion and culture of the child and any significant persons and are any directions necessary to ensure evidence about the same is available to the Court?' (DCA 2003).

suggested shift is not new but arguably extends the work already undertaken by the Equal Treatment Committee Advisory Committee of the Judicial Studies Board. For example, alongside the Equal Treatment Bench Book (JSB 2004), the Short Practical Guides for Judges (JSB 1999; 2001) make the point that the court system needs to be seen to be fair, and amongst other things, in a list of 'dos and don'ts' for judges, stipulates:

- 'Be well informed – being independent and impartial does not mean being isolated from issues which affect people from minority ethnic communities'.
- 'Don't assume that treating everyone the same way is the same thing as treating everyone fairly….'
- 'In family proceedings[167], [there is] a need for understanding of different patterns and structures.'

Moreover under 'communicating fairness' (JSB 1999:9) it is argued judges can communicate fairness and impartiality in a court setting in various ways. Individually they can:

- 'Take the initiative to find out about different local cultures and religions'
- *'Display* [emphasis added] an understanding of differences and difficulties with well times and sensitive interventions where appropriate.'

10.13 Childcare lawyers

The challenge for training lawyers is considerable. The solicitors in this sample mostly acquired their 'cross cultural' skills by 'trial and error'. However the post qualifying years of the solicitors in this sample (see Chapter one) suggests many experienced solicitors, like many highly experienced experts (see Brophy et al 2001) are nearer to retirement than is comfortable for the family justice system. Leaving aside at this point the shortage of child panel solicitors, new solicitors in many major cities face larger minority ethnic communities and more challenges to practices as experience and knowledge about 'law' in multicultural settings develops.

As the above list indicates lawyers have a range of training needs which could be taken forward, in the longer term under 'family headings' in pre-qualifying training and in more immediate period, perhaps under training for the Children Panel and under ongoing Common Professional Development training accredited by the Law Society.

[167] There also recognition in this document that that in practice almost all the statistical and research information about 'race and justice' is limited to the criminal justice system.

10.14 Expert witnesses

This and previous studies (Brophy et el 2001; Brophy et al 2003a; Brophy 2003b) demonstrate a range of issues about diversity for the work of clinicians working as expert witnesses. The lack of attention to issues of diversity in some reports identified in Phase I is replicated in Phase II. Some child psychiatrists acknowledge there are shortcomings in their knowledge and training regarding working with families from minority ethnic families (Brophy 2003b). Thus some of the issues and concerns identified by some solicitors, parents and judges could usefully be taken forward in training initiatives by the Royal Colleges and could eventually be covered in the development of post qualifying training modules for interdisciplinary education and training for the family justice system (FJS, 2005).[168]

In particular the complaints of parents and solicitors about failures of some child psychiatrists to address understand and cultural variation in families is worrying. The challenges for psychologists (and validation bodies such as the British Psychological Society, and Registers of Forensic Psychologists) in so far as psychometric testing of minority ethnic parents is concerned are considerable. The concerns of many solicitors and the complaints of some parents were substantiated by a review of reports. Some psychological reports based on psychometric testing of minority ethnic parents (where their first language was not English and who were relatively newly arrived in the UK), contained no discussion of the relevance of language or cultural context/dissonance for the validity of the tests applied, or the value/strengths of the information produced. For example, a test was used on an African parent (the Child Abuse Potential Inventory – a screening questionnaire designed for detecting parents at a high risk for child physical abuse) with no discussion about issues of reliability and validity in 'cross culture' contexts.[169]

These is now clear guidance for experts accompanying the Protocol (Code of Guidance for Experts – Particular duties, para 1.2, DCA 2003) which states 'In expressing an opinion [the expert should] take into account all the material facts *including any relevant factors arising from diverse cultural or religious contexts* [emphasis added] at the time the opinion is expressed, indicating facts, literature and any other material the expert relied upon in forming an opinion'.

[168] Issues about diversity are highlighted within a suggested curriculum for interdisciplinary education and training for professionals working in the family justice system (see Family Justice Council 2005).
[169] And where there is published research highlighting some of the limitations of the test for parents in cultures other than the one for which it was originally developed (e.g. Diareme et al 1997).

There is also of course case law from the early days of the Children Act setting out the duties and responsibilities of experts which states that reports should not mislead by omission and should be properly researched (indicating areas of insufficient data) and should clearly state if the report is provisional.[170]

Overall, the degree to which developments in this field are likely to have implications for the Human Rights issues is debatable, arguably access to consistently high quality interpreters and translators for parents who do not speak/read English is an Article 6 issue (right to a fair trial). As we outlined in Phase I however, with regard to Article 8 (right to respect for family life) three issues are relevant. First this is a qualified right; the State may intervene where the law permits if this is necessary to protect the child's rights and freedoms and this includes protecting a child from significant harm. Second, nothing in this or the previous study supports a slide into 'cultural relativism' with lower or different thresholds of harm for some children – indeed the evidence is mounting in favour of the current threshold criteria which focuses on the effects of parental behaviours and attitudes on children.

Third, this does not however mean there are no problems with the *process* or with minority ethnic parents' experiences of the process. Further work with parents is essential, but there are questions about levels of transparency in the treatment of issues of diversity in order for the family justice system to *demonstrate* fairness and understanding. Whether that might fall within the remit of Article 6 of the Human Rights Act 1998 is perhaps debatable, for example it may be argued we are in practice talking about a 'good' hearing rather than a fair hearing (that is, one in which the wrong decisions are being made). However, at this point it might be useful to return to the view of Macpherson (1999:28) - that justice is not only done but is also seen to be done, in order to demonstrate fairness and to generate trust and confidence amongst ethnic minority groups. As we argued in the Phase I study (Brophy, Jhutti-Johal and Owen 2003) child protection litigation in multi faith, multi cultural and multi ethnic communities makes special demands on judges and others in the family justice system. Parents and solicitors have demonstrated here that attention to issues of diversity - whether or not these issues are ultimately relevant to findings of fact - are an important part of that exercise and part of the broader endeavour in demonstrating both internal and external transparency.

[170] Case law and Practice Directions setting out the changing agenda and expectations of experts throughout the 1990s is reviewed in Brophy, Brown, Cohen and Radcliffe 2001:15.

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Appendix 1 - Research methods

A1.1.1 Research design

Family courts do not currently monitor applications by ethnic group. The method for identifying cases therefore was to be through the data collected by children's guardians. As outlined in the introductory chapter however, during the pilot and developmental stages of the study the dispute between guardians and CAFCASS[171] had an unpredictable and initially catastrophic impact on the study. Despite an earlier agreement from Regional Managers for CAFCASS to assist the study in the identification of a relevant sample population, as part of 'industrial action' assistance from many guardians in identifying a population sample was largely withdrawn.

In the absence of court monitoring of cases by ethnic group, this resulted in some major problems and subsequent changes to the original methodology, sample selection procedures and sample sizes. Below we outline the original design, methods and sample sizes followed by a description of the changes. Finally we discuss the implications of these changes for the study and for future work in this field.

A1.1.2 Original design

i) Study of minority ethnic parents

The original aim was for a final sample of 45 cases from which we hoped to interview at least one parent/carer. With regard to specific ethnic groups, cases were to be selected in line with those sampled in Phase I, thus we hoped to achieve five cases from each of the following groups: African, African-Caribbean, other Black groups, Indian, Pakistani, Bangladeshi, plus seven cases concerning children of mixed relationships and eight concerning white British parents. We aimed to collect a range of quantitative information from court files comparable with the key case profile information collected in Phase I (see Chapter two herein and chapter II, Phase I); this was to be followed by in-depth semi structured interviews with a parent/carer.

ii) Study of solicitors acting for minority ethnic parents

The aim was to interview a sub-sample of 27 solicitors acting for parents drawn from the above 45 cases. The decision about final selection (whether random or purposive) was to have been taken once the fieldwork with parents was underway.

[171] Children and Family Court Advisory and Support Service (CAFCASS) this is now a non-departmental public body of the Department for Education and Skills.

iii) Geographical areas for study

The geographical areas for the study were based on the 1991 Census data, on percentage of minority ethnic residents by local authority area and cost implications with regard to the number of researchers necessary. The study was primarily based in three regions and court circuits in England (with cases drawn from three county court care centres and family proceedings courts); these are identified in the study as regions 'A' 'B' and 'C'. It was intended each of the three lead researchers would take responsibility for the work in one region, would supervise and support the work of a team of interviewers for the parent interviews and would, in addition, undertake the interviews with lawyers.

iv) Original plan for the identification of cases

Identification of active s. 31 applications by ethnic group and court was the first step in the exercise. As identified above, the original plan was to adopt a similar procedure to that successfully engaged in Phase I by again seeking the help of (what were) guardian panel managers and administrators (and which became) CAFCASS during Phase I.

