
Ethnicity, inequality and justice

Key points

- Ethnic minorities experience disadvantage associated with their ethnicity in all areas of life.
- The experience of disadvantage differs with not all ethnic minority groups experiencing disadvantage in all areas or to the same extent.
- There is considerable diversity within communities and accordingly not everyone within the same ethnic group will experience disadvantage in the same way.
- The disadvantage experienced by ethnic minorities is reflected in their treatment within the criminal justice system.
- Awareness of the communities served by the courts, including the commonplace experiences of racism and disadvantage, will assist a judge in understanding those participating in the justice system.
- It is important to avoid stereotypes based on perceived characteristics associated with a particular ethnic group. Just because the majority of members of an ethnic group have certain characteristics or views does not mean all members of the group have those characteristics or views.

Introduction

1. The justice system is vital for ensuring a safe environment for everyone and for the resolving of disputes in an orderly way. Where the public, or a section of it, lacks confidence in the system, this may lead to a reduction in the reporting of crime or the provision of assistance to the police and courts, and may militate against the orderly resolution of disputes.
2. There is a perception amongst some communities that the criminal justice system is not fair and just. There is evidence that some of the concerns underlying those perceptions may be well-founded, as is explored in this chapter.
3. Further, the experience of racism or disadvantage in one sector of society will have an impact on perceptions about the administration of justice as a whole. An appearance before a court cannot be isolated from other social experiences.
4. There is, then, a particular need for judges to demonstrate fairness in the carrying out of their responsibilities if confidence in the justice system is to be maintained and promoted amongst all ethnic groups. This requires an awareness of the way in which our own actions might affect perceptions of, and confidence in, parts of the justice system. Knowledge and information about what happens outside court can help judges to ensure that what happens inside is fair and seen to be fair.
5. Some of the available statistical material is set out below to provide an introduction to the sorts of disadvantages experienced by certain minority groups within the justice system and more broadly. It is important to note that there is considerable diversity

within communities and accordingly not everyone within the same ethnic group will experience disadvantage in the same way.

6. It is also important to avoid stereotypes based on perceived characteristics associated with a particular ethnic group. Just because the majority of members of an ethnic group have certain characteristics, experiences or views does not mean all members of the group have those characteristics, experiences or views.

Statistical background

7. This section contains some background facts and statistics about different ethnic minority communities and in particular the disadvantages which they experience. To summarise those facts:
 - a. There is much variation between ethnic minority groups in relation to social and economic disadvantage.
 - b. Looked after children are disproportionately from ethnic minority groups.
 - c. In education, GCSE attainment levels are highest for pupils of Chinese and Indian ethnic origin, and lowest for those of Gypsy/Roma and Irish Traveller heritages.
 - d. In the labour market, all Britain's ethnic minority groups experience an 'ethnic penalty'; they are more likely to experience unemployment, and this is likely to be partly the result of racial discrimination.
 - e. Minority ethnic groups experience significant wealth inequality, and some ethnic groups are more likely to have low household incomes and live in substandard or overcrowded homes.
 - f. Crime and criminal justice experiences are also significantly different between ethnic groups.
 - g. People from certain minority groups are more likely to be subject to stop and search, arrest and imprisonment, and Black people have very much higher rates of arrest.
 - h. Ethnic minority groups are under-represented in most professions working within the justice system. This under-representation is particularly marked in the judiciary.

The population

8. Most residents of England and Wales belong to the White ethnic group (86 per cent, 48.2 million), and the majority of these belong to the White British group (80 per cent of the total population, 45.1 million). In London, 45 per cent (3.7 million) out of 8.2 million usual residents are White British.¹

¹ 2011 Census: Key statistics for England and Wales, March 2011 (Dec 2012, ONS) Statistical Bulletin.

9. Twelve per cent (2.0 million) of households with at least two people have partners or household members of different ethnic groups, a three percentage point increase on 2001 (nine per cent, 1.4 million).²
10. Of the 13 per cent (7.5 million) of residents of England and Wales who were born outside of the UK, just over half (3.8 million) arrived in the last 10 years.³
11. The number of residents who state that their religion is Christian is fewer than in 2001. The size of this group decreased 13 percentage points to 59 per cent (33.2 million) in 2011 from 72 per cent (37.3 million) in 2001. The size of the group who stated that they had no religious affiliation increased by 10 percentage points from 15 per cent (7.7 million) in 2001 to 25 per cent (14.1 million) in 2011.⁴

Attitudes and prejudice

12. When the public is explicitly asked about prejudice, they feel that there is greater racial and religious prejudice nowadays, compared with the recent past. In 2001, two in every five people in England and Wales believed there was more racial prejudice in Britain than there had been five years previously. The view that there was more racial prejudice than five years ago increased to almost half (48%) in 2005, and to more than half (56%) in 2008.⁵ This is so notwithstanding that there is much greater mixing between communities.⁶
13. Attitudes towards Muslim people appear to be particularly negative. The British social attitudes survey in 2010 indicates that the general public holds more negative attitudes towards Muslim people than people of any other faith (55% of people said that they would be concerned by the construction of a large mosque in their community, while only 15% would be similarly concerned by a large church).⁷
14. Research reveals negative perceptions of immigrants and asylum seekers. There is particular hostility towards illegal or undocumented immigrants. The overall level of negative attitudes is increasing with one survey revealing that the proportion of people who strongly agreed or tended to agree that there are 'too many immigrants' in the UK increased from 61% in 1997 to 70% in 2009.⁸
15. Gypsies and Travellers are often the subject of suspicion and disapproval, sometimes exacerbated by inaccurate media reporting.⁹

2 Ibid.

3 Ibid.

4 Ibid.

5 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review* (2011) EHRC: 32 available at

http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_-_complete_report.pdf. Internal references removed.

6 *2011 Census: Key statistics for England and Wales, March 2011* (Dec 2012, ONS) Statistical Bulletin.

7 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review* (2011) EHRC: 33. Internal references removed.

8 Ibid. Internal references removed.

9 Ibid, 35. Internal references removed.

Inequalities in social and economic life

16. In key areas of life, such as education, housing, and employment, there is evidence that significant disadvantage is experienced by certain ethnic minorities. There is, however, a diversity of experience, and it is not possible to speak of a singular ethnic minority experience: there are widespread variations within the ethnic minority population.

