

6 Ensuring Access to Justice

The Lord Chancellor's Department serves a diverse society. That is a society made up of men and women; of people of different races, cultures and religions; of people with and without disabilities; of young people and older people; of straight and gay people; of people with and without caring responsibilities; and of people with many other differences.¹

There was much discussion in Parliament about the importance of ensuring that the provisions in the Family Law Act must be suitable for and available to people from all walks of life, races, cultures and religious persuasions. Furthermore, it was stressed that there must be arrangements in place for ensuring the safety of those subject to abuse and violence. Protection from violence is, of course, one of the fundamental principles underlying the Act, and is the subject of Part IV, which (with the exception of Section 60) is already enacted.

Concerns about the need to respect diverse needs and to promote access to justice were reflected in the information meeting pilots. We became aware of the specific needs resulting from ill health, disability and old age, and from a person being a member of the Armed Forces or married to one. We were also concerned to develop understandings of the importance of gender in the field of law reform.

Respecting Cultural Diversity

... going to an information meeting will make no difference to my use of marriage support services ... in-laws refuse to allow divorce. I came to Britain to live with my husband, but there was always someone else. Most Muslim women would just have to suffer ... My husband didn't believe he was married. (F)

Giving the concept of ethnicity a tangible meaning, and one that can be useful in English family law, requires a consideration of characteristics such as geographical origin or descent, language, literature, religion and size of the group.² It is clear that from the legal perspective the most important characteristic of ethnic minority groups is the adherence of many to certain 'customs, traditions, religious beliefs and value systems which are greatly at variance from those of the majority community'.³ Recognition and acceptance of different ethnic minority customs and value systems lies at the heart of a just and equitable legal process. The sense of kinship, as portrayed in family structures and the role of women, for example, is as important as identifying those principles of religious and civil law that come into conflict where marriage and divorce are concerned. We recognised the fundamental importance of family forms and structures, traditions and rituals, and religious beliefs as core markers of ethnicity. Additionally, we recognised the importance of language as a tangible marker of ethnicity within the legal framework of the FLA and acknowledged the importance of rituals and taboos. We have also paid heed to those aspects of 'symbolic ethnicity', such as religious holidays, which impact upon the appropriateness, availability and relevance of information meetings.

¹ Lord Chancellor's Department, *Equality and Diversity Action Plan* (2000), p. 2.

² Banton, M., 'The actor's model of ethnic relations', in J. Hutchinson and A.D. Smith (eds), *Ethnicity*, Oxford University Press (1996), p. 103.

³ Gans, H., 'Symbolic ethnicity', in J. Hutchinson and A.D. Smith (eds), *Ethnicity*, Oxford University Press (1996), p. 10.

Divorce in Ethnic Communities

Relationship breakdown and divorce are likely to be regarded as events of enormous proportion in many ethnic communities living in England and Wales. The acts of attending an information meeting and initiating the divorce process must be regarded as carrying immense significance for the whole family. Also, consultation with ethnic minorities has highlighted conflicts-of-law problems as being of the utmost importance. These concerns centre on the relationship between religious marriage and the English civil marriage laws and the degree to which overseas marriages and religious divorces are recognised in English law.

Attendance at an Information Meeting

During the pilots, 5.5 per cent of attendees were from ethnic minority groups, and 40 per cent of these were male. The distribution of ethnic groups is similar to that of the general population. There was a considerable ethnic spread, with representation from a range of different ethnic backgrounds. The most common ethnic groups consisted of people who defined themselves as Indian. There were also more men than women among those who described themselves as either Pakistani or Bangladeshi, while women were more prominent among black attendees.

The Major Issues

To learn more about the needs of ethnic minorities we held a number of focus groups in two pilot areas. We have identified the major issues in respect of information meetings as:

1. The appropriateness of the venue (consideration being given to culturally specific venues).
2. The extent to which presenters should be selected from a wide range of ethnic origins.
3. The training of presenters in cultural awareness and understanding.
4. The cultural appropriateness and usefulness of the information given by the presenter and contained in the leaflets.
5. The style and mode of information delivery (including style of language) contained in the video, the CD-ROM and the individual and group presentations.
6. The extent to which the parenting plan and the offer of a meeting with a marriage counsellor are both culturally appropriate and useful.

