

# HM CROWN PROSECUTION SERVICE INSPECTORATE

## A FOLLOW UP REVIEW OF CPS CASEWORK WITH A MINORITY ETHNIC DIMENSION

### EXECUTIVE SUMMARY (THEMATIC REPORT 4/04)

#### **Introduction**

1. This is the report of the follow-up to Her Majesty's Crown Prosecution Service Inspectorate's thematic review of the way in which the Crown Prosecution Service deals with cases having a minority ethnic dimension.
2. The purpose of the original review was to analyse and assess the quality of the handling by the CPS of casework with a minority ethnic dimension. That might arise because of the racist nature of the offence(s) or because one or more defendants comes from a minority ethnic group. The review sought to provide an assurance (or otherwise, if necessary) to the Director of Public Prosecutions that the quality of decision-making in, and the handling of, such cases was sound.
3. Our original report was published in May 2002 and the main findings were as follows:

#### **Main findings of the original report**

##### *Cases arising from racist incidents*

- \* Inspectors provided a qualified assurance about cases arising from racist incidents in the light of the concerns that they raised. Identification of racist incident cases had improved, although some were not being monitored properly. The review also found that prosecutors were taking important decisions without considering relevant information, or having sufficient awareness of the wider context.
- \* There was inconsistency in the interpretation of key legislation within the criminal justice system generally and the report concluded that prosecutors needed further guidance. It also recommended that the CPS should establish a network of experienced prosecutors to oversee racist incident casework.
- \* The report called for improvements in the overall standard of witness care, to encourage more victims to pursue their complaints. There was also scope for CPS Areas to improve their engagement with diverse communities.

##### *Cases involving minority ethnic defendants*

- \* Inspectors also provided a qualified assurance about the quality of decision-making in cases involving minority ethnic defendants. They did not find that the Service was eradicating differential treatment completely. Again, prosecutors were not always considering sufficient information before taking decisions and did not always have the insight or opportunity to explore issues to the extent necessary to detect unfairness.

- \* Inspectors were, however, convinced that the Service was moving in the right direction. It has pursued a number of positive initiatives in furtherance of the recommendations of the Stephen Lawrence Inquiry and the Denman Report and embarked on an extensive exercise for monitoring the impact of ethnicity on casework decision-making.

### **Background to the follow-up**

4. The CPS undertook to produce an action plan in response to our original report with a challenging timetable for implementation. HMCPSI agreed with the Commission for Racial Equality that it would monitor the impact of its recommendations and scrutinise service delivery during the second cycle of Area inspections. HMCPSI also indicated that it expected to undertake a follow-up thematic review at an appropriate juncture.
5. As for the original project, the follow-up was overseen and guided by a Steering Group consisting of individuals from different backgrounds with particular expertise in this field. The Chief Inspector is extremely grateful to them for their time, advice and continued support.
6. The Chief Inspector is also grateful to Mr Peter Herbert QC and his colleagues from the Society of Black Lawyers who once again conducted a validation exercise. This report is produced by HMCPSI, but has been considered in draft and endorsed by the Society.

### **Methodology**

7. Seven CPS Areas that were the subject of routine inspections during the period of the thematic review, together with CPS London, were required to submit file samples of recently finalised cases arising from racist incidents. This produced an overall follow-up sample of 292 cases. The same questionnaire that was applied to assess performance in the original review was used to assess progress.
8. In light of the extensive survey carried out by the Diversity Monitoring Project (DMP), it was decided not to seek a further sample of minority ethnic defendant cases for the purposes of this follow-up. Instead, the inspection team analysed data arising from 2,300 cases examined during Area inspections since our original report was published. It also assessed progress by making a direct comparison between performance in cases where the defendant was or was not from a minority ethnic group.
9. Inspectors interviewed CPS lawyers and caseworkers about issues including file allocation, content, training and guidance received since the original review, along with the effectiveness of the monitoring system. Representatives of the police with relevant expertise and experience were also consulted, as were representatives of groups regularly assisting victims of racist crime. Additionally, questionnaires were sent to relevant groups listed in the CPS policy statement booklet (Racist and Religious Crime - CPS Prosecution Policy (July 2003)). Minority ethnic members of the public who had attended court as a victim or potential witness were sent a questionnaire covering issues such as their interaction with prosecutors and involvement in decision-making.

