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Assessments of Ethnic Minority Families - When in Rome Do as the Romans Do?

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BAME Families in care and supervision proceedings in England - The statistics

- White children account for 78% of children in care proceedings; children from Mixed ethnic groups account for 11%; Black children made up 5%; and Asian children 4%.

- At the point of entry into legal proceedings, Black, Asian and children from Other ethnic groups were on average 7 years old, while children from White and Mixed ethnic groups were on average 5 years old.

- 16.5% of White children and 15.6% of Mixed children are subject to placement orders, compared to only 5.8% of Black children and 4.7% of Asian children.

Nuffield Summary

- Black and Asian children less likely to be on placement orders than children from White and Mixed or multiple ethnicities.
- White children receive more 'interventionist' legal orders with the exception of secure accommodation orders/deprivation of liberty orders.
- Black and Asian children are, on average, older and their cases take longer to conclude than White and Mixed or multiple ethnicity children.

But why few placement orders for BAME children?

- Extremes in the system? Cases not coming to the attention of the local authority due to misunderstanding or fear of confrontation (see the serious case reviews) or on the other hand cases brought to court which could have been resolved without proceedings/local authorities taking a punitive approach
- Black children in particular not considered 'adoptable' due to racial stereotypes i.e crime and gangs likely when they grow up
- Racism within the system of approving adoptive carers?: see the case of **Sandeep & Reena Mander -v- Royal borough of Windsor & Maidenhead, Adopt Berkshire, a judgment of HHJ Clarke sitting at Oxford CC**

- a British couple whose interest in being approved to adopt was rejected following a home visit because of their Indian parentage. In 2016, Reena and Sandeep Mander sought to adopt a child but were refused the opportunity to apply by Windsor and Maidenhead Council's agency, Adopt Berkshire. They were told that, since only white children were available for adoption, given their Indian "cultural heritage", their application would not be progressed.
- At the four-day long hearing, Oxford County Court was told that Mr and Mrs Mander had been subject to direct discrimination on the grounds of race, contravening Section 13 of the Equality Act 2010 and Articles 12 and 14 of the European Convention on Human Rights. Adopt Berkshire's actions came after significant changes made to the adoption system by the Children and Families Act 2014 and the Adoption Agencies (Amendment) Regulations 2013, which encouraged local authorities to move away viewing ethnic or racial matching as a primary factor in the adoption process
- HHJ Clarke found that the couple had suffered direct discrimination on the grounds of race [para 80, 99 and 100]

How BAME families have been assessed by the courts and local authorities:

- The welfare principle must be the key deciding factor
- S1(3) welfare checklist
- How has the welfare principle actually been applied?

Examples from Religious upbringing cases

- Under section 33(6)(a) of the Children Act,
- "while a care order is enforced with respect to a child, the local authority designated by the order shall not cause the child to be brought up in any religious persuasion other than that in which have been brought up if the order had not been made“
- **SM & Ors (Welfare) [2016] EWFC 15 (22 March 2016)**
- Muslim family – 7 children in 6 separate placements. Welfare hearing
- Para 63 -, **Mr Justice Baker** the approach to a child's religion and culture requires sensitive handling and analysis, particularly as the child grows older and starts to think independently. There is a danger, in our increasingly secular society, that those responsible for looking after children in care – both foster carers and social workers – will not truly appreciate the importance of a child's religion and culture. If possible, children should be placed in foster placements that are culturally appropriate…. Manifestly it will not always be possible to achieve a placement that meets these requirements alongside the other welfare needs of the child. In those circumstances, the local authority must devote particular attention to how the child's religious and cultural needs will be met, in terms of religious observances, education and lifestyle, including diet.

