

What's culture got to do with it? The emotional labour of immigration solicitors in their exchanges with United Kingdom Border Agency case owners.

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What's culture got to do with it? The emotional labour of immigration solicitors in their exchanges with United Kingdom Border Agency case owners.

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ABSTRACT

The Early Legal Advice Project (ELAP) was implemented in the Midlands and East region from November 2010 to December 2012, with the aim of improving sustainability, quality and cost of asylum decisions. It was recognised by those involved in the project that in order to achieve these objectives a 'cultural change' was required. This small empirical study forms the first part of a larger project, focussing on 'cultural change', and its meaning in relation to emotional labour expectations of immigration solicitors involved in ELAP.

This study explores the emotional labour of immigration solicitors working within the current asylum process and specifically their exchanges with UKBA case owners. Furthermore, it emphasises the importance of understanding emotional habitus as a driver of emotional labour and the potential consequences of that performance. It is predicted that the 'cultural change' required will impact on the emotional labour and emotional habitus of solicitors. Consequently, emotional labour expectations must be considered when designing and implementing such schemes to facilitate successful outcomes.

1. INTRODUCTION

"The [Early Legal Advice Project] aims to improve the quality of initial asylum decision-making by front-loading the system and achieving cultural change in the asylum determination process on the part of the decision maker and adviser". [\[2\]](#)

On May 23 2006, the (then) Home Secretary, John Reid, directed a scathing attack on the immigration system, declaring it to be 'not fit for purpose.' He added that, "It is inadequate in terms of its scope, it is inadequate in terms of its information technology, leadership, management systems and processes". [\[3\]](#) As a result, the Independent Asylum Commission was established, and between October 2006 and July 2008 a team of Commissioners, led by Sir John Waite and Ifath Nawaz, conducted an independent review of the UK asylum system, and the results were published between May and July 2008. [\[4\]](#)

In the first report, which focuses on improving the process for deciding asylum applications, commissioners "expressed concern at the unacceptably poor standard of some initial asylum decisions" in a system where "some asylum seekers continue 'to fall through the net' and receive a poor quality service in relation to their initial decision." [\[5\]](#) The commissioners then go on to comment on the lack of legal advice available to asylum claimants in preparation for their substantive interview. They state:

"It is of great concern that asylum seekers are not able to consult a legal representative before their substantive interview as a matter of course. Taking into account the limit to the legal aid budget, quality legal representation can facilitate quicker, more accurate and more efficient status determination." [\[6\]](#)

This, the commissioners maintained, is a result of the short time frame within which the substantive interviews take place, as well as a shortage of solicitors resulting from cuts to the legal aid budget.

In light of this, the Commissioners make several recommendations, which includes the importance of early access to legal representation, with focus being placed on the need for legal representation to be available before the substantive interview and at tribunals, and a relaxation on legal aid funding. Research was also to be carried out in order to understand why asylum applicants are unable to obtain legal representation. Additionally, the Commissioners emphasise the need for 'frontloading' legal advice. This means that resources are implemented at the beginning of the asylum process in order to ensure high quality initial decision-making. [\[7\]](#)

In the report, the Commissioners refer to one particular project which puts in place all of these recommendations. This project, the Early Legal Advice Pilot (known as the Solihull Pilot) was an initiative set up in October 2006, the key success indicators being to make overall cost savings, faster, higher quality and more sustainable asylum decisions, and close cases within 6 months. [\[8\]](#) The Solihull Pilot proved to be successful, meeting the above success indicators, and resulted in the implementation of a larger project, the Early Legal Advice Project (ELAP), which ran in the Midlands and East region between 15th November 2010 and 31st December 2012.

One of the objectives outlined in the Solihull Pilot evaluation was the need for United Kingdom Border Agency (UKBA) case owners [\[9\]](#) and legal representatives to commit to 'cultural change' in order to ensure the successful implementation of the project. [\[10\]](#) This is again reiterated in the guidelines for ELAP, which states, "There may need to be a significant shift in the manner in which case owners and legal representatives engage with each other". [\[11\]](#) This is because ELAP requires legal representatives and case owners to work together directly much more than previously. All relevant evidence has to be produced and key issues of the case are identified by the legal representative and the case owner together, before the substantive interview. The legal representative is also to be present with the client at the substantive interview and can make oral submissions on behalf of the client. Following the substantive interview, but prior to the decision being served, further discussion between the legal representative and case owner highlights evidence required and a timetable for submission. Following this a decision is served. [\[12\]](#)

It is this need for a significant modification of the way in which legal representatives, in this case immigration solicitors, and case owners interact, which forms the focus of the project. More precisely, the study aims to

consider the potential alterations to emotional labour expectations of immigration solicitors in order to facilitate the 'cultural change' required for ELAP to be successful. It will explore the impact on the form and extent of the emotional labour produced as well as the potential consequences of its performance. It is significant in that by understanding the changes to emotional labour production it is possible to consider the extent to which the scheme embeds the 'cultural change' required. This in turn will provide an understanding of the sustainability of the scheme as a viable alternative to the current system. Given the acknowledged move from an adversarial system to an inquisitorial system, [13] the project also aims to provide an opportunity to compare the emotional labour produced as a result of using these distinctive approaches to the asylum process and the potential consequences.