Looked-after children and adoption

17. As at March 2009, there were 60,900 children looked after by a local authority and for nearly two-thirds this was because of abuse or neglect.¹⁰ Looked after children were disproportionately likely to come from ethnic minority groups, with only 73% being White British.
18. Of the 3300 children adopted in 2009, 82% were white, 12% were of mixed ethnic origin, 3% were Black, 2% were Asian, and 1% were from other ethnic groups.
19. Looked-after children in England experience low educational performance, with just 15% getting 5 GCSEs A*–C. Looked-after children are four times as likely to be permanently excluded from school as their peers; twice as likely to be convicted or subject to a final warning or reprimand from the police; four times as likely to be unemployed at the end of Year 11; and ten times as likely to have a statement of Special Educational Needs (SEN).¹¹

Education

20. In England, there are a large differences between ethnic groups in the percentage of pupils achieving 5+ good GCSEs including English and Maths:
- A high proportion of Chinese (72%) and Indian (67%) pupils achieved 5+ good GCSEs in 2009.
 - The proportion of Bangladeshi, Black African and White British pupils was close to the average (of 51%).
 - Black Caribbean and Pakistani students fell below the average at 39% and 43% respectively;
 - Gypsy and Traveller children are well below the average with only 9% of children from these groups achieving this level.¹² Irish Traveller and Gypsy/Roma are the only ethnic groups whose performance has deteriorated sharply in recent years, dropping from 42% and 23% of pupils respectively getting 5 GCSEs A*–C in 2003, to just 16% and 14% in 2007.¹³

10 DCSF (2009) *Children Looked after in England (Including Adoption and Care Leavers) Year Ending 31 March 2009*. SFR 25/2009. London: DCSF.

11 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review* (2011) EHRC: 314. Internal references removed.

12 *Ibid*, 332-3. Internal references removed. Some care needs to be taken with these comparisons because of the low number of eligible Gypsy and Traveller pupils.

13 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review* (2011) EHRC: 313. Internal references removed.

- e. Girls outperform boys across all ethnic minority groups.¹⁴
21. There are multiple reasons for educational advantage and disadvantage. Lower socio-economic status is a key factor in explaining low educational attainment, perhaps because of lower parental aspirations¹⁵ and less parental engagement with schools and the education process.¹⁶ This may be compounded in disadvantaged areas where some minority ethnic pupils (of Indian, Pakistani, Bangladeshi, and to a lesser extent Black origin) attend more ethnically segregated schools than would be expected by their representation in local neighbourhoods, thus forming a large concentration in the school with average or below-average attainment.¹⁷
 22. There is also evidence of stereotyping, with teachers making assumptions about parental expectations. There is evidence, for example, that teachers' assume that 'Chinese culture' equates to high parental expectations, pro-school attitudes, and stable family structures, leading to high teacher expectations which have been linked to educational attainment.¹⁸ Conversely, teachers may misread Somali pupils' cultural practices, such as looking down when spoken to by adults as a sign of respect and deference, as defiant and disrespectful¹⁹ and so make negative assumptions about such pupils. They may also be overly concerned with South Asian Muslim boys' presumed fundamentalist beliefs, patriarchal orientation, and self-segregation, whilst seeing South Asian girls as passive and oppressed.²⁰
 23. When many of these factors and others are taken into account, it seems that White British children of low socio-economic status and Black Caribbean and Black African pupils from high socio-economic status homes are underachieving.²¹ White working class children may believe themselves to be educationally worthless,²² and there is some indication that Black pupils are allocated to the lower Foundation set in Maths and English, which removes the possibilities of high grades and educational success at GCSE.²³

14 Ibid, 333. Internal references removed.

15 Strand, S. (2008) *Minority Ethnic Pupils in the Longitudinal Study of Young People in England: Extension Report on Performance in Public Examinations at Age 16. Dcsf Rb029*. London: DCSF. See too, *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review* (2011) EHRC: 300.

16 Ball, S. (2003) *Class Strategies and the Educational Market: The Middle-Classes and Social Advantage*. London: Routledge; Lupton, R. (2003) *Schools in Disadvantaged Areas: Recognising Context and Raising Quality Case Paper 76*. London: Centre for the Analysis of Social Exclusion.

17 Johnston, R., Wilson, D. and Burgess, S. (2004) *School Segregation in Multiethnic England*, *Ethnicities* 4 (2): 237-265.

18 Archer, L. and Francis, B. (2005) *They Never Go Off the Rails Like Other Ethnic Groups: Teachers' Constructions of British Chinese Pupils' Gender Identities and Approaches to Learning*, *British Journal of Sociology of Education* 26 (2): 165-182.

19 Howarth, C. (2004) *Re-Presentation and Resistance in the Context of School Exclusion: Reasons to Be Critical*, *Journal of Community & Applied Social Psychology* 14 (5): 356-377.

20 Crozier, G. and Davies, J. (2008) *'The Trouble Is They Don't Mix': Self-Segregation or Enforced Exclusion?*, *Race Ethnicity Education* 11 (3): 285-301.

21 (2008) *Minority Ethnic Pupils in the Longitudinal Study of Young People in England: Extension Report on Performance in Public Examinations at Age 16. Dcsf Rb029*. London: DCSF.

22 Reay, D. (2009) *Making Sense of White Working Class Education Underachievement*, in K. P. Sveinsson (eds.) *Who Cares About the White Working Class?*, London: Runnymede Trust.

