



A Follow Up Review of CPS Casework with a Minority Ethnic Dimension

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INTRODUCTION

- 1.1 This is the report of Her Majesty's Crown Prosecution Service Inspectorate's (HMCPSI) follow-up review to assess progress made by the CPS since the publication in April 2002 of the report on the thematic review of the way in which the Crown Prosecution Service (CPS) deals with cases having a minority ethnic dimension.
- 1.2 The purpose of a thematic review is to paint a national picture about how the CPS deals with a given subject throughout England and Wales, based upon evidence drawn from Areas and from Headquarters.
- 1.3 In the concluding chapter of our 2002 report, we indicated that we would take the opportunity to undertake a shorter follow-up thematic review at an appropriate juncture to consider how the CPS had addressed the issues raised. This report, therefore, provides an assessment of progress.
- 1.4 The purpose of the original review was to analyse and assess the quality of the handling by the CPS of casework having a minority ethnic dimension. That might arise because of the racist nature of the offence(s) or because one or more of the defendants comes from a minority ethnic group.
- 1.5 We found that review was generally of good quality in cases arising from racist incidents (if sometimes under-informed) but that not all cases were being monitored appropriately. We identified the need for further training to address uncertainty and inconsistency amongst prosecutors. There was also greater scope for community engagement, to better inform decision-making and increase public confidence.
- 1.6 In cases with defendants from a minority ethnic group, we also found that the overall quality of review was good. We found that the CPS was generally discontinuing inappropriate cases and ensuring that appropriate cases were pursued at the correct level. However, we also considered that it could do more to eliminate differential treatment completely.
- 1.7 In the summer of 2001, the CPS commissioned the Diversity Monitoring Project (DMP) to carry out an independent examination of CPS files in order to determine whether there was "... any bias in decision-making by the CPS at each stage of the prosecution process". A team led by Professor Gus John subsequently carried out extensive research and the executive summary of its 'Race for Justice' report was published in October 2003. Findings were broadly consistent with the findings of the earlier HMCPSI report; not surprising since although it was published much later than ours, the bulk of file sample for the DMP was substantially contemporaneous to that used in our review.
- 1.8 In assessing progress in respect of cases with minority ethnic defendants, we have considered the findings of the DMP and looked at whether there have been improvements in casework performance since the period when the cases examined for the purposes of that study were finalised.

The role of the CPS

- 1.9 The CPS is a public service for England and Wales headed by the Director of Public Prosecutions (DPP) and answerable to Parliament through the Attorney General. It is a national organisation consisting of 42 Areas each headed by a Chief Crown Prosecutor (CCP). Each CPS Area corresponds to a single police force area¹ and enjoys substantial autonomy but within the parameters of a national framework document.
- 1.10 The Crown Prosecution Service applies the principles set out by the DPP in the Code for Crown Prosecutors (the Code) so that it can make fair and consistent decisions about prosecutions.
- 1.11 The police are responsible for the investigation of crime. Although the CPS works closely with the police, it is independent of them. Proceedings are usually started by the police. Each case that the CPS receives is reviewed to make sure that the evidence is sufficient and that a prosecution is in the public interest.
- 1.12 At the time of the original review, the police were responsible for charging all defendants and the CPS then decided whether to continue with the police charges, to change them or to stop the case. Further to a recommendation of Sir Robin Auld in his Review of the Criminal Courts of England and Wales ('the Auld Report'), the police and CPS are in the process of introducing new procedures, under which CPS lawyers will determine the original charges that the defendant should face (other than in very minor cases). Currently a shadow scheme is being implemented, to be followed by a scheme which has statutory authority. The scheme should substantially improve the number of cases charged correctly from the outset.

Scope of the follow-up review

- 1.13 Sixteen CPS Areas assisted us in our original work: Cambridgeshire, Cheshire, Cleveland, Durham, Hampshire and the Isle of Wight, Kent, Lancashire, London, Norfolk, Northamptonshire, Nottinghamshire, South Wales, South Yorkshire, Suffolk, West Midlands and West Yorkshire. Eight CPS Areas assisted in the follow-up, including six of the original 16: Kent, London, South Wales, South Yorkshire, West Midlands and West Yorkshire. The additional two Areas were Leicestershire and Merseyside.
- 1.14 In order to assess the quality of decision-making and whether progress has been made, we have compared our findings in respect of cases arising from racist incidents in the eight selected Areas with similar data gathered during the original review. We readily acknowledge that the indications provided have to be regarded with some caution in light of the limited size of our follow up sample.

¹ Except CPS London which serves the Metropolitan Police Service and the City of London Police.

- 1.15 In considering progress in cases involving defendants from minority ethnic groups, we have considered data from file examination during our second cycle of Area inspections, which commenced in November 2002, and compared performance in respect of cases where the defendant was not from a minority ethnic group. As a result, any differences in the treatment of such cases have been highlighted.
- 1.16 The original thematic review was our first to be overseen and guided by a Steering Group consisting of individuals from different backgrounds with particular expertise in this field. Members of the original group (with necessary additions or substitutions) were reconvened for the follow-up review. In addition to HM Chief Inspector and members of the review team, the Steering Group comprised:
- Gordon Barclay, Home Office Research, Development and Statistics Directorate;
 - Dr Rohan Collier, Consultant and former Head of CPS Equality and Diversity Unit;
 - Peter Herbert QC, Society of Black Lawyers;
 - Huw Heycock, Chief Crown Prosecutor for CPS South Wales and CPS national lead responsibility for implementation of the recommendations of the original HMCPSI thematic review;
 - Barry Mussenden, Department of Health; and
 - Pat White, Churches' Commission for Racial Justice.
- Tony Apperley and Nicola Perkins from the Home Office CJS Race Unit had observer status.
- 1.17 The Steering Group advised us initially on our methodology and then at regular intervals during the course of the review. They provided expert guidance on the conduct of the follow-up and assisted in the identification of key issues. They considered our emerging findings and helped to shape this report. The Chief Inspector is extremely grateful to them for their time, advice and support.
- 1.18 The Chief Inspector is also grateful to Peter Herbert and his colleagues from the Society of Black Lawyers (SBL) who conducted a further validation exercise. This report is produced by HMCPSI but again takes account of additional points raised by the Society.
- 1.19 Chapter 12 summarises the review team's overall assessment of progress and conclusions.
- 1.20 Chapter 13 sets out what we consider to be the way ahead for the Service.
- 1.21 Chapter 2 sets out the methodology used in this follow-up review.

- 1.22 The remaining chapters examine our findings and set out the evidence on which those findings are based.
- 1.23 The annexes at the end of the report contain background information, which is designed to help the reader with matters of detail. Included is a list of those outside the CPS who have assisted in our work (Annex D).

The follow-up review team

- 1.24 The follow-up review team comprised the Chief Inspector, a Deputy Chief Inspector and one Legal Inspector, all of whom had participated in the original review. The administration unit of the Northern Group of HMCPSI based in York supported the team.
- 1.25 The Chief Inspector is grateful to the relevant Chief Crown Prosecutors for releasing their staff to participate in the follow-up. We are grateful for the co-operation and support of all those with whom we came into contact during our work.

METHODOLOGY

File examination

(i) cases arising from racist incidents

- 2.1 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 to produce an overall follow-up sample of 292 cases.
- 2.2 The same questionnaire that was applied to assess performance in the original review was used to assess progress. We mention the statistical comparison of the data produced where relevant in the ensuing chapters of this report. We regard such comparisons as mere indicators and have been careful not to draw any firm conclusions where the number of cases involved is relatively small. The percentage figures quoted relate to our full follow-up sample of 292 cases unless otherwise stated. We are also mindful that we have not compared strictly 'like with like' (since we examined files from 16 Areas in the original review and only six of those Areas have again provided files for the follow-up exercise).
- 2.3 Each file was examined initially by an experienced Legal Inspector. The Deputy Chief Inspector provided a 'second opinion' in cases in which inspectors considered that the decisions taken by the prosecutor did not accord with the principles of the Code for Crown Prosecutors.

(ii) cases involving defendants from a minority ethnic group

- 2.4 The Areas assisting the original review were asked to submit a specified number of cases in which the defendant was a member of a minority ethnic group and the questionnaire used in the ordinary course of Area inspections was used to assess the quality of review. Direct comparison was then made with a control sample from the same Areas of cases in which the defendant was not from a minority ethnic group. Any differences in the quality of decision-making became apparent from this analysis.
- 2.5 In light of the extensive survey carried out by the DMP (mentioned at paragraph 1.7 above), we decided not to seek a further sample of minority ethnic defendant cases for the purposes of our follow-up review. Instead, we have analysed the substantial sample of cases that have been examined for the purposes of Area inspections since the original review report was published. By making direct comparison between cases where the defendant was or was not from a minority ethnic group, we can assess whether progress has been made.

Consultation

- 2.6 We interviewed CPS lawyers and caseworkers from Areas about issues including file allocation, content, training and guidance received since the original review and the effectiveness of the monitoring system.
- 2.7 Representatives of the police with relevant expertise and experience were consulted, as were representatives of groups regularly representing or assisting victims of racist crime, about whether CPS performance has improved in this area of casework since the thematic review report was published.
- 2.8 We again consulted the individuals with a national responsibility or acknowledged expertise who had assisted the original review. We also sent questionnaires 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 (whether the trial went ahead or not) were sent a questionnaire covering issues such as their interaction with prosecutors and involvement in decision-making.
- 2.9 A list of those consulted is set out at Annex D.

Validation exercise

- 2.10 The Society of Black Lawyers was again invited to nominate a small group of its members to undertake a validation exercise. They selected 60 cases arising from racist incidents that had already been examined by HMCPSI inspectors. The findings of the HMCPSI inspectors in respect of these cases were not made known to the SBL team before they made their assessment. The two separate assessments were then compared.
- 2.11 The issues raised by the Society of Black Lawyers are reflected within the overall findings. This report has been seen in draft by the team nominated by the Society of Black Lawyers and they have endorsed it.

CASES ARISING FROM RACIST INCIDENTS

SUMMARY

- 3.1 We set out our findings in detail in the relevant chapters below. Overall, significant progress has been achieved and the Service is moving in the right direction. Some important issues of concern remain, however, which must be addressed if the improvement thus far is to be sustained and long-term progress achieved.
- 3.2 We have found that the updated policy guidance issued in July 2003 has been well received and that the recent national training initiative has generally met its aims. Our evidence suggests that police identification of racist incident cases has improved, as has the overall commitment amongst CPS staff towards the Racist Incident Monitoring Scheme (RIMS). The quality of decisions whether to accept cases for prosecution remains high. Our assessment and the overall perception of external consultees is that the quality of case handling is improving.
- 3.3 The consideration of relevant supporting information has improved and the proportion of racist incident cases that are discontinued inappropriately appears to be reducing. The reasons for the decisions are better evidenced and more often explained to the satisfaction of victims. The level and effectiveness of community engagement has improved significantly and a number of worthwhile and innovative initiatives are being pursued designed to increase public confidence.
- 3.4 There remain, however, a significant proportion of cases in which charges are reduced inappropriately. Further improvement is also required in the monitoring of racist incident cases. Generally, attempts thus far to compare police and CPS statistics and promulgate monitoring data have had limited success.
- 3.5 A network of specialist consultants has not yet been established to liaise about common issues and assist less experienced colleagues handling such cases within their Areas. In some Areas, we found that all racist incident cases are still dealt with by a relatively small number of designated prosecutors despite all having received the national training. There is a danger that the benefits of that training will be lost if it is not followed up with appropriate practical experience.
- 3.6 Our evidence suggests that, generally, the overall service provided to victims and witnesses has not improved sufficiently. Clearly, the service now covered by the Direct Communication with Victims Scheme (DCV) once a decision to discontinue or substantially alter a charge has been made, constitutes an improvement.

CPS POLICY AND GUIDANCE

- 4.1 In our original review, we found that existing CPS policy had been overtaken by events and that there were differences in approach between prosecutors. There was a pressing need for further guidance. We made specific recommendations about further guidance and training.
- 4.2 At the time that the thematic review report was published, CPS Policy Directorate was working on a public policy statement. A national working group headed by a CCP was tasked with developing its content and consulted widely. A booklet and summarising leaflet, aimed at the public and designed to increase confidence, were issued in July 2003. Detailed guidance was also provided for CPS staff about applying the policy in practice.
- 4.3 The policy statement now provides an invaluable reference, for prosecutors and others seeking to understand the reasons for decision-making, in setting out the approach that should be adopted in racially and religiously aggravated cases and the relevant criteria to be taken into account.
- 4.4 We regard the publication of this policy statement as a significant and important step forward towards achieving consistent good-quality case handling. It specifically addresses areas where we found that there was uncertainty and inconsistency. A useful checklist is also provided with guidance to prosecutors so that they can ensure that they have considered the appropriate issues and requested any available supplementary material to inform their decision-making.
- 4.5 It was not possible to assess the impact of the updated policy guidance from our follow-up file sample, since the majority of cases were finalised before it was introduced. Whilst generally we consider that casework performance has improved, we examined a number of cases that would not have been handled in accordance with that guidance had it been available at the time, for example where the level of charge was reduced inappropriately.
- 4.6 We did not always find that the updated policy had been communicated effectively to staff. In some CPS Areas, the documentation was merely left on desks without explanation or presentation. It is vital to ensure that staff are not only aware of the policy but also appreciate the importance of pursuing it in practice. In the Areas where we found that the policy had been communicated most effectively, it appeared that the commitment and enthusiasm of senior managers have been transmitted to staff.
- 4.7 We urge CPS managers to ensure that prosecutors are familiar with the policy statement and refer closely to it when dealing with racially and religiously aggravated cases. We also commend it to those outside the CPS seeking to ensure that it is dealing with such cases appropriately and is properly accountable for its decision-making.

- 4.8 Generally, dissemination of the new guidance externally has been better than internally. Areas have organised public launches inviting representatives and members of minority ethnic communities and criminal justice agencies to receive information and provide feedback. Booklets have been sent out to relevant groups and made available at appropriate distribution points, so that members of the public likely to be affected by racist crime can pick them up informally. Most CCPs have interacted well with their local media resulting in positive coverage by issuing suitable press releases and making themselves available for interview. There remains scope, however, for greater engagement of the minority media, in order to reach more people and increase the level of awareness and understanding.

A less cautious approach

- 4.9 A feature of racist crime is that it is often uncorroborated, coming down to the word of the victim against that of the defendant when seeking to prove the racial element. We discussed the importance of pursuing avenues for obtaining supporting evidence in our original report and do so again at paragraphs 6.25 to 6.27. Where that information is not available, we also suggested that it may be possible, within the terms of the Code, to adopt a less cautious approach to one against one cases; but each case would still have to be considered on its individual merits. This approach has been adopted in cases involving domestic violence, which are, in some respects, analogous.
- 4.10 Our evidence about whether the CPS is taking a more proactive approach is mixed but generally positive.
- 4.11 There was clear evidence in our file sample of a greater willingness to pursue one against one cases to trial. In a significant proportion of cases where that approach was adopted, the defendant was convicted. In those cases that were unsuccessful, the victim was at least provided with the comfort of knowing that the prosecution had pursued his or her account including the racial element.
- 4.12 However, we also examined and were told about similar cases that were not pursued when they might have been, because the prosecutor had not considered or given due weight to other evidence or circumstances that were supportive of the complainant's version of events, such as injury or damage to property.