This paper forms the first part of this project and aims to explore the culture inhabited by immigration solicitors working within the current asylum process. It achieves this by examining the emotional labour performed by solicitors working within the constraints of the current asylum process. The study will focus specifically on their interactions with case owners. It will seek to consider the performance of emotional labour using a framework based on Bourdieu's theoretical model for understanding social practice.

The study aims to examine the emotional displays presented by immigration solicitors in their exchanges with case owners, and the antecedents and the consequences of that emotional labour. It will demonstrate that the participants interviewed present a wide range of emotional displays towards case owners, ranging from attempts to perceive case owners as colleagues to viewing case owners as opponents. However, it is clear that although the emotional habitus of participants reveals unique approaches to the production of emotional labour, there are shared experiences of the use of deferential emotional capital in situations where case owners do not react in expected ways to other forms of emotional labour. It is maintained that such emotional displays impact not only on the potentially negative consequences, and the need to displace those effects, but also on their identity as legal professionals.

2. OVERVIEW OF THE CURRENT ASYLUM PROCESS

For those seeking asylum in the UK, the process begins at the screening interview, which is conducted at the Asylum Screening Unit (ASU) in Croydon or at the point of entry. [14] At this interview a case owner in one of the regional Asylum Support Teams within the UK [1] is allocated to the asylum applicant [2] who deals with the asylum claim from this point until the decision is served. [3] Within a few days of making the application the asylum applicant meets their case owner. In this meeting the case owner explains the asylum process, provides the asylum applicant with a date for the substantive interview, which is usually one week after the initial interview, and assists the asylum applicant in finding a legal representative. [15]

The substantive interview provides an opportunity for the asylum applicant to explain why they fear being returned to their own country. The asylum applicant is expected to prove to the case owner their identity and the country they claim to be from. Evidence as to the reasons for their fear of persecution is also required and this takes the form of an oral representative from the asylum applicant and any supporting documentary evidence. [16] Participants indicated that usually legal representatives do not attend the substantive interview. This is generally the case as a result of the fact that the client is reliant on Legal Aid and funding is not provided for the legal representative to attend the substantive interview. There are, however, exceptions to this, where legal representation is privately funded or where asylum applications are made by minors or disputed minors. This is also the case with reference to those applicants who are regarded as Detained Fast-Track cases. [17] However, during the substantive interview representatives are not expected to intervene during the interview process, except where there are problems with the interpretation or to ask for clarification of questions or comments made by the case owner. [18] The interview is generally recorded and a photocopy of the transcription is made available to the asylum applicant at the end of the interview. Electronic recording of the interview is allowed in circumstances where there is no legal representation at the interview. [4]

It is the aim of the case owner to serve the decision within 30 days of the substantive interview taking place. [19] In the intervening time, participants indicated that attempts are made to produce relevant reports and make representations in support of their client's claim.

3. EMOTIONAL LABOUR, ANTECEDENTS AND BOURDIEU'S SOCIAL THEORY

Given the focus of the study, it is necessary to consider the construct of emotion. While a variety of perspectives have been forwarded as to how emotion is formed, the interactionist model of emotion has recently gained a notable amount of attention by those conducting emotional labour research. This model sees emotion constructed as a result of social interaction. [20] Therefore, even where emotion is in accordance with expected emotional displays, there is still an element of emotional labour required, albeit with less effort, to ensure that the emotion is presented in a suitable manner. [21]

The concept of emotional labour has received increasing attention since it was first forwarded by Hochschild in her seminal book, *the Managed Heart*. It is not the intention of this piece to recount the theory surrounding emotional labour, as this has been carried out in various studies. [22] Instead, focus will be placed on one particular aspect of emotional labour, its antecedents, which it is maintained would benefit from further theoretical consideration. This is because, while it is argued that the most in-depth account of the antecedents is presented by Morris and Feldman, [23] their construct focuses very much on deliberate attempts by organisations to direct and control emotional labour. [24] Therefore, while use will be made of their emotional labour construct and the antecedents they see as being the most important in determining the form and content of the emotional labour produced, it is also regarded as necessary to take into account further influences on the emotional labour produced.

This is particularly important given the fact that solicitors are status professionals. There are a variety of ways in which emotional displays are controlled, such as through unspoken codes of conduct, professional socialisation, client expectations, media interest and the culture of an organisation. [25] It is contended that these have an equally important role to play as antecedents of emotional labour, and are able to add further understanding to the form and content of emotional labour as well as its potential consequences. However, it is necessary to consider in more detail how emotional labour expectations develop as a result of these types of antecedents. This can be achieved by considering Bourdieu's theory to explain the complexities of social practice, which he describes as "[Habitual Capital] + Field = Practice". [26]

Bourdieu regards society as being divided into 'fields'. These fields are "social spaces with distinct objective properties, that are organised around behaviours and practices which are strongly determined by traditions". [27] They therefore provide the 'rules of the game', [28] and in order for agents who enter these fields to succeed it is necessary for them to conform to the requirements of that field. Nevertheless, these rules are not "the product of a deliberate act of creation". Bourdieu regards a better definition to be 'regularities, that are not explicit or codified'. [29] Therefore, the result of socialization is a strategy suggested by habitus, which Bourdieu defines as a 'feel for the game.' This is where an individual is so tuned to the rules of the game that it is like being 'at home'. [30] However, fields are also the sites "within which struggles take or manoeuvres take place over specific resources or stakes and access to them". [31] These resources or stakes are defined by Bourdieu as capital and 'importantly capital has different meanings in specific fields'. [32]