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Re A and D (Local Authority: Religious Upbringing) [2011] 1 FLR 615

- Case, which concerned children born into a Muslim family but whose mother had subsequently reverted to her previous Catholic faith, A muslim father sought to discharge the care order on the basis that the local authority was obliged to sustain the child's religious persuasion as at the date of the care order, in this case the muslim faith.
- The court held that the local authority's duty to respect a child's religious persuasion under s 33(6)(a) of the Children Act 1989 was subject to its overriding duties to safeguard and protect the child's welfare under s 17(1) ["it shall be the general duty of any local authority (in addition to the other duties imposed on them by this part) … to safeguard and promote the welfare of children within their area who are in need" and s 22(3) ["it shall be the duty of the local authority looking after any child … to safeguard and promote its welfare".]. In this case, the local authority was entitled to permit the grandmother to teach the child about both the Catholic and Muslim faiths, demonstrating a proportionate empathy with the different belief systems in the family; however, it should also be doing more to teach the child about Islam (see paras [74]–[77]).

In Haringey LBC v C and E and another intervening [2006] EWHC 1620 (Fam), [2007] 1.FLR 1035,

- 'Miracle baby' case - Birth parents unknown — Whether religious belief a pre-eminent factor in welfare — Whether adoption has benefits not provided by residence or special guardianship
  - Ryder J observed (at paragraph 76):

"*Religious, racial and cultural factors are integral elements of welfare and may on the facts of a particular case provide both the positive and negative factors and context by and within which decisions have to be made. However, whatever an individual belief system may provide for, and despite the respect that will be given to private and family life, and the right to freedom of thought, conscience and religion, and the freedom to manifest religion or belief in worship, teaching, practise and observation (by articles 8 and 9 of ECHR), the law does not give any religious belief or birthright a pre-eminent place in the balance of factors that compromise welfare …. Furthermore the safeguarding of the welfare of vulnerable children and adults ought not to be subordinated by the court to any particular religious belief.*"

A mixed approach?

- ***A&B v Rotherham Metropolitan Borough Council 05 Dec 2014 [2014] EWFC 47, Fam Ct – a case which placed too much emphasis on race?***
- A decision of Mr Justice Holman
- Questions raised: What approach should be taken in cases where child is fully settled in prospective adoptive home 'described as the 'perfect adopters", "tried and tested", and then a family member, through no fault of their own comes late in the day – that family member though positively assessed has not been "tried and tested" and not as affluent? What is the correct application of the 'nothing else will do test' in that context?
- An adoption order was refused despite the fact that the child [mixed black Caribbean and white heritage] had been happily settled with his potential adopters [white couple] for 13 months
- The father and the aunt emphasised that they and their family were black African; the child was clearly of mixed race; but that the applicants were white. Something which seemed to exercise the court whe you read the judgment at Para 89 Every child has a need for love, security, and good quality care, with a carer or carers to whom he is well attached. So does C. He does have a need to be brought up in a way which acknowledges, respects and nurtures his ethnicity and his black African heritage, see also Paras 95-96.

Re P (a child) (circumcision: child in care); M v F and others [2021] EWHC 1616 (Fam)

- Both cases involved an application by Muslim parents for their child in Local Authority care to be circumcised. This ultimately led to a finely balanced decision of the Family Court to not allow the circumcision of the child, albeit that this was particularly in circumstances when the parents were not having contact with the child.

- These decisions demonstrate that whilst religion, culture and race are important factors to the court when it carries out its balancing act in the decision-making process, they are not the determining factor.

In re W (A Child) (Adoption: Grandparents' Competing Claim) [2017] 1 WLR 889, 29 Jul 2016 [2016] EWCA Civ 793

- In almost similar facts, albeit the child was of white background
- decision about whether or not a child should be moved from a potential adoptive placement, where that child was settled (17 months), to a placement with family members who again through no fault of their own came late in the day
- Lord Justices Jackson, McFarlane and Lindblom delivered judgment came to a different conclusion and overturned the decision of trial Judge Mr Justice Bodey.
- there was neither a 'right' or a 'presumption' in favour of a child being cared for by the natural family (see para [70]) and that this false assertion had created an improper and dangerous reliance on the 'nothing else will do' test. The existence of a viable home with the grandparents should make that option 'a runner' but should not automatically make it 'a winner' in the absence of full welfare analysis.
- The above Rotherham case was mentioned in a skeleton argument but not cited by the Court of Appeal

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Would Holman J's decision have survived the court of appeal?