The need for awareness

- 4.13 A finding of our original review was that the level of cultural awareness and understanding of racism varied between prosecutors, giving rise to inconsistent application of discretion. We recommended that the CPS should consider the implementation of training to encompass, inter alia, increasing awareness of relevant racial, religious and cultural factors.
- 4.14 Generally, those whom we consulted interacting regularly with the CPS consider that the level of understanding and insight has improved. This has been achieved through training and better appreciation of CPS policy but also, particularly in the Areas where it is most

developed, by involving staff in community engagement. The way in which this has been done and the benefits were explained by one CCP:

'We have made involvement in community engagement a performance appraisal objective for all staff. This has been extremely beneficial in increasing their understanding and awareness. Managers have taken staff with them to meetings and events. This increases general awareness as well as ownership and understanding of the issues. The balance has to be achieved between ensuring that CPS representation is at the right level, so that we are taken seriously, and having a coalface input.'

4.15 Experience has shown that staff tend to respond positively to this, many of those involved volunteering subsequently to participate in functions and events held outside normal working hours. In addition to providing the opportunity to meet members of minority ethnic communities and exchange information, it is also an important part of establishing the public face of the CPS, which is an essential aspect of local accountability.

4.16 Generally, awareness of religious differences is not as developed as it might be. Speaking about the CPS, but also about public service organisations generally, one consultee experienced in assisting victims of racist crime told us:

'There is a tendency to put all minority ethnic communities under the same umbrella. However, different communities have different cultures, values and priorities. That is important to understand. There is little understanding of religious differences. In some communities, the racial aspect is the most important factor and in others it is religion.'

4.17 Our examination of casework for the original review predated the implementation of the Anti-terrorism, Crime and Security Act 2001, which created new religiously aggravated offences. Considerable importance is attached to cases brought under these provisions, evidenced by the fact that the Director of Public Prosecutions (DPP) provides an annual report on them to the Attorney General.

4.18 In April 2002, the CPS introduced a new procedure requiring prosecutors considering religiously aggravated cases to submit to the DPP a summary of the facts and decisions taken. The DPP may ask to see the file and will review the case himself if he has any reservation about the decision. These new offences have now been available to prosecutors for more than two years and, although not part of the original review, we have taken advantage of this opportunity to consider their impact.

4.19 There have been relatively few religiously aggravated prosecutions thus far, but the general perception of those working with victims is that religious discrimination is becoming more of an issue and this type of offence more prevalent. Problems have increased in the wake of recent terrorist attacks with perpetrators associating them with particular religious groups. This is often accompanied by an ignorance of religious differences resulting in members of different groups being targeted.

- 4.20 In some Areas, we were told that the CPS is working closely with the communities and had played an important part in defusing religious tension. They are aware of the upsurge in religiously aggravated offences and are discussing the issues with local religious leaders.
- 4.21 We remain convinced that a full appreciation of the wider context is needed to ensure that decision-making is properly informed and that cases are handled appropriately. This can be achieved through focused community engagement and effective internal communication. The entire CPS must be alert to the increase in religious discrimination and respond accordingly if it is to maintain its progress and continue to improve public confidence.

The need for training

- 4.22 We recommended that the CPS should consider the provision of training for relevant staff, not only covering matters of law, evidence and policy but also designed to increase the general level of cultural awareness. We also mentioned the benefits of involving representatives of other agencies and minority ethnic communities in that training. In order to improve performance and achieve consistency we recommended that training should encompass:
- policy, legal and evidential matters in light of recent changes;
 - guidance about what constitutes hostility based on race for the purposes of the Crime and Disorder Act 1998;
 - achieving a consistent approach towards cases involving racist abuse of police officers;
 - achieving a consistent approach towards the laying of alternative charges;
 - increasing awareness of relevant racial, religious and cultural factors; and
 - explaining the purpose of and benefits achieved from monitoring.
- 4.23 Our assessment of progress in these important areas of performance is contained in Chapter 6, in which we consider the quality of review.
- 4.24 The CPS Training Branch was required to develop a strategy and national training programme designed to address our concerns and all elements of our recommendation. A core group of Area trainers was established to deliver the package locally, as part of the Area's training plan.
- 4.25 An impressive training package was produced and it has been well received by CPS staff and those from outside the CPS invited to participate, including police officers and members of minority ethnic communities. Involvement of those individuals was particularly valuable in that they provided a different perspective and added insight, leading to a wider more informed discussion of the issues.

- 4.26 The training began with the showing of a scene-setting video illustrating the impact of racism. This emphasised the seriousness of the issues and the importance of getting it right, thereby increasingly the receptiveness of trainees for what followed. That included a specific section on the Racist Incident Monitoring Scheme, designed to increase commitment to monitoring, covering form completion and the consequences of inaccuracy. There was an important section on the legal elements and evidential considerations. Other important issues were also discussed, including the use of alternative charges and plea acceptance. Some Areas were innovative in their choice of venue, with one conducting training at a Sikh temple and inviting members of local minority ethnic communities to participate.
- 4.27 Overall, we consider that the national training initiative has met its aims and covered the issues of concern raised in our original report.
- 4.28 However, our recommendations were designed to achieve a situation in which all prosecutors should be equipped to deal with straightforward cases of this type. In some Areas, the situation persists that all racist incident cases are allocated to specific individuals thereby depriving other prosecutors of the opportunity to put the benefits of their recent training into practice. Without appropriate practical experience, it is likely that the knowledge and skills acquired will dissipate quickly. We discuss this issue further at paragraphs 6.71 to 6.75.

MONITORING OF RACIST INCIDENT CASES

- 5.1 RIMS gathers information on prosecution decisions and outcomes in all cases identified by the police or CPS as racist incidents. The information recorded is collated and analysed by members of the CPS Policy Directorate and published annually in a report. The effectiveness of RIMS is dependent on how well the police and the CPS identify racist incident cases and ensure that they are properly registered.

Identification of racist incident cases by the police

- 5.2 In our original report, we noted that the performance of the police in identifying racist incident files was improving steadily and we have again found that they endorsed almost all cases in our file sample clearly as such. Again, this finding has to be treated with caution having regard to the small size of our sample. We are aware that the most recent 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 police identification of racist incident cases.
- 5.3 The police have agreed to supply the CPS with a copy of their racist incident form (or similar computer record) in all racist incident prosecutions, to supply additional background information and assist identification of such cases. In April 2002 we reported that the performance of the police in supplying racist incident forms to the CPS was unsatisfactory, making the suggestion that CCPs should strongly encourage the police to improve their rate of submission and that prosecutors should always request such forms when they have not been submitted.
- 5.4 The evidence that we have gathered for our follow-up review suggests that the position has not improved significantly. The CPS has taken action in reissuing guidance about checking for the presence of and requesting such information, but IT issues remain on the police side and the agreement is to be renegotiated.

Identification of racist incident cases by the CPS

- 5.5 If a case is identified as arising from a racist incident, and the file marked accordingly, it is more likely that it will be handled with appropriate sensitivity. Performance in this respect 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).
- 5.6 In our original review, we found that some Areas did not have adequate procedures to prevent cases from slipping through the net and that there were often discrepancies between the numbers of cases recorded by the police and by the CPS. Home Office research carried out shortly before publication of the report suggested that a significant proportion of racist incident cases are not captured by RIMS. We recommended that mechanisms should be in place to ensure that they are captured.

- 5.7 In response, it was decided to build an IT prompt into the new CPS case management system (COMPASS) requiring completion of the relevant RIMS form before a racist incident case could be finalised. National roll out of COMPASS began in April 2003 and was nearing completion at the time of writing. Areas in which COMPASS is well established have been able to produce a list of racist incident cases registered on the system for comparison with the number of completed monitoring forms. If cases are found in which the forms have not been completed, they are returned to the reviewing prosecutors.
- 5.8 Whilst this should increase the numbers of cases captured by the monitoring system, it is not a complete solution in that it is dependent upon cases being identified initially as racist incidents and being registered on COMPASS as such, so that the prompt can take effect on finalisation.
- 5.9 Supplementary action taken by the CPS to improve the rate of initial identification has included making monitoring forms available at court and in police stations (when initial review is carried out there), raising the profile of RIMS co-ordinators and running staff awareness campaigns. The national Quality Assurance System introduced in April 2003 has also alerted managers when cases have slipped through the monitoring net.
- 5.10 It has been a weakness of RIMS that it does not monitor or facilitate analysis of performance by defendant or victim ethnicity. COMPASS now monitors the ethnicity of defendants and has the capacity to monitor victims in the same way. Clearly this is an important aspect of the monitoring and quality assurance process, both for racist incident cases and for cases in which the defendant is from a minority ethnic group. The CPS will no doubt wish to develop its systems to capture this information. It is also imperative that the police provide accurate information about the ethnicity of the parties to the CPS. Some CCPs may need to consult with their local police force to ensure that this information is always included in prosecution files.
- 5.11 Ensuring that racist incident cases are monitored is a constant management issue. It is important that existing staff are reminded regularly and that appropriate guidance is included in induction information provided to new recruits.
- 5.12 It is clear that the position has improved since the original review but CPS staff accept that there are still some cases that slip through without being monitored. Some CPS Areas have been able to validate their monitoring statistics by comparing their list of cases with that of the local police.
- 5.13 We recommended that CCPs should consult with the police to ensure that data collected in respect of racist incidents is accurate. CPS Areas were required to review existing arrangements, or introduce new arrangements, with the police to get them to supply their figures monthly for checking against CPS monitoring logs. Some Areas have been successful in working more closely with the police and are moving towards establishing common monitoring procedures. In other Areas, however, comparison has not been possible due to differing recording criteria and because RIMS data is not always up-to-date.

- 5.14 Once fully established, COMPASS should ensure that CPS Areas possess up-to-date information about their racist incident caseload. Some Areas have already begun the process of agreeing terminology and criteria with their local police forces to achieve commonality, so that comparisons can be made. The absence of consistent nationally agreed recording criteria is something that CPS senior managers will no doubt wish to pursue with the Association of Chief Police Officers (ACPO).

Effectiveness of RIMS

- 5.15 At the time that we conducted the original review, we found that responsibility for administering RIMS was often left to an individual co-ordinator. Infrequent involvement in racist incident cases meant that many lawyers were unfamiliar with monitoring forms and procedures. Additionally, 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. We recommended that this should be an important ingredient of the proposed training initiative and that CCPs should ensure that all relevant staff are fully aware of the procedures involved in implementing RIMS, of the reasons for monitoring and participate in the process.
- 5.16 Generally, CPS staff interviewed for the purposes of the follow-up review considered that the overall commitment to RIMS has improved. In most Areas, awareness has improved significantly and the profile of co-ordinators has been raised. Some have developed successful methods of communicating the results of monitoring to staff. This was particularly advanced in one Area where the Area co-ordinator prepares a monthly analysis, which is e-mailed to all staff and placed on notice boards. The information is presented in an accessible form and is explained adequately. The provision of such information on a regular basis is to be encouraged.
- 5.17 There is still more that could be done, however. Some CPS staff said that the purpose and benefits of RIMS had only been explained to the key players who were still doing all of the monitoring work. We have already mentioned the need to involve a greater proportion of prosecutors in racist incident casework to take full advantage of the skills and the increased awareness provided by the national training initiative. That increased awareness should include a commitment towards and better understanding of monitoring procedures.

Making use of monitoring information

- 5.18 In our original review, we concluded 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. We anticipated that a suitable opportunity for refinement would arise with the introduction of COMPASS.

- 5.19 Progress on this front has been limited. It was decided to establish a working group to reassess RIMS and make recommendations for change. However, it was also decided to await publication of the full DMP report, which (at the time of writing) has not yet occurred.
- 5.20 The sharing of local RIMS data with community groups and counterparts from other criminal justice agencies provides visible accountability. We recommended that CCPs should ensure that RIMS data relevant to their Area is discussed with appropriate local representatives of other relevant agencies as part of achieving an effective partnership approach towards dealing with racist incidents.
- 5.21 Whilst we found, in conducting our follow-up review, good examples of RIMS data being analysed locally, distributed appropriately and discussed at liaison meetings, generally, there has been little improvement.

REVIEWING CASES

Introduction

- 6.1 Our assessment of progress is based on examination of our follow-up file sample and consultation with CPS staff, the police and representatives of groups regularly assisting victims of racist crime. We have compared data with that gathered as a result of applying the same questionnaire to the original review file sample and also, where possible, substantial general data gathered in the ordinary course of Area inspections.
- 6.2 Legal decisions frequently turn on legal or evidential issues that are essentially matters of professional judgement. It often occurs that different lawyers, for perfectly proper reasons, take different views in relation to the same case. Our assessments in relation to the quality of decision-making, therefore, consider whether the decision taken was one that was properly open to a reasonable prosecutor having regard to the principles set out in the Code and other relevant guidance. A statement that we disagree with a decision therefore means that we consider it was wrong in principle; we do not ‘disagree’ merely because inspectors might have come to a different conclusion.

Quality of review

(i) initial review

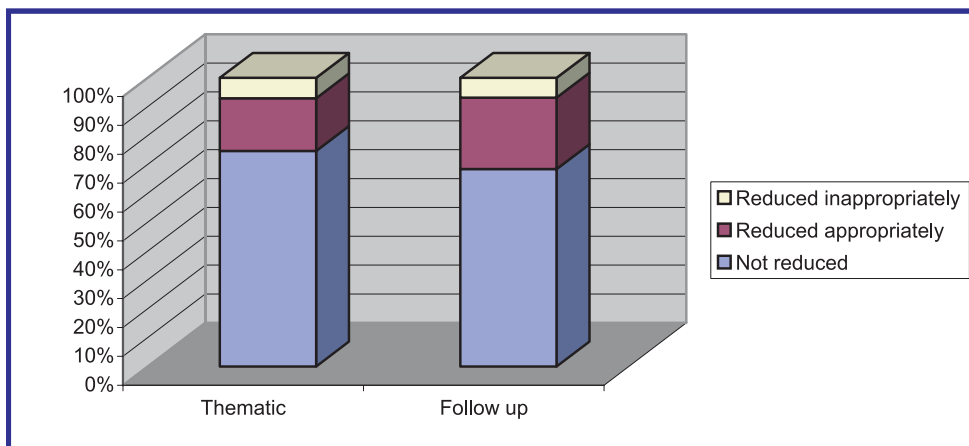
- 6.3 We have again found that the overall standard of decisions at initial review whether to accept racist incident cases for prosecution is good.
- 6.4 We examined a further 292 cases for the purposes of the follow-up review and found that all applications by prosecutors of the evidential and public interest tests at initial review were correct. ‘Correct’ in this context has its technical meaning. We did not find any cases in which the decision whether to accept the case was one that was not open to a reasonable prosecutor considering the information available.
- 6.5 Prosecutors identified the racism as an aggravating feature in almost all cases and the general perception of those consulted is that the quality of decision-making and case handling is now improving.