## **The main findings of the follow-up review**

### *Cases arising from racist incidents*

10. Whilst some important concerns remain, inspectors were satisfied that the Service has responded positively to the recommendations and that, overall, there have been encouraging improvements. It is important, however, to ensure that the momentum is not lost and that full advantage is taken of recent developments allowing the CPS to have a greater input into the building of cases from the outset.
11. An impressive training initiative has been implemented designed to cover issues raised by the original review and providing welcome clarification. Prosecutors and caseworkers are now better equipped to handle these cases with understanding, awareness and sensitivity. They are assisted by clearer and more detailed policy guidance, providing a definitive statement of the criteria that should be taken into account and setting out the service expectations for those affected by racist crime.
12. CPS Areas are beginning to use the new case management system to ensure that cases are monitored properly and the overall commitment amongst CPS staff towards the scheme appears to be increasing.
13. The quality of decisions taken by prosecutors whether to accept cases for prosecution remains high and the overall quality of case handling is improving. There is now greater consideration of important background information. The reasons for decisions are, generally, better evidenced on CPS files so that they can be explained properly to victims. There also appears to have been a welcome reduction in the proportion of cases that are discontinued inappropriately.
14. Substantial progress has been made in establishing and developing links with local minority ethnic communities. There has been considerable mutual benefit and, generally, the CPS is now perceived as a more transparent and accountable organisation.
15. There remain, however, some important aspects of performance that give cause for concern. It is particularly important that they are addressed quickly, to ensure that the significant progress achieved is not undermined. Confidence in the CPS has increased as a result of better communication and improved performance, encouraging reporting of racist crime to the police. The team's perception is that the numbers of cases resulting in prosecution is increasing and the CPS must respond positively and efficiently.
16. One of the concerns is that, despite the reduction mentioned above, there are still a significant number of racially aggravated cases in which charges are reduced inappropriately. A network of specialist consultants with a quality assurance role has not yet been established as was envisaged. Many experienced prosecutors are still not involved in reviewing racist incident cases and the substantial benefits of the training initiative will be lost if it is not followed by appropriate practical experience.
17. Other concerns relate to the way in which some racist incident cases are handled at court. Cases that have been prepared by trained experienced prosecutors are often handled by less aware agents who conduct the trial. The quality of the experience of victims attending court can suffer, creating a negative impression of the CPS that can spread quickly through minority ethnic communities, damaging confidence.

### *Cases involving minority ethnic defendants*

18. The findings of the original review - that the Service is not removing differential treatment completely - were supported by the DMP and further confirmed by analysis of data from cases examined for the purposes of the Inspectorate's second Area inspection cycle.
19. The indications are, however, that initial charges against minority ethnic defendants are significantly more likely to be appropriate, and fewer inappropriate cases brought, once CPS lawyers take responsibility for initial charging and become involved in cases at an earlier stage. The Service must take full advantage of this opportunity to influence file building if it is to drive up the quality of the information upon which its decisions are based.

### *Specific findings: cases arising from racist incidents*

20. **Policy and guidance** - the recent policy statement (issued in July 2003) now provides an invaluable reference in setting out the approach that should be adopted in racially and religiously aggravated cases and the relevant criteria to be taken into account. Inspectors did not always find, however, that the updated policy had been communicated effectively to staff.
21. **A less cautious approach** - racist crime is often uncorroborated and, in its original report, the team discussed the importance of obtaining supporting evidence and suggested that it was possible, within the terms of the Code for Crown Prosecutors, to adopt a less cautious approach to one against one cases. The evidence about whether the CPS is taking a more pro-active approach is mixed, but generally positive.
22. **Increased awareness** - a finding of the original review was that the level of cultural awareness and understanding of racism varied between prosecutors, giving rise to inconsistent application of discretion. The overall level of understanding and insight has improved. This has been achieved through training and better appreciation of CPS policy, but also by involving more staff in community engagement.
23. **Religiously aggravated crime** - the original review predated the creation of new religiously aggravated offences and there have been relatively few prosecutions under these provisions. Religious discrimination is becoming more prevalent. In some Areas, the CPS is working closely with the communities and had played an important part in defusing religious tension. Prosecutors must be alert to the increase in religiously aggravated crime and respond positively.
24. **The need for training** - HMCPSI recommended that the CPS should consider training for relevant staff, not only covering matters of law, evidence and policy, but also designed to increase the general level of cultural awareness. An impressive training package has been produced covering the issues of concern raised in the original report.
25. **Identification of racist incident cases** - the evidence suggests that police identification of racist incident cases continues to improve. However, this finding has to be treated with caution having regard to the small size of the sample. The most recent Racist Incident Monitoring Scheme (RIMS) Annual Report, relating to a significantly larger sample of cases finalised between April 2002 and March 2003,