Capital is "accumulated labor (with its materialized form or its "incorporated" embodied form) which, when appropriated on a private i.e., exclusive, basis by agents, enables them to appropriate social energy in the form of reified or living labor". [33] Capital, therefore, is any resource which is effectively used to allow a person to gain something of value from the social arena in which they take part. [34]

Bourdieu recognises that there are several types of capital, which reflects the variety of resources available to agents. Given the fact that capital derives from economics it is inevitable that the first is economic capital. This type of capital, as the title suggests refers to the amount of wealth accumulated by an individual, which Bourdieu maintains 'is immediately and directly convertible into money'. [35]

Less easy to quantify is cultural capital. This type of capital refers to the cultural resources available to an agent, which imbues them with knowledge of cultural expression. [36] Bourdieu maintains that cultural capital can take one of three forms. The first type is identified as that which takes the form of an 'embodied state.' This is cultural capital which is inculcated within the agent and takes the form of long-lasting dispositions of the mind and body. It therefore takes the form of culturally valued competences which have taken time and energy to develop and must be acquired directly by the individual. The second type is cultural capital which takes the form of an 'objectified state.' This type of cultural capital takes the form of cultural goods, for example the books, CDs or painting owned by an agent. The third form Bourdieu describes is 'institutionalised' cultural capital, which refers to cultural capital which in effect confers on the agent recognition in the form of a form of a qualification. [37]

A further type of capital is defined by Bourdieu as social capital:

"Social capital is the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition... which provides each of its members with the backing of the collectively-owned capital, a 'credential' which entitles them to credit, in the various senses of the word". [38]

Therefore, social capital is based on connections or networks between agents, and the amount of social capital possessed by an agent is dependent upon the size and content of the networks within which they are positioned, as well as the connections they have made within those networks. Symbolic capital is a fourth type of capital, which is any type of capital that is unrecognised as such. Instead it manifests itself as 'individual prestige and personal qualities such as authority and charisma'. [39]

There has also been discussion surrounding emotional capital, which is not explicitly discussed by Bourdieu. However, reference has been made in later research, [40] and is considered to be important in with respect to the current study given its relationship to emotional labour. Cahill, in his study of the professional socialisation of mortuary assistants, maintains that emotional socialisations throughout childhood 'shape emotional perception, judgements, and emotion management skills', [41] which in turn creates a set of emotional dispositions. This, he argues, directs agents towards particular occupations, because 'different occupations clearly require different forms of emotion work and therefore trade on different forms of emotional capital'. [42] Therefore, while it is possible for an agent to enter into certain occupations, success requires particular types of emotional capital. If this is not possessed by the agent then emotional struggle and effort, arguably demonstrated in the form and extent of emotional labour produced, are needed to acquire the requisite emotional capital. It is also important to add that emotional capital can be transformed into other types of capital.

Bourdieu also refers to the concept of *habitus* in his formula. *Habitus* is "a system of durable, transposable dispositions, structured structures predisposed to function as structuring structures, that is, principles which generate and organise practices and representations". [43] It is a way of explaining the dispositions that influence an individual's understanding of, and performance within, the social field, and results from the amount of capital they are expected to possess in that particular field. As the definition suggests, habitus is both structured, and structuring. It is structured by the patterned social forces creating it, and structuring in that it provides shape and consistency to the activities undertaken by the agent. [44] As a result the system of dispositions is historical in nature, in that it is a reproduction of past experiences inculcated into the agent through consistent practice. *Habitus*, therefore, while being unique to the individual, also means that people share similar experiences, and where individuals have a shared *habitus* the result is the feeling of being 'at home' with each other. [45]

As with respect to the concept of capital, *habitus* has been developed to take into account emotions. Emotional habitus is described by Virkki as "the means by which the employees develop a sense of their place in the social world by learning to manage their emotions according to their suitability for the values of the field". [46] Therefore, the emotions that are displayed reflect the ethical values and feeling rules associated with working within a particular social field. This correlates to a certain extent with the work conducted by Colley on vocational habitus, which "operates in disciplinary ways to dictate how one should properly feel, look and act, as well as the values, attitudes and beliefs that one should espouse". [47]

The use of Bourdieu's social theory and particularly the concepts of emotional capital and emotional habitus, which have developed as a result, will provide a further insight into the antecedents of the emotional labour of immigration solicitors in their interactions with case owners. This will in turn also result in a more in depth understanding of the form and extent, and the potential consequences of such performance.