The conclusions to be drawn are that information meetings and information for members of ethnic minority groups are likely to achieve their purpose more readily if they are tailored to the attendee. The concept of cultural pluralism demands this. Culturally-specific information needs to be given, and appropriate sensitivity extended to the attendee, whether in group or individual meetings or in some other format. This, of course, would require a culturally sensitive and appropriately trained presenter, of the ethnic background and sex preferred by the attendee. Additionally, it would require an information pack created with specific cultural references, in a range of languages other than English, and a local directory of ethnic support agencies. Other elements such as religious holidays must be

recognised when appointments for attendance are made. Flexibility in relation to date, time and place is important.

Choice is vital in meeting ethnic needs and meeting the challenge of countering social exclusion. The ethnic diversity in England and Wales is very great, making it impossible to contrive a standardised information meeting which is applicable to all non-English speakers and ethnic minorities. Consequently, information meetings and information provision will best meet the objective of ensuring equal access to justice if flexibility is retained and ethnicity addressed by the provision of choice. If appropriate attention is paid to ethnicity and proper provision made we see no case for exemption from attendance on grounds of ethnic origin if Part II is implemented.

Domestic Violence and Information Meetings

If domestic violence issues are not clearly acknowledged at all stages of the process, then many victims who have not disclosed abuse will be unaware of the protective measures available to them.⁴

It is important that information meetings are conducted in such a way that those attending them feel safe, enjoy privacy and are respected.⁵

Those who have experienced domestic violence or are worried about aspects of personal and child safety form a specific population group to be considered in the light of the FLA. Our task in the evaluation was to understand the dangers and fears posed by domestic violence in the context of attendance at an information meeting. In other words, attendance must not pose a threat in terms of physical safety, either to the attendee or the presenter. While domestic violence is usually experienced by women (the assumption made in the pilots), this is not always the case. Men can also be the victims of violence and particular problems arose for men in this context when they attended an information meeting. There was also little recognition in the pilots that the attendee might be the perpetrator rather than the abused partner.

The Relevance of Information about Domestic Violence

Seventeen per cent of women and 11 per cent of men who responded to our telephone interviews indicated that the information they received about domestic violence was of relevance to their situation. Of those who felt it was relevant, 66 per cent of women and 52 per cent of men indicated that, as a result of the meeting, they felt better informed as to where to get help:

I don't know if I can tell you how much better I've been because I've always assumed you had to put up with it. I don't feel the same now. The whole experience [of attending an information meeting] has really made a difference although I've not yet made the decision [to divorce]. (F)

There can be several reasons for information about domestic violence being described as relevant, and an attendee's attributing relevance to it does not necessarily imply that they see violence as an issue in their marriage. People who were involved in divorce proceedings before attending a meeting were twice as likely as others to describe domestic violence information as relevant to their circumstances. Overall, only a few attendees indicated that they were actually afraid for their safety in relation to

⁴ The Women's Aid Federation of England, quoted by Mrs Barbara Roche MP (Hornsey and Wood Green), Official Report (H.C. Standing Committee E), 9 May 1996 at col. 178.

⁵ Mrs Barbara Roche MP (Hornsey and Wood Green), Official Report (H.C.), 17 June 1996 at col. 624.

attending a meeting, and only a small minority stated that attendance had actually caused problems for them.

Delivering Information about Domestic Violence

Observation of information meetings revealed difficulties surrounding mandatory inclusion of information about domestic violence in the script. Our observation of meetings showed:

- both attendees and presenters were apt to show embarrassment when the issue of domestic violence was raised
- domestic violence often received a cursory explanation, particularly where the attendee indicated that it was not a present concern
- in cases where the attendee was identified as the violent partner the script was inappropriate

We have identified the advantages and disadvantages of both one-to-one meetings and group presentations for victims of domestic violence. The perceived advantages of group presentations include anonymity, the safety of numbers, the potential for mutual support and possible lessening of the intensity likely in individual meetings. The disadvantages include fear of identification by other attendees at a group meeting. Other disadvantages are the cultural difficulty some women have in attending a meeting which includes men as well as women, and the perceived lack of presenter flexibility in responding to individual needs such as that for particular information about refuges and safe havens.