showed a slight downturn in the rate of identification. Police performance in supplying racist incident forms to the CPS was unsatisfactory at the time of the original review and has not improved significantly.

26. CPS performance in identifying cases appears to have fallen back slightly, in that only 84.8% of files in the follow-up sample were marked clearly (compared to 92.2% in our original sample). Positive action has been taken, however. An IT prompt has been built into the new case management system, monitoring forms have been made available at other locations where initial review is carried out, the profile of RIMS co-ordinators has been raised and general staff awareness has been increased.
27. **The operation of RIMS** – the position has improved since the original review but there are still some cases that are not monitored. Some CPS Areas have been validating monitoring statistics by comparing their list of cases with that of the local police. In other Areas, however, comparison has not been possible due to differing recording criteria and because RIMS data is not always up-to-date.
28. **The effectiveness of RIMS** – at the time of the original review, inspectors found that responsibility for administering RIMS was often left to an individual co-ordinator and that many lawyers were unfamiliar with monitoring procedures. Some staff were unconvinced about the benefits of RIMS because they had not received a proper explanation of its purpose, or adequate feedback of the results. This was addressed, as recommended, in the national training. Generally, the commitment towards, and awareness of, RIMS has been raised.
29. **Making use of monitoring information** – the original review found that more could be done with RIMS statistics to assure quality and that Areas should look critically at the reasons behind the figures. It was also questionable whether the existing scheme captured the necessary information. Progress has been limited. The CPS decided to establish a working group to reassess RIMS, but to await publication of the full DMP report, which (at the time of writing) had not occurred. There are good examples of the sharing of local RIMS data with community groups and counterparts from other criminal justice agencies during our follow-up exercise but, generally, there has been little improvement.
30. **Review** – inspectors again found that the overall standard of decisions at initial review whether to accept racist incident cases for prosecution is good. Prosecutors identified the racism as an aggravating feature in almost all cases in our follow-up sample and the general external perception is that the quality of case handling is improving.
31. Overall, the quality and timeliness of charging decisions has improved. A new system has been piloted recently, and is now being introduced, under which CPS lawyers will determine the original charges, rather than the police. The evidence suggests that a significantly greater proportion of initial charges in racist incident cases will be appropriate when the CPS is fully responsible for their determination.
32. Inspectors were concerned to find, in the original review sample, a significant number of cases in which the charge had been reduced inappropriately (28.1% of cases in which the charge was reduced). There has been some improvement in this important aspect of performance, although the position continues to demand management attention. The comparative figure for the follow-up review was 21.7%.