Once court file reference numbers had been identified with the help of guardians, this was to be followed by visits to each court by a member of the research team to examine the relevant case files[172], decide whether against the criteria (see below, exclusions) the case might be viable so far as the study was concerned, and if so complete a short schedule along with contact details for parents' solicitors. It was then intended we would write to solicitors seeking their help by forwarding an information pack to parents. This pack detailed the aims and objectives of the study and asked parents whether when their case was completed they would meet with an interviewer to discuss their views and experiences of proceedings. If necessary (i.e. if it was apparent from the file) this information was translated into the parent's first language. In the covering letter to the solicitor[173] we also asked whether the solicitor would be willing to discuss the general issues involved in advising and representing parents from minority ethnic groups.[174]

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[172] Access to court files had been cleared with courts by (what was) the Lord Chancellor's Department (then the Departmental for Constitutional Affairs) under a Privileged Access Agreement (PPA). The PPA covers access to court files for the research, the protocol for collecting information to preserve confidentiality and the use of information derived from privileged access. It is restricted to named members of the research team – in this case, the named authors only.

[173] The study aims, objectives and ethical issues and the letters intended for solicitors and parents had been circulated for comment and approval from the Law Society (Family Committee and Children Sub-Committee), the SFLA (now Resolution) and the Association of Lawyers for Children (ALC).

[174] We were aware of the issue of client confidentiality and this had been discussed with the Department and our Advisory Group. In the letter to solicitors we made it absolutely clear that we would not wish to discuss the specific case/parent; rather we wanted broader views about this area of work.

A1.1.3 Problems encountered during fieldwork

We had already written to CAFCASS Regional Managers seeking and obtaining agreement in principle to assist with the Phase II study. In practice however, it then transpired that local CAFCASS offices did not in fact have accurate information on current applications (at that point we were simply seeking identification of ongoing applications by ethnic group and court file reference numbers). Although we had tried to resist approaching guardians directly because of the pressures on their time and because this is a more complex exercise, after discussions with managers and our Advisory Group we devised a short questionnaire to go to children's guardians in the selected regions (see below).[175] This questionnaire simply requested a list of active s.31 applications along with court file reference numbers and an estimated final hearing date.

It was at this point during the pilot and development stage of the study that we ran into a second round of problems. The dispute between CAFCASS and children's guardians escalated and indeed a second judicial review was subsequently announced. As part of the dispute between CAFCASS and guardians, many guardians in all regions withdrew co-operation with the study. It should be recognised that this was an unprecedented stand by guardians who traditionally had been extremely enthusiastic and indeed involved in many government funded studies aiming to enhance evidenced-based practice.[176] Indeed as an indication of how prepared most were to 'go the extra mile', in the past we undertook a national random survey of guardians in which we requested completion of a very lengthy questionnaire about the use of experts which comprised about one hundred questions based on three active cases. The response rate for that survey was 71% and represented some 44% of the relevant workforce (Brophy, Wales and Bates 1999).

Certain individual guardians, public law managers and IT managers tried to assist and indeed given their circumstances at the time and the level of morale and insecurity within the service, some individuals made tremendous efforts to try and help identify cases. However, at the end of a six-week period despite a two stage chase-up process we had only a handful of responses.

[175] In some areas – given the number of public law guardians - we sampled the whole team, in others with a much larger overall workforce, a random sample from employed and self-employed guardians.
[176] For example, Brophy and Bates 1999, Brophy, Wale and Bates 1999.

On the basis of Census data we expanded the local authority areas within regions and through public law managers we sent guardians in four further teams a letter and a questionnaire. With the exception of one area, responses were again poor.

Managers again tried hard to help by circulating guardians encouraging them to complete the brief questionnaire. Responses remained poor, at the end of the period as one manager responded:

> '…*Most of my team are too aggrieved with the present CAFCASS approach to 'harmonisation' of pay and conditions to be willing to co-operate with the survey'. This is not to suggest that they disagree that it is a useful enterprise it is simply that they are very experienced, work long hours and are committed to children and the expression of their need to courts, yet they feel under-valued and disregarded by the CAFCASS organisation*.'

We also received emails from individual guardians, saying they supported the aims and objectives of the study – and hoped 'it would not be taken personally' – but they felt so aggrieved at their treatment by CAFCASS, and angry at the unprecedented levels of unallocated cases, they had made a conscious decision not to co-operate with LCD funded research while front line services for children were in crisis, and bureaucracy and tiers of management in the services were increasing.

A1.1.4 Additional sampling strategies

Overall at this point, (31 March 2003) and with the exception of the aggregated Black group in one region, we had not reached sufficient numbers to begin work in courts. Several further avenues were explored to try and locate a sample by ethnic group, these are *summarised* below:

- We contacted NAGALRO and the Council agreed to put a notice on their website appealing for self employed guardians to reconsider and if possible return the questionnaire sent via public law managers in CAFCASS.

- We contacted the Legal Services Commission to see whether it could offer any help in case identification (given the ethnic monitoring sections of APP 3 form). We were not optimistic about this avenue (completion of this part of the form is not compulsory and we felt it likely that the Data Protection Act would preclude any help). The Commission expressed support for the aims and objectives of the study but having taken advice confirmed that the DPA precluded provision on any assistance on identifying cases by ethnic group.

- We embarked on a search of *FamilyMan* database (a case tracking programme in family courts) in each of the County Court Care Centres, scrolling current s.31 applications by name to try and identify at least some minority ethnic children by naming practices and systems.[177] In some centres where we experienced additional difficulties, manual logs were checked and indeed searches were made of shelves stacking case files.

- We consulted with court managers in Magistrates Family Proceedings Courts and Chief Clerks, managers and staff. We devised a brief schedule to be attached to current care files on which we asked staff to note the ethnic group of the child (ren) and, when set, the final hearing date.

- In one area where we had worked during Phase I and where there is a substantial population of South Asian origin, we contacted a senior legal adviser for family proceedings in the Magistrates' Court to see if they could identify, by ethnic group, cases transferred to the relevant care centre over the previous fourteen month period. Despite being under considerable pressure for resources, the family administration assistant agreed to look at the list of transferred cases over this period.[178]

- An 'open appeal' was made for childcare lawyers to participate in the study through the Newsletter of the Association of Lawyers for Children.[179] This was followed by the distribution of information about the study and a request to lawyers at the 2003 National ALC conference to agree to be contacted with a view to participating in the (professional) study.

- Following discussions with the Department it was decided to write to all solicitors likely to be working in this field - again using solicitors as a 'letterbox' for parents. The Law

[177] The limitations of this approach are outlined in the Phase I study but for example while it is possible to make an 'educated guess' about children of African origin (albeit naming practices have been transformed by religion and colonialism and thus the adoption of Christian and Muslim names). Equally, components of Hindu, Muslim and Sikh naming systems offer a *start* to sample identification. However, the position in relation to children of African-Caribbean origin is much more difficult because as a result of colonialism and the influence of Christianity on once-British Caribbean territories many families have adopted British naming systems (personal names(s) and a surname) sometimes using Biblical names from the Old Testament. The position with regard to identifying cases concerning children of mixed heritage becomes even more complex. Thus much of this is guess work demanding the retrieval of many court files to verify information on the ethnic group of children.

[178] In practice, this proved complex, thus a list of all transferred cases was supplied (27 cases), all cases were then tracked down (some were transferred to another FPC, some to the care centre); files were than explored to try and identify the ethnic group of the children.

[179] At *no* point did we ask solicitors to reveal any case details to the research team, rather we asked solicitors to identify to the relevant *court*, those cases listed in that court, *by ethnic group*.

Society (Children Law) The Solicitors' Family Law Association (now Resolution), NAGALRO and the Association of Lawyers for Children (ALC) were contacted to discuss this option with a view to obtaining agreement on the method and an endorsement of the study in a letter to go to all solicitors on the Children, and the Family Law Panel in the three regions. The Law Society agreed to support the study and encourage solicitors to respond, and to send us electronic copies of the Panel Lists. Following agreement from the other professional associations, a 'parent's pack was written and circulated for agreement; some 340 letters and packs were then sent out – all these were in English but with a note saying we would translate the contents into the first language of any parent they felt fell into the criteria set for inclusion in the study.[180]

Each of these approaches raised many logistical and timing problems along with implications for resulting data - all of which are worthy of a separate discussion. However for purposes here two points need to be made. First, it really should not be this difficult to locate a sample of cases by ethnic group. Both CAFCASS and the court as public agencies are under an obligation under the Race Relations (Amendment) Act 2002 to undertake ethnic monitoring of cases. Second, this problem resulted in a substantial amount of work in courts trying to identify relevant files and a search for information within files to determine if the case met the criteria for the study – and, if a final hearing date fell within the timeframe for the fieldwork of the (now extended) study.

This process was extremely slow and laborious especially in combined county court care centres. For example in one care centre at the start of the fieldwork it was estimated by the court that there were 400 active public law cases; despite support in principle of the family court manager, in practice it proved difficult to gain access to a computer to explore *Family Man* and to retrieve file records.[181] This frequently meant that by the time we had access to the actual file, in terms of timing we were too close to the final hearing date to allow sufficient turnaround for contacting the solicitor and parents.