4. STUDY DESIGN

As this is the first part of a larger project studying the changes to emotional labour performance as a result of the implementation of ELAP, it was considered appropriate to concentrate primarily on immigration solicitors practising in firms outside the Midlands and East region. This was to ensure the interviews captured an accurate representation of the emotional labour performed by participants working within the current asylum process. Consequently, participants were selected from the Yorkshire and the Humber region [48] making the study geographically bounded. Nevertheless, there are no geographical differences in the distribution of cases under the current asylum system unless the asylum client has mitigating circumstances making it necessary for them to remain or be relocated to a particular region. This is due to the National Dispersal System which has been running since 2000. [49] Additionally, the asylum process is technically uniform in all regions apart from the Midlands and East region during the time which the ELAP scheme operated. [50]

A purposive sampling technique was used to select participants fitting a particular set of criteria, and given the qualitative nature of the study; this produced a small number of participants. The criteria were that the interviewees were qualified solicitors with Immigration and Asylum Accreditation Scheme (IAAS) [51] accreditation practising in the Yorkshire and the Humber region. No prerequisite as to whether a firm had Legal Aid contracts was applied as this does not affect the application procedure. Of the twelve solicitors interviewed ten worked in firms which had secured Legal Aid contracts.

In accordance with the model to be used in the study, interviews were considered to be the most appropriate data-collection method. This is because other forms of data collection such as surveys will not provide the opportunity to explore the diverse issues surrounding the performance of emotional labour by immigration solicitors in their interactions with case owners. Possible interviewees were located through the Find a Solicitor tool on the Law Society website. Individuals who fell within the parameters of the sample were identified and a letter was sent with an invitation to participate in the study. This was followed up with a phone call the following week. Due to the bounded nature of the study and the limited number of solicitors working in this area, a small data set was produced. As a result it is conceded that data is not representative of the population as a whole, however, representation is not sought. Focus is instead placed on the rich data to be analysed, with a view to unravelling the complex details of social interactions, which is not available using broader approaches. [52] In this way the study seeks to "contribute to a better understanding of social realities and draw attention to processes, meaning patterns and structural features". [53] The sample forming the empirical basis of the research was collected between July 2009 and December 2010. It consists of six women and six men working in the Yorkshire and Humber region, with three men and two women being from an ethnic minority. The rest of the participants are white. The age of the solicitors interviewed ranges from between 27 and 50 years and experience ranged from 1-15 years. All participants work primarily in the area of Immigration and Asylum, Human Rights and Civil Liberties.

Francis in his study of legal executives notes that all researchers have a standpoint when entering the field and that by explaining this standpoint important information relating to the 'interactional cues...given off by the interviewer' is provided. [54] The interviews were conducted once the primary researcher had read literature connected to emotional labour and the legal profession, as well as other occupations, both professional and within the service industry. A literature review was also undertaken of acculturation into the legal profession, as well as more general reading around the asylum process both within the UK as well as in other jurisdictions.

Questions were framed in such a way as to allow participants to comment freely on their understanding of emotional skills required in their interactions with case owners. Therefore, discussion relating to emotional labour focused on a number of areas, not necessarily in any particular order allowing the immigration solicitor to lead discussion. Themes introduced by the interviewees were picked up on and used in later questions to tease out further information. The immigration solicitors were asked about a wide variety of people they are expected to interact with directly during their everyday work such as clients, family and friends of clients, social workers, interpreters, colleagues, other legal professionals, other professionals e.g. social workers, GPs, psychiatrists, case owners, presenting officer and judges. Discussions in each case surrounded the emotional skills required to successfully interact with these people, where they thought the expectation to use these skills came from, and the potential consequences of having to use them.

The data was analysed using thick description, [55] which involved the examination of interviews in light of themes and concepts identified through a thorough literature review. The interviews were then coded into categories which reflect these themes and concepts. Once this had been completed, the coded data were again compared to themes and concepts identified in the literature review. This was to determine where there may be further development or reassessment of already recognised themes and concepts. Furthermore, data were also coded where there were identifiable similarities in participant responses but no recognisable themes or concepts were identified in the literature review. [56]

5. FINDINGS

In comparison to the process followed under ELAP there are clearly fewer formal opportunities for legal representatives to have direct contact with case owners. Nevertheless, the immigration solicitors interviewed did provide examples of situations where direct interaction with case owners might be required. In most cases it was acknowledged that interactions would occur subsequent to the substantive interview taking place. Discussions would often focus on the requirement for reports, including those dealing with medical issues, country information, and social welfare issues. The participants also maintained that at times it is necessary to call a case owner to request more time prior to decision-making in order to ensure complete reports, to state that the substantive interview might have been conducted in the wrong language, or to present further legal representations. The solicitors interviewed also commented that they might need to contact the case owner before the substantive interview for reasons such as altering the date or time of an interview, to make sure an appropriate interpreter is available, or to ensure the interview will be recorded. It was on the basis of these interactions that the form, content antecedents and consequences of emotional labour expectations were explored.

5.1 "I DON'T REALLY SEE THEM AS THE OPPOSITION": CASE OWNER AS COLLEAGUE?

When asked to explain the emotional displays required when interacting with case owners, a quarter of participants began by describing emotional displays which attempt to foster a positive working relationship with case owners.