23 Gillborn, D. (2008) *Racism and Education: Coincidence or Conspiracy*. London: Routledge.

School exclusions

24. There are significant differences in the rates of school exclusions.
25. Mixed White/Black Caribbean pupils were 2.5 times more likely to be excluded than average, with a permanent exclusion rate of 25 per 10,000 pupils. Pupils from Other Black households were twice as likely to be permanently excluded, with a rate of 20 per 10,000 pupils.
26. The highest rates of permanent exclusions among ethnic minority groups were found among Black Caribbean pupils (30 per 10,000 pupils), pupils from Irish Traveller backgrounds (30 per 10,000 pupils) and Gypsy/Roma pupils (who had the highest rate at 38 per 10,000 pupils). Taken together these rates are between 3–4 times the overall exclusion rate.²⁴
27. In addition to having very high exclusion rates, Gypsy and Traveller children have the lowest attendance rate of any ethnic minority group, at around 75% in England. In Scotland, it has been estimated that only 20% of Gypsy and Traveller children of secondary school age regularly attend school (and this percentage may be even lower in more remote areas).²⁵

Higher education

28. The proportion of ethnic minority students in higher education has been rising fairly steadily over the last decade and that increase has been experienced by all ethnic minority groups, with the largest increase being among Black students.²⁶
29. However, students from some ethnic minority groups are far less likely to leave university with a first or upper second class degree than others. In 2008/09 White students were most likely to achieve this level with nearly seven in ten (67%) White students leaving with a first or upper second class degree, compared to fewer than four in ten Black students (38%).²⁷

Adult educational achievement and literacy

30. There are different levels of literacy and educational achievement amongst adults as between ethnic groups.
31. Most differences in basic skills between ethnic groups disappear when those for whom English is not a first language are excluded from the pool for comparison, indicating that much of the difference is attributable to the fact that a significant number of people in ethnic minority groups speak English as an additional language. However, the exception to this is in the case of those in Black or Asian groups. There

24 Although some care is needed in using these estimates owing to the possible under-recording of pupils from the Gypsy/Roma and Irish Traveller groups, and the small population sizes: *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review* (2011) EHRC: 313. Internal references removed.

25 Ibid.

26 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review* (2011) EHRC: 344. Internal references removed.

27 Ibid.

is a strong correlation between being in a Black or Asian ethnic group and having poorer literacy skills, in particular for women.

32. Black men are more likely to lack basic numeracy skills than any other ethnic groups.²⁸ With the exception of Black Caribbean/Black African women, ethnic minority people over the age of 45 appear less likely to reach functional literacy.²⁹
33. One study in 2004 found that 21% of men and 9% of women from the Gypsy and Traveller communities could not read at all, and 14% of men and women could not write anything.³⁰
34. In most ethnic minority groups women are more likely to have no qualifications than men. Substantial groups of Black Caribbean and Mixed White women have no qualifications. Other Mixed groups also have large groups of women without qualifications. Far higher proportions of Bangladeshi and Pakistani men in these groups have no qualifications compared to men in all other ethnic groups and nearly a quarter of women have no qualifications.³¹

Employment

35. Although employment disadvantage is experienced differently across ethnic groups, all ethnic minorities experience some disadvantage.
36. Unemployment rates remain higher for all ethnic minority groups with Pakistani and Bangladeshi men experiencing the lowest levels of employment amongst men and Bangladeshi and Pakistani women showing exceptionally low levels of employment.³²
37. The low levels of employment amongst Bangladeshi and Pakistani women, which corresponds to a similar picture for Muslim women, includes those who are British-born. It is not clear whether this reflects personal choice, cultural pressures, discrimination or lack of opportunities. Even comparing those with degrees, Pakistani and Bangladeshi women are 11 percentage points less likely to be employed than White British women.³³
38. Some research indicates, too, that on many Gypsy and Traveller sites, only a small minority of households are engaged in paid work. The evidence points towards a strong preference for male self-employment with women tending not to work outside the home though sometimes engaging in traditional 'craft' work (some evidence

28 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 355. Internal references removed.

29 Ibid.

30 Ibid.

31 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 356. Internal references removed.

32 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 401. Internal references removed.

33 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 402. Internal references removed.

suggests that married women with children in school are beginning to enter employment).³⁴

39. Conversely, Black Caribbean women are more likely than any other group of women to work full-time (though less likely than average to work part-time).³⁵
40. As amongst those employed, there is significant occupational segregation. Distinct 'occupational clustering' occurs with the most extreme examples including the following:
 - a. 24% of Pakistani men are transport drivers (mainly taxi drivers) in their main jobs
 - b. 17% of Chinese men are chefs
 - c. 9% of Indian men work in ICT professions
 - d. 8% of Africans work in elementary security occupations (often security guards).
41. A disproportionate number of Pakistani men are also self-employed (21%).
42. Ethnic minority women are clustered in a narrow range of jobs. For Black African and Caribbean women, the most notable occupational clustering is associated with healthcare and related personal services occupations. These include nursing auxiliaries and care assistant positions that tend to be less well paid than other healthcare-related jobs.³⁶
43. Ethnic minorities experience a 'pay penalty'. In 2004–07 White British women experienced a pay gap of 16%. However, this rose to 21% for Black African women and 26% for Pakistani women with Chinese and Pakistani Muslim women experiencing the largest penalties.
44. In the same time period, Muslim men, whether Bangladeshi or Pakistani, earned less than might be expected given their qualifications, age and occupation, by 13% and 21% respectively. Black male graduates earn 24% less than White British male graduates.³⁷

Health

45. Some ethnic minority groups are more likely to experience poor health. Evidence suggests that Pakistani and Bangladeshi groups are more likely to report 'poor' health than average; more likely to experience poor mental health; more likely to report a disability or limiting long-term illness, and more likely to find it hard to access and

34 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 403-4. Internal references removed.

35 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 403. Internal references removed.

36 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 428. Internal references removed.

37 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 416. Internal references removed.

communicate with their GPs than other groups. Muslim people also tend to report worse health than average.³⁸

46. Gypsies and Travellers report high levels of 'poor' health.³⁹
47. Asylum seekers and refugees have particular health difficulties because of the impact of relocation and possible past experience of trauma.⁴⁰
48. Research has suggested that there may be an association between harassment and poor mental health. Some evidence suggests that Gypsies and Travellers and asylum seekers, who are perhaps more likely than other groups to face hostility and misunderstanding, are all more likely to experience poor mental health.⁴¹

Economic inequality

49. Minority ethnic groups experience significant wealth inequality.⁴²
50. Some ethnic minority groups experience much worse outcomes than average. These are even worse than might be expected, taking into account differences in age structures, educational attainments and other factors. People of Indian origin are more likely to have low household income than White people, despite the fact that a small proportion of Indians earn low hourly wages and they have higher than average educational attainments. More than half of Pakistani and Bangladeshi adults live in poverty.⁴³ Gypsies and Travellers are also at higher risk of poverty.⁴⁴ Asian and Black households are also several times more likely than White British households to live in overcrowded or substandard homes.⁴⁵
51. Asylum seekers are at particular risk of real abject poverty because they are not allowed to work while waiting for their cases to be determined. If at risk of becoming destitute in the meantime, they can apply for minimal subsistence which, if they qualify, may cover housing and cash support at around 70% of benefit levels.⁴⁶ Accordingly, they will usually live on very low incomes.