One further consequence of the dispute between guardians and CAFCASS and the loss of many guardians from the service, was that in one region courts were not setting final hearing dates for unallocated cases. Thus we eventually located files, checked the case criteria only to discover no final hearing date had been set; some panel solicitors also responded to the 'letterbox' approach indicating they too had potentially relevant cases but no children's guardian and no hearing date.

[180] If necessary we could also get an interpreter to read the content of the pack to parents.
[181] In view of extensive problems with this county court care centre we eventually stopped further work in this court.

A1.1.5 The amended methods

It will be apparent from the above discussion that we had by this point lost our objective of obtaining a random sample of cases stratified by eight ethnic groups. In discussion with our Advisory group however we took a pragmatic approach on the basis that we could achieve *some* interviews with minority ethnic parents. On that basis we amended the sample sizes, the aims and the methods (see below) but continued to try and recruit parents to the study.

To take account of a likely shortfall in the number of parents and following positive responses from childcare lawyers

- We expanded the numbers in the solicitor sample from 27 to 45.
- We also expanded the range of issues to be explored with solicitors to include questions about how parents might experience court proceedings, in part to try and retain a focus on this question in the light of smaller numbers of parents to be interviewed.

Second, we amended some of the methodology to be employed with parents and changed some of the questions:

- We stopped trying to sample by specific ethnic group and accepted any parent from a minority ethnic group who agreed in principle to talk with us.
- We also dropped most, but not all of the quantitative work.
- We expanded the qualitative work in which we aimed to explore how parents experienced attending court and assessments by experts.
- We dropped the use of a vignette exercise - originally planned to explore attitudes towards children and maltreatment.
- We did not however want to lose completely an opportunity to ask parents about values and approaches to bringing up children, so we added a general question about whether/how parents thought they might differ from White British parents/neighbours they know and the reasons for this.
- After much work on the interview schedules we retained most of the themes described in the original schedule - albeit some were explored rather differently.

A1.1.6 Amended sample sizes

i) Parents

We had hoped to achieve a sample of 20 parents/carers. In practice we finally recruited 18 cases for the parent study.[182] This resulted in twelve in-depth semi-structured interviews. The sources through which we recruited these cases along with the reasons for the seven respondents eventually 'lost' are described below. Interviews with parents were usually undertaken in their home; some interviews were conducted through an interpreter

ii) Solicitors

We undertook in-depth semi-structured interviews with 45 solicitors drawn mainly from the three original regions selected for the study. This comprised 27 individual interviews, and two group interviews with a further 18 solicitors). Interviews with solicitors were mostly undertaken in their offices; occasionally we met at court and used a court interviewing room. All interviews were taped and fully transcribed.

A1.1.7 The interview schedules - amendments to themes to be pursued

As outlined in the introductory chapter (Para 1.2 – 1.4), the questions and methodology for this study were shaped by the Phase I study (Brophy, Jhutti-Johal and Owen 2003a) coupled with theoretical and methodological contributions from previous work in this field (e.g. Brophy 2000; 2005). Combined, that work dictated the major themes to be pursued with both lawyers and parents.

Underscoring the theme-based approach adopted in Phase II was a view that in order to gain access to the shifting agenda of racism and the dynamics of diversity, we required an interview schedule which would allow us to take parents through each stage in the process addressing views and experiences in relation to notions of fairness and justice, and feeling 'heard and understood' and views about the relevance/impact of issues of 'race' and diversity. We took a view early in the preparation of the interview schedules that these issues should be raised with parents in a direct manner – otherwise parents might not talk about them.[183] Therefore in the first letter and information pack we identified these issues as key areas we wished to explore.

[182] Loss of two cases resulted from the death of a parent in one case, and the death of a child in another.
[183] In practice, that view was supported by the study: for example some solicitors left these issues to parents to raise while some parents did not feel able to raise the question of cultural diversity as an area for discussion. Indications are that parents may be unlikely to raise this area without an 'opener' from an 'authority' figure – be that their solicitor, a doctor, or indeed (as was our view) a researcher.

Equally, with lawyers we started with themes and questions arising from the Phase I study but with additional questions (generated by the Phase I study) about how parents' stories were translated into the language and concerns of law, and the relevance of issues of diversity to specific issues (e.g. thresholds of harm, achieving changes in parenting). Despite changes in the methodology outlined above we did retain most of the original themes for lawyers. We also expanded some areas (e.g. with regard to courtroom experiences, and issues of cultural variation in parents' views about childcare and notions of ill treatment) in case we were unable to gain sufficient numbers of parents to discuss these topics in any detail.

During the early stages of the study, we undertook training sessions with a group of interviewers in each of the regions, based on the original interview schedule. The schedule was developed for an in-depth qualitative interview, organised around specific stages in the process with specific themes and questions at each stage (see below – themes pursued).

We decided with some minor amendments to retain this approach and risk getting sufficient numbers to make the very focused and interviewer led approach worthwhile - in part because we wanted to get at least some comparative data (*not* on the basis of ethnic groups) but with regard to individual parent's views and experiences at specific stages in order to throw some light on 'styles'/approaches of lawyers and judges. We also wished to be able to compare the perspectives of parents with lawyers and to be able to link this with findings from Phase I.

At that stage in the fieldwork this was a high risk approach since given all the problems we were experiencing in courts, at this point we had relatively little idea of the number of interviews we would achieve with parents (hence, the extension of the issues covered in the lawyers' interviews 'just in case'). We are grateful to our Advisory Group and the Department for supporting this decision, however it is not a pressure any of us would wish to work under in future projects.

In practice, we achieved sufficient numbers to make a theme-based approach workable although the parent sample was not as large as we had hoped at the end of the fieldwork (due to losses and withdrawals by parents who had initially agreed to meet us). It must be reiterated with regard to the parents the data presented cannot be generalised to specific ethnic groups. What we have achieved and tested is a workable framework for exploring these issues with parents; with the advent of ethnic monitoring this would enable further work to be undertaken. We have established the importance and viability of addressing

issues of diversity with parents in a *direct* way, and have demonstrated some parents at least are able and willing (despite significant personal pain, trauma and sometimes shame) to discuss and reflect on their views and experience of the interplay between aspects of diversity and other issues in cases.

At each stage in the process (i.e. experiences with solicitors, attending courts, being assessed by experts, etc.) we explored parents' views and experiences about understanding the process, opportunities to discuss issues of diversity and feeling comfortable with that discussion. We examined the relevance of issues of diversity in statements; whether parents felt they were treated fairly by courts and whether they had experienced anything they considered racist, disrespectful or insensitive. We also explored whether parents felt 'heard and understood' by courts and experts, along with their reasons. Because we had purposely devised a very focused interview schedule we concluded with open-ended questions about whether we had missed any aspect of a parent's experiences, which they felt important, and whether there were things that they felt the family justice system could do to improve the experiences of minority ethnic parents involved in care proceedings.

A1.1.8 Analysing the data

i) Parents' interviews

With regard to the analysis of the data, descriptive numerical information was collected on case profiles (according to children, parent/carers, types of orders requested, range of allegations in cases, types of expert evidence filed and outcomes) and these are listed in the contents - Index of Tables, and Chapter two). This indicates we may have a larger proportion of parents in this sample who use and defend hitting/beating children than might be obtained in a random sample of cases stratified by ethnic group. As a matter of interest we also have parents (in the same ethnic groups) who do not use/defend this type of treatment.

The transcripts (based on fully transcribed verbatim accounts) were read and responses coded and text tables prepared according to the key stages, themes and questions asked. Because of the number of interviews we decided against using a qualitative data package preferring instead immersion in the data and a very detailed analysis within and across transcripts until all the data was coded and analysed and ascribed to key themes. Having analysed the data in this way, key word searches were run on the transcripts to ensure in the analysis of each transcript cross checking had been accurate and any duplicate/change of view, repeat of information had been identified during different stages of the interview.

ii) Solicitors' interviews

With regard to the lawyers finally interviewed, in terms of methods of recruitment, as indicated above, these were drawn from a variety of sources. Some were recruited through the procedure identified in the original research design (i.e. from random sample of ongoing s.31 applications); some were recruited through the letter that went out to Law Society Panel members, many were recruited through the Association of Lawyers for Children[184] – and a small number were recruited through personal contacts.[185]

As Chapter one identifies, in terms of experience the sample contains many specialist, highly experienced practitioners working in areas with considerable minority ethnic populations and where such populations are likely to represent a significant proportion of their case work. Thus in terms of views and experiences, what we have probably represents practice at one end of a continuum; it may well not represent views and practices in many rural areas or small market towns where lawyers have little ongoing experience of child protection litigation concerning minority ethnic families.

With regard to the organisation and analysis of the interviews with lawyers, with regard to the 27 one-to-one interviews, each researcher took responsibility for the region in which they had undertaken the interviews. Transcripts (based on full verbatim accounts) were read and coded, and tables with *all* supporting texts (i.e. including what is sometimes called the 'deviant' view[186] as well as the general/majority) were prepared for each region. As with the parent interviews, the schedule was organised around key stages in cases and key tasks for solicitors. Thus for example, the interview started with the solicitor's task in getting the parent's story and in giving parents information about law and proceedings (questions focusing on how this was done, whether it differed across and within different groups, addressing diverse cultural/religious contexts, working through interpreters, drafting parents' statements).