"I always try to be friendly towards them, because they are just doing their job, you know. It's not their personal opinions they are putting forward. It's just their professional opinion." (Solicitor with 18 month's experience)

"I see them as reasonable people generally. That's my standpoint. I don't really see them as the opposition as hell bent on refusing asylum." (Solicitor with 7 year's experience)

This is described as deep acting by Hochschild, [57] which is where the actual feelings are created through the imagination of the person producing the labour. However, while both immigration solicitors are engaging in deep acting, there are clear differences between the actual feelings they are attempting to create. The first participant focuses on the professional nature of the relationship in order to ensure they remain friendly in the face of what may be regarded as negative displays of emotion. This can be contrasted with the second immigration solicitor, who uses deep acting to imagine the case owner as an associate. Indeed, this is explicitly stated later in the interview:

"I form a relationship with them as if they're a professional colleague and we're working on the same case almost and that it's to our mutual benefit that the case is presented properly." (Solicitor with 7 year's experience)

The latter example of deep acting indicates an attempt at presenting emotional displays which are arguably commensurate with the 'cultural change' required in order for ELAP to be successful. Indeed it is noted in the evaluation of the Solihull Pilot that, "Much of the success of this interactive approach will depend on the confidence that each side has in the professionalism and good will of the other." [58] This is also borne out in the evaluation of the Early Legal Advice Project where it is stated, "The majority of legal representatives particularly welcomed the opportunity to collaborate with the case owner and referred to cultural change based on greater joint working." [59] The above participant also gave reasons why they use deep acting in this way, which, in accordance with the aims of ELAP, is to ensure the presentation of the asylum applicant's claim in a full and timely manner.

However, the above solicitor was the only participant who referred to this type of emotional labour. Even participants who highlight the need for maintaining a positive relationship did not give any indication that they perceived case owners as 'colleagues.' Therefore, while it is recognised that a positive working relationship is necessary, there is a discrepancy between the emotional *habitus* of these two immigration solicitors. This suggests that the 'cultural change' necessary in order to implement ELAP requires not only an alteration in the focus of the deep acting, but also a change in the emotional *habitus* of some immigration solicitors.

5.2 "THIS IS HOW IT SHOULD BE DONE": CASE OWNER AS SUBORDINATE

When asked to describe how they interacted with case owners, rather than highlighting attempts to create feelings associated with cohesion, a quarter of participants commented on the need to display emotions commensurate with their standing as a legal professional.

"Sometimes clearly they're very junior and they don't know what they're talking about and obviously if they come across like that you have less respect for them and so you perhaps become a bit more condescending towards them because you feel you know the law better than them. So there is a temptation to start preaching a bit to them about the law." (Solicitor with 7 year's experience)

"I think your relationship with them is always of a *very* professional (pause) nature, you know, very much like 'this is how it should be. You should have done this,' very much like 'this is how it should be, you should have done this, you haven't done it, do it immediately sort of thing.'" (Solicitor A with 1 year's experience)

The performance of this type of emotional labour sees the solicitors situating themselves as superordinate as a result of their knowledge of the law, and their status as a legal professional. [60] This is inculcated into the newly qualified lawyer during their training, where being able to speak and act with authority, as well as imbue an air of confidence are vital in projecting the image of the 'powerful professional'. [61] Acting in such a way also demonstrates the use of emotional capital in the presentation of the respondent's professional standing, with the expected response being respect and perhaps even deference. [62]

5.3 "IT'S THE THEM AND US THING": CASE OWNER AS OPPONENT?

Rather than viewing case owners as subordinate, a quarter of participants explicitly stated that they viewed case owners as opponents.

"Sometimes you can discuss things with them and, you know, try and help your client, but the culture generally is us against them." (Solicitor with 5 year's experience)

"It's creating a remove; it's the us and them thing. It's always going to be us and them with the Home Office." (Solicitor B with 1 year's experience)

The depiction of case owners as rivals suggests an adversarial element to these immigration solicitors' understanding of their own professional identity. There is evidence of non-adversarial teaching methods being used at Law schools such as problem solving, the teaching of Alternative Dispute Resolution, and Law Clinic, which emphasise problem solving skills, and the importance of therapeutic jurisprudence and the emotional intelligence of Law students. [63] However, it is also maintained that there still remains emphasis on advocacy, [64] which may influence the emotional displays of the above immigration solicitors.

On entering the legal profession, Sommerlad argues, newly qualified lawyers undergo intense acculturation and the law firm is an important source in determining the way in which the socialisation process is conducted. [65] Therefore, where other solicitors in the firm perceive their professional identity as adversarial in nature, this will inevitably influence the emotional labour of the newly qualified lawyer. However, arguably more influential might be the adversarial nature of the current asylum determining process in the UK [66] and its impact upon the perceived emotional displays of the above participants.

Indeed, while other participants did not state explicitly that they saw the case owner as an opponent, they did draw attention to the antagonistic behaviour of some case owners.

"The Home Office are trying to ideally apply the law to a person's case, but they do come across as if their job is to refuse as many people as possible." (Solicitor with 15 year's experience)

"You must have a statement before you go for an interview because the interviewing officer is trained to confuse you. They're trained to shake you at the interview with their questions.... I've seen that so many times - that they're actually trying to confuse." (Solicitor with 14 year's experience)

The attitudes of the above participants show 'suspicion and mistrust' of case owners. [67] The viewpoint that the Home Office decision-making process is founded on a 'culture of disbelief' or a 'culture of refusal' remains pervasive [68] despite arguments being presented to the contrary. [69] Indeed, one immigration solicitor referred in their interview to a story relating to accusations made by a person working for the UKBA office in Cardiff in 2010 that a stuffed toy was put on the desk of case owners who accepted asylum claims as a 'badge of shame'. [70]

While only the above immigration solicitors expressed such extreme opinions of case owners, comments were made by other participants that case owners were at times unhelpful, not constructive or unreasonable, and one participant likened interacting with some case owners to 'talking to a brick wall' (Solicitor with 11 year's experience). Therefore, while not explicitly referring to 'a culture of refusal' there are clear indications that participants find interacting with some case owners difficult, due to what they perceive to be the latter's challenging behaviour.