- In light of the CoA's clear rejection of any 'presumption' in favour of the natural family, would Holman J's decision, framed on clear welfare grounds, have survived this Court of Appeal.

- What do we make of this? whichever way Holman J decided, public reaction to his judgment and decision was likely to be polarised, with some agreeing and some strongly disagreeing with what he decided.

- In fairness Mr Justice Holan did say it was one of the most harrowing cases he had heard and expressed regret at the 'intense grief' his ruling would cause.

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'Perfect' white parents told by judge to give up adopted mixed-race boy to aunt that he's never met

- Justice Holman said toddler will live with family of father who rejected him
- Ruled that the toddler should be moved from the 'perfect' adoptive couple
- Toddler went to live with adoptive parents when he was seven months old
- Five months later, genetic father said he wanted him to live with his sister
- Judge said it was 'finely balanced case' but rejected adoption application

By SAM MARSDEN FOR THE DAILY MAIL
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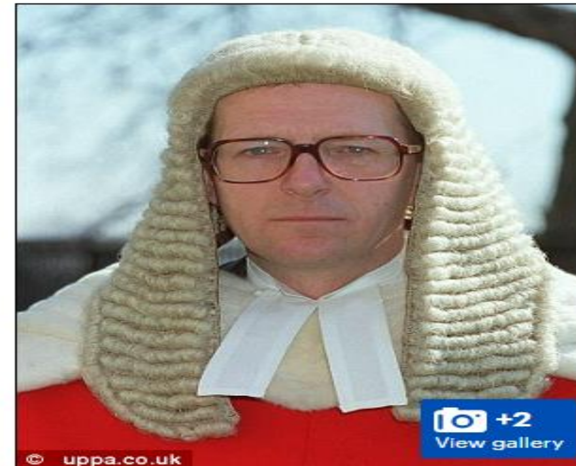
A mixed-race toddler must be taken from a 'perfect' white couple who wanted to adopt him and given to a black aunt he has never met, a judge ruled yesterday.

The 20-month-old boy has been lovingly cared for by his adoptive parents for the past 13 months and will suffer distress and perhaps psychological harm when he is removed from them.

But Mr Justice Holman said these factors were outweighed by the child's chance to be brought up by his father's family, who can teach him about his African heritage.

The experienced family court judge said it was one of the most harrowing cases he had heard and expressed regret at the 'intense grief' his ruling would cause.



Mr Justice Holman (pictured) said that in almost 20 years as a judge of the Family Division he had rarely heard a more harrowing case

Physical chastisement case

A decision of Pauffley J Re A (A child: Wardship: Fact finding: Domestic Violence) [2015] EWHC1598

- Pauffley J accepted that at times different cultural approaches to physical chastisement may be highlighted and whilst not excusing such behaviour as appropriate given UK laws and standards, at times a cultural allowance might be given. At para [67] of the judgment, Pauffley J 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.'

- From reading the judgment Pauffley J did not believe much of what the father said in evidence. She described being 'troubled by the father's ability to lie when the situation as he saw it, called for deceit'. But she accepted much of what both the mother and A said. Therefore the father's assertions that he had simply 'slapped' or tapped' A as opposed to A's allegation that he had been hit with a belt must be placed in this context.

- If it was indeed accepted by Pauffley J that A had been hit with a belt by his father on his back and his legs, that it hurt and it left marks then some may ask how it can be said this does not amount to 'punitively harsh treatment'.

Controversial?

- What is meant by *proper allowance must be made for what is almost certainly, a different cultural context.*
- Should it be taken that if a child is from a community where corporal punishment using a belt is acceptable to some but by no means all in the community, that society should tolerate that treatment of that particular child in a way we would not if the child were from a different community or cultural heritage?
- Social workers reading this may also feel that they are being criticised for overreacting to what may be a cultural norm
- Does this judgment carry with it a danger for providing an excuse for hitting and marking a child with a belt when it may be said this should not be acceptable in the first place?
- Is there a risk that in trying to be culturally sensitive, we are failing to realise that abuse and the effects of it know no such sensitivity?
- Is there a risk that a 'cultural deficit', a lower threshold 'of concern and intervention' is not applied to black and minority ethnic families

Lessons for the judiciary?