The framework for the analysis was set by the themes and associated questions, with one researcher preparing a coding framework based on transcripts for one region. This was then circulated for testing against data from the other two regions and if necessary,

[184] Indeed the ALC members were instrumental in setting up the group interviews.
[185] In practice some of those who responded to the subsequent appeals through the letter to Panel members and ALC, were in fact also practitioners in current cases.
[186] One of the criticisms of some forms of qualitative analysis is that it may leave readers pondering whether the researcher has selected only those parts of data that support a particular view. As indicated above, this study incorporates both numerical and qualitative methods – numerical offering a means to survey the whole corpus of data ordinarily lost in intensive qualitative research.

extended or modified to ensure the whole corpus of views (dominant, and 'deviant') was identified. Transcripts were again crosschecked for internal inconsistencies, changes or subtle shifts of view during the interview (using key terms and concepts).[187] For some issues we also compared the views of minority ethnic solicitors with those of white British solicitors. The first draft of each chapter was prepared by one researcher drawing on an agreed data set (numerical and qualitative) for each region; the draft was then circulated to the other two researchers for comment again against the regional data. At each stage we compared and contrasted views looking at the overall picture compared with any individual/local variation.

For the two group interviews (comprising eighteen lawyers overall) the themes (and questions) pursued in discussions were very similar to individual interviews but with some minor modification to take account of the size of the groups and the number of follow-up questions. For example, we explored broadly the same questions with regard to background information on participants as detailed in Chapter one (and a majority of lawyers in these groups were also experienced and had been on the Children Panel for several years). But for one group with lawyers drawn from several locations we did not ask for individual figures/estimates for minority ethnic clients, nor could we utilise Ward data for this diverse group in the report.

The same researcher undertook both the group interviews which were recorded and fully transcribed. Data for each group was separately analysed, each transcript was read and analysed using the format and coding framework provided by the individual interviews with the responses summarised for each theme/question discussed and for each group. Summaries of the responses were produced for each theme/question again in table format with *all* supporting texts; this was then compared with regional data with additional perspectives added where necessary.

AI.1.9 Parents who withdrew or were lost from the final sample

Despite having agreed to be interviewed, not too surprisingly some parents failed to meet with an interviewer. As identified above, we had twenty positive responses from minority ethnic parents agreeing to be interviewed on completion of their case. In practice we

[187] Thus for example, with regard to 'significant harm', this may come up several times in an interview both in relation to the specific question and with regard to any difficulties in explaining 'law' to parents. Equally issues of race, and racism (and culture, religion and language) may arise at various points in the discussion in addition to specific questions that focused on these issues. In the initial reading of transcripts these links were usually identified and incorporated into the analysis. We used a word search on transcripts to ensure views and practices had been appropriately summarised and drafted.

interviewed 12 respondents (11 parents/carers and one young person). The remaining parents were either 'lost' to the study (see below) or consistently failed to 'show' for pre-arranged interviews.

For those parents 'lost' to the study: in one case a child and a parent were murdered; in another we were simply informed by a solicitor that the mother had died. For those who agreed to talk with us but effectively withdrew:

- In one case, despite extensive phone discussions with the father (by an ethnically matched researcher who spoke the same language), and several pre-arranged meetings, the father consistently failed to show.
- In another case, a father also failed to turn up. Despite several phone calls leaving messages and new mobile numbers we were unable to make contact with him again.
- In two cases parents agreed to an interview giving a phone number to ring after the final hearing, however we never managed to contact the parents, phones were not answered, messages not returned and one number eventually 'unobtainable'.
- In a further case a mother was constantly 'just going out' as the interviewer arrived at a pre-arranged time; discussions and several re-arranged dates failed to result in an interview.
- In two cases the final hearing was adjourned beyond the life of the fieldwork.
- One mother disappeared during the course of proceedings.

A1.1.20 Cases excluded from the study

i) Parental factors indicating exclusion

Certain allegations – and certain combinations of issues - precluded taking a case any further in the initial selection process. Overall, cases were excluded if it was thought potentially damaging to a parent or if a parent was deemed too vulnerable to approach, and/or if it was thought on the basis of events an interview would be highly unlikely to succeed on practical terms, and/or placed in a potentially violent situation. The majority of cases excluded contained multiple reasons (see Table A1 below). Data collection for the white group was stopped when it become clear we would not gain sufficient minority ethnic parents to make meaningful comparisons.

Some cases were also excluded because the date set for a final hearing was too close leaving insufficient 'turnaround' time (to write to the solicitor and the parent and to set up an

interview date) prior to the final hearing. Some of the selected cases were subsequently adjourned and thus moved outside of the fieldwork period.

ii) Solicitors' exclusions

When letters were sent to solicitors along with packs for parents, a small number of solicitors excluded the parent. Most solicitors either discussed their concerns with us over the phone or wrote explaining broadly why they felt a particular parent was unsuitable. For example, the solicitor felt the parent was too vulnerable/volatile, things had deteriorated since we had reviewed the records, or the parent had ceased to cooperate with professionals and/or the solicitor was without instructions. Some solicitors reported parents had changed solicitors; some forwarded letters to new advocates. In practice however, few of the subsequent solicitors/parents responded.

A1.2.1 Doing the research

To say that we grappled with a variety of issues, which threatened the study, would be something of an understatement. The issues outlined above demonstrate that we were thwarted at several stages and in all regions. We simply restate our earlier comment: it really should not be this difficult to gain access to a representative sample of cases by ethnic group. This difficulty adds a further element to the 'invisibility' to the position of minority ethnic parents in the process.

We reiterate the limitations of the parent sample and make no claims to representativeness. Clearly a random sample by ethnic group is the ideal starting point in this field, although even then the variables associated with the likelihood of being involved in care proceedings makes this type of study difficult in the extreme.

It is still important to address the type of information we have achieved. As we outline above and in Chapter two the profiles for cases in this study are very similar to those of the earlier random study. However we note a tendency towards more physical ill-treatment of children in this sample, thus it may be that parents who feel very strongly about this issue may be more willing to talk to researchers about it. However it is also the case that we have parents in the study (from the same groups) who did not use or support physical punishment of children. It might also be argued that parents said what they thought we wanted to hear, and that had we achieved ethnic, language and gender matching we might have got different responses. With regard to the former – the details of the project made it clear we did indeed want to discuss views about diversity in the contexts of proceedings, in

practice that did not result in a sample of parents who focused solely on issues of racism or who perceived the system as a 'whitewash'.

With regard to the second issue, the interview team and the lead researchers were an ethnically mixed group but predominantly white. We could however achieve some ethnic matching, for example, for some parents of South Asian origin and we were always able to match for language (either through a team member or by using an interpreter). However where we were able to match on two of three variables within the team (ethnic group and language but not gender) the parent failed to 'show' despite several discussions and appointments. In another case a white interviewer undertook interviews with two African parents – an intermediary helped set up these interviews (and that may have made the parents more predisposed to the interviewer). However these interviews were two of the most detailed and eliminating in the study. Thus, as with ethnic matching of parents with experts and solicitors, this is a complex field and not *always* predictable.

On the plus time, the interview team as a whole had considerable experience of working with vulnerable parents involved in child protection litigation and considerable understanding of the issues and processes. However we would not of course argue that different people might have elicited different information, albeit we had a very specific interview schedule.

Having said that we have achieved a qualitative study in area where there is no previous work of the same or similar nature. As was pointed out by the Judicial Studies Board in 999, almost all our information about issues of race and the courts has been drawn entirely from research in criminal proceedings. There has been a dearth of information in family proceedings but we have started that process – against some sizable odds. We have produced a workable approach to unpacking and exploring and how issues of race and diversity are played out in care proceedings, albeit this work requires testing on a larger sample. In future work we would argue strongly that court files would still have to be explored. These gave invaluable information and a framework to interviews with parents which helped the interviewer and the parent.