(ii) selection of the appropriate charge

- 6.6 Overall, the quality and timeliness of charging decisions has improved.
- 6.7 Evidence gathered for the original review suggested that the police were less likely to get the charge right in racist incident cases than in other types of case. At the time, the police were responsible for charging all defendants. A new system has since been piloted and is

now being introduced under which CPS lawyers will determine the original charges that the defendant should face (other than in minor cases).

- 6.8 The vast majority of the cases that were examined for the follow-up were charged by the police. The evidence that we have gathered, for both the original and follow-up reviews, 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.
- 6.9 A greater proportion of cases were pursued as racially aggravated under the Crime and Disorder Act 1998 in our follow-up sample (78.4% compared to 73.9% in the original review) and prosecutors appear more likely to amend inappropriate police charges at the first reasonable opportunity (71.1% compared to 56.7% - 86 out of 121 cases in which amendment was necessary).
- 6.10 Cases in which charges are reduced are particularly sensitive and can come under close scrutiny. The timeliness of those decisions is important and we are pleased to note that the proportion of cases where the charge was reduced at court appears to have fallen significantly (from 45.1% to 25% - 23 out of 92 cases in which the charge was reduced).
- 6.11 We were concerned to find in our original review sample a significant number of cases in which we considered that the charge had been reduced inappropriately (28.1% - 41 of 146 cases in which the charge was reduced). There has also been an improvement in this important category, although the position continues to demand management attention. There were 92 cases in our follow-up sample in which the charge was reduced and we considered that the reduction was inappropriate in 20 (21.7%).
- 6.12 The following chart compares the full breakdown of CPS charging decisions:



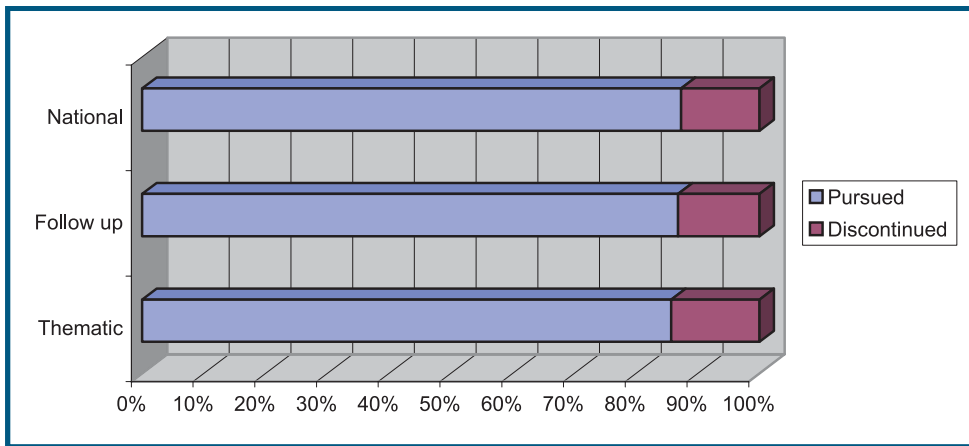
Charge reduction	Charge not reduced		Reduced appropriately		Reduced inappropriately	
	Cases	%	Cases	%	Cases	%
Original thematic review	431	74.7	105	18.2	41	7.1
Follow-up	199	68.4	72	24.7	20	6.9

6.13 The proportion of final charges reflecting the gravity of offending has remained broadly static (86.3% - compared to 88.9% in the original review).

(iii) discontinuance

6.14 In our original review, we found that the discontinuance rate for racist incident cases in our 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 our follow-up sample was closer to the current national average (13.2% compared to 12.7%). The proportion of cases in which we considered that discontinuance was inappropriate was also below that seen in the original review file sample.

6.15 The following chart compares the discontinuance rates:



Discontinuance rate	%
Current CPS national (all cases)	12.7
Follow-up review (racist incident cases)	13.2
Original thematic review (racist incident cases)	14.3

6.16 We expressed concern in our original review about the proportion of cases that were dropped because the prosecution ran into practical difficulties, usually concerned with the commitment or availability of victims and witnesses. We suggested that there is a link between deficiencies in the quality of service provided to witnesses and discuss progress in that area in more detail in Chapter 9.

6.17 There were only 29 cases in our follow-up sample that were discontinued in the magistrates’ courts and a further five that were terminated in the Crown Court. The value of our findings about the reasons is, therefore, limited. However, with this substantial caveat, they suggest that the police and CPS are becoming more successful in securing the commitment of victims and witnesses towards pursuing racist incident prosecutions to trial. Only 23.7% of terminations in our follow-up sample were caused by victim or witness problems (nine cases), compared to 42.9% in our original review.

Information taken into account in decision-making

(i) introduction

- 6.18 In our original review, we 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.
- 6.19 The quality and amount of information available to prosecutors was an important concern in our original review and we recommended that CCPs should discuss with the police ways of ensuring that all relevant background information is submitted so that informed decisions can be made. The type of information that is likely to be relevant will include details of previously recorded racist incidents, the psychological impact of the offence on the victim and the willingness of the complainant to testify.
- 6.20 Our evidence, from case examination and consultation, suggests that overall improvements in file quality are yet to materialise and we have already mentioned (at paragraphs 5.3 to 5.4) the unsatisfactory position with regard to the agreement that the police should supply the CPS with the copy of their racist incident form. Generally, however, the effectiveness of the partnership between the police and the CPS is improving, which should lead to prosecutors becoming significantly better informed.
- 6.21 Co-location has meant that CPS staff are now working more closely with the police and the charging initiative (under which CPS lawyers will take on responsibility for determining the initial charge) will provide greater opportunity for input towards file building and information gathering. The establishment of the Local Criminal Justice Boards (LCJBs), requiring a joined-up approach towards achieving common targets linked to public confidence, has increased the focus upon the need to prepare good quality cases leading to successful prosecutions.
- 6.22 Prosecutors also appeared to be more proactive than they were at the time of the original review in seeking to supplement the information that is initially supplied to them by the police. Overall, we found in our follow-up sample (of cases finalised in 2003) that they were significantly more likely to request additional background information where appropriate than in our original sample (of cases finalised in 2000).

(ii) previous incidents

- 6.23 Information about previous racist incidents was lacking in cases within the sample for our original review. That was linked to the quality of recording and prevented pursuance of harassment charges in appropriate cases, where a course of conduct might otherwise have been established. We recommended that CCPs should consult the police to ensure that, where possible, sufficient details are taken in respect of allegations of racist incidents that are not pursued to prosecution.

- 6.24 Our evidence on the provision of information about previous incidents is mixed. We saw some excellent examples in our file sample of the police providing a detailed background history, either initially or after prompting by a prosecutor. Conversely, however, we also examined a number of cases in which it was apparent from the evidence that there had been previous incidents involving the parties about which no information was provided or sought. This inconsistent performance was confirmed during our consultation exercise.
- 6.25 Discussions between CPS senior managers and the police have centred around revision and reissue of ACPO guidance on minimum data recording requirements. Guidance to prosecutors issued in conjunction with the policy statement (in July 2003) stresses the importance of considering relevant information about previous incidents and a reminder is also included in the checklist.
- 6.26 Care should be taken to ensure that the reasons are recorded if racist incidents are not pursued to prosecution. If that is not done and the information subsequently becomes unused material in a prosecuted case it may be open for the defence (in the absence of any other explanation) to suggest that the complainant has made earlier unsubstantiated allegations thereby undermining his credibility.

(iii) corroborating evidence

- 6.27 Lack of corroboration for evidence of racism can lead to the acceptance of guilty pleas to lesser non-aggravated offences or discontinuance, because the case rests on the word of the victim against that of the alleged perpetrator.
- 6.28 We were disappointed to find in our original review that the CPS sought further evidence to establish racist hostility in only 66.3% of cases where it was appropriate to do so. Our evidence suggests that prosecutors are still not always proactive in this regard, since the comparative follow-up figure was 74% (57 out of 77 cases in which it was necessary). The recent policy guidance was not available to prosecutors at the time that those cases were dealt with. It now promises that:

‘The CPS will work closely with the police to make sure that the police investigation has been thorough and that all the available evidence has been gathered and brought to our attention.’

- 6.29 We have found in our follow-up that, generally, prosecutors are more likely to pursue one against one cases to trial. There remains, however, the need to ensure that they explore avenues of potential corroboration in accordance with the policy statement. The move to closer working with the police should improve file quality and content.

(iv) the psychological impact

- 6.30 We found in our original review that not all prosecutors understood the disproportionate psychological impact on victims of racism. Files did not always include this type of information where appropriate nor was it always requested when absent. This led to inconsistent decision-making and undermined the seriousness attributed to some cases.
- 6.31 All cases examined for our original review were finalised before the introduction of the Victim Personal Statement scheme (on 1 October 2001), which gives victims the opportunity to describe the physical, emotional and psychological impact of the crime upon them.
- 6.32 We suggested that CCPs should consult the police to ensure that victim personal statements taken in racist incident cases contain sufficient detail in respect of the psychological impact. In response, it was decided that CCPs should meet Chief Constables to discuss action that could be taken to increase the number of victim personal statements in racist incident cases. The discussions should also address ways of measuring existing and future performance. Their value as an ‘important source of information for the prosecutor and the court’ is acknowledged in the policy statement.
- 6.33 Our evidence suggests that performance since the original review has been patchy and there remains considerable room for improvement. Generally, victim personal statements have been taken up slowly and such information is more often found (if present at all) in the body of the victim’s witness statement.
- 6.34 Our file examination suggests that prosecutors are now more likely to seek further information than at the time of the original review. Following the recent national training initiative, they are also better placed to appreciate the psychological impact of racism. CCPs will wish to encourage the police to improve their performance in providing victim personal statements, to inform decision-making and ensure that the seriousness of cases arising from racist incidents can be properly presented to the courts.

(v) willingness to testify

- 6.35 The attrition rate in racist crime is high and it is particularly important that appropriate levels of assistance and support are offered to victims. Prosecutors need to be aware of any special requirements and concerns of victims so that, where appropriate, steps can be taken to protect their interests and maintain their commitment towards pursuance of the case. Improvements in the level and quality of this type of information have also been modest.

(vi) other sources of information

- 6.36 We suggested in our original report that CCPs should inquire whether there are other potential sources of evidence or background information in respect of racist incidents

(for example local authority departments), which might assist in improving the quality of decision-making or strengthen individual cases. The advice from CPS Headquarters to CCPs was to raise this issue with the police and local authorities and also with the Local Criminal Justice Boards. Representatives of other agencies were invited to participate in and contribute to the national training initiative.

- 6.37 In visiting the Areas assisting the follow-up review, we have found significantly more evidence of the CPS interacting and exchanging information with local racist incident monitoring groups than was apparent during the original review.

Proving the racist element

- 6.38 Section 28 of the Crime and Disorder Act 1998 provides a two-limb statutory definition of racial aggravation. The first limb requires proof of hostility based on the victim's membership or presumed membership of a racial group and the second limb requires that the offence was motivated by racist hostility. Proof of either limb is sufficient to establish the racist element.
- 6.39 During our original review, we found that there was uncertainty about the proper interpretation of racist hostility. Some judges had ruled that 'mere vulgar abuse' did not suffice and that was influencing the approach of some prosecutors or putting them in a difficult position. We suggested that CCPs should ensure that cases where the judge indicates that the racial element is not present and that the prosecution should reconsider its position are referred to and considered by a senior lawyer manager before a final decision is taken.
- 6.40 As a result, CCPs were advised to notify their local judiciary and members of the Bar of the names of the relevant senior lawyer managers who should be contacted in these circumstances. Some CPS Areas have been particularly active in raising such concerns with Resident Judges and attempting to achieve a consistent approach.
- 6.41 We also suggested that the DPP should, after consultation with senior representatives of relevant agencies, issue guidance to prosecutors so that there may be a common understanding about what constitutes hostility based on race under section 28 of the Crime and Disorder Act 1998.
- 6.42 The cases examined for the purposes of the original thematic review were finalised between January and September 2000. Since then, case law has provided clearer guidance on the proper interpretation of section 28 of the Crime of Disorder Act 1998 rendering it unnecessary for the DPP to seek clarification as suggested.
- 6.43 Discussion of this issue was an integral part of the national training initiative and we are also pleased to note that the guidance to prosecutors accompanying the CPS policy statement provides a proper explanation of the correct interpretation and details of two supporting cases (*DPP v McFarlane (2002) EWHC Admin 485* and *DPP v Woods (2002) EWHC Admin*).

6.44 Most of those whom we consulted confirmed that the position has improved and that evidence of racist hostility is now accepted more readily as justifying pursuance of racially aggravated offences. We were, however, given some recent examples of cases in which judges were still suggesting a narrow approach to the interpretation of section 28 and there is still inconsistency. CCPs will wish to ensure that prosecutors continue to adopt a firm stance towards this issue, inviting attention to the supporting case law wherever appropriate.

Racist abuse of police officers

6.45 In our original file sample, there were a small proportion of cases in which the victim was a police officer. We found that different prosecutors interpreted the law relating to such offences in different ways, resulting in inconsistent and sometimes inappropriate outcomes.

6.46 Some prosecutors suggested that defendants racially abusing police officers should be bound over to keep the peace or that their cases should be discontinued, because it would be difficult to establish that the police officer was likely to suffer harassment, alarm or distress. That was an inappropriate approach that was likely to discourage members of minority ethnic groups from joining the police.

6.47 We suggested that CCPs should ensure that cases in which a police officer is the victim of a racially aggravated offence are not reduced in seriousness inappropriately. Guidance was subsequently issued to ensure that any decisions to reduce or discontinue in such cases are approved by senior prosecutors.

6.48 We found that the proportion of police officer victim cases in our follow-up case sample was greater than that seen in the original review sample. It was confirmed during consultation that police officers are being encouraged to record, report and pursue instances of racism towards them. The CPS approach towards such cases has also improved markedly. The vast majority in our follow-up sample were pursued to conclusion (and in most conviction) as racially aggravated offences under the Crime and Disorder Act 1998.

Quality of charging decisions

6.49 We saw a number of cases in our original sample in which incidents involving criminal damage or assault clearly accompanied by racist hostility were pursued from the outset by the CPS as basic offences. This was addressed in the national training package and we found very few cases in our follow-up sample where we could make a similar criticism.

6.50 We suggested in our original report that CCPs should ensure that all appropriate staff are fully aware of the sentencing implications of removing the racial element from prosecutions. The general perception is that there is now less compromising of cases and a greater willingness to pursue the racial element.