- Need diversity within judiciary
- Professor Leslie Thomas KC's lecture on Judicial Racism and the Lammy review highlights racism within the court system and what needs to considered going forward to affect change.
- Judges, magistrates and the judiciary may also like to give some attention to anti-racist training within the Family Court, periodically, to enable all to overcome fears and grow in confidence to be able to challenge racist practice wherever it is observed or encountered and provide a safe space to have uncomfortable conversations about race
- A key document and guide for the courts on how to treat individuals with respect, fairness and equity, is the Equal Treatment Benck book (Judicial college, 2023: p. 208-269) which also highlights that

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 a difficult task. (p. 250)

Serious case reviews

- Looking at practitioners with day to day conduct of cases
- Serious case reviews: Wider analyses of serious cases have found that practitioners need greater confidence and competence in exploring how ethnicity, racism and culture affect parenting and a child's lived experience

Serious case reviews

- Wider analyses of serious cases have found that practitioners need greater confidence and competence in exploring how ethnicity, racism and culture affect parenting and a child's lived experience
- Ghananian baby died due to force feedings, Waltham Forest professionals lacked understanding of cultural values re weight/body image
- unnamed Local safeguarding children board – Lack of curiosity –
- Serious neglect and physical and emotional abuse of a 9-year-old boy and his siblings by their parents. Bilal (known as Billy) had not been seen by any professional since the age of 14-months and had not received education, health or social care services to meet his diagnosis of autism.
- Romani family - Bradford Children Safeguarding partnership[2023 - Lack of cultural competence.
- Neglect of female siblings aged 11-months-old, 1-year-old and 6-years-old. A home visit found the two younger children living in significantly neglectful circumstances with unexplained injuries.
- The Romani and traveller community in the UK experience the same level of personal and institutional racism and discrimination as any other Black and minoritized groups. There is evidence of poor health outcomes, inequality in the labour and housing market, poor education outcomes and low literacy rates, an overrepresentation of referrals to children's social care and other institutions.

Victoria Climbe’

- Assumptions were made about culture involving racism and culturally-based stereotypes.

What assessments should take into account

- Should race and religion be added to the welfare checklist?
- Experts, Practice Direction 25B:
- Para 4.1: when expressing an opinion, the expert has a duty to take into consideration all of the material facts including any relevant factors arising from ethnic, cultural, religious or linguistic contexts at the time the opinion is expressed.
- Para 9.1: the expert must identify the facts, literature and any other material, including research material, that the expert has relied upon in forming their opinion.

Re L, Hedley J

'Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unusual consequences flowing from it. It means that some children will experience disadvantage and harm, whilst others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting'.

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Cultural Competence

- Understanding how childhood is viewed from the ethnic minority perspective
- Be curious, inquisitive and open-minded
- Employ a strengths perspective when assessing BAME families
- Consider alternative models for assessment, e.g. the Resolutions Model

An unfair assessment of an African family

- **In a case X, Y and Z (Treatment of a family with African heritage) [2014] EWCC B75 (CC) (10 April 2014) a judgment of HHJ Roberts**

