BRIDGET LINDLEY MEMORIAL LECTURE

(FAMILY JUSTICE COUNCIL CONFERENCE)

'INCLUSIVE JUSTICE: RACE, CULTURE AND THE FAMILY COURTS'

HER HONOUR JUDGE KHATUN SAPNARA

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My thanks to the President for inviting me to give this lecture and for his kind words. I served on the Family Justice Council from its inception, and when Bridget Lindley joined the Council, she brought a vital family rights perspective to our work. I am very pleased to give this lecture in her name.

The family courts are in the business of delivering fair, just, and impartial justice. At a time when there is much pressure around the world, on the viability of concepts of equality, diversity, and inclusion (EDI), it is perhaps more important than ever to continue to have conversations about how we can improve the family justice system using EDI as an important tool to give effect to principles of fairness. All who come before the courts are to be treated equally. However, to achieve meaningful equality, it sometimes requires a differential approach, and remedies tailored to the circumstances of the litigants we are dealing with.

While we are waiting for the supposed nirvana of a more homogeneous society, how do we accommodate difference in our family courts? In the push for integration, where does that leave concepts of multiculturalism, cultural relativism, and diversity in the Court's considerations? In my view they continue to have relevance, if approached from the perspective of equality. Does the wider discourse impact upon the way we approach and handle cases and the outcomes for children and families? I suggest that it can and sometimes does, to the disadvantage of BAME (Black, Asian and Minority Ethnic) families. It leads to assumptions and the propagation of generalisations, myths, and negative stereotypes.

Undeniably, racism and discrimination exist in our society, and the family courts are no exception. Racism is not an opinion; it is a fact. Victims are often gaslit in respect of their experiences. Thankfully, we have evolved as a society and in our justice system so that (generally speaking), we do not tend to gaslight victims of gender-based violence and sexual assault or engage in victim blaming.

If a woman reports a sexual offence, we no longer ask her: “Are you sure that is what happened?”, “Might you have misinterpreted it?”, “Was there anything that you did that might have contributed to or provoked the response?”. Yet this occurs repeatedly in the context of race: it is rarely an innocent inquiry – rather, it is a challenge.

I suggest that one means by which we can readily demonstrate our commitment to equality and to signal intention to bring about change is to adopt the anti-racism and anti-poverty statements endorsed by the Racial Justice Family Network. We have done so at our Local Family Justice Board. It is based on the work of Millie Kerr of Brighton & Hove City Council, and the Sussex Family Justice Quality Circle.

In the main, social workers do a very difficult job, very well, in very challenging circumstances. However, it is perhaps unsurprising that some of the prevailing social attitudes sometimes find their way into the attitudes of professionals in their interactions with BAME families by way of unconscious bias, with serious consequences.

Consider the judgment of my predecessor Designated Family Judge at the Central Family Court (CFC), HHJ Lynn Roberts sitting in Essex in 2014 regarding the treatment of an African family. She indicated the local authority needed to undergo serious diversity training to address its approach to a family from another culture.

She said: *“My strong impression is that this family has not been treated fairly throughout this process and my strong impression is that they would have been treated differently if they had been white and the mother British born. There has been no consideration of the mother’s different cultural background or that of her children. The level of ignorance displayed has been shocking. The fact that she struggles to understand and express herself has not been thought about. She has been treated with unreasonable and undue suspicion about irrelevant matters .....[and there has been].....a lack of respect for this mother and a failure to treat her properly in these proceedings.”*

Black families have had children removed from their care because marks on the body were wrongly attributed to abuse when they were due to common patterns of pigmentation. Asian children were removed because multiple fractures were wrongly attributed to abuse when they were the result of vitamin D deficiency, in utero, of a mother who wore hijab.

It is a well-worn mantra, communicated to parents in care proceedings, that in order to retain your children in your care (or otherwise to have them returned to your care), what is required is quite formulaic. Firstly, you must accept the concerns and make admissions in relation to at least some allegations; then you have to engage in interventions to bring about change; and finally, you have to be able to demonstrate and evidence that change. The same is applicable to mistakes which have been made in the family justice system where fairness has been compromised.