Table - A1

Cases excluded from the study – all regions		
Ethnic Group	**Region/ Case No.**	**Reason for Exclusion**
African	1 /2	Both parents deceased, child came to UK with family friend/relative (status unclear); no statements filed by carers
	1 /4	Data missing
	1/10	Father in Nigeria, solicitor in UK discharged, mother's location unknown
	1/11	Both parents in Nigeria, mother refused leave to come to UK; child came with grandmother, no statements filed at first visit
	1/12	Parents not responding to solicitor
	1/13	Mother has learning difficulties and mental health problems, lacks the capacity to litigate
	3/3	Both parents in Kenya
	3/4	Both parents deceased, child being returned to Africa, currently with foster carers
African-Caribbean	1/4	Father Schedule one offender, sectioned under Mental Health Act and in residential setting; both parents have significant mental health problems
	2/12	Mother sectioned under Mental Health Act, father in Canada
	2/14	Parents not participating (both discharged as parties)
	2/13	Final hearing set but unable to gain access to file
	2/15	Will miss final hearing date
Other Black	1/9	No statements filed by parents
Indian	1	Parents living outside region
Pakistani	1 /2	No statements filed on behalf of parents
	2/1	Mother deceased, father not represented
	2/11	Will miss final hearing date
	2/12	Unable to gain access to case file
	2/13	Will miss final hearing date
	2/14	Will miss final hearing date
	2/16	Will miss final hearing date
	2/17	Will miss final hearing date
	2/18	Will miss final hearing date
Bangladeshi	2/1	Mother 16 yrs old, learning disability, mental age of 9 yrs
South Asian[188]	3/5	Mother highly volatile; father has learning disabilities and serious head injuries following road accident
	3/6	Will miss final hearing date
Mixed-group	1 /2	Mother not represented, father's whereabouts unknown
	1/3	Missed final hearing date
	1 /4	Ethnic group is in fact 'white other'.
	1/5	Mother has severe mental health problems, violent to other adults, not safe to send in interviewer

[188] Case file details simply say 'of South Asian origin'

Mixed-parentage	2/6	Solicitors indicated exclude father (uncooperative, not living at last address); mother also uncooperative, not responding
	2/14	Father of child one discharged his solicitor; father of child two not represented and not participating in proceedings
	2/17	Excluded initially because final hearing date fell outside fieldwork period; then excluded on basis of father's violence, continued active drug use by both parents, possible learning difficulties unresolved.
	2/18	Will miss final hearing date
	2/19	Will miss final hearing date
	2/20	Will miss final hearing date
	2/21	Will miss final hearing date
	3/9	Mother 15 yrs in foster care with baby
	3 /4	High levels of violence both parents – safety issues
	3/10	Final hearing date missed
White British	1/3	Father in prison, drug problem; mother not cooperating with professionals or solicitor and has not filed a statement
	1 /4	Father: drugs and criminal proceedings following manslaughter charge and not participating in proceedings; Mother: no statement at court visit I
	1/5	Mother in prison (convicted for stabbing someone)
	2/4	Will miss final hearing date
	2/5	Excluded initially due to final hearing date outside fieldwork period then excluded when it became apparent both parents were 'schedule one offenders', coupled with domestic violence and alcohol abuse
	2/6	Mother has mental health problems, is violent and a drug user (range of safety issues precluded interview)
	2/7	Mother 16 yrs old, mental age of 9 yrs
	2/8	Mother 16 yrs old, father 15 yrs old
	2/9	Mother in prison and father removed from file by court order.
	2/10	Letter sent out; mother's solicitor replied mother would be unable to participate due to learning disability
	2/15-26	Will miss final hearing date
	2/27	Both parents class A drug users; father no longer participating in proceedings; mother also has a learning disability
	2/28	Will miss final hearing date also high level of violence, safety issues
	3/2	Father has personality disorder, grandmal epilepsy, depression and is homeless
	3/3	No statements filed by parents

Appendix 2 - Translation and interpreting

A2.1.1 Modes of interpreting

As indicated in both this study and that completed under Phase I of the DCA Diversity and the Courts Programme (Brophy et al 2003a), there is much confusion about different forms of interpreting and whether/how this relates to issues of accuracy and clarity. There are two modes of interpreting: *simultaneous interpreting* where interpreting starts *before* the speaker has finished their sentence; given the speed of the process it is not possible for the interpreter to pass on every single word, only the gist of what is being said can be conveyed. *Consecutive interpreting* starts as soon as a participant has finished speaking; this mode is considered to be easier, especially for the interpreter who has a good immediate memory recall.

A2.1.2 Styles of interpreting

here are also two styles of interpreting: *direct speech,* using first person, and *indirect speech,* using third person. In the context of legal proceedings, direct speech is said to be preferable: it shortens the exercise and is likely to achieve better communication. There is some reported resistance from interpreters to the use of direct speech based on custom and practice, role confusion about the parameters between interpreting and advocacy, and pressures from clients who want the interpreter to explain/argue their case (Rennie 1998: 18).

A2.1.3 Definitions

- '**Advocacy** seeks to redress the communication imbalance between service providers and their clients. Advocacy is also sometimes known as intercultural mediation.'[189]
- **Interpreter**: 'A person who transmits oral messages from one language to another language, impartially.'[190]
- **'Interpreting** is the act of communicating orally between people who do not share the same common language. It demands very high-level language skills and an understanding of the cultural context in which the languages are used.'[191]

[189] Source: Podro (1994), cited in Praxis (2003: App.1 p.16)
[190] Source: City University, cited in Praxis (2003: App.1 p.17)
[191] Source: 'Languages and your career', Institute of Linguists (1994), cited in Praxis (2003: App.1 p.17)

A2.1.4 Interpreting and communication

Interpreting is not simply about language and terminology; it is also about the broader issues of communication that take place in what has been termed a 'medium of social, cultural and power relationships' (Praxis 2003: 60). Interpreting 'meanings' transcends literal language transmission and can include what has been termed 'cultural mediation'. This perspective may also blur the boundaries of the role of the interpreter since arguably the more emphasis there is on 'meanings', the closer interpreting may come to advocacy.

A study on clients' perspectives of using interpreters to access public services found that people mostly prefer family or friends to interpret for them because of their emotional commitment and loyalty.[192] However in the context of legal proceedings about child maltreatment, as Phase I and II studies demonstrate, the use of family or friends is highly problematic and clearly not acceptable.

A2.2 Becoming an interpreter

A2.2.1 Introduction

Chapter one above and in findings from Phase I (based on interviews with a sample of judges and magistrates, plus independent observations of interpreters in care proceedings, Brophy *et al* 2003), identify varied levels of expertise amongst interpreters. With notable exceptions, there is much dissatisfaction with the quality of services provided for work in care proceedings both with regard to interpreters used for interviews between solicitors and clients and those used in court hearings. Those findings are further endorsed by a recent study of interpreters (users and providers), which identified a considerable number of people working as interpreters (and/or translators) who are not qualified (Schellekens 2004: 11).[193]

Professionals in this and the DCA Phase II study identified that few people in the family justice system know whether interpreters are qualified and indeed what 'qualified' means. This finding is not surprising, as indicated below, the background to training and 'qualifying' as an interpreter is complex and fragmented. A specific focus on civil family law is hard to find; certainly it does not appear as a mandatory module in any training in interpreting.

[192] Source: JRF Findings (2004)
[193] The study found that only 52% of respondents working as interpreters and/or translators held qualifications in interpreting and/or translating. It also showed that there were shortages of courses provided in interpreting in Asian and African languages. However the target groups, response rates and methodology for this study were limited.

The following gives some broad information on training and standards for qualifying as an interpreter and for entry onto the National Register of Public Service Interpreters (NRPSI), and points out some issues of importance for practitioners in the family justice system.

A2.2.2 Interpreting/translation training standards

In 2001 The Languages National Training Organisation (LNTO) published the *National Standards in Interpreting* (NSI); in 2003 it merged with the Centre for Information on Language Teaching and Research to form the National Centre for Languages (CILT).

The National Standards were adopted by CILT; they define competent *performance* in interpreting and/or translation. The Standards are designed to reinforce and enhance the status of practising interpreters and translators: they are a practical tool for benchmarking skills and planning professional development.[194]

A2.2.3 Likely candidates in translating and interpreting

Likely candidates for training in this field are identified as those who are bilingual and are able to use both languages to a professional standard, or those who have acquired the necessary skills to interpret information from one language into another (but need additional training) (LNTO 2001: 4).

A2.2.4 Training and qualifications

The Standards stipulate that training should be undertaken *starting with language units, this to be followed by translation or interpreting units*. It is argued that this order allows candidates to concentrate on their language performance, followed by acquisition of the professional knowledge and practice required for interpreting and/or translation (LNTO 2001).

The Standards include a structure and assessment strategy for students of National/Scottish Vocational Qualifications (N/SVQs) in translation and/or interpreting. The syllabus for language training is divided into five levels (1-5). The syllabus for interpreting and translation training is divided into two levels, (levels 4 and 5).

A2.2.5 The core of professional competence

The Standards comprise 22 units, which describe the various aspects of competent performance at each level. For candidates taking the NVQ, these are divided into

[194] Source: http://www.cilt.org.uk/qualifications/standards/tistandards.htm.

'mandatory' and 'optional' units. The mandatory interpreting units (listed in section 3.1 below) represent the core of the professional competence assessed. Optional units cover specialist aspects of interpreting and managing a business, but family law is not identified as a specialist option.[195]

A2.2.6 Levels of language training

The five levels of National Language Standards (NLS) units cover the four linguistic skills – listening, speaking, reading and writing. For example:

- Level 1 is linguistically similar to a lower GCSE grade (G-D).
- Level 4 is linguistically similar to a good honours degree.
- Level 5 is also linguistically similar to a good honours degree with the benefit of experience in using the language to carry out responsible and specialised tasks. *This is the level at which a fully experienced professional interpreter or translator would be expected to work*.[196]

A2.2.7 Minority languages

A report on national language qualifications frameworks in the UK (CILT 2003) found that the provision of qualifications for less taught languages, such as Welsh, Urdu or Chinese, is extremely limited. Although a mother tongue speaker may have a high level of fluency in their accustomed register, there may be features of higher-level performance in terms of the qualifications framework, which they do not exhibit (CILT 2003).