- 6.51 Concerns remain about the quality of CPS decisions to reduce charges in cases arising from racist incidents.
- 6.52 We saw a significant number of cases in both our original and follow-up file samples in which we considered that the charge was reduced inappropriately. Although the position appears to have improved in the follow-up sample, we still disagreed with the decision in more than one fifth of cases in which the charge was reduced (21.7% compared to 28.1% in the original review). Expressed as a percentage of the full case samples, inappropriate charge reduction occurred in 6.9% of all cases examined for the follow-up compared to 7.1% in the original review.
- 6.53 Generally, the feedback that we received from police officers and support groups was that the approach of the CPS towards accepting pleas to lesser offences is better than it was. A clear desire to improve has been apparent and most prosecutors are perceived as having a greater appreciation of the implications of removing the racial element.
- 6.54 However, we also received evidence of inconsistency with some prosecutors being more likely to pursue the racial element than others. We also note the widespread practice of using agents to prosecute trials in the magistrates' courts rather than in-house prosecutors. Those agents have not received the benefits of the CPS national training and their understanding and awareness of the issues covered in this report is variable. They are not able to reduce charges without the consent of a Crown Prosecutor, but authorisation often has to be given without a proper opportunity to consider the file or consult the victim, for example, from the CPS office on the other end of a telephone.
- 6.55 Clearly, the pre-charge advice initiative will create a heavy demand on existing CPS resources with a consequent short term increased reliance on agents as staffing levels are brought up.
- 6.56 There has been some improvement on plea acceptance performance for cases finalised in 2003 after publication of the CPS policy and guidance and this should continue as the impact of training and clearer guidance takes effect.
- 6.57 It is vital, however, that the Service continues to improve its performance, and minimise inappropriate charge reduction. Considerable work has been done to increase confidence in the police and CPS amongst the minority ethnic communities and encourage them to report racist incidents and pursue prosecution. The number of prosecuted cases appears to be increasing adding to the importance of 'getting it right'.
- 6.58 The new CPS policy statement requires that prosecutors 'must place evidence of racial aggravation before a court in a plea or a trial when it is proper to do so'. The progress that we have described in this report will be undermined if the policy is not observed so that the charges pursued by the CPS properly reflect the seriousness of the offending and give courts adequate sentencing powers.

Alternative verdicts

- 6.59 Unlike in the Crown Court, in the magistrates' courts the prosecutor must decide whether it is necessary to add an alternative charge as a 'safety net' since not to do so runs the risk that the defendant will be acquitted completely (if the racist element cannot be proved beyond reasonable doubt). In our original review, we found evidence of inconsistency as to whether alternative charges were preferred.
- 6.60 The key to the decision whether to pursue an alternative charge in the magistrates' court is the strength of the evidence. If the prosecutor is confident that there is a realistic prospect of proving the racist element, there should be no need for an alternative.
- 6.61 We found that there was greater use of alternative charges in our follow-up sample and that they were used appropriately in the vast majority of cases. Where the charge was being put as a 'safety net', firm instructions were generally given to the prosecuting advocate that a plea to the lesser alternative was not acceptable. We also examined some isolated cases in our follow-up sample, however, where the evidence to support the racist offence was clear and strong yet the prosecutor had added a non-aggravated alternative unnecessarily.
- 6.62 The proper approach towards alternative offences was an aspect of the recent training and the correct approach is now set out in the guidance to prosecutors. Where an alternative charge is added, it must be made clear to the prosecuting advocate (if he is not the prosecutor preferring the alternative charge), court, defence and victim that it is not done as an admission of weakness in the case nor as an indication that a plea to a lesser offence is acceptable.

Discontinuance

(i) introduction

- 6.63 In our original review, we found that the discontinuance rate for racist incident cases exceeded the national average and expressed concern that CPS decisions were sometimes taken where material information is missing. We recommended that CCPs should satisfy themselves that they have mechanisms in place to ensure that all available and relevant information is considered before charges in racist incident cases are reduced or discontinued.
- 6.64 As we have already mentioned, prosecutors are now more proactive in requesting further information and the CPS has introduced referral procedures under which any decision to reduce or discontinue cases with a racial element should be approved by a senior prosecutor (at Level D or above) or by a designated prosecutor. We are pleased to note that the discontinuance rate in the follow-up sample is lower and only slightly above the current national rate for all types of case.

(ii) maintaining the commitment of victims and witnesses

- 6.65 Delay can test the commitment of victims and witnesses particularly if they are vulnerable, which is often the position in cases arising from racist incidents. This is likely to increase the level of attrition. Avoiding unnecessary delay, therefore, is an important aspect of victim and witness care.
- 6.66 We recommended in our original report that CCPs should ensure that delay is kept to a minimum by liaising with their local courts to ensure that listing guidance allowed for expedited hearings in contested racially aggravated cases and seek an assurance that they would be given fixed dates for hearing.
- 6.67 We have found limited evidence that racially aggravated cases are being expedited. The reason appears to be that there are already several recognised categories of case in which formal fast-track procedures apply. Prosecutors must continue to be vigilant by requesting shorter adjournments in cases with vulnerable witnesses whose commitment is likely to waiver.
- 6.68 We were also given examples of cases in which the desire to avoid delay generally appeared to have taken precedence over the interests of victims. These were cases in which victims failed to attend the first listing of trials unexpectedly and the prosecutor was unable to provide an explanation. The courts refused to adjourn and the prosecution were compelled to offer no evidence. It subsequently transpired that the victims had valid reasons for their non-attendance and still wished to pursue the case.
- 6.69 It is important in these circumstances that the prosecuting advocate takes all necessary steps to seek an explanation that can be given to the court on the day. Where that is not possible, applications by the defence for dismissal because a victim or other vital witness has failed to attend the first listing of a trial without explanation should be strongly opposed.
- 6.70 Timeliness is an important element of good quality decision-making and considerable damage can be caused by overdue decisions to discontinue or reduce charges. We recommended that CCPs should satisfy themselves that they have mechanisms in place to ensure that racist incident cases are reviewed in timely fashion at all stages. We have already drawn attention to improvements in the timeliness of charging decisions (at paragraph 6.10). The timeliness of decision-making generally has improved, including decisions to discontinue.

Developing expertise and achieving consistency

- 6.71 In our original report, we 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. The CPS national training package has since been delivered to all lawyers and caseworkers likely to become involved in dealing with them. There is now a large pool of prosecutors equipped with the knowledge and awareness required to handle such cases properly and ensure that there is consistency throughout the Service.
- 6.72 We expected, when visiting the Areas assisting our follow-up, to find that racist incident cases would now be allocated more widely. In some, however, we found that specific prosecutors still handle all racist incident cases.
- 6.73 Not all racist incident cases involve difficult issues and many are extremely straightforward. There is a danger that the substantial benefits of the national training initiative will be we lost if other prosecutors are not provided with the opportunity to gain practical experience. Individuals with significant experience of such cases should be available to advise and provide guidance if necessary and to handle the most complex cases.
- 6.74 We recommended that CCPs should identify an individual (or individuals) in their Area, with appropriate experience and expertise, to act as a consultant in respect of racist incident cases and fulfil a quality assurance role. This would be an important step towards achieving consistency, since they could liaise and create a national network.
- 6.75 A national network of racist incident specialists has not yet been established. We remain convinced that it would enhance the performance of the CPS in these cases. A similar initiative has been successful in the context of cases involving domestic violence. Prosecutors consulted for our follow-up review commented on how useful they had found the HMCPSI national seminar (in September 2001), at which we presented our original emerging findings. It provided a welcome opportunity to share experience with colleagues and discuss common problems. They were disappointed that the CPS has not organised any similar events since.
- 6.76 In some CPS Areas, we found that staff rarely discussed issues concerned with race due to a fear of the consequences of inadvertently making an inappropriate comment. We recommended that CCPs should encourage staff to discuss such issues in an atmosphere supportive of open-minded debate.
- 6.77 Generally, staff are now more confident to talk about these issues because they possess greater understanding as a result of the national training, equality and diversity initiatives and receipt of information gained through more effective community engagement.

PREPARING CASES

7.1 Good quality decision-making is of limited value if the subsequent handling of cases is not thorough and professional.

File endorsements

7.2 The overall quality of initial and continuing review endorsement in cases examined for our original study was unsatisfactory. 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.

7.3 We recommended, therefore, that file endorsements in racist incident cases should include, where applicable:

- the reasons for any reduction in the charge or charges, particularly in cases where a lesser offence is pursued in place of an aggravated offence under the Crime and Disorder Act 1998;
- sufficiently detailed reasons for discontinuance or for agreement to the defendant being bound over to keep the peace; and
- in cases where a reduction or discontinuance occurs because the complainant or other witness is unwilling to give evidence, the reasons for not pursuing any of the recognised alternatives.

7.4 We found that the overall quality of initial review endorsements about whether cases should be accepted for prosecution and continuing review endorsements reflecting decisions taken during the conduct of cases has improved. They are now significantly more likely to provide the satisfactory 'audit trail' needed to justify actions and explain them adequately to victims.

7.5 The position with regard to the recording by prosecuting advocates of decisions taken at court is less satisfactory. Whilst we saw some that were excellent, providing full reasoning and details of any relevant change in circumstances, we examined too many cases in which there was little or no explanation why decisions had been taken. This often meant that the subsequent letters sent out purporting to explain those decisions to victims were of poor quality and did not convey any useful information.

7.6 There is clearly a potential problem where letters are based on agent's court endorsements of decisions made by another and the reasons behind such decisions.

- 7.7 These factors mean that records of decisions taken on the day of trial do not always cover the matters mentioned in our recommendation above. This detracts from the quality of communication with victims and information feeding into RIMS. It is another reason why we consider that better guidance is needed for agents and, whilst acknowledging limitations, believe that more in-house prosecutors should conduct racist incident trials.

Instructions to counsel

- 7.8 We found in our original review that the overall quality of instructions to counsel in racist incident cases is no better than seen generally. We suggested that CCPs ensure that instructions to counsel in racist incident cases contain an adequate analysis of the facts and likely issues, the views of the reviewing prosecutor on the acceptability of pleas, details of CPS policy guidance and any other relevant information.
- 7.9 The fresh file sample did not reveal that the quality of instructions has improved in this sensitive area of casework.

PRESENTING CASES IN COURT

- 8.1 The prosecuting advocate has an important duty to assist the court by bringing all relevant factors, including the impact of the crime on the victim, to its attention.
- 8.2 In our 2002 report, we observed that the powers of the Attorney General to consider unduly lenient sentences conferred by sections 35 and 36 of the Criminal Justice Act 1988 did not then apply to racially aggravated offences. We recommended that the Attorney should consider seeking an extension to his powers to include all racially aggravated offences dealt with in the Crown Court. We are pleased to note that our recommendation was accepted and that those powers have now been extended.
- 8.3 We received many comments during our original review about a lack of consistency and firmness of sentencing in some courts. It was apparent during our examination of the follow-up case sample that the overall level of sentencing for racially aggravated offences has increased and that there is now far more consistency. That view was confirmed in consultation.
- 8.4 Appropriate sentencing can provide the final validation of a victim's decision to pursue prosecution, encouraging others to report racist crime and remain committed if the allegation is contested. A lot of positive work by the police, CPS and those supporting victims can be undone by apparently inappropriate sentencing.

Offences under sections 29 to 32 of the Crime and Disorder Act 1998

- 8.5 At the time that cases examined for our original review were finalised, the legislation was relatively new. Prosecutors were approaching it differently and there was inconsistency. We have mentioned the issue that arose about the interpretation of hostility based on race. Some courts took completely different approaches and that was influencing CPS decision-making.
- 8.6 There is now less uncertainty and prosecutors are, generally, more comfortable in dealing with the statutory racially aggravated offences. This has been achieved through discussion of contentious issues as part of the national training initiative, the establishment of a clear policy statement and accompanying guidance for prosecutors and has been assisted by the helpful development of case law.

Acceptance of pleas

- 8.7 Many cases are reconsidered in light of the defendant's willingness to plead guilty to a lesser charge and we have already expressed concern about the overall quality of decisions to reduce charges.

- 8.8 If such a decision is taken on the day of trial, it is likely that the victim will be present at court and should, therefore, be consulted by the prosecuting advocate, prior to the decision. Prosecuting advocates should be able to interact effectively with victims in these circumstances so that they can establish a rapport and ensure that they understand the victim's wishes, before giving them due weight in the decision-making process.
- 8.9 The quality of interaction between prosecutors and victims in these circumstances varies. It can cause considerable damage to the level of confidence in the CPS if victims leave court with the feeling that their case has been devalued against their wishes. That is particularly so if they have had little opportunity to contribute to the decision and it has not been explained properly to them. Negative experiences or perceptions are often communicated quickly.

TREATMENT OF VICTIMS AND WITNESSES

- 9.1 The overall perception is that the service provided by the CPS to victims and witnesses attending court has not improved since the time that we conducted the original thematic review. There is a real risk that the progress that has been achieved by the CPS will be undermined if the overall quality of victim and witness care in cases arising from racist incidents does not improve.
- 9.2 Prior to our original review, we contemplated consulting minority ethnic witnesses by means of a questionnaire. The imminent undertaking of a wide ranging Home Office witness satisfaction survey caused us to opt to draw on their findings. These were published in *Home Office Research Study 230 Witness satisfaction: findings from the Witness Satisfaction Survey 2000*, but the number of minority ethnic witnesses identified in the survey proved insufficient to provide any statistically valid results.
- 9.3 As part of our follow-up, we decided that it would be helpful to consult members of the public who had attended court as a victim or potential witness in a racist incident case about their treatment by the CPS (whether the trial went ahead or not). Victims and witnesses from cases within the file sample were sent a questionnaire covering issues such as their interaction with prosecutors and involvement in decision-making.
- 9.4 We received very few responses and the value of the feedback is, therefore, extremely limited. The comments varied with some being very negative, in particular highlighting a lack of information about case progress and the reasons for decision-making. This accords with other evidence that we have received in consultation for the follow-up review.
- 9.5 Securing the commitment of victims and witnesses towards prosecution is often more difficult in this type of case than generally. It is also more likely that they will be subjected to further offences. It is vital that they are not discouraged from reporting racist crime and pursuing successful prosecutions because they, or someone that they know, considers that they had been treated badly by the CPS. The impact of a negative experience is increased if it has been preceded by encouragement and positive assurances. It also erodes trust in those providing the assurances, for example, police officers and members of groups seeking to support and assist victims.
- 9.6 If decisions to reduce or discontinue are not explained adequately, adverse assumptions are sometimes made inappropriately about the efficiency of the prosecution. Since our original review, the CPS has implemented procedures for explaining its decisions directly in cases with an identifiable victim, by means of the Direct Communication with Victims Scheme. Formerly the police were the sole point of contact for the victim.

- 9.7 Victims of racist crime may experience language difficulties that present a barrier to effective communication. We noted during our original review that there is a shortage of suitable interpreters in some Areas. Some consultees provided examples of cases in which translations had been inaccurate, changing perspective and meanings.
- 9.8 The trial provides an opportunity to emphasise the positive impression. If victims leave court with a good impression about the way in which the prosecutor treated them, they are more likely to report further incidents of racist crime to the police and pass on a positive message to others within minority ethnic communities.
- 9.9 We have mentioned the widespread practice of using agents to prosecute trials in the magistrates' courts. Some possess an excellent understanding of the issues arising in contested racist incident cases and the communication skills necessary to interact effectively with victims. Generally, however, experienced in-house prosecutors are now better equipped.
- 9.10 Following the national training initiative, CPS prosecutors possess the understanding to deal sensitively with difficult issues when preparing racist incident cases. However, conduct of the trial and face-to-face contact with the victim is often left to less aware agents, who then represent the public face of the CPS. The opportunity to create a positive impression may be lost as a result and, in some cases, the impression becomes a negative one.
- 9.11 It would be unreasonable to require CPS prosecutors to conduct all contested racially aggravated cases in the magistrates' courts in the current climate, having regard to their other important responsibilities. There is however a strong case for allowing in-house prosecutors to see their more difficult contested cases through to conclusion, while ensuring that agents instructed to prosecute such trials are fully familiar with the CPS policy statement.