To reference the multidisciplinary approach of The Family Justice Council: we are all in it together and we can only drive change collectively. Gaining competency in understanding issues pertaining to matters such as race, culture, ethnicity, and

religion is critical in helping to enable effective participation of families in proceedings and to create informed and better outcomes.

The observations I make in this lecture are my own and not expressed on behalf of the judiciary. Much of it is based on my experiences both as a barrister and as a judge working within the family justice system. Until relatively recently, there had been little by way of empirical evidence and studies on the subject of race and the family courts, and therefore discussion has necessarily been confined to the anecdotal. That is why the work of the Nuffield Family Justice Observatory, and the Racial Justice Family Network is so important. The fact that the senior judiciary is fully behind those initiatives is most welcome.

Just to be clear, considerations of issues of race and culture are not “woke gone mad” in the family courts. They are not optional. They are not an adjunct. The express duty to take these factors into consideration is enshrined in our law, in that most brilliantly drafted piece of legislation, the Children Act 1989, which has withstood the test of time.

We are all familiar with the principle that the child's welfare is paramount in many decisions within private and public law children’s proceedings. Among the range of welfare checklist factors contained in Section 1(3), the court is required to take into consideration a child's age, sex, background, and any characteristics which the court considers relevant. It is here that factors such as race, culture, ethnicity, and religion fall to be considered.

Re K (Non-Accidental Injuries: Perpetrator: New Evidence) [2004] EWCA Civ 1181

In the case of K in 2004, Lord Justice Wall and the Court of Appeal allowed an appeal based on new evidence relating to cultural and personal circumstances.

The father had been born and educated in England; the mother had been born and raised in India. The arranged marriage took place in India, but the couple then came to England, moving in with the father's parents. The mother, then aged nineteen, spoke no English. The couple's first-born child in the following year suffered serious non-accidental injuries, including severe shaking. According to the family the mother had been the primary carer, while the paternal grandmother and the father had a lesser role. All three denied injuring the child and denied any knowledge about the injuries. The judge at first instance referred to a 'conspiracy' of silence between them, and although he described the mother and paternal grandmother as unwilling conspirators, he found that none of them were telling the truth. The mother subsequently made three statements retracting her previous evidence in which she accused the paternal grandmother of violence and cruelty towards her and of shaking the baby, and accused the paternal grandfather, previously said to have had nothing to do with the baby, of being regularly drunk in charge of, and of mishandling, the baby. She revealed a kidnap attempt, subsequently admitted, in which the father, assisted by his parents, returned her forcibly to the family home. She had escaped only after police intervention. Setting aside the care orders and the freeing orders, the Court of Appeal took into consideration the mother’s fresh evidence and concluded that it was sufficient that the fresh evidence might reasonably lead, on a rehearing, to a finding that the mother could be excluded as a possible perpetrator.

The Court of Appeal ruled the mother was entitled to invite the court to make full allowance for the cultural context in which she was placed, namely the control by and her dependency upon the father's family that arose. The court said *“This mother is not uneducated or illiterate, but she is very young. She is a relative newcomer to this country and does not speak English. She was living in a household and a culture where, inevitably, her in-laws and her husband dominated. We do not find the difficulties she has encountered in making a break from that environment, and from her husband in particular, in the least surprising. ...we equally do not find it in the least surprising that her changed evidence has emerged in fits and starts. We accept that, if she is to maintain her stance, she faces substantial isolation, possible ostracism, and all the difficulties likely to be encountered by a single Sikh woman,*

compounded by the fact that she does not at present speak English. In our judgment the break must have been very difficult indeed, and we do not, as a consequence, think that her evidence falls to be devalued because it has emerged as and when it has".