33. The discontinuance rate for racist incident cases in the original file sample was greater than the national average for all types of case at the time (14.3% compared to 13%). The discontinuance rate for cases in the follow-up sample is closer to the current national average (13.2% compared to 12.7%). The proportion of cases in which inspectors considered that discontinuance was inappropriate has also reduced.
34. **Information taken into account in decision-making** – in the original review, HMCPSI found that the overall standard of police files and the level of background information were no better than in other less sensitive types of case. Consequently, some CPS decisions were taken without material information and prosecutors could not always present racist incident cases in their best light. Overall improvements in file quality are yet to materialise. Generally, however, the effectiveness of the partnership between the police and the CPS is increasing, which should lead to prosecutors becoming significantly better informed.
35. **The interpretation of hostility based upon race** – the original review found that there was uncertainty about the proper interpretation of racist hostility. Some CPS Areas have been particularly active in attempting to achieve a consistent approach. Case law has since provided clearer guidance and discussion of this issue was an integral part of the national training initiative.
36. **Developing expertise** – the original report suggested that all appropriate staff should receive the basic level of training needed and have the opportunity to handle racist incident cases, stressing the importance of not confining the necessary skills to a small number of lawyers. Delivery of the national training has meant that there is now a larger pool of prosecutors equipped with the requisite knowledge and awareness. In some Areas, however, inspectors found that specific prosecutors still handle all racist incident cases. There is a danger that the substantial benefits of the training will be lost if other prosecutors do not have the opportunity to gain practical experience.
37. It was recommended that individuals with appropriate expertise should act as consultants in respect of racist incident cases and fulfil a quality assurance role. They would advise and guide colleagues and handle the more complex cases. This would be an important step towards achieving consistency, since they could liaise and create a national network. Inspectors were therefore disappointed to note that such a network has not yet been established and remain convinced that it would enhance the performance of the CPS in these cases.
38. **Case preparation** – the overall quality of initial and continuing review endorsement in cases examined for the original study was unsatisfactory and attracted a recommendation. Failure to record decision-making adequately meant that the CPS was particularly vulnerable if decisions were challenged. It is now under a duty to explain its decisions to victims if cases are discontinued or if the level of charge is reduced significantly. The follow-up review found that the overall quality of initial review endorsements and continuing review endorsements had improved. The recording by prosecuting advocates of decisions taken at court was, however, less satisfactory.
39. **Witness care** – the overall perception is that the service provided by the CPS to victims and witnesses attending court has not improved in the time since we conducted our original review. There is a real risk that the progress that has been achieved will be undermined if the overall quality of victim and witness care in cases arising from racist incidents does not improve.

40. **Liaison and community engagement** – the overall level and effectiveness of community engagement has improved significantly from a low starting point. Most external consultees from groups regularly assisting victims were very positive about the progress that has been made, which has benefited both the CPS and members of minority ethnic communities alike.

**Specific findings: cases involving minority ethnic defendants**

41. **Review** – the original review concluded that the CPS was addressing overcharging and inappropriate charging of minority ethnic defendants, but was not yet satisfying its gate-keeping role to the full extent required to ensure that differential treatment was eliminated. Area inspectors have continued to find that the quality of initial decisions whether to pursue cases involving minority ethnic defendants is on a par with the general standard.
42. **Selection of the appropriate charge** – evidence gathered for the original review suggested that it was more likely that the police would overcharge in cases involving minority ethnic defendants but that, in most cases, the CPS rectified the situation. This inspection found that the CPS was addressing overcharging to a large degree at its initial consideration of the case. Under the new procedures, the initial consideration by the CPS will also involve formulating the charge. Initial charges against minority ethnic defendants are significantly more likely to be appropriate once the new procedures are established.
43. **Discontinuance** – the original study also suggested that cases involving minority ethnic defendants are more likely to be discontinued. This finding was confirmed from consideration of a more recent case sample. Prosecutors have to discontinue a greater proportion to fulfil the gate-keeping role. With the CPS determining the initial charge under the new system, our evidence suggests that fewer inappropriate cases will be brought.
44. **The wider context** – prosecutors should have a clear understanding of the wider context when considering cases involving minority ethnic defendants. The original report recommended that CCPs should ensure that there is awareness of the issues and that prosecutors should be alert to the possibility of discrimination. It was decided that the CPS Policy Directorate would consider the need for guidance in light of the findings of the DMP. As we have indicated, the full DMP report is awaited at the time of writing. HMCPSI is not aware of any further guidance that has been issued to prosecutors.
45. **The need for ongoing and improved monitoring** – the original review recommended that all available monitoring data and information should be utilised to the full with the ultimate aim of eliminating discrimination and achieving consistency. During the course of that the review, the DMP research was commissioned and its findings are now available in summary. Ethnic monitoring was also added to the specification for the new CPS electronic case management system. It is anticipated that the system will enable easier collection of data by casework category, thereby improving the ability of Areas and CPS Headquarters to monitor effectively.

A copy of the follow-up report may be obtained by telephoning the Corporate Services Group of HMCPS Inspectorate (telephone 020 7210 1197), and is also available at [www.hmcp.si.gov.uk](http://www.hmcp.si.gov.uk).

HMCPS Inspectorate  
May 2004