38 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 250. Internal references removed.

39 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 264. Internal references removed.

40 Ibid.

41 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 250, 261–264. Internal references removed.

42 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 460.

43 Ibid.

44 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 484.

45 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 460.

46 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHR: 484–5. Internal references removed.

New migrant communities

52. In the UK, many migrants have British citizenship and have become part of settled ethnic minority communities. Newer migrants are an increasingly diverse group, coming from almost every nation in the world. They include: those from EU states; those from outside the EU; asylum seekers; refugees; spouses/fiancé(e)s and civil partners; overseas students; British nationals returning from living abroad; and irregular migrants including visa and asylum seekers and clandestine entrants. The latter groups are likely to be concentrated in the informal labour market earning very low wages.⁴⁷
53. There are also a significant number of trafficked immigrants⁴⁸ whose formal status will be unlawful making them especially vulnerable. In 2010, research commissioned by the Association of Chief Police Officers (ACPO) estimated that of the 17,000 migrant women involved in off-street prostitution in England and Wales 2,600 had been trafficked, whilst a further 9,600 were vulnerable to trafficking. The majority of the women were from China and South East Asia with around 400 from Eastern Europe.⁴⁹
54. Total long-term immigration to the UK has fallen over the recent past (leading to a reduction in rates of net migration). The total number of citizens from EU Accession countries who immigrated to the UK has decreased significantly over the recent period and there has also been a significant decrease in the number of citizens from New Commonwealth countries immigrating to the UK. The latter decrease is as a result of fewer New Commonwealth citizens arriving to study in the UK.⁵⁰
55. However, study continues to be the most common reason for migrating to the UK.⁵¹
56. In the past migrants have mostly settled into urban areas, but this generation of migrants can be found in suburban and rural areas too. Of UK-born heads of households, 74% were owner-occupiers, 17% were in social housing and 7% rented privately. Among the foreign-born, 64% rented privately, 11% were in social housing and 17% were owner-occupiers.⁵²
57. Among legal migrants, proportionately more of the foreign-born have a higher-level qualification than the UK-born population, but the foreign born also have higher proportions of those who are completely unqualified. Poor levels of English are more commonly found among those born in Poland, Bangladesh, Sri Lanka, Somalia, Turkey, Iraq and Slovakia.⁵³
58. More than 3000 children arrive in the UK alone every year seeking asylum. Although there have been improvements in recent years, for many of the children and young

47 Rutter, J. and Lattore, M. (2009) *Migration, Migrants and Inequality*, in J. Hills, T. Sefton and K. Stewart (eds.) *Towards a More Equal Society? New Labour, Poverty, Inequality and Exclusion*, Bristol: Policy Press.

48 *Human Trafficking: Practical Guidance (2013)* Home Office.

49 'Setting the Record': *The Trafficking of migrant women in the England and Wales off-street prostitution sector*. Project Acumen, K. Jackson, J. Jeffrey and G. Adamson (2010) ACPO.

50 *Migration Statistics Quarterly Report, February 2013 (Feb 2013)* Office of National Statistics.

51 Ibid.

52 Rutter, J. and Lattore, M. (2009) *Social Housing Allocation and Immigrant Communities*. London: IPPR.

53 Rutter, J. and Lattore, M. (2009) *Migration, Migrants and Inequality*, in J. Hills, T. Sefton and K. Stewart (eds.) *Towards a More Equal Society? New Labour, Poverty, Inequality and Exclusion*, Bristol: Policy Press.

people, the process of claiming asylum is a very frightening and bewildering experience.⁵⁴

Ethnicity, crime and criminal justice

Perception and victims of crime

59. Racist and religiously aggravated attacks are a persistent phenomenon in British life.⁵⁵ People from ethnic minority backgrounds are roughly twice as likely as White people to report being worried about violent crime.⁵⁶ People who are not Christian are roughly ten times more likely to report being attacked or harassed because of their faith than Christian people.⁵⁷
60. Findings from the 2009/10 British Crime Survey interviews with children showed that a higher proportion of children in the Black and Minority Ethnic group reported that they avoided travelling on buses because they were worried about their safety and using a mobile phone in public all or most of the time as compared to the White group.⁵⁸
61. Fear of police harassment and concern that complaints against the police will not be taken seriously is greater among ethnic minorities. There is evidence from smaller-scale studies Gypsies and Travellers have only limited confidence in the system's ability to protect them.⁵⁹
62. A survey of Gypsies and Travellers in Devon found that half of respondents had experienced racism. Out of 121 Gypsies and Travellers surveyed in the West of England, 58 had experienced harassment and intimidation. Such studies consistently find that Gypsies and Travellers downplay their experiences, and that they do not expect assistance from the authorities; many see harassment and racism as inevitable.⁶⁰

54 *Unaccompanied Children* The Children's Society, available at <http://www.childrenssociety.org.uk/what-we-do/policy-and-lobbying/young-refugees-and-migrants/unaccompanied-children>.

55 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHRC: 190.

56 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHRC: 242.

57 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHRC: 190.

58 *Statistics on Race and the Criminal Justice System 2010 A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991 (Oct 2011)* Ministry of Justice: 23. Internal references removed.

59 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHRC: 124. Internal references removed.

60 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHRC: 231.