A2.2.8 Other qualifications in language training

In addition to NVQs a range of degree and Higher National Diploma language courses are available at colleges and universities.[197]

A2.3 Specific training in interpreting

A2.3.1 National Standards in Interpreting

This training follows on from the language units. National Standards in Interpreting identify the following standards of ability to be achieved on completion of Level 5 units. Mandatory interpreting units are:

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[195] Source: http://www.cilt.org.uk/qualifications/standards/tistandards.htm.
[196] Source: http://www.cilt.org.uk/qualifications/standards/nls_structure.htm
[197] There are five awarding bodies approved to award NVQ units and vocationally related language qualifications based on the National Language Standards: City & Guilds, Edexcel, London Chamber of Commerce and Industry Education Board (LCCIEB), and OCR and CACDP (for British/Irish Sign Language qualifications).

- ‘Prepare for specialist interpreting assignments’
- ‘Conduct specialist interpreting assignments’ (see example below)
  - Interpret one-way specialist assignments
  - Interpret two-way specialist assignments (see below)
- ‘Develop performance as a specialist interpreter’
  - Evaluating performance as a specialist interpreter
  - Planning and implement continuing professional development (LNTO 2001: 92)

For example, the part-unit ‘Interpret two-way specialist assignments’ includes the following Performance Criteria in which the trainee must show that:

- They interpret the meaning expressed by people engaged in a two-way exchange precisely and fluently in both target languages, maintaining a consistently satisfactory performance.
- They interpret factual information, concepts and opinions; standard language and any regional or national dialects[198]; complex language, specialist terms and jargon, etc. (LNTO 2001: 129)

A2.3.2 Assessment of interpreting

Assessment involves providing evidence of performance and knowledge. For example the unit ‘Conduct specialist interpreting assignments’ requires a total of 145 minutes of interpreting including six 10 minute samples for one-way interpreting and four 10 minute samples for two-way interpreting.[199] The student must also provide evidence of formal, informal and colloquial register, and evidence of one-to-one meetings, group meetings, lectures and conferences. The student must provide evidence of their work in at least three of seven specialist domains, choices including English or Scottish law [200] and local government (LNTO 2001: 19-20).

A2.3.3 Training in interpreting for legal proceedings

Training in interpreting for legal proceedings in general does not appear to be mandatory. There are no explicit references to specific fields within law, for example, criminal, family, employment, immigration, or human rights law. Thus, training in interpreting in ‘the law’ in

[198] Dialects belonging to the same language are not always mutually intelligible in their spoken form, for example there is often a ‘chain’ of dialects spoken throughout an area, with linguistic distinctions between them increasing with geographical distance (Crystal 1999).
[199] A recently trained interpreter with experience of interpreting for only 10 minute periods would have difficulty, for example, in a lengthy court case.
[200] Specialist areas of law, for example criminal, family, employment, immigration or human rights law, are not specified.

general and family proceedings in particular is not mandatory and will depend on (a) the choice of the individual candidate, and (b) what field of law is then covered in training.

A2.3.4 Awareness of language/interpretation qualifications

The CILT report found that awareness of occupational language qualifications is not widespread among employing bodies (CILT 2003). As discussed above, formal avenues to training and accreditations as an interpreter can be complex. Without prior knowledge, the notion that an interpreter is 'NVQ trained' can be meaningless in the context of Children Act proceedings, and verification for busy practitioners/court staff is very difficult. Not surprisingly none of the solicitors interviewed in this study demonstrated an awareness of the NSI levels of language or interpreting qualifications, or what levels of competence or qualifications should be expected of professional interpreters.

A2.3.5 Provision of training and continuing professional development

A study of interpreting and translation in the UK found that provision was planned on the basis of student needs rather than industry needs, with few providers looking to employers and/or freelance professionals to verify that course requirements met industry standards (Schellekens 2004: 8). Of 22 course providers, six offered short courses and opportunities for continuing professional development. The author argues that level of provision does not meet the demands: 60% of the organisations and 40% of the individual interpreters participating in the research were not satisfied that the opportunities for professional development were adequate (Schellekens 2004: 8).

A2.4 The national register for public service interpreters (NRPSI)[201]

A2.4.1 Underlying principles

People who need interpreters are, by definition, unable to assess the interpreter's competence for themselves. It is essential that interpreters have prior training and that objective assessment of their skills and commitment to professional codes has been made in a rigorous way.

The NRPSI is a professional register of individuals who have satisfied selection criteria in terms of qualifications and experience. The organisation recognises the risk to both public services and their clients of employing unqualified interpreters, and of asking family members, fellow patients, co-defendants and children to act as interpreters. The aims are

[201] NRPSI is administered by NRPSI Ltd, a wholly owned, non-profit making subsidiary of the Institute of Linguists.

to provide national access to professional interpreters by the public services, and to provide a system for interpreters to make their services available.[202]

A2.4.2 Categories of registration

There are four categories of registration available to interpreters each relating to differing levels of experience and competence (see website). For 'Full Status' category registration a candidate requires one of the following qualifications (for each language to be registered): Diploma in Public Service Interpreting (DPSI), or Metropolitan Police Test, or equivalent level 4/5 NSI, PLUS more than 400 hours of proven pubic sector interpreting (PSI) experience.

In the 'Rare Languages' category of registration certain levels of assessments are waived. Candidates are admitted on the basis of 100 hours of proven PSI experience only and are reviewed annually.[203] Standards of interpreting may therefore be lower.

Checking qualifications and experience of individuals applying for registration is problematic. It would also appear that there are no specific vocational qualifications in spoken interpreting, partly it appears because of difficulties in assessing interpreting in real situations.[204]

A2.4.3 Professional Codes of Conduct

Ethical issues, particularly those of confidentiality, are very pertinent to interpreting legal proceedings. Learning about ethics as part of interpreting training is only mentioned in brief in the NSI: "... interpreters working at level 5 are expected to have knowledge of the role and ethics of the interpreter, as described in the level 4 Standards, and to behave according to the code of conduct" (LNTO 2001: 10).

Codes of Conduct are drawn up by professional bodies or the holders of registers such as the NRPSI and differ according to the field of operation. The NSI therefore define competence as performance consistent with the appropriate code of professional conduct.

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[202] Source: www.iol.org.uk/nrpsi/default.asp
[203] NRPSI (2003); http://www.iol.org.uk/rnpsi/applications.asp.
[204] Thus caution is necessary in taking 'qualified' and 'registered' at face value. 'Qualified' can mean examinations and practical experience, but it can also mean attendance for a few hours on a short course. Similarly 'registered' does not always mean an individual has the full skills and experience required by the register they are on.

The NRPSI has a professional Code of Conduct to which all registered interpreters are signatories. It has been agreed with the Home Office and the Office of Fair Trading, and details the standard expected of registered interpreters; the objective is to ensure that communication across language and culture is carried out consistently, competently and impartially, and that all those involved in the process are clear about what may be expected from it.

The following points in the Code of Conduct are pertinent to interpreting in the family justice system. For example areas of competence, procedure and ethics include expectations that interpreters will:

- Understand the relevant procedures of the particular context in which they are working
- Be familiar with the cultural backgrounds of both parties;
- Interpret truly and faithfully what is said, without anything being added, omitted or changed
- Not enter into the discussion, give advice or express opinions or reactions to any of the parties
- Respect confidentiality at all times and not seek to take advantage of any information disclosed during their work, etc.[205]

Professional codes of conduct for this and other organisations therefore cover general issues of procedure and ethics but do not cover the ethics of interpreting with respect to the particular philosophy of, and expectations of parties in, family proceedings, and those of care proceedings in particular.

A2.4.4 Compatibility of professional registers

There are currently at least three national professional registers (two for spoken languages and one for British sign language) to which individual interpreters may belong and which confirm their professional status and skills. This is a cause for confusion among organisations and individuals who hire language professionals (Schellekens 2004: 9).

A2.5 Key issues for the family justice system

A2.5.1 Training:

- Options for specialist training in family law should be made available to interpreting trainees at NVQ Levels 4 and 5 and equivalents.

[205] www.iol.org.uk/membership/IoL-CodeofConduct.pdf

- Training in ethics of interpreting could – and arguably should - be included in mandatory units of course provision, and in any future specialist units on family law.
- Language and interpreting qualifications should be streamlined.

Continuing professional development:

- Increased provision of continuing professional development should be made available, with an option for specialist training in the family law.

Professional registers:

- National professional registers should use compatible standards and skills requirements (Schellekens (2004).

Awareness:

- Information on interpreting qualifications should be made available to public service professionals, including examinations and interpreting experience, and with equivalent qualifications made clear.