5.4 "I GENERALLY BECOME MORE CONFRONTATIONAL": EMOTIONAL CONTAGION AND ANTAGONISM

One solicitor, who describes case owners as 'enemies' provides two anecdotes in which they found it necessary to behave in an intimidating way by threatening to take the Home Office to court. Intimidation is a form of emotional labour produced by US trial lawyers, which aims to put pressure on the witness or opposing counsel to submit. [71]

However, in contrast to the type of emotional labour produced by US trial lawyers, the above solicitor mentioned the fact that these case owners also used intimidating behaviour, which required a similar response:

"You have to show that you are not feeling threatened by them... because of the language... and the tone that they would use, they would try to intimidate you... I think you have to be in a very firm position, when you speak to them, because you've got to be saying to them that, 'You are in the wrong and not our client.'" (Solicitor with 8 year's experience)

Another participant also refers to the need to be confrontational in situations where case owners are behaving unreasonably:

"I generally become more confrontational...because I have to step up the pressure without letting it go. Because what they want you to say is "Okay" and then put the phone down. So you have to keep up a measure of pressure." (Solicitor with 7 year's experience)

In both examples the above solicitors regard such confrontational or intimidating behaviour to be a necessary result of hostile behaviour towards them. Therefore, emotional labour is only performed as a reaction to having to handle hostile emotions. Strazdins refers to this as 'emotional contagion', which can occur when performing particular types of emotion work. Strazdins further maintains that negative emotions may occur when handling hostile or conflictual relationships. [72] Therefore, rather than being clearly identified as 'Rambo litigators' and 'hired guns', [73] participants suggest that this type of emotional labour is used as a necessary reaction to antagonistic behaviour.

This type of behaviour indicates a competitive style which requires assertive behaviour in response to bullying or intimidation. [74] However, in keeping with the professional status of the lawyer these types of emotional displays relate not to physical presence, but mental agility and highly developed social skills. It can therefore, also be likened to gamesmanship in terms of the ability to engage in 'legal strategy, skill and expertise', [75] which enables the solicitor to "feel purposeful and in control". [76] Consequently, displaying confrontational or intimidating behaviour towards another person provides a necessary link for the participant to their role as legal professional, and arguably with it, a masculinised representation of their role. [77] This also provides the opportunity to use 'occupationally valued emotional capital' gained as a result of being inculcated into the profession to obtain authority in relation to their everyday work. [78] These immigration solicitors are in effect making a 'place claim', [79] about their 'authoritative standing' in comparison to the case owner. [80]

5.5 "WELL, IT'S TO TRY AND BUTTER THEM UP": STRATEGIC FRIENDLINESS OR POWERFUL ROLE RECEIVER?

The importance of displaying courtesy and politeness towards case owners is highlighted by half of the solicitors interviewed, in an attempt to ensure reciprocal emotional displays.

"Obviously you're trying to get information from them, so it doesn't help to be stand-offish or rude to them or anything like that because they're simply not going to give you the information." (Solicitor with 3 year's experience)

"Well, it's to try and butter them up basically...You might have spoken to this particular case owner every day for the last ten weeks and [they've] been rude and arrogant and completely uncooperative with you, but when you make that call for that new client, you never know, [they] might be in a better mood." (Solicitor with 5 year's experience)

Importantly, this type of emotional display, while giving the impression of simply being polite or friendly could in fact be described as a form of strategic friendliness, [81] which has a strongly manipulative element. Hence, strategic friendliness is described as a masculinising practice, given the fact that the emphasis remains on

winning. [82] This is in contrast to friendliness which is deferential in nature, such as in respect of interactions between flight attendants and customers, and paralegals and attorneys. [83]

However, displays of politeness and courtesy such as those above, can also be compared with the emotional labour of barristers in their interactions with influential solicitors. Emotional labour designed to ingratiate the barrister with the solicitor is produced in response to the power and status of the solicitor as role receiver, and their ability to provide financial reward. [84] As is the case with barrister, while the case owner as initial decision maker places them in a position of power relative to that of the immigration solicitor, [85] there are potential rewards available to the immigration solicitor willing to perform such emotional displays.

Consequently, as a result of the fact that the asylum system is premised on an adversarial approach, it is inevitable that the case owner, who is responsible not only for factual inquiry, but also the credibility of those facts, [86] may be viewed as someone to be influenced through carefully orchestrated emotional displays. Therefore, politeness and courtesy are important emotional displays presented in order to ensure the best possible outcome for the client. Yet, while it is clear that similar emotional displays are considered necessary, the drivers of those displays may result from the development of a unique, yet shared emotional habitus that immigration solicitors are required to ingratiate themselves with case owners. This in turn provides a connection with each other and their professional identity as immigration solicitors.