LIAISON AND COMMUNITY ENGAGEMENT

- 10.1 The CPS nationally and locally has well-established links with other criminal justice system agencies through which a partnership approach is pursued and problems are shared. That includes liaison on issues surrounding racist incidents and has been strengthened following the establishment of Local Criminal Justice Boards, with common targets linked to public confidence.
- 10.2 Effective community engagement, through which information is both given and received, is an important step towards securing confidence that the CPS will provide a high quality service. Links with local minority ethnic communities were less well established at the time of our original review. During its course, the CPS issued good practice guidance on their development.
- 10.3 We remain convinced of the significant benefits that can be achieved from meaningful community engagement and recommended at the time that CCPs should ensure, consulting with representatives of minority ethnic communities as appropriate, that they personally and the CPS generally has a sufficiently high profile amongst members of local minority ethnic communities and that there should be appropriate liaison at a practitioner level between the CPS and other relevant agencies on race issues.
- 10.4 We are pleased to find that the overall level and effectiveness of community engagement has improved significantly and that numerous worthwhile and innovative initiatives are being pursued. From a low starting point, the CPS has moved on markedly. Most external consultees from groups regularly assisting victims were positive about the progress that has been made, which has benefited both the CPS and members of minority ethnic communities alike. The general tone of the feedback that we received can be summarised in the words of one, who said that:
- ‘...the CPS has come out of its shell. It is now more human and user-friendly.’*
- 10.5 Most CPS Areas now have extensive community engagement programmes. CPS representatives participate in open days and meetings at schools and colleges. They also attend public meetings and events, in order to explain the role of the CPS and gather the views and concerns of community members.
- 10.6 The Service has acknowledged the need to improve its public interface and is now generally perceived as being significantly more transparent and accountable than at the time that we conducted our original review. We have already mentioned (at paragraphs 4.14 to 4.15) the advantages of involving as many CPS staff as possible in community engagement, so that they may gain awareness and pass on the benefits of their practical experience.

- 10.7 An external consultee experienced in assisting and advising victims of racist crime described the benefits, in terms of increasing public confidence, that can be achieved through more effective engagement:

'Until relatively recently, members of minority ethnic communities did not really know what the CPS is or what it does. If anything, the CPS was seen as an extended arm of the police and confidence in it equated with confidence in the police. I met the CCP about three years ago at the launch of the CPS diversity policy. He has since been invited to speak to my organisation at regular meetings and has raised awareness considerably. Particularly after 9/11 when there was a lot of tension. We were able to work successfully with the CPS and the police to defuse it.

We have invited CPS managers to major events and dinners and they have all attended. They have participated in awareness sessions about Islam, lectures and joint faith services. It has been important for the CPS to appear at community functions. The message is that they are trying to understand our concerns, are no longer aloof and are joining us. The CCP has been very positive and helpful. It has completely changed our perception of the CPS. Victims come to us for information because they know that we now have a close relationship with the CPS.'

- 10.8 We emphasised in our first report that assumptions should not be made about the most effective way of exchanging information and that CPS managers should consult with community representatives to identify the best method in their Areas. There are often certain individuals within minority ethnic communities who are highly regarded and approached regularly for advice and assistance. If these key individuals have the necessary information about the CPS, positive messages are more likely to reach victims. They also provide a rich source of information for the CPS about community concerns.
- 10.9 We found in our original review that racist incident victim support and monitoring groups were often better informed than the CPS about the views of victims and the background to cases. Without compromising independence, we considered that there was greater scope for liaison and suggested that CCPs inquire whether there are racist incident monitoring groups operating in their Areas able to supplement the levels of information available to prosecutors to assist their decision-making and, where appropriate, liaise with them.
- 10.10 We spoke to several representatives of such groups in our follow-up review and found that, generally, the position has improved. Where an effective dialogue has been established there has been considerable mutual benefit. Monitoring groups have provided useful information for the CPS and been able to obtain more information about policy and the reasons for individual decisions. They have also been able to liaise more effectively with victims who have consulted them to ensure that they are kept up-to-date with the progress of cases. They have also helped to ensure that victims remain committed to prosecutions and attend court to give evidence if necessary. There is now greater mutual understanding and a more positive general perception of the CPS.

CASES INVOLVING MINORITY ETHNIC DEFENDANTS

INTRODUCTION

- 11.1 The CPS was set up as an independent prosecution service to achieve fairness and consistency in prosecution decisions and the proceedings which follow. It applies clear, publicly stated principles set out in the Code for Crown Prosecutors which requires that all citizens should be treated equally.
- 11.2 A major purpose of our original review was to establish the quality of CPS decision-making in cases involving defendants from minority ethnic groups and compare it with the quality of decisions in cases where the defendant is not a member of a minority ethnic group.
- 11.3 In 2001, the CPS commissioned the Diversity Monitoring Project to carry out an independent examination of CPS files in order to determine whether there was "... any bias in decision-making by the CPS at each stage of the prosecution process". A team led by Professor Gus John (a member of our original Steering Group) subsequently carried out extensive research and the executive summary of its 'Race for Justice' report was published in October 2003. The DMP study looked at a total of just under 13,000 finalised cases and we have considered its findings.
- 11.4 Data from file examination during our second cycle of Area inspections enables us to compare recent performance in respect of 2,300 cases where the defendant was and was not from a minority ethnic group.
- 11.5 The comparative case samples involved are, therefore, 264 cases involving minority ethnic defendants and 2,036 cases involving white defendants. We repeat our important caveat that the indications provided have to be regarded with some caution in light of the limited size of our minority ethnic defendant sample. For the purposes of comparison, we refer to defendants not from a minority ethnic group as "white defendants" even though our minority ethnic defendant category also included some defendants who were white in appearance, for example, Eastern European.
- 11.6 Evidence gathered for our original review suggested that there was a greater tendency for the police to overcharge in cases involving minority ethnic defendants but the final charge was no less likely to reflect the gravity of offending than for white defendants. We also found that there was a greater likelihood of discontinuance and a greater likelihood of acquittal.
- 11.7 We 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. We are reassured to find that the conclusions of the DMP study are very similar to our own.

11.8 The position with regard to initial charging has changed since the time of our original review and the DMP research. A new system is being introduced under which CPS lawyers will determine the original charges that a defendant should face. As with cases arising from racist incidents, our evidence suggests that the quality of charging in cases with minority ethnic defendants will improve when the CPS becomes fully responsible.

REVIEWING CASES

11.9 We have filtered data already gathered by inspectors carrying out the second cycle of Area inspections to compare performance in cases with minority ethnic defendants to that in cases where the defendant was white.

11.10 As we have indicated in the context of cases arising from racist incidents, HMCPSI assessments in relation to the quality of decision-making consider whether the decision taken was properly open to a reasonable prosecutor. A statement that inspectors disagree with a decision therefore means that they consider it was wrong in principle; they do not 'disagree' merely because they might have come to a different conclusion.

11.11 Area inspectors have continued to find that the quality of initial review in cases involving minority ethnic defendants is on a par with the general standard. The comparative figure for 'correct' application by prosecutors of the Code evidential test in cases with minority ethnic defendants (99.3%) was identical to that for white defendants[†]. The position is virtually unchanged since the comparative figures for our original review were 99.3% for minority ethnic defendants and 99% for white defendants.

11.12 Inspectors considered that all applications by prosecutors of the public interest test at initial review for cases with minority ethnic defendants were correct, compared to 99.9% for white defendants (one case failing the test). Our original review produced figures of 99.7% for minority ethnic defendants and 100% for white defendants.

Selection of the appropriate charge

11.13 Because of the system in existence at the time of our original review (under which the police charged all defendants), our findings reflected the quality of police charging and the action taken thereafter by the CPS to continue appropriate charges and amend or replace inappropriate charges. The CPS has not yet taken on full responsibility for charging and we can, therefore, only predict the likely impact of that development.

[†] For cases in which the defendant pleaded guilty or was convicted or acquitted after a full trial.

- 11.14 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. That lead us to the conclusion that the CPS was addressing inappropriate charging but that differentiation had not been eliminated completely.
- 11.15 We found that the CPS was addressing overcharging to a large degree at its initial consideration of the case. There were 123 cases in our original minority ethnic defendant sample in which we considered that the police had overcharged. The CPS rectified the position at initial review in 76 (61.8%). Under the new system, the initial consideration by the CPS will also involve formulating the charge. This analysis suggests, therefore, that initial charges against minority ethnic defendants are significantly more likely to be appropriate once the new procedures are established.
- 11.16 Although prosecutors did not always identify the correct charge from the outset, our evidence suggested that overcharging was rectified in almost all cases by the time that they are finalised, since the proportion in which the final charge reflected the gravity of offending was almost identical for minority ethnic and white defendants. We did, however, find that there were differences in respect of some types of offence and that the CPS was less likely to get the final charges right in respect of minority ethnic defendants charged with public order offences.
- 11.17 There was little difference in the appropriateness of final charges during our original review and that position does not appear to have changed. We found that the final charge reflected the gravity of offending for 97.4% of minority ethnic defendants and 98.4% for white defendants. In analysing our more recent sample of cases, we found that the proportion proceeding to trial or plea at the correct level of charge is slightly better for white defendants - 96.7% compared to 95.7% for minority ethnic defendants.
- 11.18 We were concerned to find cases in our original review file sample that had been reviewed on the basis of factual summaries, rather than following consideration of admissible evidence. This meant that overcharging was more difficult to detect and decisions were not properly informed. We recommended that CCPs should consult with the police to ensure that prosecutors have available for the first hearing evidence (and other relevant material) necessary to support a properly informed decision about whether the case should proceed and for presentation of the case to court.
- 11.19 It was anticipated that increased co-location would bring about improvements in file quality, enabling the CPS to provide earlier advice and ensure that all relevant information is made available. As we have already mentioned, our evidence suggests that overall improvements in file quality are yet to materialise.
- 11.20 The general perception is that the effectiveness of the partnership between the police and the CPS is improving. CPS lawyers will soon take on responsibility for charging and be stationed at police offices. They will 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.

Discontinuance

- 11.21 Our original study suggested that cases involving minority ethnic defendants are more likely to be discontinued, since the discontinuance rate was greater than the national average for all types of case.
- 11.22 In almost all cases in our original minority ethnic defendant sample that were dropped, we considered that the CPS decision to discontinue was correct and that is again our finding from analysis of a more recent case sample.
- 11.23 This suggests that the police are more likely to instigate inappropriate cases against minority ethnic defendants and that the CPS has to discontinue a greater proportion to fulfil its gate-keeping role. Under the new system, gate-keeping will take place earlier in the process. With CPS lawyers taking over decisions whether defendants will be charged in the first place (rather than deciding whether the case should be pursued or discontinued after the police have charged), our evidence suggests that fewer inappropriate cases will be brought.

The wider context

- 11.24 In defining the remit of our original review and acknowledging its limitations, we mentioned other issues of concern to members of minority ethnic communities, such as deaths in custody, stop and search, differential approaches towards counter-allegations and differential approaches towards bail. We acknowledged that to enquire into deaths in custody would be a major undertaking and outside the remit of our review.
- 11.25 In December 2001, the Attorney General announced a review of the arrangements for prosecuting deaths in custody and of the roles of the Law Officers, DPP and CPS. The findings of that review have now been published (Attorney General's Review of the Role and Practices of the Crown Prosecution Service in Cases Arising from Death in Custody) and 12 new measures were announced designed to improve casework performance and the quality of communication with the families of victims.
- 11.26 We raised in our original report the need for prosecutors to have a clear understanding of the wider context when considering cases involving minority ethnic defendants. We recommended that CCPs should ensure that there is awareness of the issues and that prosecutors should be alert to the possibility of discrimination.
- 11.27 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 executive summary of the DMP report was published in October 2003 and the full report is awaited. At the time of writing, we are not aware of any further guidance that has been issued to prosecutors.

The need for ongoing and improved monitoring

- 11.28 The Race Relations (Amendment) Act 2000 places a positive duty on the CPS to show that it does not discriminate in carrying out any of its functions, including its decisions about casework. When we commenced the original review, the CPS did not have mechanisms in place to monitor the quality of casework by ethnicity.
- 11.29 We recommended that the DPP should ensure that all available monitoring data and information in respect of cases involving minority ethnic defendants is utilised to the full, both nationally and locally, with the ultimate aim of achieving consistency.
- 11.30 During the course of that review, the DMP research was commissioned and its findings are now available in summary. Ethnic monitoring was also added to the specification for COMPASS (the new 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. This relies upon the police providing accurate information about the ethnicity of the parties in the first place. As we have already mentioned (at paragraph 5.10), further consultation is required in some Areas to ensure that this information is always available.
- 11.31 Action to improve monitoring is now at a transitional stage. Roll out of COMPASS began in April 2003 and is nearing completion. The CPS is in the process of considering its response to the DMP findings and it is too early to assess the quality and value of monitoring information being generated by COMPASS. Once the new case management system is fully established the intention is to introduce performance measurement systems to ensure consistency of decision-making. The information gained from the monitoring of ethnicity must be analysed effectively, if managers are to identify any differences in performance and eliminate discrimination.

CONCLUSIONS

Cases arising from racist incidents

- 12.1 Our original review sought to provide an assurance to the DPP that the quality of the handling of cases having a minority ethnic dimension is sound. We concluded that any positive assurance about cases arising from racist incidents must be qualified.
- 12.2 Whilst we retain some important concerns, we are satisfied that the Service has responded positively to our 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.
- 12.3 Since we published our report in April 2002, the CPS has delivered an impressive training package designed to cover issues raised by the thematic review and providing welcome clarification about the correct approach to be taken in such cases. Prosecutors and caseworkers are now better equipped than ever to handle them with understanding, awareness and sensitivity. They are also assisted by clear and 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.
- 12.4 We are pleased to note that positive action has been taken to ensure that cases do not slip through the monitoring net. CPS Areas in which the new case management system (COMPASS) is established are beginning to use its facilities to ensure that cases are monitored properly. The purpose and benefits of monitoring have been better explained and the overall commitment amongst CPS staff towards the scheme appears to be increasing.
- 12.5 The quality of decisions by prosecutors at initial review whether to accept cases for prosecution remains high and it is apparent from the examination of a more recent file sample that the overall quality of case handling is improving. That impression was generally confirmed during our further consultation exercise.
- 12.6 There is now greater consideration of important background information before decisions are taken. The reasons for review decisions taken otherwise than at court are, generally, better evidenced so that they can be explained properly to victims. There also appears to have been a welcome reduction in the proportion of racist incident cases that are discontinued inappropriately.
- 12.7 The CPS was only beginning to establish links with minority ethnic communities at the time of our original review. This is perhaps the area in which the most progress has been achieved. Almost all of the Areas that we visited had established extensive programmes and were exploring different avenues for exchanging information, not only with a recognised

community representatives but also with community members generally. The benefits, for the CPS and for the communities, have been significant. Generally, the CPS is now perceived as a more transparent and accountable organisation.