In 2007 I chaired the Diversity Subcommittee of The Family Justice Council. The title of the Council's conference of interdisciplinary experts at Dartington was *"Neither Blind to Culture nor Blinded by Culture"*. I based that title on the comment of the Home Office Minister, Mike O'Brien, during a parliamentary debate in February 1999 about the Human Rights of women and measures to tackle forced marriage – he said, *"multi-cultural sensitivity is no excuse for official silence or moral blindness"*. It seems to me that proposition is inarguable and provides a helpful steer in how to navigate some challenges the family courts face when dealing with cases involving BAME families but, as with the case of Re K, it does not extinguish the need to give proper consideration to cultural issues.

The resolutions of the 2007 Dartington Conference included the following recommendations for the family justice system.

- all professionals should receive appropriate training to enable them to elicit culturally related information that is relevant.
- in order to improve its approach to diversity, more time is needed to prepare and investigate individual cases.
- families must be able to access culturally sensitive support and services to prevent court intervention.
- Research should be commissioned to ascertain the accurate demography of children, in particular minority ethnic children, in both the family justice and the Looked After Children systems across England and Wales.

Those recommendations remain highly relevant. The work of the Nuffield Family Justice Observatory in respect of that last recommendation is invaluable and such research has been long overdue.

While I will concentrate in this lecture on BAME families and public law proceedings in the family courts, much of what I have to say can apply equally to other historically disadvantaged groups affected by issues such as class, gender, disability, sexuality. However, it is the intersectionality of disadvantage operating in the case of BAME communities, which often complicates cases and compounds the problems that are otherwise experienced also by majority community litigants.

There is over representation of working-class white families, and also of black and minority ethnic families in public law proceedings while, conversely, there is an under representation of judges from those backgrounds in the judiciary hearing those cases.

It is axiomatic that socio economically disadvantaged families attract state interference whereas those who can afford access to resources, financial or otherwise, are often able to keep statutory safeguarding bodies at arm's length. Once the justice system is engaged, disparities in the ability to access justice and to obtain legal representation through legal aid funding compounds the disadvantage. Discrimination (direct or indirect), resorting to stereotypes, and unconscious bias, all operate to affect experiences and outcomes negatively.

The language of EDI has evolved and changed overtime. It is often experienced as bewildering and inhibiting - an absolute political and social minefield. Is it DEI or EDI? What is the correct and acceptable term to use now and who gets to define it authoritatively? Should we say "Black", "Asian", "Minority Ethnic", "Black *and* Minority Ethnic", or "Global Majority and Other Ethnic"? In the wake of the Black Lives Matter movement, quite rightly it has been identified that it is not helpful to clump together all minority ethnics under the term "Black", because this masks the disparities between the various groups and distorts to create an impression that black people are progressing equally as brown people, when statistics demonstrate that they are not. I prefer to continue to use the acronym BAME.

These terms have at times become loaded, and the sensitivities around them are such that it is extremely inhibiting to navigate the terminology. There is always the risk of causing offence and essentially being “cancelled”.

It seems to me that simply describing an event and categorising it as racist, whilst entirely understandable, is not particularly constructive in moving the dial. I suggest we all have a duty to try and assist each other, and to build professional competence, in order to make meaningful progress.

As the composition of our society changes, state intervention by way of care proceedings must adapt to, and address the needs of, diverse families. The family courts have had to be agile in addressing new challenges over the years. It is worth being reminded that it was white, male judges who sought to expand the law, in circumstances where there was a vacuum in legislation, so as to protect the vulnerable, for example in the use of wardship and the inherent jurisdiction to protect victims of forced marriage.

The settlement of immigrants from the New Commonwealth and the liberal confusion about multiculturalism and interfering with harmful practices, have allowed problems to fester. Historically there has been hesitancy in professionals intervening in matters within the sphere of private family life and risk being called out for racism by communities who have already suffered well-documented discrimination by state agencies. It is an approach which persists. We must recognise that it can be a very difficult line to tread. Given the debate generated by high profile child sexual abuse and exploitation cases, it is perhaps worth pointing out that these risks to BAME girls, in areas such as Tower Hamlets, have also come from men within their own communities. The collectivistic values of some minority communities means that issues in some cases are compounded by factors such as shame and honour.