Catering to local public service needs:

- Local community demands should be researched and provided for in terms of interpreting for public and other services.

A2.5.2 Guidelines for practitioners - selecting and using an interpreter

- Praxis (2003) identifies the following guidelines for good practice in engaging an interpreter for use in public service[206]. Interpreters should have:
  - A good command of English and the target language;
  - An understanding of the culture(s) in question;
  - Competence in interpreting (and translation) techniques;
  - The ability to function professionally in all situations;
  - A commitment to the NRPSI Code of Conduct;
  - A knowledge of the areas in which they work;
  - Complete impartiality, confidentiality and sensitivity.

- Professionals should where possible look for interpreters trained to NVQ Level 4 or Level 5 in English and the required language *and in interpreting*.

[206] Praxis (2003) Appendix 5, p.18. These guidelines were set up by the Scottish Translation, Interpreting and Communication Forum.

- Professionals should where possible look for an interpreter with knowledge of the family justice system, or with knowledge of legal proceedings and terminology.

- When using a non-experienced interpreter, professionals should where possible avoid using legal terms where lay terms can be used instead.

- Practitioners and courts also need to be aware of the demands of interpreting and the need for systematic breaks during lengthy interviews/hearings.

A2.5.3 Looking to the future

Indications are that increasing complexity and fragmentation of services is occurring with further privatisation of agencies and the development of international interpreting 'call centres' capitalising on the need for telephone interviewing. In this situation it may well be impossible to know if an individual interpreter is qualified to the level users require.

A2.6 Languages spoken by parents/carers

A2.6.1 Table A2-1 below provides information on the first language of parents/carers in Phase I and II of the DCA studies. Where the information is available we included areas of the country ('of origin') where the language is spoken, main dialects, and areas of the country (of 'origin') where the language is spoken, the main dialects, and whether languages are spoken and/or written. This exercise highlights some of the complexities involved in finding a suitable interpreter. Tables A2-2 and A2-3 provide a summary of the languages in the South Asian and African samples along with additional information (drawn from Ethnologue.com) in part to demonstrate some of the complexities but also as an illustration of the range of background information which can be obtained and which can provide a useful starting point to discussing issues of language and interpretation issues with clients.

Table A2-1

FAMILIES IN CARE PROCEEDINGS (PHASE I AND II SAMPLES) LANGUAGES SPOKEN IN 'COUNTRIES OF ORIGIN'[207]				
Countries of 'origin'	**Phase I**	**Phase II**	**National/official languages in the study**[208] (Where English included as a national lang., marked *)	**Languages used by parents/carers that are not listed as national languages**[209]
SOUTH ASIA				
Bangladesh	√	√	Bengali	Arabic, Gujerati, Sylhetti
India	√	√	Bengali, Hindi, Punjabi (+ 12 other national langs.*)	Gujarati
Pakistan	√	√	Sindhi, Urdu, *	Arabic, Gujerati, Katchi (Kachchi), Punjabi, Punjabi Mirpur, Swahili[210]
AFRICA				
Algeria		√	Arabic	French
Angola	√		Portuguese	
Chad	√		French, Arabic	
Central African Republic (CAR)		√	French, Sango	
Congo	√		French, Lingala, Munukutuba,	
Democratic Republic of Congo (ex-Zaire)	√	√	French, Lingala,	
Ghana	√		*	Twi (dialect of Akan)
Morocco		√	Arabic	
Nigeria	√	√	Hausa, Igbo, Yoruba (+ 6 other national langs.*)	
Somalia	√	√	Somali, Arabic, *	
South Africa		√	Afrikaans, Xhosa, Zulu (+ 8 other national langs.*)	
WEST INDIES[211]				
Dominican Republic	√		Spanish	
Jamaica	√		*	'Jamaican Creole', official name: 'South Western Caribbean Creole English'
OTHER COUNTRIES				
Fiji	√		Fijian	
Iraq		√	Kurdi, Arabic	
Iran		√	Western Farsi	
Mauritius	√		*	'French Patois'[212]
Myanmar		√	Burmese	

[207] It should be noted that 'countries of origin' can be misleading, in part because one parents may well be first/second generation Black/Asian British and patterns of Diaspora for some groups/families are complex (Brophy *et al* 2003) indicate that some families may well not have lived in 'countries of origin' for some years/generations. Nevertheless, families may retain aspects of cultural mores, beliefs, and linguistic traditions identified with an ethnic group/'homeland' outside the UK.

[208] First languages of parents in the DCA studies that are national languages of their country of 'origin'.

[209] First languages of parents that are not national languages of their country of 'origin'.

[210] Swahili is not listed as a language of Pakistan. It is a national language of Tanzania.

[211] Parents in the studies tended to be referred to as 'African-Caribbean'. Island of 'origin' was not always specifically referred to. Most parents tended to be first/second/third generation Black British and spoke English.

[212] French Patois' is not listed as a language of Mauritius. The closest is 'Mauritius Creole French', also known as 'Morisyen'. 'French Patois' or 'Patwa' is reported as spoken in St. Lucia, Dominica, Grenada, Guadeloupe, Martinique and Trinidad and Tobago.

Table A2-2

SUMMARY OF SOUTH ASIAN LANGUAGES IN DCA PHASE I AND II STUDIES BY COUNTRY (* National or official languages)			
Language	**No. of speakers**	**Spoken in:**	**Other information**
BANGLADESH			
Arabic, Standard	No estimate available. (Not listed as a lang. of Bangladesh, India or Pakistan.)	Middle East, North Africa, also 24 other countries inc. Algeria, Chad, Egypt, Eritrea, Libya, Morocco, Somalia, Sudan.	In most Arab countries only the well educated have adequate proficiency in Standard Arabic (written and spoken).
Bengali*	100,000,000 in Bangladesh, 98% of the popn. Total all countries 1st lang. speakers 207,000,000	Western Bangladesh, India, Malawi, Nepal, and elsewhere.	Bengali script used (written and spoken). 12 langs. or dialects in the Bengali group. Alternate names: Bangala, Bangla.
Gujerati	(see India)		
Sylhetti	5,000,000 in Bangladesh. Total in Bangladesh and India 5,100,000.	District of Sylhet, about 100 miles N. of Dacca. Also possibly in India.	Approx. 70% lexical similarity with Bengali. Bilingualism in Bengali. Educated speakers can read Bengali (written and spoken). Alternate name: Sylhetti Bangla.
INDIA			
Bengali*	(see Bangladesh)		
Gujerati	45,479,000 in India. Total all countries 46,100,000 or more.	Gujarat, Maharashtra, Rajasthan, Karnataka, Madhya Pradesh. Also Bangladesh, Kenya, Malawi, Mauritius, Pakistan, S.Africa, Tanzania, Uganda, Zambia, Zimbabwe.	Spoken as mother tongue by the Keer. Literacy rate in 2nd lang. 30% (written and spoken). Dialects: Standard Gujarati, Gamadia, Parsi, Kathiyawadi, Kharwa, Kakari, Tarimuki.
Hindi*	180,000,000 in India. 363,839,000 inc. 2nd lang. users in India.	Throughout northern India. Also in Bangladesh, Belize, Botswana, Kenya, Nepal, S.Africa, Uganda, Zambia and elsewhere.	Literary Hindi has 4 varieties: Hindi, Urdu, Dakhini, Rekhta (written and spoken). State lang. of Delhi, Uttar Pradesh, Rajasthan, Madhya Pradesh, Bihar, Himachal Pradesh.
Punjabi, Eastern*	27,125,000 in India.	Punjab, Majhi in Gurdaspur and Amritsar districts, S.Ferozepore District, Rajasthan, N.Ganganagar District, Haryana, Delhi, Jammu and Kashmir. Also in Bangladesh, Fiji, Kenya, Mauritius and elsewhere.	E. Punjabi is distinct from W. Punjabi, although there is a chain of dialects to Western Hindi (Urdu). Alternate name Gurumukhi, associated with Sikhs. Gurmukhi script (written and spoken).
PAKISTAN			
Arabic	(see Bangladesh)		
Gujerati	(see India)		
Kachchi	50,000 or more in Pakistan, 806,000 in India.	Language of India: Gujarat, Kutch area, Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, Assam, Kerala, Tamil Nadu, Maharashtra, Karnataka, Orissa. Also in Kenya, Malawi, Pakistan.	Closely related to Sindhi. Most Kachchi do not understand Gujarati. Alternate names: Kutchie, Katch, Kautchy. Dialect: Jadeji.
Punjabi Mirpur	Popn. in India and Pakistan 20,000 to 30,000 or more.	Language of India: Jammu, Kashmir, Mirpur area, near Pakistan border. Also in Pakistan.	Distinct from Western Punjabi, although closely related.