- *The internal inquiry which is taking place in R needs also to address the issue of the approach of this authority to a family from another culture. I have been judging full-time for 12 years in London before coming to Essex. In London it was an everyday occurrence for the families being considered by the courts and the local authorities to come from outside the UK. I have conducted many trials involving people from various countries in Africa, although I cannot recall whether I have dealt with a case of a family from Country L before or not. These cases are prepared and presented fairly and appropriately. It may be that there is little experience in R of such cases but the approach in R is not one I have met before. 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 M's different culture 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 such as where she earns her money and about her family in Country L. I also do not think a white British mother who had had two of her daughters die in this country within two years of each other would have been treated with the very limited compassion this mother has received. I have noted a lack of respect for this mother and a failure to treat her properly in these proceedings. These children have only been accommodated, there have been no interim care orders, and M's request for more contact or different contact has not apparently been considered. I was told today that there have been ongoing discussions about how a rehabilitation process would work but no one has thought to consult the children's mother. Most breathtaking of all is the fact that the Marigold Family Resource Centre in their assessment concluded in August 2013 that these children should be adopted. At the time they were twelve, seven and five, and the idea was preposterous. However, the local authority accepted the recommendation and adoption became their care plan. This care plan is unique in my experience. I have had to form the view that this family has been treated differently from other families in R.*

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Who should assess BAME families

- Culturally competent child protection assessment and interventions are integral to anti oppressive practise with families from black and minority ethnic backgrounds
- President's case management Guidance March 2022 - Applications for independent social workers or psychological assessments should not be necessary. The culture should be of judges (and guardians) trusting assessments made by the local authority, unless a reason not to do so is established. The social worker is likely to know the family better than an ISW or a psychologist and many such assessments add little or nothing to what the social worker can and should be able to tell the court. The statute is clear, instruction of an ISW or a psychologist will only be permitted if the evidence 'is necessary to assist the court to resolve the proceedings justly' [CFA 2014, s 13(6)].
- Family Procedure Rules 2010 Pt 25. Rule 25.1 provides that "Expert evidence will be restricted to that which in the opinion of the court is necessary to assist the court to resolve the proceedings". (*Re H-L (A child) [2013] EWCA Civ 655*)

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If LA is assessing

- Obtain details from the LA of the proposed assessor, in good time.
- Experience of assessing BAME families
- Complex cases
- Knowledge of the family
- Post qualification experience
- SW from different team
- Consult AFRUCA/ Save the woman

Does the case require Independence?

- Is there evidence of unfairness, bias, prejudice? Ingenuos offer of a culturally expert SW who infact is told what to do by the LA?
- May need to consider an ISW
- Re Z (A Child: Independent Social Work Assessment) (2014) EWHC 729 .
- A 2 year old child suffered serious NA injuries leaving her disabled. Asian family. Mother accepted she caused the injuries. LA applied for care and placement orders. The social work assessment of the father was negative and no parenting assessment was recommended. Father applied for an ISW under part 25.
- Concerns raised about the SW assessment
- HHJ. Bellamy sitting as a High Court Judge held: '***In any case in which a local authority applies to the court for a care order, the assessment of the parent is of critical importance. That assessment will be a key piece of the evidential jigsaw, which informs the local authority's decision-making, in particular with respect to the formulation of its care plan. If the assessment is deficient then it is likely to undermine the reliability of the decision-making process. It follows from there, that any assessment of a parent must be, and must be seen to be, fair, robust and thorough***' (paragraph 130)

Court of appeal case where a LA assessment preferred to that of a culturally appropriate ISW

ADA (Children: Care and Placement Orders) [2023] EWCA Civ 743 (29 June 2023):

- An independent social worker recommended that the older children should return to M. She said M had chastised the children "*not to hurt or abuse them but to discipline them in the same way she was disciplined* [as a child.]"
- Giving an ex tempore judgment the trial judge, Her Honour Judge Shanks sitting at Chelmsford, considered that the ISW's assessment was superficial, taking what M said at face value.
- the judge explained that she was concerned about the approach to physical chastisement set out in the report on cultural issues, in which the expert distinguished between its use as a mode of discipline, lawful in Jamaica, and its use as a form of abuse.
- Judge was also concerned about the short period of time that this expert had been involved with the family.
- Judge preferred the SW's evidence about Mother and made care orders in respect of all 3 children. She made a placement order in respect of the youngest D.
- Court of appeal upheld trial judge's decision re the older children although the appeal re D the youngest was allowed and remitted for re-hearing (plan was for care from a relative)

Make sure the ISW is really experienced and any offer of culturally approriate in-house SW is genuine and appropriate