5.6 "THEY CAN WIND ME UP SOMETHING CHRONIC": DEFERENTIAL EMOTIONAL CAPITAL AND EMOTIONAL DISSONANCE

At some point during the interview most of the participants admitted that there are times when emotional displays presented have little effect, as case owners do not respond in a way that is expected:

"Well, they come across as if they want to suggest that they're always right; that whatever decisions that they want to make or have made are correct and there's nothing you can say about it, or whatever information they have is correct and there's nothing you can say about it." (Solicitor A with 15 year's experience)

"With the junior case workers you can't because they have a script and they can't bend from their script. They can't make any concession, they can't say, 'Actually we can change that.' They're simply told to object or to refuse." (Solicitor with 13 year's experience)

Therefore, at times even where politeness and courtesy had already been displayed in order to produce reciprocal emotional responses, participants were mindful of the need to be polite and courteous in a situation where emotional displays designed to influence the emotional responses of case owners had little bearing on the emotional responses of case owners. This results in the need to suppress negative emotions such as frustration and anger:

"One of the few times... my emotions almost can get the better of me... [is when] they can wind me up something chronic, because (long pause) it's just like banging your head against a brick wall sometimes, and I try my very best to be polite at all times, but sometimes it is a struggle with certain case owners." (Solicitor with 11 year's experience)

"It's very frustrating because you're trying to help and you think that we are in this job to try and find a solution when we are trying to get our client to win their case... I never allow my frustration to show on the phone..." (Solicitor with 15 year's experience)

This type of emotional display is achieved by the use of surface-acting. Surface acting is where internal feelings do not correspond to the emotional display being presented. Therefore, as opposed to deep-acting, emotional displays are simulated rather than being premised on attempting to imbue actual feelings. [87]

The suppression of emotion such as frustration or anger, while relying on surface-acting to present emotionally neutral displays can lead to emotional dissonance. Emotional dissonance occurs, "when the emotional expression required by the job's display rules clashes with [a person's] inner or 'real' feelings". [88] Therefore, emotional dissonance results from the incongruence between expected emotional displays and actual feelings. However, participants were keen to emphasise emotional dissonance is a necessary element of their job:

"They won't listen to my representations at all, and I can't rant and rave at them. That's not going to do anything. That's perhaps my personal feeling. I just have to say, 'Well I disagree with you' or 'Thank you' and 'We're not getting anywhere so that's all.'" (Solicitor B with 1 year's experience)

"You can put the phone down and then rant and rave and talk to your secretary or whatever, but no I wouldn't do it over the phone. I can control that... you wouldn't be a good lawyer if you couldn't." (Solicitor with 13 years' experience)

"Sometimes you have to speak to that person again about somebody else. So, if you're not professional with them then you could have problems for another client." (Solicitor with 6 years' experience)

The perception of emotional dissonance as being a necessary element of the job is described as 'faking in good faith'. [89] It is therefore based on an understanding that to suppress emotion in the above context ensures the maintenance of a demeanour commensurate with their position as a legal professional. Anleu and Mack maintain that suppression of emotion is an important characteristic of traditional understandings of professional status jobs. It ensures that professionals maintain sufficient distance from their clients, and perpetuates the integrity of the profession itself. This has been seen to be the case in relation to the emotion management of magistrates who suppress emotions as a way of remaining distant and removed in accordance with decided cases and ethical guidelines. [90] Barristers also stressed the need to suppress all genuine emotional displays in order to ensure the maintenance of a professional and detached demeanour. [91] This would seem to conflict with the assertion of Morris and Feldman that the greater the job autonomy, the less emotional dissonance is felt, because there is more scope for deviation from expected emotional displays. [92]

The socialisation of immigration solicitors into the legal profession results in the development of emotional habitus and the gaining of emotional capital to be used in interactions with others, including case owners.

However, participants have highlighted that in situations where case owners are unreceptive to emotional displays intended to influence their emotional responses, it is necessary to engage in alternative forms of emotional labour. This seems to arise from the need to ensure that negative emotional responses such as anger and frustration, which are not in accordance with the profession as a whole, are suppressed. In addition there is also the understanding that the case owner is the decision-maker as opposed to an associate to be worked with, an adversary to be defeated, an antagonist to be confronted or a powerful role receiver to be persuaded. Furthermore, it points to the use of deferential emotional capital [93] to ensure the presentation of emotional displays appropriate to their role as a legal professional. This type of emotional capital, while ensuring the participants remain neutral in the face of potentially negative emotional displays may result in negative consequences if those suppressed emotions are not released. [94]

5.7 "I DON'T BELIEVE THIS. DON'T THEY UNDERSTAND?": EMOTIONAL DISSONANCE AND DISPLACING EMOTION

Even though participants recognise the importance of the expectation to suppress certain emotions, they also placed equal emphasis on the releasing of those suppressed emotions. This often was described as taking the form of emotionally charged conversations with other colleagues:

"You have to be nice. I mean obviously when I put the phone down I'm like 'Oh my God. I don't believe this. Do they not understand?'" (Solicitor with 6 year's experience)