Our society lacks a written constitutional code but subscribes to the concept of equality under law and the rejection of invidious discrimination. The ECHR, Human Rights treaties, the Equalities Acts and the common law provide standards for lawmakers and judges, but they do not create a coherent concept of British citizenship and integration. Weak enforcement of equality law has allowed patterns of inequality to become entrenched in the name of cultural diversity.

Cultural and religious considerations are often wrongly used to justify unequal treatment of individuals, and they do not excuse harmful practices either. However, they can provide an explanation and context.

The fundamental rules of the principles of natural justice require that a party in a case should be given a fair hearing and should not face bias. We need to keep families engaged in the system. If the decisions of judges are to be respected and court orders adhered to, litigants need to feel heard, valued and respected within the system. If not, quite apart from anything else, this has resource implications also in terms of further litigation by way of enforcement or appeal.

I suggest that in our approach to BAME families in the family courts, we need to keep an open mind; ask the right and targeted questions to elicit best evidence; acquire confidence but improve sensitivity via cultural competency; seek assistance from external experts where necessary; undertake work to increase the pool of available cultural experts and think laterally and creatively about how to solve problems.

In a case involving three girls of a family of Pakistani background in contested private law proceedings, the credibility and mental health of the mother were called into question. Her highly distressed state and her behaviour in making the girls wear talismans to ward off jinns (evil spirits), burning any cards or letters from the father and making the girls drink water in which pieces of paper with Quranic verses had

been dipped, was viewed as bizarre and irrational and she was at risk of being dismissed as simply mentally unstable and implacably hostile to contact. The children were joined as parties and an expert in south Asian culture was instructed– a white, British man from SOAS, who was a social anthropologist. He was able to analyse the mother's account and explain that, in fact, a very high proportion of people from South Asia across class and educational boundaries, believed in witchcraft and jinns and had their children wear talismans. Furthermore, that the mother's behaviour was rooted in her very valid and rationally held fear that the father would seek to influence the children negatively and marry off the girls at an early age to unsuitable members of his family (who had been abusive towards the mother), for economic advantage. The court ruled that the mother should retain care of the children and the father was permitted only indirect contact.

In many instances all that is required is an open mind and the willingness to pose open questions. In contested proceedings for a non-molestation injunction, the applicant woman had not just her husband and his family ranged against her, but also her own mother and family members queuing up to give evidence against her. All of this had a potentially very serious impact on the credibility of her account. It was only because I was aware of the very high incidence of consanguinity within sections of the Pakistani community that it occurred to me to ask her "is your husband your cousin?". It turned out that both the fathers of this couple were brothers and their wives were sisters. It was such a normal arrangement in that community that it did not occur to the applicant to disclose it and her solicitors had not asked either. That put a very different complexion on the evidence and the reliability of all those witnesses who were clearly motivated by their disapproval of this woman, who had transgressed their social norms, in order to avenge what they perceived as her bringing shame and dishonour upon the entire family.

Independent social workers (ISWs) who undertake parenting and risk assessments need support. Many have been deterred because of past, trenchant criticism in court judgments. There is a paucity of experts in the family justice system as it is.

There are a handful of social workers, who because of their own cultural identity or other experience are familiar with the cultural and religious background of families and their countries of origin. They are over stretched. They do not always have experience as expert witnesses or of the forensic process. There is no form of specific accreditation or specific training afforded to them. Some are instructed because they have a campaigning background. That is sometimes dangerous when their evidence is so critical to decisions, but they do not observe the level of impartiality and objectivity required, or else over identify with the families they are assessing. The ISWs could benefit from some shadowing or court experience training. Almost uniquely, as experts they are not able to engage in peer review or discussions with colleagues. At the very least, some form of feedback, even if it is only the routine opportunity to read the court's judgment and see how their evidence fits with the rest in the case and what weight the court attached to it, would be helpful.