- 12.8 There remain 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. Our perception is that the numbers of cases resulting in prosecution is increasing and the CPS must respond positively and efficiently.
- 12.9 We are disappointed to still find that there are a significant proportion of cases in which charges are reduced inappropriately. A network of specialist consultants has also not yet been established and, in some Areas, all racist incident cases are still handled by specific prosecutors despite all having received the national training. The substantial benefits will be lost if training is not followed by appropriate practical experience. Other prosecutors should be given the opportunity to apply what they have learnt and become more familiar with CPS policy.
- 12.10 We also have concerns about the way in which some racist incident cases are handled at court. Cases that have been prepared by trained and experienced prosecutors are often given to less aware agents to conduct the trial. This can mean that the benefits of that training and experience are not fully engaged in decisions taken about the final charge. The quality of the experience of victims attending court can also suffer creating a negative impression of the CPS that can spread quickly through minority ethnic communities damaging confidence.

Cases involving minority ethnic defendants

- 12.11 We were also unable to provide an unqualified assurance in respect of the quality of decision-making in cases involving minority ethnic defendants after our original review, finding that the Service was not removing differential treatment completely. Our findings are supported in the recently published executive summary to the report of the extensive research carried out by the Diversity Monitoring Project.
- 12.12 The overall quality of information upon which decisions are taken should improve as the effectiveness of the partnership between the police and the CPS increases. CPS lawyers will soon take on responsibility for charging and be stationed at police offices. They will 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.
- 12.13 Our evidence suggests that initial charges against minority ethnic defendants are significantly more likely to be appropriate and fewer inappropriate cases brought once the new procedures are established in which CPS lawyers take over responsibility for charging.

THE WAY AHEAD

13.1 We are satisfied that the CPS as an organisation is committed to improving its performance in cases with a minority ethnic dimension. That is evidenced by the commissioning of the DMP research and the positive response to our original review. It is also reflected in recent public statements of intent.

13.2 At the press launch of the Policy on Racist and Religious Crime on 14 July 2003 the then DPP, Sir David Calvert-Smith QC, set out clearly the seriousness with which such cases are regarded and the importance attached to handling them effectively:

'Racist and religious crime can have a devastating effect on both victims and communities as a whole, leaving them feeling isolated, fearful and vulnerable. We are determined to prosecute robustly wherever and whenever we can. We are publishing this policy because we want victims, witnesses and their families as well as the general public to understand that we understand the serious nature of this type of crime...by putting this policy into practice we aim to build more effective cases and bring more offenders to justice.'

13.3 CPS staff were reminded of that commitment in a compelling message from the current DPP, Ken MacDonald QC, issued on 19 December 2003:

'The publication of our policies on prosecuting homophobic and racist and religiously motivated crime has been a great success. We are determined that such incidents should be recognised as being particularly serious, since they are motivated by prejudice, discrimination and hate. It is because these offences are an attack upon our diverse society that I am particularly proud of the involvement of the community and interested groups in the design of these important policies. It is essential for us to demonstrate our ability to develop responses that reflect community concerns and which protect people from abuse. Let us not forget that prosecutors exist to make society safer by engaging due process against those who threaten peace and safety and the rights of others.'

13.4 In following up our original review, we have found that the Service is generally moving in the right direction and beginning to take on board the lessons of the past. Although there are no specific areas of performance where there have been big provable changes, the recommendations of the original review have been taken forward and there are good foundations. It is now essential to ensure that progress is maintained at a time when resources will be committed heavily to important competing priorities, for example, the taking over from the police of responsibility for determining the initial charge.

13.5 We will continue to monitor the impact of our recommendations and the quality of service delivery during our inspections of individual CPS Areas. Future scrutiny will include assessing whether the publicly stated policy on racist and religious crime is applied correctly in practice and whether casework performance generally has benefited from the increased understanding and awareness provided by training and more effective interaction with the public.

- 13.6 In the year to come, as a result of greater CPS input, we expect to see improvements in the quality of initial charging and file building, thereby ensuring equality of treatment for defendants from all ethnic groups, reducing attrition and further raising public confidence. The substantial benefits that have been achieved from engaging local communities in some of the Areas that we visited should be mirrored throughout the Service. We also expect full advantage to be taken of the advanced capabilities of COMPASS to increase the effectiveness of monitoring, including by ethnicity, and quality assurance procedures.

ANNEX A

BREAKDOWN OF FILE SAMPLE

Cases arising from racist incidents

Eight CPS Areas were required to submit file samples of recently finalised cases arising from racist incidents to produce an overall follow-up sample of 292 cases.

Area	Cases
Kent	20
Leicestershire	26
London	71
Merseyside	20
South Wales	44
South Yorkshire	18
West Midlands	64
West Yorkshire	29
TOTAL	292

Cases involving defendants from a minority ethnic group

In light of the extensive survey carried out by the DMP, we decided not to seek a further sample of minority ethnic defendant cases for the purposes of our follow-up review. Instead, we analysed a substantial sample of cases that have been examined for the purposes of Area inspections since the original review report was published. That sample is constituted as follows:

Area	Minority ethnic defendants	White defendants*	TOTAL
Cambridgeshire	12	53	65
Cheshire	3	84	87
Cleveland	6	46	52
Derbyshire	6	93	99
Dorset	7	58	65
Durham	1	64	65
Essex	9	66	75
Gloucestershire	5	61	66
Humberside	0	80	80
Kent	9	99	108
Lancashire	11	147	158
Leicestershire	10	62	72
London	34	48	82
Merseyside	2	15	17
Norfolk	2	66	68
Northumbria	6	64	70
North Yorkshire	1	60	61
Nottinghamshire	15	77	92
South Wales	23	219	242
South Yorkshire	2	8	10
Suffolk	1	22	23
West Mercia	3	63	66
West Midlands	45	209	254
West Yorkshire	51	272	323
TOTAL	264	2,036	2,300

* We have adopted the police categorisation of defendants, which is based principally on visual appearance. If a white defendant is from a minority group, for example, Eastern European, he or she would be categorised as within the ‘Other’ minority ethnic group rather than as a ‘white defendant’.

ANNEX B

IMPLEMENTATION OF RECOMMENDATIONS/SUGGESTIONS FROM REPORT PUBLISHED IN APRIL 2002

RECOMMENDATIONS		POSITION IN JANUARY 2004
CASES ARISING FROM RACIST INCIDENTS		
R1	CCPs should satisfy themselves that they have mechanisms in place to ensure that racist incident cases are captured by RIMS and, in particular, that fast-tracked cases do not slip through the net.	<p>The position has improved but there are still some cases that slip through the net.</p> <p>An IT prompt has been built into the new electronic case management system (COMPASS) requiring completion of the relevant RIMS form before a racist incident case can be finalised. That system produces a list of racist incident cases for comparison with completed monitoring forms.</p> <p>Action taken to improve the rate of initial identification includes making monitoring forms available at court and in police stations, raising the profile of RIMS co-ordinators and running staff awareness campaigns.</p>
R2	CCPs should consult with the police to ensure that data collected in respect racist incidents is accurate, up-to-date and consistent.	<p>This has been partially achieved.</p> <p>Some Areas are moving towards establishing common monitoring procedures but in others comparison has not been possible due to differing recording criteria and because RIMS data is not always up-to-date.</p>
R3	<p>That CCPs should ensure that all appropriate staff:</p> <ul style="list-style-type: none"> • are fully aware of the procedures involved in implementing RIMS; • are fully aware of the reasons for such monitoring; • participate in the monitoring process. 	<p>This has been partially achieved.</p> <p>Generally, the overall commitment to RIMS is better. Awareness has improved and the profile of co-ordinators has been raised.</p> <p>More could be done to involve a greater proportion of prosecutors, to take full advantage of the increased awareness provided by the national training initiative.</p>

<p>R4</p>	<p>CCPs should ensure that RIMS data relevant to their Area is:</p> <ul style="list-style-type: none"> • made available in an accessible form and explained to all staff; • properly analysed in order to identify strengths and weaknesses, examine the reasons behind the figures and learn lessons where appropriate; and • discussed with appropriate local representatives of other relevant agencies as part of achieving an effective partnership approach towards dealing with racist incidents. 	<p>This has been partially achieved.</p> <p>Some Areas have developed successful methods of analysing and communicating the results of monitoring to staff, presented in an accessible form. Performance is also mixed with regard to discussing RIMS data with other agencies.</p>
<p>R5</p>	<p>CCPs should consult the police as necessary to ensure that, where possible, sufficient details are taken in respect of allegations of racist incidents that are not pursued to prosecution.</p>	<p>Although performance is inconsistent, there has been some improvement.</p> <p>There have been discussions with the police about revision of ACPO guidance on minimum data recording requirements.</p>
<p>R6</p>	<p>CCPs should discuss with the police ways of ensuring that all relevant background information is submitted so that informed decisions can be made, including:</p> <ul style="list-style-type: none"> • details of any previously recorded racist incidents involving both the complainant and defendant or either; • the psychological impact of the offence on the victim; and • the willingness of the complainant to testify and details of the level of assistance and support being provided. 	<p>Performance since the original review has been patchy and there remains considerable room for improvement.</p> <p>New guidance to prosecutors stresses the importance of considering such information and a reminder is included in the case preparation checklist.</p>
<p>R7</p>	<p>CCPs should satisfy themselves that they have mechanisms in place to ensure that all available and relevant information is considered by appropriate staff before charges in racist incident cases are reduced or discontinued.</p>	<p>This has been achieved in most CPS Areas.</p> <p>Prosecutors are more proactive in requesting further information and referral procedures have been introduced so that decisions to reduce or discontinue cases with a racial element are approved by a senior or designated prosecutor.</p>

R8	<p>CCPs should ensure that delay is kept to a minimum in racially aggravated cases and, in particular, should:</p> <ul style="list-style-type: none"> • consult the police and courts to consider arrangements for expediting racially aggravated cases; and • discuss with the police ways of ensuring that, where there has been an indication that the victim wishes to withdraw, it is investigated in timely fashion. 	<p>This has not been achieved.</p> <p>Despite liaison, we found limited evidence of racially aggravated cases being expedited.</p>
R9	<p>CCPs should satisfy themselves that they have mechanisms in place to ensure that racist incident cases are reviewed in timely fashion at all stages.</p>	<p>This has been achieved.</p> <p>The timeliness of decision-making generally has improved, including decisions to reduce charges and those to discontinue.</p>
R10	<p>CCPs should identify an individual (or individuals) in their Area, with appropriate experience and expertise, to act as a consultant in respect of racist incident cases and fulfil a quality assurance role.</p>	<p>This has been partially achieved.</p> <p>We envisaged that consultants would advise other prosecutors and handle the more difficult cases. They would also liase and provide a national network. In some Areas, specific individuals still deal with all racist incident cases. A national network of racist incident specialists has not yet been established.</p>
R11	<p>CCPs should encourage staff to discuss issues surrounding racist incident cases and share any lessons to be learned from them in an atmosphere that is supportive of open-minded debate.</p>	<p>The position has improved.</p> <p>Discussion has been encouraged and staff are generally more confident about the issues following national training, diversity initiatives and involvement in more effective community engagement.</p>

<p>R12</p>	<p>The CPS Director of Human Resources should consider the implementation of training for all staff dealing with racist incident cases (and the extent to which other agencies might beneficially participate) to encompass, inter alia;</p> <ul style="list-style-type: none"> • policy, legal and evidential matters in light of recent changes; • guidance about what constitutes hostility based on race for the purposes of the Crime and Disorder Act 1998; • achieving a consistent approach towards cases involving racist abuse of police officers; • achieving a consistent approach towards the laying of alternative charges; • increasing awareness of relevant racial, religious and cultural factors; and • explaining the purpose of and benefits achieved from monitoring. 	<p>This has been achieved.</p> <p>An impressive training package was produced and it has been well received by CPS staff and those from outside the CPS invited to participate. Overall, we consider that the national training initiative has met its aims and covered our concerns.</p>
<p>R13</p>	<p>That file endorsements in racist incident cases should include, where applicable:</p> <ul style="list-style-type: none"> • the reasons for any reduction in the charge or charges, particularly in cases where a lesser offence is pursued in place of an aggravated offence under the Crime and Disorder Act 1998; • sufficiently detailed reasons for discontinuance or for agreement to the defendant being bound over to keep the peace; and • in cases where a reduction or discontinuance occurs because the complainant or other witness is unwilling to give evidence, the reasons for not pursuing any of the recognised alternatives. 	<p>This has been partially achieved.</p> <p>The overall quality of initial and continuing review endorsements has improved. However, the quality of recording of decisions taken at court remains inconsistent. This means that some letters sent out purporting to explain those decisions to victims are of poor quality.</p>
<p>R14</p>	<p>That the Attorney General should consider seeking an extension to his powers to refer unduly lenient sentences to the Court of Appeal to include all racially aggravated offences dealt with in the Crown Court.</p>	<p>This has been achieved.</p> <p>The Home Secretary and Lord Chief Justice agreed to accept the recommendation and those powers have now been extended.</p>

R15	The CPS should consult with the police nationally to ensure that cases properly charged under part 3 of the Public Order Act 1986, requiring the consent of the Attorney General, are referred directly to the CPS Casework Directorate.	This has been achieved. Meetings have been held with senior police representatives and there have been presentations at ACPO conferences. The issue is being taken forward through liaison with ACPO.
R16	CCPs should ensure, consulting with representatives of minority ethnic communities as appropriate, that; <ul style="list-style-type: none"> • they personally and the CPS generally has a sufficiently high profile amongst members of local minority ethnic communities; • there is appropriate liaison at a practitioner level between the CPS and other relevant agencies on race issues; • staff participating in such liaison are of appropriate seniority. 	There has been a substantial improvement. The overall level and effectiveness of community engagement has improved. Many positive initiatives are being pursued, producing benefits for the CPS and the communities. There has been a substantial improvement. The overall level and effectiveness of community engagement has improved. Many positive initiatives are being pursued, producing benefits for the CPS and the communities. There has been a substantial improvement. The overall level and effectiveness of community engagement has improved. Many positive initiatives are being pursued, producing benefits for the CPS and the communities.
CASES INVOLVING DEFENDANTS FROM MINORITY ETHNIC GROUPS		
R17	CCPs should consult with the police to ensure that prosecutors have available before the first hearing evidence (and other relevant material) necessary to support a properly informed decision about whether the case should proceed and for presentation of the case to the court.	This has been partially achieved. It is now rare for cases to be reviewed on the basis of factual summaries (rather than admissible evidence). However, increased co-location has not yet brought about overall improvements in file quality.