The advantages of an individual meeting centre on privacy and the notion that a one-to-one meeting heightens the prospects for safety, honesty and comfort, as well as enhancing opportunities for disclosure and the flexibility to respond to need. There is a greater likelihood that attendees will expect interaction with, and possibly advice from, the presenter. This may be considered a disadvantage if a structured meeting is envisaged.

The nature of the information meeting is critical, and for many abused women the ability to take the first step in the divorce process may be gained only after years of suffering. Women we interviewed in women's refuges spoke of the courage required to take this first step and how it was often accompanied by anguish and guilt over children. When the abused spouse feels sufficiently empowered to attend an information meeting to begin the process of divorce, it may be deeply distressing to be confronted with an exhortation to consider whether the marriage is really over and to consider marriage counselling, albeit coupled with information about domestic violence assistance. Not only are needs and expectations likely to remain unfulfilled, but the attendee's morale and self-esteem are likely to be deflated and further guilt engendered. The marriage-saving agenda may have less relevance in such a context, and messages about the impact of divorce on children may serve to drive an abused spouse back to a marriage in which abuse will continue.

Where domestic violence is identified, the presenter must be enabled to tailor the substance of the information presented to meet the needs of the recipient. More information about help for both the victims and the perpetrators of abuse may be required. One of the advantages of a CD-ROM lies in the ability of the attendee to spend more time on the information about domestic violence without having to disclose that it is a problem. We noted that some people were anxious about the information pack because it was too big and bulky to take home. The information did not address abuse from the

abuser's perspective, but assumed that victims are female and that only victims will receive the information. This needs to be remedied when the information is revised.

The research points to the need for appointments and attendance to be conducted safely. This has implications for booking systems, venues, sensitivity and confidentiality. The personal characteristics of the presenter are of the utmost importance. It is clear that, in general, the information on domestic violence is useful to people and upholds the legislative aim of seeking to reduce the risk of abuse and provide protection from violence. It is equally clear that some people will have difficulty attending a meeting.

The Importance of Flexibility

Two interlinked conclusions can be drawn. First, all those who want the information, whether or not they ultimately seek divorce, should have the opportunity of receiving it. Secondly, those who have fears for their safety should not have to expose themselves to risk in the interests of accessing the information and beginning the divorce process.

The holding of information meetings in women's refuges (coupled with the training of workers within the refuge movement as presenters) would enable some abused women to gain access to the information and begin the divorce process. It should be noted that other jurisdictions holding compulsory information meetings as part of the divorce process do not provide exemptions from attendance on the grounds of safety concerns. It is considered that if an exemption is required so as to ensure safety then the legal process has failed in its duty to provide protection from violence. Information confers power and non-attendance at an information meeting should not further compound the vulnerability and social exclusion of those so afflicted. Topic-specific rather than uniform information needs to be provided so that those who wish to receive more in-depth information about domestic violence might do so. It is our view that information about domestic violence should be given verbally in whatever model of information provision is chosen in the future. Flexibility is key.

Providing Information to People in Prison

This [information meeting] would have been useful to me a couple of months ago, or when I first came in here. Me and my wife separated soon after I came into prison. She just couldn't get her head round the fact that I was in here for life. She's with someone else now, but she still loves me. Yes, this would have been useful. (male prisoner serving a life sentence)

The White Paper envisaged the exemption of certain categories of person from attendance at an information meeting, and cited 'the elderly, the disabled or those in prison'. The current prison population stands at just under 65,000, of whom 95 per cent are male. The national prison survey 1991⁶ indicated that around one in five prisoners were married when they started their sentence and that the marital status of 28 per cent of those who were married changed during the sentence.