I heard a quite unusual case involving a Chinese family a couple of years ago. It was unusual, firstly, in that it involved an ethnic group we do not often encounter in the family courts. The family had left China and was claiming political asylum in this country, on the basis of extreme state persecution. Even by the standards of BAME families with alleged experience of non-benign state interference in country of origin, this family had the most severe aversion to any form of state intervention. They were profoundly mistrustful and saw conspiracy in everything. The adult child was drawn into this distorted worldview. What started out as a case of neglectful parenting of the younger children, escalated alarmingly. The local authority tried to engage with the family but they refused or evaded visits, including by escaping via the fire exit of their temporary accommodation. Yet, they continued to communicate florid claims of alleged police brutality as well as sending abusive emails to various addressees including the Prime Minster and many MPs. Unfortunately, the emails included severe personal abusive comments about the allocated social worker and other professionals and made allegations of persecution of the family by authorities in this jurisdiction, which were without foundation.

The local authority eventually saw the sense in employing a social worker with the same ethnicity and linguistic background of the family. There was very limited engagement by the family with her also, but she was able to provide a helpful and reflective report. After the case had concluded, I had the opportunity to explore the issues raised with the allocated senior social worker. She readily acknowledged that the ISW should have been engaged earlier and described how the ISW's input had helped to break the impasse in communications. The social worker felt that children's social care was then better able to understand the parents' thought processes, family dynamics and functioning and they were then able to approach them with more empathy. Ultimately, and seemingly against all odds at the outset of proceedings, all the children were returned home to the care of the parents.

In approaching diversity, an ethnic match of professional or judge with litigant has its place and value, but it is neither required nor necessarily desirable. In many instances it would be impossible to achieve. As the judge in the Essex case observed, being culturally appropriate does not mean finding somebody who is black. I suggest what *is* required is ***cultural competence***. This can be acquired with sufficient awareness, thought and systematic training, for all professionals including judges. Everyone needs to be "upskilled". It can be done. In Tower Hamlets, a white female social worker was trained in, and was successful in addressing, radicalisation and extremism cases.

Sometimes an ethnic match is definitely not the answer as BAME families come from small communities, even if they are spread geographically. The lines of communication are swift and effective, and they do not wish their communities to know about the difficulties their families face. In the past, regrettably, confidentiality has been breached by professionals of the same background which adds to the concerns. For similar reasons, care needs to be taken in the publication of judgments to anonymise the identity of the children. Arguably, in some communities, almost no amount of anonymisation will be adequate to ensure privacy.

Some young people do not wish to be placed in a culturally matched foster placement where they may be subject to the same attitudes and approaches to parenting which were oppressive and abusive in the family home.

Culturally matched assessors can also bring baggage in terms of their own values to a parenting assessment. In one case, I rejected the negative conclusion of an assessment by an independent social worker, of a Charedi Jewish couple as potential long-term carers of a child, whose father was Asian but whose mother had Jewish heritage, albeit she was not practising or observant. The Charedi couple were part of the child's extended biological family and living in Israel. The social worker was herself Jewish, albeit of a more liberal leaning. I thought this difference may have partly. influenced her in reaching the conclusions she did. I formed the view that the assessment had been overly harsh and critical, had employed stereotypes and that it had applied a standard of care expected of the carers, which would not be valid were I to be considering placement with a similar family in, say, Stamford Hill, North London. The ISW based her conclusion in part on her assessment that the child's needs would not be met because the male carer was a Rabbi who was unavailable because he was heavily engaged on a daily basis in the study of the Torah. Insufficient consideration had been given to the fact that the female carer's almost sole role in the family was to provide care for the children. Contrary to the ISW's report, they did have internet at home and the adult children were attending universities and were employed in wider societal settings and so the child would have had the benefit of those opportunities also. I placed the child with the couple in Israel.

An ethnic match is sometimes resisted by families because they are well aware they may not be able to pull the wool over the eyes of someone who is from their own background. Equipping and empowering all professionals to have the confidence to challenge and intervene rather than be over-sensitive to issues of culture comes with knowledge.