Punjabi, Western	30,000,000 to 45,000,000 in Pakistan	Mainly in the Punjab area of Pakistan. Also in Afghanistan, India and elsewhere.	There is a continuum of varieties between E. and W. Punjabi and with W. Hindi and Urdu. Several dozen dialects. Perso-Arabic script used, but not often written in Pakistan.
Sindhi*	16,992,000 in Pakistan inc. 1,200,000 Hindu Sindhi. Total all countries 19,720,000	Sindh. Also India, and elsewhere.	Some Hindu speakers are 1st lang. speakers, most are 2nd lang. speakers. Arabic script used in Pakistan (written and spoken).
Swahili	313,200 monolinguals in Tanzania. (Not listed as a lang. of Pakistan.)	Language of Tanzania: Zanzibar, coastal areas. Also Burundi, Kenya, Mozambique, Rwanda, Somalia, S.Africa, Uganda.	Used through secondary education and university in Tanzania. Rural people are 2nd lang. users; they use the local lang. for most activities but Swahili with outsiders.
Urdu	10,719,000 1st lang. speakers in Pakistan, 8% of popn. Total all countries 60,290,000 1st lang. speakers.	Pakistan, Afghanistan, Bangladesh, Botswana, Fiji, India, Malawi, Mauritius, Nepal, South Africa, Thailand, Zambia, and elsewhere.	The 2nd or 3rd lang. of most Pakistanis for whom it is not the 1st lang. Intelligible with Hindi but has formal vocab. borrowed from Arabic and Persian. Arabic script used (written and spoken).

Source: www.ethnologue.com

Table A2-3

SUMMARY OF AFRICAN LANGUAGES IN DCA PHASE I AND II STUDIES BY COUNTRY (* National or official languages)			
Language	**No. of speakers**	**Spoken in:**	**Other information**
ALGERIA			
Arabic, Standard*	No estimate available.	Middle East, N. Africa, also 24 other countries inc. Algeria, Chad, Egypt, Eritrea, Libya, Morocco, Somalia, Sudan.	Used for written materials, formal speeches. Not a mother tongue in Algeria, but taught in schools. Arabic script (written and spoken).
French	110,600 in Algeria. Total all countries 77,000,000 1st lang. speakers.	France and 53 other countries inc. Algeria, Benin, B. Faso, Burundi, Cameroon, CAR, Chad, Congo, Côte d'Ivoire, DRC, Djibouti, Gabon.	20% of the popn. can read and write French, and more can speak it (written and spoken).
ANGOLA			
Portuguese*	57,600 in Angola. Total all countries 176,000,000 1st lang. speakers.	Iberia, Azores, Madeira and 33 other countries, inc. Congo and Mozambique.	Dialects: Beira, Galician, Madeira-Azores, Estremenho, Brazilian Portuguese.
CHAD			
Arabic*	No estimate available.	(see Algeria)	
French*	3,000 in Chad.	(see Algeria)	
CENTRAL AFRICAN REPUBLIC (CAR)			
French*	(see Algeria)		
Sango*	350,000 mother tongue speakers in CAR.	Scattered. Also spoken in Chad, Congo, DRC. Not in Cameroon.	Spoken and written for informal use, used for instruction in community schools, in public schools when students do not understand French.
CONGO			
French*	28,000 in Congo.	(see Algeria)	Sole lang. of formal education in Congo.
Lingala*	300,000 in Congo.	(see DRC)	
Munukutuba*	1,156,800 or 60% of the popn.	Mainly along roads and railroads westwards from Brazzaville and northwards to Mayoko.	Literacy rate in 1st lang.: 5-10% (written and spoken). Close to Kituba lang. The main lang. of the south of Congo.
DEMOCRATIC REPUBLIC OF CONGO (ex-Zaire)			
French*	No estimate available.	(see Algeria)	
Lingala*	7,000,000 2nd lang. speakers together with Bangala. Total all countries 309,100 or more.	Bandundu, Equateur and Orientale provinces (not SE of Orientale). Also in CAR, Congo.	Degree of use varies with location, age, rural vs. urban and commercial centres, ethnically mixed areas, formal education. Literacy rate in 1st lang.: 10-30% (written and spoken).
GHANA			
Twi (dialect of Akan)	Akan spoken by 7,000,000 in Ghana, 44% of popn. Dialects: Asante Twi 1,170,000, Akuapem Twi 230,000.	The Asante are south central, Ashanti province; the Akuapem are S.E., areas N. of Accra. Also spoken by the Fante in south central Ghana.	Literacy rate in 1st lang.: 30-60% (written and spoken). Dialects are largely inherently intelligible. Different dialects of Twi spoken in Burkina Faso and Sudan.
MOROCCO			
Arabic*	No estimate available.	(see Algeria)	Used for education, official purposes, communication among Arabic speaking countries. Used in newspapers.

NIGERIA			
Hausa*	18,525,000 in Nigeria. Total all countries 24,200,000 1st lang. speakers.	Sokoto, Kaduna, Katsina, Kano, Bauchi, Jigawa, Zamfara, Kebbi & Gombe states. Spoken as 2nd lang. in N. half of Nigeria. Also in Benin, B. Faso, Cameroon, CAR, Chad, Congo, Eritrea, Ghana, Niger, Sudan, Togo.	There is a pidgin or market Hausa, and several dialects of each of Western, Eastern and North Hausa. Official regional lang. in the north. Roman and Ajami scripts used (written and spoken). Alternate names: Hausawa, Abakwariga, Mgbakpa, Habe, Kado.
Igbo*	18,000,000 or 17% of the popn.	Abia, Anambra, Imo, Rivers, Delta and Akwa Ibom states.	30 dialects vary in inherent intelligibility. A standard literary form is developing. Main trade lang. of Anambra and Imo States. Roman script (written and spoken).
Yoruba*	18,850,000 in Nigeria. Total all countries 20,000,000.	Most of Oyo, Ogun, Ondo Osun, Kwara and Lagos states, and W. of Kogi state. Also in Benin, Togo.	Roman script (written and spoken). Used in newspapers, radio, TV.
SOMALIA			
Arabic*	No estimate available.	(see Algeria)	Most Somalis have v. limited or no ability in Arabic. Not used as a medium of communication by the government.
Somali*	5,400,000 to 6,700,000 in Somalia. Total all countries 9,472,000 to 10,770,000.	Spoken by clan confederacies throughout Somalia. Also in Djibouti, Ethiopia, Kenya and elsewhere.	The lang. of most of the people of Somalia. Bilingualism in Italian. Roman script adopted in 1972, Osmania script no longer used (written and spoken). Used for mass communications.
SOUTH AFRICA			
Afrikaans*	6,200,000 in S.Africa, 15% of popn., of whom 1m are bilinguals with English. 4m in S.Africa 2nd lang. speakers.	Pretoria and Bloemfontain are principal centres. Also in Botswana, Lesotho, Malawi, Namibia, Zambia, Zimbabwe.	A variant of the Dutch spoken by 17thC colonists, with some borrowings from Malay, Bantu, Khoisan, Portuguese and other European langs.
Xhosa*	6,858,000 in S.Africa, 17.5% of popn.	Southwest Cape Province and Transkei. Also in Botswana, Lesotho.	Many speakers understand Zulu, Swati, Southern Sotho. Uses clicks. Use in newspapers and radio (written and spoken).
Zulu*	8,778,000 in S.Africa. Total all countries 9,142,000	Zululand and n. Natal. Also in Botswana, Lesotho, Malawi, Mozambique, Swaziland.	Close to Swazi and Xhosa langs. Used in newspapers, radio (written and spoken).

Source: www.ethnologue.com

DCA Research Series No. 5/05

Minority ethnic parents, their solicitors and child protection litigation

A responsibility to protect all children from maltreatment and a desire not to impose inappropriate Eurocentric models of parenting on families in diverse communities makes special demands on the family justice system. Nevertheless, a decade after the Children Act 1989 we had little research about this field or indeed about what it might take for parents from diverse backgrounds to feel understood by judges and magistrates.

This exploratory study, together with Phase I (*Significant Harm: child protection litigation in a multi-cultural setting*, Research Series No 1/03), addresses that gap. This study explores the views of solicitors representing minority ethnic parents, identifying some of the barriers to effective communication and exploring issues of racism and cultural variation in explanations of child maltreatment. It outlines parents' views about their solicitor, their statements and attendance at family courts, exploring whether parents felt the process was fair, whether they felt understood, and whether they experienced any racism.

Further research is essential but for these parents at least, most had not experienced any racism. However, many did not feel they were treated with respect and sensitivity, and some did not feel understood by courts. Overall, most solicitors felt courts had improved in this field: most judges were 'good with parents including minority ethnic parents, those (a minority) who had problematic attitudes did not reserve these for minority ethnic parents. However like some parents, certain solicitors felt courts did sometimes fail to understand parents, and while no solicitor felt outcomes were unfair/unjust - or that the threshold criteria required re-assessment - many felt the *process* left much to be desired.

Taken together the studies indicate there is room for a better balance to be struck in understanding and addressing issues of cultural/religious and linguistic diversity. The study indicates the family justice system should not only aim for internal but also external transparency in the treatment of these issues. That objective has implications for the training of lawyers, judges and others, and for the development of court services serving diverse communities in Britain.

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