
Issues paper: Failure to consider cultural
and religious background in
investigations into relationship status of
Arabic speaking single mothers

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1 Background to the paper

The Minister for Human Services has agreed to examine circumstances where large Centrelink overpayments can arise when Centrelink backdates a decision that a person is a member of a couple. The Minister for Human Services responded quickly to the report on this issue in the media in August 2012 and asked his Department to have discussions with Centrelink staff on cultural issues affecting member of a couple decisions.

The Welfare Rights Centre produced an issues paper for the Minister in September 2012 “*Issues Paper: problems with member of a couple decisions made by Centrelink investigations teams*”. One of the issues discussed in that paper (at section 1.6) was the failure of investigations teams to have sufficient regard to cultural factors. The Department of Human Services requested a further issues paper on this specific issue. The Welfare Rights Centre has therefore written this issues paper to elaborate on these issues.

2 Failure to consider cultural and religious background in member of a couple investigations

The Welfare Rights Centre has represented many Arabic speaking single mothers, most living in Western Sydney, in member of a couple cases and has seen consistent evidence that investigations teams are failing to understand the critical significance of their cultural and religious backgrounds when carrying out member of a couple investigations.

This paper summarises some of the ways in which these women's circumstances are misunderstood because of a failure to appreciate the impact of their cultural and religious background on their post-separation arrangements with ex-partners.

Examples we have consistently seen in our casework include:

2.1 Reasons for not applying for a divorce

Many women do not seek a formal divorce due to the shame or stigma associated with divorce in their family and community. For many, the fact of separation has already brought shame onto their families, with the result that important family relationships (particularly with their own parents) have been seriously damaged and this is often a source of ongoing conflict, as well as isolation from family and community.

Obtaining a legal divorce would, in many cases, exacerbate this conflict due to perceptions of shame and stigma. The same applies to religious divorces.

We have observed that obtaining a religious divorce is often not possible if it requires the consent of the woman's father and husband. Even if not strictly a religious requirement, it can be a cultural norm that decisions about divorce are made by family or other male members of the community, and not by the women herself.

When understood in this context, it is often appropriate to place greater weight in a member of a couple investigation on attempts to obtain a religious or legal divorce or on the fact that a divorce has been obtained as evidence of separation, as it can in fact show the strength and persistence of a women's desire to be separated in the face of community and family shame, hostility and isolation.

However, it is important that absence of a divorce should not be construed as evidence that a relationship continues, without considering whether this is the result of the same cultural and religious considerations, rather than the persistence of a member of a couple relationship. We have observed that many clients do not try to obtain a religious or legal divorce after separation because of:

- resistance from the people she would need cooperation from (generally father, husband and Sheik)
- fear of, or inability to deal with family on the issue, or unwillingness to put her family through the shame they will experience
- a perception that her desire to be divorced will not be accepted, so there is no point in trying
- a desire not to cause more trouble for herself or her family after the initial struggle to separate.

CASE STUDY

One client spent years trying to obtain her father's consent to a religious divorce from her Sheik. It took many years after her separation to obtain his consent. She commented to us that she hadn't seen the point in pursuing a legal divorce, since it was the community divorce that she hoped would address the pressure on her to reconcile that she was experiencing from her community.

This client's situation was one which we have seen a number of times. We do not have consent to identify her case, but we note the following:

- it was an arranged marriage to her first cousin
- she was culturally "married" to her husband prior to the age of consent, in a traditional cultural ceremony
- she was legally married to him as soon as she reached the age of consent
- she grew up and was schooled in Australia
- he was born and schooled overseas
- he emigrated to Australia to marry her
- her mother and father were also his aunt and uncle (ie they were first cousins)
- his parents were overseas, her parents felt a strong obligation to him in their absence
- there was domestic violence in the relationship
- her parents were vehemently opposed to the separation and felt shamed, humiliated and stigmatised within their community by it
- her ex-husband was also opposed to the separation, which had been a unilateral decision on her part
- her separation caused violence from her family
- she was under constant (almost daily) pressure from her parents and some siblings to reconcile
- she had limited support from some siblings and cousins but was not aware of support services until we connected her to them
- for a time she rented a house from her cousin, however as her ex-partner was also his cousin he felt more licence to visit the house whenever he pleased
- despite having been married, and separated, for a number of years by the time she contacted us, she was still very young
- other family members had the same name as her husband

2.2 Reasons for lack of contact with third parties

It is not uncommon for our clients to be unaware of the post separation assistance available from community services, agencies and/or government departments. Where such awareness does exist, we have often observed a preference to turn to families to make arrangements post-separation. For many, vulnerabilities relating to factors such as youth, recent arrival in Australia, or perceptions of shame or stigma, mean that women are either unaware of, or face barriers in accessing such services and turn to their families instead.

This often means that:

- Family and friends know about the separation, but this knowledge is not verifiable via independent third parties as required by Centrelink, such as doctors or schools
- If a formal application is made for child support, private collection arrangements are made, often designed by the ex-partner to benefit the children and often also to keep the woman in the former marital home and accessible to the ex-partner
- Neither party approaching Legal Aid for family law advice, obtaining formal orders or attending mediation about the children, but the parties arranging themselves for the ex-partner to see the children at her house (most surveillance footage obtained in these cases clearly shows this type of contact).

We are therefore concerned that in such cases, it is wrong to treat the absence of third party evidence or a formal child support arrangement or care arrangements as evidence that separation has not occurred. Again, it is critical for investigations teams to consider whether cultural and religious factors may explain the absence of such indicators of separation.

2.3 Reasons for the ex-partner's address history

The issue of ex-partners not establishing clearly verifiable alternative accommodation was raised in our initial issues paper and we have observed that, because there is a preference for single men to live with their parents or wider families rather than live alone, it is almost invariably the experience among the cases our Centre sees for this client group.

The reasons for this preference include:

- As in the case study described earlier, the ex-partner may be a new migrant to Australia, and so may have nowhere else to turn when he leaves the marital home than family
- Again, as in the case study above, the ex-partner may be a relative and the woman's family may feel an obligation to support him after separation
- Cultural norms for families to live together, such that it is appropriate for single men to live with family

These living arrangements, especially if transient, may also mean that it is convenient to continue to pick up mail from his former residence when visiting to see the children.

His address history as reported to third parties and for mailing purposes will often be patchy because of a combination of factors, including laziness, convenience and intransigence, as well as language barriers and difficulty dealing with government departments and other agencies if the ex-partner is a new migrant to Australia. This means that extreme caution should be used before treating complex address history evidence as weighing against a finding of separation.

3 Conclusion

These are just some examples from the many cases we have acted in where there has been no explicit consideration given to whether our client's cultural and religious background may provide an alternative explanation for arrangements taken to indicate a member of a couple relationship. This includes cases where there is a record of interview showing that the woman was attempting to explain the cultural and religious forces impacting on her.