<p>R18</p>	<p>CCPs should ensure that prosecutors are fully aware of the issues surrounding the potential for:</p> <ul style="list-style-type: none"> • inappropriate allegations to arise from engagement between police officers and minority ethnic suspects; • inappropriate charging or overcharging of minority ethnic suspects; • differential approaches where counter-allegations are made; and • differential approaches towards the granting of bail and the attaching of conditions to bail. 	<p>This has not been achieved.</p> <p>It was decided that the CPS Policy Directorate would consider the need for guidance in light of the findings of the DMP. The executive summary of the DMP report was published in October 2003 and the full report is awaited. Further guidance has not yet been issued to prosecutors.</p>
<p>R19</p>	<p>CCPs should ensure that they have mechanisms in place to encourage, in respect of cases potentially falling within the categories set out in recommendation 18 (above);</p> <ul style="list-style-type: none"> • referral by prosecutors to line managers for discussion; • liaison with appropriate representatives of the police; and • feedback to staff on the outcome of such liaison. 	<p>This has been partially achieved.</p> <p>Area casework guidance on levels of authority should ensure that any decision on charging levels in these cases is approved by a senior or designated prosecutor. Arrangements are not yet in place to facilitate liaison with the police and feedback to CPS staff.</p>
<p>R20</p>	<p>The DPP should ensure that all available monitoring data and information in respect of cases involving minority ethnic defendants is utilised to the full, both nationally and locally, with the ultimate aim of achieving consistent:</p> <ul style="list-style-type: none"> • levels of charging; • rates of discontinuance; and • rates of acquittal. 	<p>This has not been achieved.</p> <p>Action to improve monitoring is at a transitional stage. Roll out of COMPASS is nearing completion and it is too early to assess the quality and value of monitoring information being generated. The CPS is in the process of considering its response to the DMP findings. The intention is to introduce performance measurement systems to ensure consistency of decision-making.</p>

SUGGESTIONS		POSITION IN JANUARY 2004
CASES ARISING FROM RACIST INCIDENTS		
S1	CCPs should consider whether their Areas might beneficially pursue localised consultation initiatives involving representatives of relevant criminal justice system agencies and minority ethnic communities.	This has been partially achieved. CPS Headquarters has issued guidance and a number of initiatives have been pursued.
S2	CCPs should strongly encourage: <ul style="list-style-type: none"> • the police to improve their rate of submission of racist incident forms significantly; and • prosecutors to always request such forms when they have not been submitted. 	This has not been achieved. The position has not improved significantly. The CPS has reissued guidance about checking for the presence of and requesting such information. The agreement is to be renegotiated.
S3	The CPS Policy Directorate should, consulting as necessary, consider whether the information currently provided by RIMS is sufficient to assess the quality of the CPS performance in racist incident cases.	This has not been achieved. A working group will be established to review RIMS after publication of the DMP findings.
S4	CCPs should consult the police, where necessary, to ensure that victim personal statements taken in racist incident cases contain sufficient detail in respect of the psychological impact of the offence upon the victim.	This has been partially achieved. CCPs have met Chief Constables to discuss action to increase the number of VPS in racist incident cases and their value is acknowledged in the public policy statement. Performance, however, has been patchy and there remains considerable room for improvement.
S5	CCPs, in consultation with the police, should inquire whether there are other potential sources of evidence or background information in respect of racist incidents (for example local authority departments) which might assist in improving the quality of decision-making or strengthen individual cases.	This has been partially achieved. CCPs have discussed this with representatives of the police and local authorities. Representatives of other agencies have participated in CPS training. However, there is little evidence as yet of such information being included in prosecution files.
S6	CCPs should ensure that cases where the judge indicates that the racial element is not present and that, as a result, the prosecution should reconsider its position are referred to and considered by a senior lawyer manager before a final decision is taken.	This has been achieved in most CPS Areas. CCPs have notified their local judiciary and Bar of the names of the relevant senior lawyer managers. Some CCPs have been particularly active in raising such concerns with Resident Judges and attempting to achieve a consistent approach.

S7	The DPP should, after consultation with senior representatives of relevant agencies, issue guidance to prosecutors so that there may be a common understanding about what constitutes hostility based on race under section 28 of the Crime and Disorder Act 1998.	Case law has provided clearer guidance on the proper interpretation of section 28 of the Crime of Disorder Act 1998 rendering it unnecessary for the DPP to seek clarification as suggested.
S8	CCPs should ensure that cases in which a police officer is the victim of a racially aggravated offence are not reduced in seriousness inappropriately.	This has been achieved. The CPS approach towards such cases has improved. The vast majority in our follow-up sample were pursued as racially aggravated offences.
S9	CCPs should ensure that all appropriate staff are fully aware of the availability of all racially aggravated offences under the Crime and Disorder Act 1998.	This has been achieved. This was covered by the national training package. There were very few cases in our follow-up sample in which allegations of criminal damage or assault accompanied by racist hostility were pursued as basic offences.
S10	CCPs should ensure that all appropriate staff are fully aware of the sentencing implications of removing the racial element from prosecutions.	This has been partially achieved. This was covered by the national training package. There are still inappropriate reductions of charges, however, some involving removal of the racial element.
S11	CCPs should ensure that instructions to counsel in racist incident cases contain an adequate analysis of the facts and likely issues, the views of the reviewing prosecutor on the acceptability of pleas, details of CPS policy guidance and any other relevant information.	This has not been achieved. The follow-up case sample did not reveal that the overall quality of instructions in racist incident cases has improved.
S12	CCPs should inquire whether there are racist incident monitoring groups operating in their Areas able to supplement the levels of information available to prosecutors to assist their decision-making and, where appropriate, liaise with them.	This has been achieved. There is now significantly more interaction between CPS Areas and local racist incident monitoring groups.

ANNEX C

CHARTS AND TABLES

The following charts and tables illustrate data obtained as a result of the file examination.

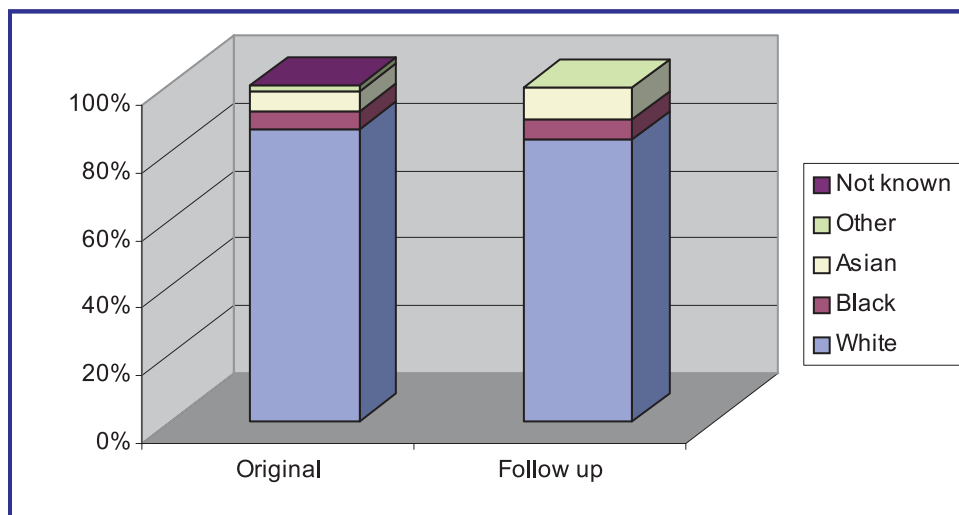
Key to file samples

- 1. **Original racist incident** - 586 cases taken from 16 CPS Areas
- 2. **Original minority ethnic defendant** - 1,831 cases taken from same 16 CPS Areas
- 3. **Follow up racist incident** - 292 cases taken from 8 CPS Areas
- 4. **Follow up minority ethnic/white defendant** - 2,300 cases examined for second Area inspection cycle

1. ETHNICITY PROFILE

Ethnicity of defendants	Racist Incident	
	Original	Follow-up
White	86.7%	83.9%
Black	5.1%	5.8%
Asian	6.3%	9.6%
Other	1.5%	0.7%
Not known	0.3%	0%

RACIST INCIDENT DEFENDANTS - ETHNICITY PROFILE



CASES ARISING FROM RACIST INCIDENTS

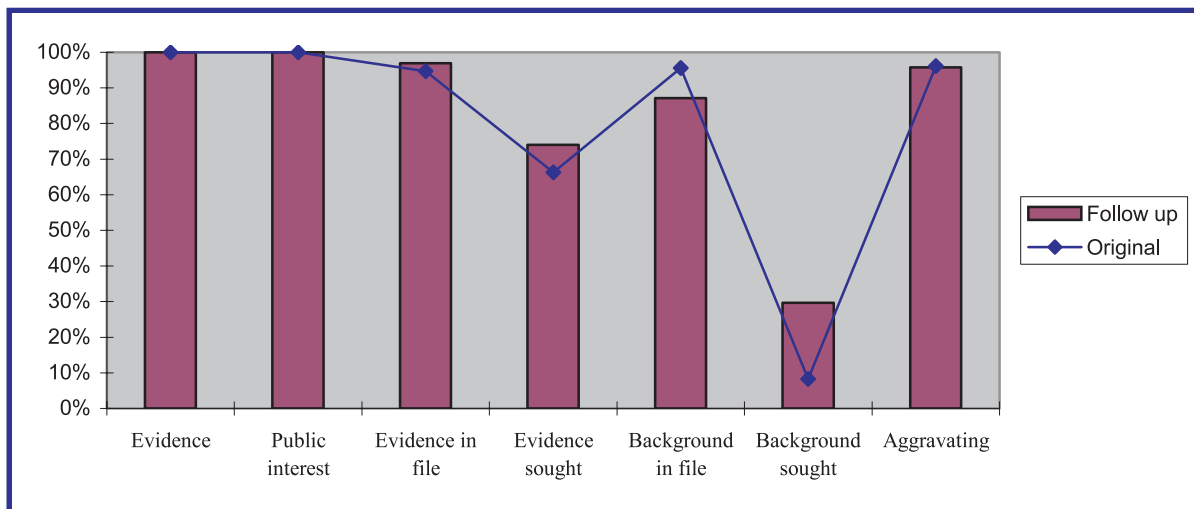
Key to file samples

- 1. **Original racist incident** - 586 cases taken from 16 CPS Areas
- 2. **Follow up racist incident** - 292 cases taken from 8 CPS Areas

1. THE REVIEW DECISION

Category	Follow up			Original review		
	Yes	No	%	Yes	No	%
Was the decision to proceed on the evidence correct?	286	0	100	577	0	100
Was the decision to proceed in the public interest correct?	286	0	100	577	0	100
Was it appropriate to request further information at initial review?	62	229	21.3	NA	NA	NA
Was an appropriate request made?	37	25	59.7	NA	NA	NA
Was there admissible evidence of racist hostility/motivation in file?	283	9	96.9	552	31	94.7
Was further evidence sought to establish racist hostility/motivation?	57	20	74	59	30	66.3
Was there sufficient background information?	249	37	87.1	541	25	95.6
If not, did the prosecutor request more from the police?	11	26	29.7	2	22	8.3
Did the prosecutor identify the racism as an aggravating feature?	273	12	95.8	538	22	96.1

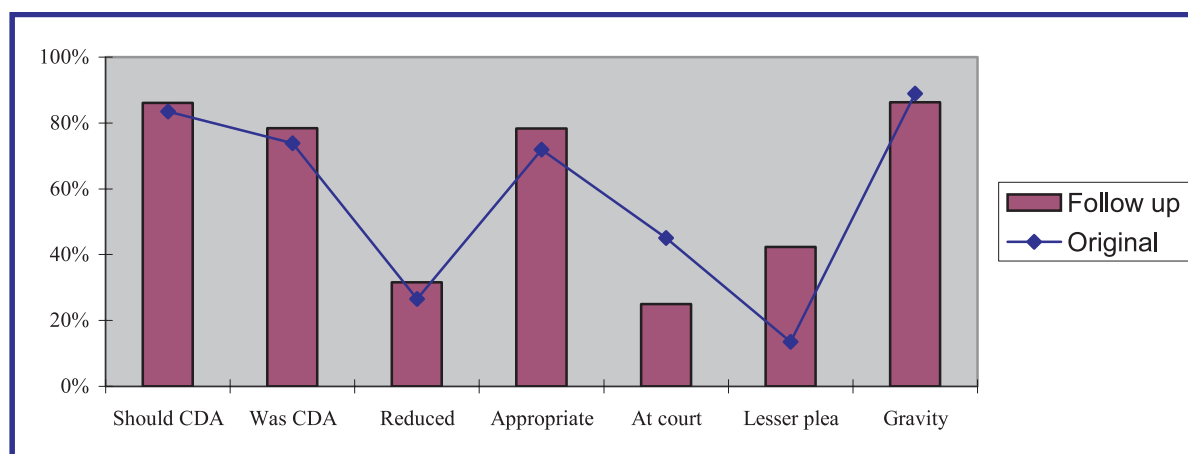
THE REVIEW DECISION - SELECTED CATEGORIES



2. CHARGE HISTORY

Category	Follow up			Original review		
	Yes	No	%	Yes	No	%
Police charges amended correctly at first reasonable opportunity?	86	35	71.1	85	65	56.7
Did the case proceed to trial/guilty plea on correct level of charge?	250	34	88	NA	NA	NA
Should the charge(s) pursued have been under the CDA 1998?	247	40	86.1	485	96	83.5
Was/were the charge(s) pursued under the CDA 1998?	225	62	78.4	431	152	73.9
If yes, was it under the right section?	212	12	94.6	415	13	97
If CDA charge pursued, was it appropriate to also pursue alternative?	25	198	11.2	20	408	4.7
If CDA charge pursued, was an alternative offence also pursued?	26	197	11.7	34	394	7.9
Was the level of charge reduced?	92	199	31.6	155	431	26.5
If so, was the reduction appropriate?	72	20	78.3	105	41	71.9
If reduced, was that decision taken at court?	23	69	25	69	84	45.1
Was a plea to a lesser offence accepted in place of a CDA offence?	39	53	42.4	65	416	13.5
If so, was that course of action at appropriate?	29	10	74.4	37	23	61.7
Was that decision taken at court?	18	21	46.2	37	28	56.9
Did the final charges reflect the gravity of the offending?	251	40	86.3	519	65	88.9

CHARGE HISTORY - SELECTED CATEGORIES



3. CASE PREPARATION AND PRESENTATION

Category	Follow up			Original review		
	Yes	No	%	Yes	No	%
Appropriate instructions to prosecutor about acceptability of pleas?	75	20	78.9	170	35	82.9
Did instructions bring racially aggravation to the attention of counsel?	53	8	86.9	52	9	85.2
Did counsel originally instructed attend the PDH?	12	3	80	33	25	56.9
Did counsel originally instructed attend the trial?	3	4	42.9	9	13	40.9
Did counsel originally instructed attend the sentencing hearing?	15	4	78.9	21	18	53.8