"I mean invariably we will talk to them on the phone and ask for what we want and they'll usually say no and we'll put the phone down and start, you know, f-ing and blinding about them and going for a fag, or a coffee or whatever. That happens all the time." (Solicitor with 5 year's experience)

"You know, we talk about our frustrations because that's really our therapy, I think, just within the team because we can all understand how the others feel and what we're going through." (Solicitor with 3 year's experience)

The displacement of emotions through actions or the ritualised expression of emotion is common, [95] particularly in jobs which require the suppression of anger as "emotions remain, and undesirable feelings need to be discharged

". [96] If this process is not completed, then this may result in work related problems such as decreased job satisfaction, increased emotional exhaustion, depression and poor self-esteem. [97] Therefore, for the participants, the displacing of emotion usually in the form of releasing suppressed emotion in front of colleagues is a process which is as important as suppressing unwanted emotion in front of case owners as it prevents potentially negative consequences of having to perform such emotional labour.

6. DISCUSSION AND FUTURE RESEARCH

An analysis of emotional labour performed by solicitors in their direct interactions with case owners has revealed that participants produce diverse emotional displays. Furthermore, a broader understanding of the antecedents, form and content, and potential consequences of emotional labour has been made possible through the consideration of Bourdieu's social theory and particularly emotional capital and emotional habitus.

Some of the immigration solicitors interviewed were keen to emphasise the adversarial character of their interactions with case owners, and the emotional displays presented often reflect this attitude. While other sources of this type of emotional labour were considered, it is acknowledged that the asylum process is at present adversarial in nature [98] which may have an effect on the emotional displays presented by these participants. Therefore, it will be interesting to discover the extent to which the emotional labour of those immigration solicitors participating in ELAP continues to be premised on an adversarial standpoint. This is particularly given the fact that in the evaluation of the Early Legal Advice Project it is stated that, "The process appeared to contribute towards improved working relationships between legal representatives and case owners." [99]

While other participants did not explicitly refer to case owners as opponents, as a result of the perceived hostile behaviour of some case owners, intimidating or confrontational behaviour was deemed necessary either as a result of 'emotional contagion' [100] or as a way of connecting themselves to their status as legal professionals. [101] By engaging in these types of emotional displays, it is maintained that these participants are also using emotional capital gained through their professional socialisation to display their authority as legal professionals. Emotional displays which see immigration solicitors situating themselves as superordinate as a result of their legal knowledge also sees the use of emotional capital in this way. [102] Again, the question arises as to how appropriate emotional displays premised on this type of emotional capital are to participants in ELAP, and the impact that this may have on their identity as legal professionals.

However, there were immigration solicitors who emphasised the necessity of displaying courtesy and politeness towards case owners. Yet, on analysis, it was revealed that the drivers of such behaviour may be very different, with emotional displays being driven by either strategic friendliness, [103] which places emphasis on manipulating the role receiver, or the positioning of the case owner as decision-maker and therefore powerful role receiver, [104] requiring emotional labour designed to win the favour of the case owner. It is clear that this type of emotional labour may well be necessary in order to successfully implement ELAP. However, given emphasis placed on 'confidence', 'professionalism and goodwill', [105] it will be important to consider the drivers of such behaviour, and whether they alter as a result of the implementation of the scheme.

The most interesting type of emotional labour, which also reveals the intricate relationship between solicitor and case owner, is where emotional displays of politeness and courtesy are required in situations where the case owner does not respond as required. Here, emotional displays are expected, which, while in accordance with the participant's status as detached professional, [106] necessitates the use of deferential emotional capital, [107] and with it the suppression of negative emotions such as anger and frustration. This, at times, leads to emotional dissonance, which while understood to be a necessary element of the job, has to be discharged in order to prevent potentially negative consequences. [108] Under ELAP, the 'cultural change' put into practice relates to both the legal representative and the case owner. Therefore, responses of case owners may well also be different to that discussed by participants under the current process. Consequently, emotional labour such as that

discussed may well not be necessary as a result of the implementation of ELAP, and with it the use of deferential emotional capital. Nevertheless, it is also acknowledged that the frequency and duration of emotional labour also increased as the project provided many more formal opportunities for legal representatives and case owners to interact. [109] This not only results in increased amounts of emotional labour, but also the potential for an increase in negative consequences such as job stress and burnout. [110]

Finally, while it is clear that there is some attempt to engage in deep acting in order to promote positive working relationships with case owners, of all the immigration solicitors interviewed only one made reference to presenting emotional displays, which it seems are required to successfully implement ELAP. Therefore, it has to be acknowledged that in order to facilitate a 'cultural change', ELAP may require immigration solicitors to alter their emotional labour, and also importantly their emotional habitus. This has implications not only in relation to the emotional effort expected from immigration solicitors, but also for their identity as legal professionals.

Following on from this study, further research will be undertaken which considers the impact of changes implemented by ELAP has had on the emotional labour produced by immigration solicitor's and the potential consequences, both short term and long term, of that performance. It will also consider the impact, if any, on the sustainability of the decision and the quality of the service, which is a further aim of ELAP. [111] This type of research is vital in considering the design and implementation of schemes which require such changes to be made not only for the clients themselves, but also for the legal professionals involved in the process.

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