There is a need to exercise caution against making assumptions. One case involved two teenage sisters taken to Pakistan by their father and forced into marriage at gunpoint, raped by their husbands subsequently, and abused by extended family and the wider community. They were then groomed and drawn into prostitution and the pornography industry. On their return to this jurisdiction the focus of forced marriage proceedings was on progressing a petition for nullity. It had been assumed that the girls no longer wanted anything to do with their own background. It had not occurred to the professionals that, despite their experiences, the girls still harboured a strong wish to remarry within the Pakistani diaspora community. They were not bothered about the legal status of their marriage; they were more concerned with securing an Islamic divorce.

In an application for removal of a baby girl, at birth, into foster care because it was believed she would be subject to female genital mutilation (FGM), the fair, analytical and culturally competent questions which needed to be asked when assessing risk were: how does this particular family practice FGM? Where on the cultural spectrum does this particular family fit? If it was the case that they only practice FGM when a child reaches puberty, then (pending final decisions) the balance of risk and harm weighed in favour of the child not being separated from the mother, with all the recognised damage such separation causes in a newborn's development. Removal would have been disproportionate. I did remove the 13-year-old daughter. The parenting assessment by an expert in FGM was educational and liberating for the mother so much so that she came to acknowledge the harm FGM would cause - and had caused *to her* - and so the elder child was returned to her care.

As a barrister, I was privileged to have been asked to advise Government on various matters and in respect of the review of Sharia Councils, I expressed the view that in seeking to protect the interests of vulnerable Muslim women, if it was not possible to establish an alternative process for securing Muslim divorces, it was important not to throw the baby out with the bath water. The activities of some Sharia Councils were a source of concern. Clearly, there needed to be much tighter regulation and best

practice needed to be improved and disseminated. However, the vast majority of work undertaken by Sharia Councils, just as with the Jewish Beth Din, relates to declaring and granting divorces. In the case of Muslim women, pronouncing the *khul*, in circumstances where the husbands refuse to pronounce *talaaq*. The private law and financial proceedings in the family courts are often delayed or interrupted - and sometimes undermined - by these alternative dispute resolution processes and it seems to me mutual disclosure of documents, only when appropriate, may assist.

Culture is not monolithic or static. Regular and ongoing training is required to achieve cultural competence, which means applying the best approach to engage litigants and not applying inappropriate value judgments.

Litigants are far better able to give a true account of themselves in answer to the allegations they face, and best evidence is achieved if they feel comfortable with the assessor. We have made progress, where we would not dream of having an assessment of a learning-disabled litigant undertaken by a social worker who has not received sufficient training, yet very often the courts are content to order assessments by professionals who do not understand and have never been trained in understanding the particular issues which arise in BAME families. This gives rise to misunderstandings and the serious risk of injustice. It is not helpful or fair to send a white Irish man, however well intentioned, to Bangladesh accompanied only by a male local interpreter in order to assess a grandmother in a hotel room in the capital city, in circumstances where she had never travelled outside of her village area and had never spent time alone with a man who is not a member of her immediate family. Highly sensitive and embarrassing subjects were discussed. There is no equivalent word for “sexual abuse” in the Sylheti dialect. An assumption was made that she was not independent and had insufficient agency to be able to safeguard the child, when in fact she was wealthy, she had inherited businesses from her deceased husband and employed male members of her family.

Language, cultural and religious observance, are not in themselves barriers to good parenting, safeguarding, progress, or social cohesion. However, I suggest that in appropriate cases, tailored, culturally appropriate parenting programmes could be offered to the parents in their own language as soon as problems arise and certainly during and post proceedings. Too many parents are compliant with courses without understanding them. The problems are not adequately addressed and will only re-surface later, resulting in a fresh set of proceedings.

I hold concerns in respect of the psychological assessments frequently relied upon in court proceedings. Aspects of the standardised tests are language based. Without some further explanation being provided about the tests in a manner which does not undermine the validity of the test, especially to those who have received no formal education, I question whether it is fair to simply rely on interpreters. Then there is the issue of varying quality of interpreters to factor in. Even the visual assessment tests can be culturally inappropriate, such as asking someone to identify that lattice work on an apple pie is missing, when they may never have seen an apple pie. I have only ever come across one expert report in this field which expressly made adjustments for cultural difference. There seems to be a disproportionately high number of BAME parents, women in particular, assessed with significant learning disabilities. Yet their functioning on the ground, attending to a range of caring tasks for family members, interaction with schools and doctors and the litigation process itself would indicate otherwise. The assessment has implications for decisions as to their ability to provide adequate care, and also the level of support which will be required to assist them.

