

Equal access to the adoption process (Mander and Mander v Royal Borough of Windsor & Maidenhead and anor)

17/12/2019

Local Government analysis: A borough council and its adoption service directly discriminated against a couple of Sikh heritage in refusing their request to be assessed as suitable potential adopters. In the wake of this decision, it would behove adoption agencies across the country to assess their processes to ensure that they do faithfully follow the statutory framework. Georgina Calvert-Lee, senior counsel and head of the UK employment and equality team at McAllister Olivarius, considers the case.

Mander and Mander v Royal Borough of Windsor & Maidenhead and another [\[2019\] EWFC B64](#)

What are the practical implications of this case?

The decision in *Mander and Mander* found that the defendant borough council and its adoption service, Adopt Berkshire, directly discriminated against a couple, Reena and Sandeep Mander, in refusing their request to be assessed as suitable to be potential adopters, and subjected them to detriments by informing them that they should not bother to apply to be approved because of their 'Indian background', refusing to reconsider their decision, and suggesting they consider adopting from India instead.

It is important to note that this is not a case about matching a specific child with the Manders—a decision which should properly be based on an assessment of many factors, including race and cultural and linguistic background—but about being allowed equal access to the adoption process itself. If an eligible adult is barred from being formally assessed as suitable to adopt, they are effectively excluded from adoption because an adoption panel cannot even consider placing a child with them. The Manders brought their claim to establish that every eligible adult should have equal access to the adoption assessment process, regardless of race or ethnic background.

During their subsequent inter-country adoption process, the Manders came across a number of other prospective English adopters who had been turned away from their local authority adoption agencies at an early stage on grounds of race and so feared that the improper 'pre-screening' process implemented by Adopt Berkshire was not unique. The Equality and Human Rights Commission supported the case for the same reason. In the wake of this decision, it would behove adoption agencies across the country to assess their processes to ensure that they do faithfully follow the statutory framework.

What was the background?

The Manders are a British couple in their thirties, born and raised in England and identifying culturally as British. They are both professionals, in good health, living in a detached house with financial security and a wide network of friends and family living around them. They are of Sikh heritage and their parents were born in India.

After many years of unsuccessful attempts to start their own family they looked to adopt from their local authority's adoption agency, Adopt Berkshire. When they called Adopt Berkshire to express their interest in applying to be assessed they were asked about their 'cultural heritage'. On learning that their parents had been born in India, the Manders were discouraged from applying on the basis that Adopt Berkshire had only white children available for adoption and it would be unlikely that any of these would be matched with the Manders since priority would be given to adopters of the same 'cultural heritage' as the child. The

Manders, however, expressed a willingness to adopt a child of any ethnicity or to adopt a sibling group. Notwithstanding, Adopt Berkshire did not allow them to submit a registration of interest form and so effectively blocked their application before the pre-assessment and assessment stages.

The Manders felt that the decision, which seemed clearly related to Adopt Berkshire's assumptions about their 'cultural heritage' was discriminatory since it treated them unfavourably because of their race. They could not believe that this basis for rejection represented Adopt Berkshire's formal considered decision and so requested that the grounds for rejection be put in writing. This was provided, and in the same letter Adopt Berkshire suggested that the Manders consider adopting from India where, it stated, they would be more likely to ultimately achieve placement of a child.

The Manders sought to reverse the decision through the council's internal complaints process without success, and submitted a complaint to the Local Government Ombudsman before bringing this claim. In the meantime, they successfully adopted a child from the US, a process that nevertheless cost them around £60,000.

What did the court decide?

The court helpfully outlined the statutory framework for English adoption agencies with respect to recruitment of prospective adopters. This is provided by the [Adoption and Children Act 2002](#) (as amended), the [Children Act 1989](#), the Adoption Agencies Regulations 2005, [SI 2005/389](#) (as amended) and [Statutory Guidance on Adoption for Local Authorities, Voluntary Adoption Agencies and Adoption Support Agencies of July 2013](#). The recruitment involves four main steps:

- seeking information
- registration of interest
- stage one—the pre-assessment process
- stage two—the assessment process

Under this framework, any adult who meets basic eligibility criteria (as the Manders did) and submits a registration of interest form must be progressed to the stage one pre-assessment process, regardless of racial or ethnic origin or cultural background; and it is only at the final step, during the stage two assessment process, that an adoption agency must obtain a prospective adopter's racial, ethnic or cultural background. Adopt Berkshire's own policies were in line with this framework.

Despite this, the court found that Adopt Berkshire had added another step before registration of interest 'to filter prospective adopters out, using [their] own criteria' which included considerations of racial and cultural origin. The court criticised this as entirely outside 'the spirit and letter of the statutory framework and [its own] guidance.' Adopt Berkshire's explanation for rejecting the Manders' request to submit a registration of interest form was their stated wish to prioritise applications from prospective adopters who they felt likely to provide a cultural match with the children currently on their books. However, the court observed that in coming to this conclusion, before any other facts had been gathered or assessed about the Manders' suitability as adopters, Adopt Berkshire must be making 'an assumption that it would not be in a putative child's best interests to be matched with prospective adopters who did not share their race' regardless of other factors affecting suitability. This assumption, the court held, gave race a disproportionate importance as a factor, which was precisely the 'stereotype' which the 2013 statutory and regulatory amendments had sought to dispel.

Accordingly, the court found and declared that the Manders had been directly discriminated against, and ordered that each of them should receive general damages for injury to feelings at the top of the middle

range of the *Vento* guidelines (amounting to about £29,000 each) and special damages of just over £60,000, totalling £118,914.27.

Case details

- Court: County court at Oxford
- Judge: Her Honour Judge Melissa Clarke
- Date of judgment: 6 December 2019

Georgina Calvert-Lee has experience running complex discrimination, equal pay and harassment cases in the Employment Tribunal and county court under various parts of the Equality Act. In Mander and Mander she instructed counsel (James Robottom) for the successful claimants.

Interviewed by Kate Beaumont.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

FREE TRIAL