CASES INVOLVING MINORITY ETHNIC DEFENDANTS

1. Follow up minority ethnic/white defendant - 2,300 cases examined for second Area inspection cycle

1. TRIALS AND SENSITIVE GUILTY PLEAS

Category	White defendants			Minority ethnic defendants		
	Yes	No	%	Yes	No	%
Was the decision to proceed on the evidence correct?	1,148	8	99.3	137	1	99.3
Was the decision to proceed in the public interest correct?	1,147	1	99.9	137	0	100
Police charges amended correctly at first reasonable opportunity?	269	81	76.9	37	11	77.1
Was any relevant charging standard applied correctly?	556	15	97.4	65	2	97
Did the case proceed to trial/guilty plea on correct level of charge?	1,103	38	96.7	132	6	95.7
Did the decision to proceed to trial accord with the evidential test?	974	14	98.6	121	3	97.6
Did that decision accord with the public interest test?	978	3	99.7	120	0	100
Was the lodged indictment amended (Crown Court cases)?	112	341	24.7	14	50	21.9

Reasons for amendment of indictments - Crown Court cases only

Category	White defendants		Minority ethnic defendants	
	Number	%	Number	%
To reduce the level of charge	12	10.7	1	7.1
To increase the level of charge	11	9.8	1	7.1
Change in circumstances	5	4.5	0	0
Wrong charges	9	8	2	14.3
Minor cosmetic error	14	12.5	1	7.1
To accommodate pleas	15	13.4	1	7.1
Other reason	46	41.1	8	57.1

2. TERMINATED CASES

Category	White defendants			Minority ethnic defendants		
	Yes	No	%	Yes	No	%
Was initial decision whether to proceed on the evidence correct?	514	14	97.3	67	2	97.1
Was initial decision whether to proceed in the public interest correct?	494	0	100	67	0	100
Did the decision to discontinue accord with the evidential test?	409	31	93	56	1	98.2
Did the decision to discontinue accord with the public interest test?	255	24	91.4	37	2	94.9
Did discontinuance take place at the earliest opportunity?	405	121	77	55	14	79.7

Reasons for termination - magistrates' courts cases only

Category	White defendants		Minority ethnic defendants	
	Number	%	Number	%
Inadmissible evidence - breach of PACE	1	0.2	0	0
Inadmissible evidence - other reason	3	0.6	1	1.4
Unreliable confession	1	0.2	0	0
Conflict of evidence	38	7.1	3	4.3
Essential legal element missing	119	22.3	22	31.9
Unreliable witness(es)	19	3.6	1	1.4
Identification unreliable	31	5.8	4	5.8
Effect on victim's physical/mental health	5	0.9	0	0
Defendant elderly or suffering significant ill health	5	0.9	1	1.4
Genuine mistake or misunderstanding	1	0.2	0	0
Loss/harm minor and one incident	16	3	0	0
Loss/harm put right	5	0.9	1	1.4
Long delay between offence and date of charge or trial	2	0.4	0	0
Very small or nominal penalty likely	79	14.8	5	7.2
Informer or other public interest immunity issues	0	0	2	2.9
Caution more suitable	17	3.2	1	1.4
Youth of offender	1	0.2	0	0
Case not ready/adjournment refused	9	1.7	0	0
Offence taken into consideration	3	0.6	1	1.4
Victim refuses to give evidence/retracts	126	23.6	14	20.3
Victim fails to attend unexpectedly	41	7.7	7	10.1
Civilian witness refuses to give evidence/retracts	3	0.6	3	4.3
Civilian witness fails to attend unexpectedly	5	0.9	0	0
Police witness fails to attend unexpectedly	3	0.6	2	2.9
Documents produced at court	0	0	1	1.4

3. ADVERSE CASES†

Category	White defendants			Minority ethnic defendants		
	Yes	No	%	Yes	No	%
Was the decision to proceed on the evidence correct?	316	36	89.8	56	1	98.2
Was the decision to proceed in the public interest correct?	313	2	99.4	57	0	100
Was any relevant charging standard applied correctly?	141	7	95.3	18	0	100
Did the case proceed to trial on the correct level of charge?	319	24	93	52	3	94.5
Was the reason for acquittal reasonably foreseeable?	149	204	42.2	21	35	37.5
Could the CPS have done more to avoid acquittal?	92	217	29.8	11	38	22.4

Reasons for acquittal in adverse cases

Category	White defendants		Minority ethnic defendants	
	Number	%	Number	%
Inadmissible evidence - breach of PACE	2	0.6	0	0
Inadmissible evidence - other reason	3	1	1	2
Conflict of evidence	7	2.2	2	4.1
Essential legal element missing	70	22.3	8	16.3
Other evidential element missing (e.g. continuity)	23	7.3	4	8.2
Unreliable witness(es)	13	4.1	1	2
Identification unreliable	23	7.3	1	2
Effect on victim's physical/mental health	8	2.5	0	0
Defendant elderly or suffering significant ill health	3	1	1	2
Other indictment or sentence	11	3.5	1	2
Informer or other public interest immunity issues	0	0	1	2
Victim fails to come up to proof	22	7	7	14.3
Other civilian witness fails to come up to proof	5	1.6	0	0
Police witness fails to come up to proof	1	0.3	0	0
Victim refuses to give evidence/retracts	59	18.8	12	24.5
Victim fails to attend unexpectedly	52	16.6	10	20.4
Civilian witness refuses to give evidence/retracts	5	1.6	0	0
Civilian witness fails to attend unexpectedly	6	1.9	0	0
Poor police representation	1	0.3	0	0

† Cases in which the magistrates found no case to answer at the close of the prosecution case and Crown Court cases in which the judge ordered or directed an acquittal.

4. SUMMARY

This section summarises the comparative performance in respected of trials, sensitive guilty plea cases, terminated cases and adverse cases in important categories.

Category	White defendants			Minority ethnic defendants		
	Yes	No	%	Yes	No	%
Was the decision to proceed on the evidence correct?	1,978	58	97.2	260	4	98.5
Was the decision to proceed in the public interest correct?	1,954	3	99.8	261	0	100
Was any relevant charging standard applied correctly?	697	22	96.9	83	2	97.6
Did the case proceed to trial/guilty plea on correct level of charge?	1,422	62	95.8	184	9	95.3

ANNEX D

LIST OF EXTERNAL CONSULTEES

Inspector M Baines, West Yorkshire Police
Detective Chief Inspector C Croucher, Kent Police
Mr D Singh Dhesi, Birmingham Sikh Community and Youth Service
Superintendent A Hope, Kent Police
Mr S Kidwai, Association of Muslim Professionals
Ms N KIELTY-CRUMMIE, Merseyside Racial Harassment Prevention Unit
Sergeant B McAdam, Merseyside Police
Mr S Meer, Leeds Racial Harassment Project
Inspector C Piggins, Leicestershire Police
Mr D Sharma, North West Kent Racial Equality Council
Mr S Sidhu, Hillingdon Race Equality Council
Chief Inspector C Spriggs, West Midlands Police
Detective Superintendent D Tucker, Metropolitan Police
Mr T Moore, Justices' Clerks Society
Mr P Singh, Black Racial Attacks Independent Network
Mr M Hussain, Victims of Racism in England
Mr G Lemos, RaceActionNet

We sought evidence from 13 other organisations.

ANNEX E

POSITIVE INITIATIVES AND PRACTICES

During the course of our follow-up exercise, we received details of a number of positive initiatives and practices that are being pursued or planned by individual CPS Areas. They have obvious merit and most are already producing visible benefits. Those at a more advanced stage are listed in this annex, so that other CPS managers may consider whether it would be advantageous to adopt similar practices in their Areas.

<p>Increasing understanding of criminal justice processes</p>
<p>An ambitious inter agency event was held designed to increase awareness. Research has shown that individuals within the age group of 12 to 16 most commonly use racist language. A local school was selected to nominate 14 children to experience the criminal justice system at first hand, with a race theme. They followed an imaginary case through the CJS starting at the police station custody office. They spent time at the CPS office observing and discussing review and the CPS role before seeing a case through the magistrates' and Crown Courts. They were given the opportunity to sit on the Bench, retire with the magistrates/judge and ask any questions that they wished about the case and processes. They then went to the local prison and observed how prisoners are processed and rehabilitated. The local press covered the event extensively and it attracted significant publicity. The end product was a video that was distributed to every pupil in the selected school. This is a good example of a joined up approach, designed to improve public confidence, emphasise the seriousness of racism, involve young people and use the media to spread positive messages in the community.</p>
<p>Achieving fair treatment</p>
<p>A Fair Treatment of Offenders Group has been established to ensure equality. The CPS is participating with the police and others and will bring service delivery monitoring data. The CPS and police have worked together on recruitment.</p>
<p>A CPS Area has adopted and applied the Diversity Excellence Model. This is a tool similar to the Business Excellence Model through which staff are able to self-assess, identifying strengths and weaknesses, and measure progress. Publishing of the result provides transparency and accountability.</p>
<p>Publicising success</p>
<p>A CPS Area is doing more to publicise its successes. Representatives have appeared on the TV and radio explaining policy and are establishing links with the minority media. Those avenues are used to reassure and encourage victims that pursuing prosecution is a worthwhile option.</p>

<p>Identifying role models and establishing a representative workforce</p>
<p>Interviews were arranged in the minority media with an Asian lawyer who was going through the CPS law scholarship scheme. He was seen as a potential role model. CPS staff have visited schools and publicised the legal trainee scheme. They try to cover all types of schools including multi-faith and Muslim and have publicised work experience opportunities.</p>
<p>Reassuring victims and gaining public confidence</p>
<p>The CPS has funded an outreach worker who spends four to five days each week within the community. She attends community meetings to respond to concerns and gather information. She has been able to gain a wider understanding, which is then disseminated to colleagues. The CCP takes a keen interest in her work and speaks to her at least once a week.</p>
<p>Arrangements have been made (to encourage reporting of racist crime) with organisations advising and assisting victims by providing facilities for those who do not wish to approach the police initially. They also provide information and support and share information with the prosecution team. They encourage victims to pursue offences through to conviction.</p>
<p>The police and CPS have publicised measures that are available to protect victims and witnesses. Posters have been produced that list the possibilities, such as screens and video evidence. Funding is available for publishing and the information has been translated into different languages.</p>
<p>Initiatives have been developed to assist victims in attending court, for example, one in which a group of local Asian shopkeepers have agreed to look after each other's shops if they need to give evidence.</p>
<p>The CCP asked if the CPS could deliver training at a Sikh temple. Members of the communities also attended. The CPS was no longer a faceless organisation.</p>
<p>An Area has established positive links with local and national ethnic media. This has resulted in a CCP providing interviews to bilingual newspapers as well as Asian TV stations.</p>
<p>Communication strategies are agreed so that the CPS works alongside the police and racial harassment organisations to manage any dip in performance, so that it is clearly understood to be a necessary consequence of increased reporting and an early step on the road towards increasing significantly the number of successful prosecutions. Expectations are managed jointly. As people begin to realise what they can expect they start to expect more and satisfying those expectations becomes more difficult. When expectations are high, there is greater take-up and, as a result, a greater risk of dissatisfaction. It is recognised that the voluntary sector has an important role to play in explaining this process and that it is part of the transition.</p>

Involving staff in community engagement
Involvement in community engagement has been made a performance appraisal objective for all staff. Managers have taken staff with them to meetings and events. This increases general awareness of and ownership/understanding of the issues.
An Area has set up a cultural awareness programme for senior managers in order to raise their understanding of different cultures and religions. This has also provided managers with the opportunity to meet with the local community and discuss concerns. These concerns are then fed back to colleagues and the Local Criminal Justice Board.
Lay panels
Understanding might be increased through the use of the lay panels. They could comprise three or four people with knowledge/experience of race issues who would go over and review finalised cases. There would be confidentiality issues but they would act as critical friends and be constructive. Lessons would be learned and insight gained. Mistakes would be learned from and good practice identified.
Ensuring cases are monitored
COMPASS now allows for comparison between cases recorded on the system and the manually completed racist incident data sheets (RIDS). Administrators flag cases on COMPASS and a monitoring report is checked against completed forms. Cases in which forms have not been completed are returned to reviewing lawyers. The CCP sees all completed forms. Coloured file jackets are also used for racially aggravated cases.
The Area's performance management regime is constantly under review. Unit Heads are required to report after a review of RIMS data. The CCP needs to be satisfied that cases have been seen by the Unit Heads before discontinuance or charges are reduced.
Publishing the results of RIMS
The Area RIMS co-ordinator prepares a monthly analysis. It is e-mailed to all staff and placed on notice boards. Unit Heads discuss the information at unit meetings. The information is presented in a user-friendly manner and explained.
Joint performance monitoring
The CPS and police are pursuing a programme of joint performance monitoring visits. Senior police officers and the CCP are spending time with crime managers and CPS Unit Heads to review the investigation and prosecution of hate crime. Issues and risks will be identified with regard to race crime.

<p>Adopting a partnership approach</p>
<p>Co-location has meant that CPS staff are working more closely with the police, particularly with the community liaison officers. The police are able to generate a lot of information about racist incidents using their computer system. Those incidents are discussed at meetings. The police and CPS look at what could have been done.</p>
<p>Pursuing cases of racial harassment</p>
<p>The police are working more closely with repeat victims so that cases of harassment can be pursued and restraining orders sought. In a recent case, a CPS lawyer spoke to a multiple victim with a view to pursuing harassment and to maximise victim impact information.</p>
<p>Maximising background information</p>
<p>The CPS is seeking more background information. Their representative brings a bundle of files to meetings with the police and says ‘this is what we need’ for each case. That includes details of previous incidents and corroborative evidence.</p>
<p>Youth Offending Teams are a good source of background information for the CPS and police. When referral orders are made, they investigate whether the victim wants to meet the offender. They know whether parties have had to move house. This can be very useful information and illustrate wider problems.</p>
<p>Increasing understanding and awareness</p>
<p>A package has been prepared locally which is a mixture of training course material and relevant information from the minority media. It is updated periodically and given to everyone who attends the training. It is a manual for reference and the importance of monitoring is emphasised.</p>
<p>Prosecutors are proactive at the mode of trial stage, drawing attention to relevant sentencing case law. CPS staff attended a magistrates’ training event and distributed policy documents.</p>
<p>Assuring the quality of case presentation and interaction with victims at court</p>
<p>An agreement has been reached so that a scheme will be set up in which local barristers receive a week’s training with the CPS followed by a week’s shadowing of a CPS prosecutor. The Unit Heads will set up a training programme, which will be like high-level work experience. A letter has been sent to Heads of Chambers inviting applicants to indicate at which office they would like to receive their training. The ultimate aim is for such training to be compulsory before barristers can undertake CPS work.</p>

An initiative has been agreed with all local Heads of Chambers in which an 'expectations document' will be drawn up. This will list the expectations of prosecuting counsel and include introducing themselves to the victim and explaining their role. The CPS, Bar and representatives of victims groups will work together to draft the document. A 'tick box' evaluation form will be provided to victims so that every trial will have an expectations and evaluation document. The CPS will analyse the results and feed them back to chambers. The CCP visited each set of chambers to discuss the scheme and victims were also invited to discuss their perspective with counsel. The intention is to compare the 'satisfaction rates' of chambers rather than to criticise particular individuals.

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