An example of the danger of approaching a case with ill-informed “saviour” mentality is of a young girl in care proceedings relating to forced marriage issues. Like many in her position, she suffered tremendous internal conflict. She oscillated between the need to keep herself safe and her love for, and loyalty to, her mother and siblings. She worried about her mother who was herself the victim of domestic violence, and for the welfare of her younger siblings who she feared may bear the brunt of her actions. She repeatedly breached arrangements and terms of court orders designed

to keep her safe. She told lies and engaged in subterfuge. She faced pressure from the family to retract her allegations. Instead of trying to understand the root cause of her behaviour, social workers became exasperated with her, treating her as the problem. In this period, she suffered a very significant and rapid deterioration in her mental health. Instead of receiving help, she received a caution for wasting police time and ended up in secure accommodation.

I do not say that female genital mutilation (FGM) and male circumcision are entirely comparable. There is no religious justification for FGM or forced marriage in respect of which there are very serious issues which impact upon women and girls and which are significantly harmful in myriad ways. There is not sufficient time to delve into that in any great depth in this lecture. However, there is a complexity in this because many of those from a Muslim community learn the Quran by rote, as recitation in and of itself is considered virtuous. They can read Arabic but do not understand it. They may have been raised within communities where the literacy rate has been low. Their interpretation of the Quran has been handed down to them by their elders who in turn would not have been theologians. Therefore, it is sometimes difficult for a community to comprehend why it is that female genital mutilation is a criminal offence and that it is treated as abusive within the family courts whereas male circumcision is not. Where there is no medical imperative for male circumcision, it still causes physical harm and there are instances where it can have devastating consequences when the surgery results in complications. It has been said by various people that the difference in approach to male circumcision might in part have been influenced by the fact that a significant number of men in the UK, particularly from the higher social classes, were circumcised in the early part of the last century. It is said to be the world's most commonly performed surgical procedure, and reports of health benefits or cultural reasons aside, there exist fundamentally different views in different countries and within the medical profession as to whether the harm outweighs the benefits.

Many BAME families who come before us in the family courts will have experienced discrimination previously and often have entrenched issues of trust in the state and

in professionals, which we need to work to overcome. Although it is instructive perhaps to note that families said to subscribe to social segregation, when their children are beyond their control or were lured to Syria to join Isis, paradoxically often still look to the British state to help and to return them.

To understand the responses of some BAME litigants within proceedings, I suggest their behaviour needs to be contextualised by reference to some of their negative experiences of racism and at times, discriminatory state intervention also.

Many BAME litigants have that whole hinterland of painful experiences, which remain engorged within. If you understand that, then perhaps it is not so much of a leap to understand why the reactions of litigants to seemingly innocuous or unintended words and actions by professionals and judges sometimes can appear to elicit a disproportionate response, because how they have been treated can trigger those long-suppressed emotions.

Some of the prevalent, specific issues pertaining to BAME family cases, have included excessive physical chastisement, so called “honour” based abuse, forced marriage, female genital mutilation, male circumcision, irrational beliefs such as witchcraft, Islamic radicalisation, trafficking of women and children which at one point resulted in a wave of cases involving supposed miracle births of babies under the control of some churches, where the congregation was majority black.

In my experience excessive physical chastisement is often the threshold issue in family law proceedings involving BAME families. In many cases, within limits, it is considered a cultural norm within communities. In general, most care cases involve denial of the allegations, otherwise they would not be in proceedings. However, the extent and quality of denial is often particularly pronounced in BAME families. As a result, BAME children are sometimes removed and placed far away, in rural locations where no one looks like them, there is limited access to places of worship,

or the traditional food that they are used to or the essential black hair care and skin products they need.