Criminal justice

63. Evidence suggests that an individual's ethnic group is not significantly associated with an increased or a reduced likelihood of offending.⁶¹ However, at every point in the criminal justice system certain minority groups experience harsher outcomes.
64. Black people make up between 2–3% of the population. However, they constituted 15% of those who were stopped by the police in 2008/09. Other ethnic minority groups were also over-represented.
65. Further, between 2006/07 and 2009/10, the proportions of Stop and Searches for the Black and Asian groups increased (from 22% and 9% to 33% and 16% respectively).⁶²
66. Gypsies and Travellers have experienced blanket raids of their sites on the basis of unfounded allegations by local communities. The police have power to remove and destroy vehicles if directions are not followed and this means that most leave voluntarily when served notice, but then lack access to legal processes to challenge the direction. This means that Travellers are often forced out of their homes by default.⁶³
67. Across England and Wales as a whole, there were more arrests per 1,000 population for each of the Black and Minority Ethnic groups (except for Chinese or Other) than for people of White ethnicity. There were 84 arrests per 1,000 population for the Black group compared with 26 arrests per 1,000 population for the White group, 29 per 1,000 for the Asian group and 59 per 1,000 for those from a Mixed ethnic background. Per 1,000 population, Black persons were arrested 3.3 times more than White people, and those from the Mixed ethnic group 2.3 times more.⁶⁴ This data is best understood as evidence of whom the police suspect of committing crime.⁶⁵
68. A higher percentage of those in the Black and Minority Ethnic groups were sentenced to immediate custody for indictable offences than in the White group in 2010 (White 23%, Black 27%, Asian 29% and Other 42%). In 2010, the highest average custodial sentence length for those given determinate sentences for indictable offences was recorded for the Black ethnic group, at 20.8 months, followed by the Asian and Other groups with averages of 19.9 months and 19.7 months respectively. The lowest average custodial sentence length was recorded for the White group at 14.9 months.⁶⁶

61 *Statistics on Race and the Criminal Justice System 2010 A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991 (Oct 2011)* Ministry of Justice: 44.

62 *Statistics on Race and the Criminal Justice System 2010 A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991 (Oct 2011)* Ministry of Justice: 14.

63 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHRC: 136.

64 *Statistics on Race and the Criminal Justice System 2010 A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991 (Oct 2011)* Ministry of Justice: 46.

65 *Statistics on Race and the Criminal Justice System 2010 A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991 (Oct 2011)* Ministry of Justice: 44.

66 *Statistics on Race and the Criminal Justice System 2010 A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991 (Oct 2011)* Ministry of Justice: 52. As with the proportion sentenced to immediate custody, these findings should be treated with caution as there are a number of factors which could affect sentence length including the mix of crimes committed, the seriousness of the offences and the plea entered.

69. A higher percentage of those in the BME groups were sentenced to immediate custody for indictable offences than in the White group in 2010 (White 23%, Black 27%, Asian 29% and Other 42%). In 2010, the highest average custodial sentence length for those given determinate sentences for indictable offences was recorded for the Black ethnic group, at 20.8 months, followed by the Asian and Other groups with averages of 19.9 months and 19.7 months respectively. The lowest average custodial sentence length was recorded for the White group at 14.9 months.⁶⁷
70. On average, five times more Black people than White people in England and Wales are imprisoned.⁶⁸

Those who work in the criminal justice system

71. There is significant underrepresentation of certain minority groups in some parts of the main criminal justice agencies (police, CPS, Judiciary, NOMS and Probation). Ethnic minorities are most underrepresented in the police (4.8%) and most well represented in the CPS (14.9%).
72. As at 1st April 2012, there are no ethnic minority judges in the Supreme Court or Court of Appeal. Only 4.5% of the High Court bench is from an ethnic minority and only 1.7% of Circuit Judges and 2.8% of District Judges (Magistrates) are from an ethnic minority.⁶⁹
73. Only 4.86% of Queen's Counsel are from a Black or Minority Ethnic group (though ethnic minorities are better represented amongst non-Queen's Counsel barristers).⁷⁰
74. Amongst solicitors, Black and Minority Ethnic groups are better represented, accounting for 11.1% of solicitors.⁷¹

67 *Statistics on Race and the Criminal Justice System 2010 A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991 (Oct 2011)* Ministry of Justice: 52. As with the proportion sentenced to immediate custody, these findings should be treated with caution as there are a number of factors which could affect sentence length including the mix of crimes committed, the seriousness of the offences and the plea entered.

68 *How Fair is Britain: Equality, Human Rights and Good Relations in 2010: The First Triennial Review (2011)* EHRC: 162.

69 *Courts Diversity Statistics (Sept 2012)* available at <http://www.judiciary.gov.uk/publications-and-reports/statistics/diversity-stats-and-gen-overview>.

70 *Demographic Profile of the Bar*, Bar Council, available at <http://www.barcouncil.org.uk/about-the-bar/facts-and-figures/statistics/>

71 *Diversity Profile of the Profession: A Short Synopsis (May 2011)* Law Society: 9, available at www.lawsociety.org.uk/advice/.../diversity-profile-of-the-profession/.

The Equality Act 2010

Key points

- The Equality Act 2010 defines ‘race’ broadly, to cover colour, ethnicity, nationality and ethnic and national origins.
- The Equality Act 2010 does not outlaw discrimination in the exercising of judicial functions but it does outlaw discrimination in the exercising of public functions and in the provision of services and so will apply to those working within the justice system whilst carrying out other functions.
- The Equality Act 2010 creates a new Public Sector Equality Duty which imposes duties on those exercising public functions to have due regard to the need to achieve certain specified equality objectives.

‘Race’

75. Section 9 of the Equality Act 2010 defines ‘race’ as including: colour; nationality; ethnic or national origins. The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.⁷² This means that a person who describes themselves as Black African will fall within a racial group so described.
76. As can be seen, ‘race’ is treated as embracing a number of specific characteristics.
77. ‘Colour’ is self-explanatory as a matter of fact. The concept of ‘colour’, however, has come to describe a collection of characteristics and is not merely to describe a singular physical characteristic and the comparing of skin complexion (as one tribunal once did⁷³) is neither required and nor is it appropriate.
78. ‘Nationality’ is in essence a legal status. Nationality is a broader concept than citizenship in British law.⁷⁴
79. ‘National’ origins, conversely, refers to ‘identifiable elements, both historically and geographically, which at least at some point in time reveals the existence of a nation’.⁷⁵ Discrimination against Scottish people and English people, as such, is discrimination on the grounds of national origins. The same reasoning would apply equally to discrimination against Welsh⁷⁶ people and against (Northern) Irish people.
80. ‘Ethnicity’ has been given a broad meaning by the courts. The classic test for determining whether any group constitutes an ‘ethnic group’ is found in *Mandla (Sewa Singh) v Dowell Lee*.⁷⁷ According to Lord Fraser, for a group to constitute an

72 Section 9(4).

73 See appeal decision in *X H Diem (known as Anita Ho) v Crystal Services Plc* [2005] UKEAT/0398/05.

74 L Fransman, *Fransman’s British Nationality Law* (3rd edn, 2011, Bloomsbury Professional). It should be noted that many exceptions apply to the prohibitions against nationality-based discrimination under the Equality Act 2010.