Twenty-five prison establishments in five pilot areas were included for the purposes of providing information meetings to prisoners, although only 20 prisoners attended an information meeting (15 men and 5 women). We sought other means of eliciting the views of prisoners and prison staff. A total of 36 prisoners, including nine women, were involved in focus groups. The same number of staff were

⁶ Dodd, T. and Hunter, P., *The National Prison Survey 1991: A Report to the Home Office of a Study of Prisoners in England and Wales, Carried Out by the Social Survey Division of OPCS*, HMSO (1992).

involved, including prison officers, probation officers and chaplains. The Model A individual meeting and Model E CD-ROM were offered to prisoners, while the group presentation was demonstrated in focus groups.

Establishing Information Meetings in Prison

The pilots indicated that establishing information meetings in prisons takes time. Issues relating to security have to be considered and appropriate arrangements made. If information meetings are implemented, directions or guidelines will need to be provided by the Prison Department. Although some prison officers expressed concerns about how the meetings might be organised to fit with prison regimes, the majority were positive about the provision. Presenters and attendees expressed concerns about the appropriateness of the scripts, and wanted the meeting to be more appropriate to the specific circumstances. The pack was considered to be inappropriate because it demands a high level of literacy. Since the prison population has a low level of literacy, provision of written information on its own would not be appropriate.

The MWMC was not offered to prisoners in the pilots but prisoners and prison staff felt that information meetings and the MWMC should be available to prisoners. It was felt that information meetings should be provided by an agency independent of the prison service. A face-to-face meeting with a presenter was considered more appropriate than a CD-ROM, since prisoners will need to ask questions, and group meetings could not offer privacy and confidentiality.

Some staff suggested that the best model for prisoners might involve a combination of an individual meeting, a CD-ROM and a specially-devised video. They also drew attention to the needs of unmarried prisoners experiencing relationship breakdown. Many of them have children. There was universal agreement on the part of all those taking part in the prison study that information meetings in prisons should be available to everyone, irrespective of marital status. Our research has found no reason to consider prisoners as an exempt category under the FLA, but sufficient time would be needed to get a suitable information service for prisoners set up across the various types of establishments.

Addressing Specific Needs and Circumstances

It's quite common for problems to arise in marriages when a partner becomes disabled ... there's no way we're going to get back together. My husband can't deal with my illness and all the ailments. I'm not going to wait until my husband finds somebody else, and then wants a divorce. I thought it might be a good idea to do something for myself. (F)

During the pilots, we did not conduct any special study of older people or of the significance of disability or illness. Nevertheless, through the pilots, our general evaluation has enabled us to draw on data that allow some discussion of these issues. Furthermore, while the information meeting pilots were going on in England and Wales, the Ministry of Defence commissioned us to conduct a feasibility study with respect to the implementation of various aspects of the Family Law Act for Forces' families, specifically those stationed in Germany. We concluded that study in October 1999.⁷ Some members of Forces' families attended the information meeting pilots in England and Wales.

⁷ Walker, J. and Mitchell, S., *Feasibility Study for Implementation of Provisions under the Family Law Act 1996 for Forces' Families in Germany*, Newcastle Centre for Family Studies (1999) (Restricted – Management).

Senior Citizens

Among information meeting attendees, 2.1 per cent of men and 1.7 per cent of women were aged over 65. Four men and one woman were aged over 80. Clearly, some older people were able to get to a meeting, but it is likely that there were others who were unable to do so. Separation from a spouse may be especially difficult for older people, not least because they may have been married a very long time. The information meeting as constructed in the pilots was not particularly relevant to such people, and attendees were inclined to think it was targeted at younger people.