It seems to me that we have to find ways of addressing this issue rather than insisting upon complete acceptance of allegations, to prevent greater numbers of children remaining in long term state care. As with the Resolutions Model, there is room here to develop a culturally supportive, specialist environment in which to explore findings of abuse and find a way for rehabilitation.

There is obviously no room for cultural relativism when the child can only experience such parenting as profoundly harmful, with lifelong consequences for development and functioning. Physical abuse as a form of discipline of children must be viewed as unacceptable and transcends issues of class, race, culture and religion. However, it does provide a context - surely there is room for an understanding of what misguidedly motivates parents, of their confusion, misunderstanding and time needed to adjust to standards of parenting we rightly demand in this country? *But* for these practices, they may be otherwise entirely loving parents, meeting their children's needs in all other respects. In my experience this sort of abuse is often driven by factors such as wanting to prevent children from falling into gangs and criminality; preventing drug and alcohol misuse; the pursuit of educational attainment; preventing daughters from transgressing social norms which impact upon the family's reputation and social standing and thereby diminish the child's own marriage prospects.

Re A (A child: Wardship: Fact finding: Domestic Violence) [2015] EWHC 1598

In Re A, the High Court judge Mrs Justice Pauffley accepted that, at times, different cultural approaches to physical chastisement may help to understand though not excuse such behaviour as appropriate, given UK laws and standards. This was controversial, but if I may say so, her approach was a correct and helpful one. She said " *I do not believe there was punitively harsh treatment of A of the kind that would merit the term physical abuse. Proper allowance must be made for what is, almost*

certainly, a different cultural context. Within many communities newly arrived in this country, children are slapped and hit for misbehaviour in a way which at first excites the interest of child protection professionals."

Integrating EDI into the family justice system also means having a more diverse judiciary. In some areas, BAME families may go through the entire court process without the involvement of a single BAME professional. Police, social workers, lawyers, guardians, medical and other forensic experts, and judges. That may not make any difference to outcomes, but it does not serve to instil confidence in the process and promote essential engagement. The importance and benefits of a diverse judiciary have long been accepted. Yet there has been a woeful lack of progress in respect of the appointment of BAME judges, particularly at a more senior level. To date, I believe the Kings Bench Division of the High Court has had eight judges of a BAME background. The Family Division has had none. The statistics can no longer be justified on the basis that BAME lawyers have not been working in the system long enough, or that there are insufficient numbers with the requisite merit. Diversity and merit are not mutually exclusive concepts. Something is not working. Having sat on many selection exercises for the Judicial Appointments Commission (JAC) I know that this is a very complex, multi- faceted issue and the JAC works very hard to address it and is absolutely committed to changing those statistics. We can run as many diversity initiatives as we wish; there is nothing more powerful to encourage and inspire than people seeing others in their own image simply doing the job. I have some suggestions for change, short of affirmative action, which I do not have the time to set out in this lecture but perhaps we can discuss the issue in sessions later today.

Senior judicial positions continue to be dominated by a narrow social group who attended fee paying schools. The social mobility commission has singled out the law for criticism as a socially exclusive profession. Not just the bar – but also the solicitors' profession is dominated by those attending fee paying schools. At the CFC I am looking at a mentoring programme to also encourage those form a working-

class white background to apply for judicial appointments, just as we have been doing in respect of black lawyers (an initiative started by HHJ Lynn Roberts).

A disproportionate number of BAME lawyers practise in the publicly funded areas of law, such as family law. The Bar Standards Board research has shown that black (not brown) female barristers earn 40% of what their white male counterparts earn. That is true even when you strip away all the variables such as academic background and attainment, level of call, area of practice. There is no escaping the fact that the only logical conclusion is that they are victims of structural discrimination. I can tell you, from the verbal (and sometimes non-verbal) communications I regularly receive from BAME advocates, court staff, litigants, defendants, witnesses and jury members that the lack of BAME judges is an issue. Despite recent controversies, the judiciary so far continues to enjoy high levels of public approval. That may yet be placed in jeopardy. Judges are the public face of the justice system. In more ways than one, justice has got to be done, and it has got to be ***seen*** to be done.