75 *Northern Joint Police Board v Power* [1997] IRLR, para 9.

76 *Gwynedd CC v Jones* [1986] ICR 833, 836F.

77 *Mandla (Sewa Singh) v Dowell Lee* [1983] 2 AC 548.

ethnic group, it must regard 'itself, and be regarded by others, as a distinct community by virtue of certain characteristics'.⁷⁸ Some of these characteristics are essential, whilst others are not, but one or more of them will commonly be found, and the existence of these will help to distinguish the group from the surrounding community. According to Lord Fraser, the conditions which are essential are these: (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to those two essential characteristics the following characteristics are relevant; (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community. A group defined by reference to enough of these characteristics would be capable of including converts, for example persons who marry into the group, and of excluding apostates.

81. Provided a person who joins the group feels himself or herself to be a member of it, and is accepted by other members, then s/he is, for the purposes of the Act, a member.⁷⁹ Thus membership of an 'ethnic' group may be acquired (as in conversion) and this depends upon a high degree of subjectivity so that a sense of belonging may be adequate.
82. Jews,⁸⁰ Sikhs,⁸¹ Romany Gypsies,⁸² European Roma,⁸³ and Irish Travellers⁸⁴ have all been held to constitute distinct ethnic groups.
83. As to 'Gypsies', the Court of Appeal has held that they constitute an ethnic group when defined in the narrow sense of Romany Gypsies because of their shared history, geographical origin, distinct customs, and language.⁸⁵
84. The Equality Act 2010 permits an amendment by order to be made to the definition of 'race' so as to make 'caste' an aspect of 'race'.⁸⁶ No order has yet been made.

'Discrimination' and the unlawful acts

85. The concept of "discrimination" under the Equality Act 2010 is a wide one. It covers,

⁷⁸ Mandla, 562E, per Lord Fraser.

⁷⁹ Mandla, 562E–562H, per Lord Fraser.

⁸⁰ *Seide v Gillette Industries Limited* [1980] IRLR 427; *R (E) v Governing Body of JFS and another (United Synagogue and others intervening)* [2009] UKSC 15; [2010] 2 AC 728.

⁸¹ *Mandla (Sewa Singh) v Dowell Lee* [1983] 2 AC 548.

⁸² *Commission for Racial Equality v Dutton* [1989] IRLR 8, CA.

⁸³ *R (European Roma Rights Centre and others) v Immigration Officer at Prague Airport and another (United Nations High Commissioner for Refugees intervening)* [2004] UKHL 55; [2005] 2 AC 1.

⁸⁴ *O'Leary v Allied Domecq Inns Limited*, CL 950275, July 2000, Central London County Court (unreported). Indeed Irish travellers are expressly recognized as a racial group (when defined as 'the Irish traveller community') within the Race Relations (Northern Ireland) Order 1997 SI No 869, NI6 which implements the RRA in Northern Ireland.

⁸⁵ *Commission for Racial Equality v Dutton* [1989] IRLR 8.

⁸⁶ Section 9(5)(a).

- a. Direct discrimination;⁸⁷
 - b. Discrimination arising from disability;⁸⁸
 - c. Gender reassignment discrimination: cases of absence from work;⁸⁹
 - d. Pregnancy and maternity discrimination: non-work cases;⁹⁰
 - e. Pregnancy and maternity discrimination: work cases;⁹¹
 - f. Indirect discrimination;⁹²
 - g. Failure to comply with a duty to make reasonable adjustments.⁹³
86. 'Other prohibited conduct'⁹⁴ comprises 'harassment'⁹⁵ and 'victimization.'⁹⁶
87. The unlawful acts under the *Equality Act 2010* outlaw the forms of prohibited conduct just mentioned. The unlawful acts outlaw these forms of prohibited conduct in the provision of services and in the exercising of public functions.⁹⁷
88. The unlawful acts exclude judicial functions from their reach.⁹⁸ However, functions which are not strictly judicial, including those undertaken by the courts' administration, will fall within these unlawful acts and so judges should be aware of them.

Public Sector Equality Duty

89. The *Equality Act 2010* introduces a new Public Sector Equality Duty.⁹⁹ More limited (but similarly structured) duties were found in the anti-discrimination enactments that preceded the *Equality Act 2010*.
90. The origins of the Public Sector Equality Duty can be seen in the Macpherson Report which followed the Inquiry into the death of Stephen Lawrence and so it has particular resonance to the justice system and the work of judges. The significant and multifarious disadvantages that ethnic minorities experience in the justice system was described by the Macpherson Report as constituting 'institutional racism', that is: 'the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes, and behaviours which amount to discrimination

⁸⁷ Section 13. Section 14 'combined discrimination: dual characteristics' is also a form of prohibited conduct but it has not been brought into force and it is expected that it will be repealed.

⁸⁸ Section 15.

⁸⁹ Section 16.

⁹⁰ Section 17.

⁹¹ Section 18.

⁹² Section 19.

⁹³ Section 21, though this falls under the separate heading, 'adjustments for disabled persons'.

⁹⁴ See heading to sections 26 and 27.

⁹⁵ Section 26.

⁹⁶ Section 27.

⁹⁷ Section 29.

⁹⁸ Schedule 3, para 3.

⁹⁹ Section 29.

through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people'.¹⁰⁰

91. The purpose of the Public Sector Equality Duty is to create a strong, effective, and enforceable legal obligation which places equality at the heart of a public authority's decision making,¹⁰¹ so, amongst other things, as to address these institutional forms of discrimination.
92. Under the heading 'Advancing of Equality', section 149(1) of the *Equality Act 2010* enacts the Public Sector Equality Duty. It provides that:
'A public authority must, in the exercise of its functions, have due regard to the need to—
(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.'
93. The Duty applies to all the protected characteristics under the *Equality Act 2010*,¹⁰² including 'race'.
94. Each limb of the duty is explained further under section 149 of the *Equality Act 2010*. 'Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it'¹⁰³ involves having due regard, in particular:
'to the need to (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low'.¹⁰⁴

100 *Stephen Lawrence Inquiry Report*, Sir William Macpherson, 1999, Cm 4262-I, para 6.34.