Ill Health and Disability

Not surprisingly, health concerns were prominent among older people. They were also the key issue for some younger attendees. Yet they were not referred to in either the information meetings or the information pack. Nevertheless, during our telephone interviews it was apparent that attendees (of all ages) who were themselves in poor health, or caring for an ill spouse, tended to find that the illness was the dominating factor in any decision they made about their marriage. Indeed, for some of them ill health was the root cause of their marital problems. Some people intended to divorce but found it difficult to proceed because of changes in health circumstances. Those attendees who were affected by health issues would have appreciated acknowledgement that ill health is an important issue. In particular, they suggested that information about appropriate support services should be included in the information pack. We have detected a need for information, and indeed for marriage support, that is specifically targeted at people who are ill or disabled, and at their spouses, whose needs are likely to be different. It may also be that if Part II is implemented, exemption might be appropriate in some cases involving ill health, disability and old age, especially as it would not mean that people would not be free to attend an information meeting if they wished to.

Providing Information to Forces' Families

We began our work for the Ministry of Defence (MOD) in April 1997, dovetailing the feasibility study with our evaluation of the information meeting pilots. The overall objective was to provide information to assist the MOD and those responsible for making and implementing policy in respect of military families to reach decisions about the extent to which elements of the FLA could and should be embraced in British Forces Germany (BFG).

Several of the information meeting pilots were conducted in areas in England and Wales in which Navy, Army and RAF bases are located. In total, 22 serving military personnel (all male) attended an information meeting in the information meeting pilots. We have no way of knowing how many Forces' wives attended since we did not routinely ask applicants to declare the employment of their spouse. Overall, 8 of the servicemen described the information meeting as very useful, 13 described it as fairly useful, and only one did not find it at all useful. Although these men received the standard information pack, with no additional information having been prepared for Forces' families, 10 men found the information very relevant to their needs, 5 found it fairly relevant, and only 2 said that it was not at all relevant for them. Most of the servicemen were positive about the information meeting, and several were attempting reconciliation when we spoke to them afterwards. Most men felt that they had got all the information they needed, although some of the agencies, particularly marriage counselling and mediation services, were inaccessible because of their circumstances.

Our study has led to a number of conclusions. Service life places exceptional stresses on marital relationships. Separation and divorce may give rise to additional problems for service personnel and their families over and above those encountered in civilian life, and servicemen and their families are

often reluctant to seek help from within the Services. Forces' families need information when marriages are breaking down, and an effective and speedy response. Also, there is a need for the provision of information which is both sensitive and relevant to their special circumstances.

Providing Specific Information

Our various studies within our evaluation programme which have addressed the ways in which access to justice might be ensured for those groups and categories of people with special needs or circumstances have led us to conclude that if Part II of the Act were to be implemented there would not be a case for blanket exemptions. Nevertheless:

- information needs to be specific to particular cultural groups
- safety and security need to be ensured for people in fear of domestic violence
- prisoners need information which can assist them when relationships fail, irrespective of marital status
- there needs to be recognition, in the provision of information, of the special circumstances caused by old age, ill health, disability and being a member of the Armed Forces, and also of the difficulties faced by people with no children or with adult children

If the information materials are to be revised, some leaflets would need to be modified and others developed. The context of the meeting would need to be more personally tailored. Indeed, many of the problems of relevance would be alleviated by provision of a meeting which is more responsive to the needs of individuals. Only in very exceptional circumstances can we see there being a need for people to be exempted from attending an information meeting. When this is the position, however, arrangements will need to be made for the provision of information in appropriate formats.

Gender, Divorce and Information Meetings

My husband can ... give us the runaround ... provide six lever-arch files in response to a simple question and say: 'The answer's in there.' (F)

I feel very much the man is taken to the cleaners and hasn't got a leg to stand on. (M)

The research supports the now commonly held view that it is important to see the institution of marriage and the social experience of divorce as gendered phenomena. These gender differences, in turn, have a number of implications for the development of policy. Women generally tended to adopt a more proactive stance than men in the divorce process. Men, by contrast, tended to seek to save marriages which their partners, for a host of complex reasons, felt the need to leave. Men appeared more reluctant, relative to women, to participate in a range of ancillary services such as counselling. Getting men to attend can thus itself be seen as a problem in this context. There exists a concern about the extent to which the party who does not attend the meeting may be less well-informed about the divorce process.

It is essential that a sensitivity to gender difference is integrated into the training of information presenters. A consideration of gender reinforces the importance of providing information to individuals rather than simply to married couples.