Above mentioned judgment of HHJ Roberts X, Y and Z (Treatment of a family with African heritage) [2014] EWCC B75 (CC) (10 April 2014)

- *I conclude that the report on this family by the Marigold is not one upon which I can rely nor importantly is it a report upon which any other professional can rely as the basis for their own work. It was of great concern to me that when the current social worker Miss Brown was asked about the Marigold assessment report she could not point to anything wrong with it. She said it was a thorough assessment and there was no concern at all about it. In my judgment that is such an inadequate description of this assessment that it makes me more cautious about the evidence given by Miss Brown herself. I can see that she is a hardworking social worker who has come late to the case and has had a difficult job in preparing her final evidence to be filed some five weeks later. However, contrary to what she has said under cross-examination, I do not think she has sufficiently applied her own mind to the issues in this case but has accepted the assessment of others. She has after all only seen the children for 50 minutes with their mother. She too showed a worrying lack of understanding of the cultural aspect of this case. She told me that to deal with it she consulted an African social worker but it turned out that this social worker came from Zimbabwe. Miss Brown clearly saw nothing wrong with this because the worker was African. As I said yesterday, the distance between Zimbabwe and Country L is the same as from Chelmsford to Kiev.* ***I doubt that Miss Brown would think it appropriate to obtain guidance from a Ukrainian as to how English cultural matters should be approached. Similarly, she told me that she had arranged for an African foster mother to advise the current foster mother about cultural matters. She is well-intentioned but she was unable to tell me where that mentor came from and just repeated 'Well, she's African.' I thought I had made it clear in the first days of this case that being culturally appropriate did not mean finding somebody who is black, yet yesterday it emerged that the local authority considered that the father should be assessed by someone who was culturally appropriate and when I asked – with a sense of some foreboding – what the ethnicity of that person was, I was told that that person again was from Zimbabwe. Clearly this local authority needs to look seriously at its diversity training.***

Outcome: children rehabilitated with mother under a supervision order

How lawyers should represent BAME families

- Ethical obligations – rules C12 and C15
- BSB anti-racist actions:
  - to complete race equality audit to identify the barriers to race equality within a practice;
  - design and implement positive action measures, where the audit shows that there is an underrepresentation of, or adverse impact on, people from minority ethnic groups;
  - undertaking comprehensive anti-racist training for all barristers and staff; and
  - produce and publish an anti-racist statement.

Tips for barristers

- Calling out racism at court
- Considering culturally appropriate or independent assessments
- Interpreters and translation
- Carve out time for conferences
- Listen to your clients and be inquisitive and open-minded

Drawing the threads together

1. There are deep inequalities in children's social care
2. Welfare approach
3. Good social work practice: avoiding extremes of implementing Western based ideas but also making wrong assumptions which place children at risk
4. LA force need to be culturally competent.
5. Sometimes expert social workers with cultural competence required, but choose carefully
6. Representation matters, the solicitors code and bar code of conduct has a lot to say
7. Anti-racist training for judiciary
8. Equal treatment bench book, a key document for lawyers and the judiciary

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POST-SCRIPT: When in Rome do as the Romans do?

- Chairman: Lord Laming THE INQUIRY VICTORIA CLIMBIÉ, ***Pg 346 Chapter 16 -*** Working with diversity,

Child safety comes first

- *16.10 The basic requirement that children are kept safe is universal and cuts across cultural boundaries. Every child living in this country is entitled to be given the protection of the law, regardless of his or her background. Cultural heritage is important to many people, but it cannot take precedence over standards of childcare embodied in law. Every organisation concerned with the welfare and protection of children should have mechanisms in place to ensure equal access to services of the same quality, and that each child, irrespective of colour or background, should be treated as an individual requiring appropriate care. 16.11 There can be no excuse or justification for failing to take adequate steps to protect a vulnerable child, simply because that child's cultural background would make the necessary action somehow inappropriate. This is not an area in which there is much scope for political correctness.*

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THANK YOU!