101 See Speech of Mike O'Brien, Parliamentary Under-Secretary of State for the Home Department, HC Standing Committee D, 2 May 2000 in addressing the Race Equality Duty which provided the model for the Public Sector Equality Duty: "The Bill is one of the most significant steps that the Government will take on race equality in Britain, and is probably the biggest step taken since the Race Relations Act [1976]. The Bill will create a positive duty on all public authorities to promote race equality. It will be a major change in law. The Government sees this new duty as a way of trying to eliminate discrimination in public services, not only in the internal organisational structure of public authorities but in the delivery of services to ethnic minorities . . . In considering any new element of Government policy, a Minister must consider the implications for ethnic minorities and race equality generally . . . The public services must recognise that it is no good simply paying lip-service to race equality: they must ensure that race equality is at the heart of their organisation's considerations when providing services—it should be part of the mainstream of policy consideration. The new duty will be a significant step forward . . . Equality is important in the delivery of services to all the people of this country and should be pursued in a way that is consistent with our belief that we must become a successful multiracial society."

102 Except marriage and civil partnership, save in respect of the first limb; see section 149(7) for the 'relevant characteristics' for the purpose of section 149(1)(b) and (c).

103 Section 149(1)(b).

104 Section 149(3).

‘Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it’¹⁰⁵ requires having due regard, in particular, “to the need to (a) tackle prejudice, and (b) promote understanding’.¹⁰⁶

95. The three limbs of the duty require separate consideration. Whilst advancing equality of opportunity ‘will be assisted by . . . [it] is not the same thing as, the elimination of discrimination . . . [T]he [advancing] of equality of opportunity is concerned with issues of substantive equality and requires a more penetrating consideration than merely asking whether there has been a breach of the principle of non-discrimination.’¹⁰⁷ Similarly, *fostering good relations* will involve discrete attention and may require very different actions. Accordingly, the fact that a decision is proved to be lawful does not relieve a public authority from the duty to have due regard to the other equality objectives.¹⁰⁸
96. Discharging the Public Sector Equality Duty requires that ‘due regard’ is given to the equality objectives. ‘Due regard’ means ‘proportionate regard’, or that which is appropriate in all the circumstances.¹⁰⁹
97. Accordingly, the greater the impact (positively or negatively) that any decision or the exercise of any function may have, the greater the weight must be given to the equality objectives; ‘in a case where large numbers of vulnerable people, many of whom fall within one or more of the protected groups, are affected, the due regard necessary is very high.’¹¹⁰
98. As the case law has made clear, the substance of the duty must be conscientiously had regard to if the duty is to be properly discharged. For this purpose, relevant materials must be analysed in the context of the duty¹¹¹ with a ‘conscious directing of the mind to the obligations’.¹¹²
99. As with the unlawful acts, the Public Sector Equality Duty does not apply to judicial functions or a function exercised on behalf of, or on the instructions of, a person exercising a judicial function.¹¹³ A reference to a judicial function includes a reference to a judicial function conferred on a person other than a court of tribunal.¹¹⁴

105 Section 149(1)(c).

106 Section 149(5).

107 *R (Baker) v Secretary of State for Communities and Local Government and LB Bromley* [2008] EWCA Civ 141; [2008] LGR 239, para 30, per Dyson LJ; see, too, *Pieretti v London Borough of Enfield* [2010] EWCA Civ 1104; [2010] EqLR 312, para 31.

108 See, for example, *Hereward & Foster LLP & Anor v Legal Services Commission* [2010] EWHC 3370; [2011] EqLR 150.

109 *R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141; [2008] LGR 239, para 31, per Dyson LJ; *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin); [2009] PTSR 1506, para 82, per Aikens LJ.

110 *R (Hajrula) v London Councils* [2011] EWHC 448 (Admin); [2011] EqLR 613, para 69, per Calvert-Smith J.

111 *R (Harris) v LB Haringey* [2010] EWCA Civ 703, para 40, per Pill LJ.

112 *R (Meany) v Harlow DC* [2009] EWHC 559 (Admin), para 74.

113 Sch 18, para 3(1).

114 Sch 18, para 3(2).

100. However, as with the unlawful acts, the Public Sector Equality Duty will apply to, amongst other things, functions exercised by the courts' administration. In some circumstances, the question whether a party or other person has complied with the Duty may be relevant to a judge when deciding what action to take in relation to a case.

Use of Language

Key points

- It will sometimes be necessary to identify or describe a person's ethnicity. Where it is not relevant, it should not be referred to at all.
- Where it is relevant then some care needs to be taken to ensure that appropriate terms are used.
- Where a judge is unsure about how to identify or describe a person's ethnicity or how to address a person, she should ask the person concerned how they would wish to be identified, described or addressed.

Introduction

101. It will sometimes be relevant to identify or describe a person's ethnicity. Where it is relevant then some care needs to be taken to ensure that appropriate terms are used. Where a person's ethnicity is irrelevant there will be no need to refer to it at all.
102. Where a judge is unsure about how to identify or describe a person's ethnicity or how to address a person, she should ask the person concerned how they would wish to be identified, described or addressed. Some guidance is provided below as to appropriate terms.

Terms

103. The English language is constantly evolving, and acceptable terminology describing ethnic minorities has developed as a way of avoiding offence and developing sensitivity. It is important that unacceptable language is not used. This is not about so called "political correctness", rather it is part of society's response to the need to recognise and respect diversity and equality.
104. Language that was formerly used to describe a person's race is sometimes no longer acceptable. It should be noted that there can be differences in opinion over some terms, so whilst some words are clearly unacceptable, for others there may not be any one correct answer about whether the term is right or wrong. Some guidance is provided below.
105. **Black:** It is now considered acceptable to use the term "Black" to describe people of Caribbean or African descent.
106. **West Indian / African Caribbean / African:** The term "West Indian" was formerly used as a phrase to describe the first generation of settlers from the West Indies and, in particular, many older people from that community will so describe themselves. Whilst the term "West Indian" would not always give offence, it is inappropriate to use it unless the individual concerned identifies himself or herself in this way.

The term "African Caribbean" is now much more widely used, especially in official and academic documents. Where a person's ethnic origin is relevant, that term is both appropriate and acceptable. It does not, however, refer to all people of West Indian origin, some of whom are White or of Asian extraction.

The term “African” is often acceptable and may be used in self-identification, although many of African origin will refer to their country of origin in national terms such as Nigerian or Ghanaian.

Young people born in Britain today may choose not to use any of these designations.

107. **Asian:** “Asian” is a collective term which has been applied in Britain to people from the Indian sub-continent and other parts of Asia, such as Indonesia. In practice, people from the Indian sub-continent may not consider themselves to be “Asian”. People tend to identify themselves in terms of one or more of the following:
- a. Their national origin (“Indian”, “Pakistani”, “Bangladeshi”).
 - b. Their region of origin (“Gujarati”, “Punjabi”, “Bengali”).
 - c. Their religion (“Muslim”, “Hindu”, “Sikh”).

The term “Asian” can be appropriate when the exact ethnic origin of the person is unknown or as a collective reference to people from the Indian sub-continent. The more specific terms of South East Asian, Far East Asian or South Asian may be preferred.

Young people of South Asian origin born in Britain often accept the same identities and designations as their parents. This is by no means always the case, and some now may prefer to describe themselves as “Black” or as “British Asian”.

108. **Mixed race/Mixed heritage:** The term “mixed race” is widely used and is considered acceptable by some and not by others. Another term which may be better is “mixed heritage”. The term “multi-racial” is only used in relation to communities.
109. **Ethnic minorities/Minority ethnic:** The terms “ethnic minority” and “minority ethnic” are widely used and are generally acceptable as the broadest terms to encompass all those groups who see themselves to be distinct from the majority in terms of ethnic or cultural identity. This term is clearly broader than “Black minority ethnic” or the problematical “visible minorities” (problematical as it may imply that there are invisible minorities), and brings in such groups as Greek and Turkish Cypriots or Gypsy Travellers.

Interpreters

Key points

- Judges do not have a role in arranging for interpreters. However, they must take care to ensure that potential difficulties in the use of English are identified and addressed.
- A functional ability to speak English in day-to-day life may not be sufficient to understand or speak English sufficiently well as to understand and answer questions in court.
- There are now standardized arrangements in place for securing the assistance of interpreters.

Judges' role

110. Although judges are not involved in making arrangements for interpreters, it is important that they are fully aware of potential difficulties experienced by witnesses who may have only a limited ability to speak and understand English, and the interpretation facilities available and the arrangements for securing them.¹¹⁵
111. When giving evidence, people for whom English is not a first language may not always fully understand what they are being asked. It is one thing to know the basics of a language and to be able to communicate when shopping or working. It is quite another matter having to appear in court, understand questions, and give evidence. It should also be remembered that many ethnic minorities prefer to speak their mother tongue at home. Judges should therefore be alert to different language needs, and should not assume, simply because a witness has lived in the UK for many years, that he or she does not require an interpreter.
112. Situations may arise where the judge has to take a proactive role, and make some effort to clarify and resolve the extent of any language difficulty faced by a witness. It is part of the judge's function to assess an individual's fluency and comprehension. If a judge hearing a case considers that an interpreter is required, an adjournment should be granted for that purpose.
113. A judge may also wish to check whether the interpreter and the accused or witness are indeed able to communicate, and to confirm that there are no cultural dialect or language difficulties that would preclude the interpreter from interpreting.

Interpreters in Criminal Proceedings

114. On 30 January 2012 courts and tribunals across England and Wales started using a new interpreter service through a single agency, Applied Language Solutions.

115 As to which, see <http://www.justice.gov.uk/courts/interpreter-guidance>.

115. A National Agreement on Arrangements for the Use of Interpreters provides clear and detailed guidance for all agencies on the procedures to follow at each stage of the criminal justice process where an interpreter may be required.¹¹⁶

Interpreters in Civil and Family Proceedings

Deaf and Hearing impaired Litigants

116. Her Majesty's Courts & Tribunals Service will meet the reasonable costs of interpreters for deaf and hearing-impaired litigants for hearings in civil and family proceedings.
117. Many people have a friend or relative who usually translate for them. If the deaf person wants such a person to interpret for them, they will need to ask for permission from the judge. The judge must be satisfied that the friend or relative can exactly interpret what is being said to the court and what the court is saying to the deaf person.
118. Unless the relative or friend has a recognised qualification in relaying information between deaf and hearing people, it may be better to use a qualified interpreter who will understand the limits of an interpreter's role.
119. If an interpreter is needed, the court will make arrangements for an interpreter to attend.

Foreign language interpreters

120. Court staff will also arrange for language interpreters needed for civil and family hearings in certain circumstances where cases involve:
- a. **Committal cases** Her Majesty's Courts & Tribunals Service has a legal obligation under the Human Rights Act to provide language interpreters. They will ensure that anyone attending a committal case has the free assistance of an interpreter if s/he cannot understand or speak the language used in court.
 - b. **Domestic Violence and cases involving children** Because of the sensitivity of these cases, Her Majesty's Courts & Tribunals Service has agreed that it will provide an interpreter if required. This is irrespective of whether solicitors are involved or public funding is available.
 - c. **Non-committal cases** Her Majesty's Courts & Tribunals Service will provide an interpreter if that is the only way that a litigant can take part in a hearing. The relevant circumstances are where the person:
 - i. Cannot speak or understand the language of the court well enough to take part in the hearing
 - ii. Cannot get public funding.

¹¹⁶ National Agreement for the Use of Interpreters and National Agreement 2011 rider; see, <http://www.justice.gov.uk/courts/interpreter-guidance>.

- iii. Cannot afford to privately fund an interpreter, and has no family member, or friend, who can attend to interpret for them and who is acceptable to the court.
121. If the case is publicly funded, Community Legal Service funding may be available. If the case is privately funded, parties have to supply their own interpreters.

Welsh Language

122. The Welsh Language Act 1993 provides the right for any party to speak Welsh in legal proceedings in Wales (criminal, civil and tribunals hearings).
123. As soon as it is known that the Welsh language is to be used at a hearing details should be provided to HMCTS' Welsh Language Unit by e-mailing welsh.language.unit.manager@hmcts.gsi.gov.uk who will arrange a Welsh interpreter from the list of those who have successfully sat examinations in simultaneous interpretation. Her Majesty's Courts & Tribunals Service is responsible for paying the interpreter's fees.