REPORT ON THE THEMATIC REVIEW OF CASEWORK HAVING A MINORITY ETHNIC DIMENSION

C O N T E N T S

	Paragraph
INTRODUCTION	**1.1**
The role of the CPS	1.5
Scope of the review	1.11
Purpose and themes	1.15
The review team	1.27
Limitations of the review	1.29
METHODOLOGY	**2.1**
File examination	2.1
(i) cases arising from racist incidents	2.2
(ii) cases involving defendants from a minority ethnic group	2.6
(iii) cases from a general sample	2.9
Cases of incitement to racial hatred	2.11
Interviews	2.12
Validation exercise	2.14
Consultation seminar	2.18
CASES ARISING FROM RACIST INCIDENTS	**3.1**
INTRODUCTION	3.1
CPS POLICY AND GUIDANCE	**4.1**
The need for awareness	4.9
The need for training	4.13
MONITORING OF RACIST INCIDENT CASES	**5.1**
Background	5.1
Operation of the scheme	5.6
Identification of racist incident cases by the CPS	5.16
Effectiveness of RIMS	5.34
Getting the best out of RIMS	5.38
Making use of monitoring information	5.48
REVIEWING CASES	**6.1**
Introduction	6.1
Quality of review	6.5
(i) initial review	6.8
(ii) selection of the appropriate charge	6.12
(iii) discontinuance	6.16
Information taken into account in decision-making	6.21
(i) introduction	6.21
(ii) previous incidents	6.28
(iii) corroborating evidence	6.36
(iv) the psychological impact	6.39
(v) willingness to testify	6.44
(vi) other sources of information	6.45
(vii) information generally	6.49

	Paragraph
REVIEWING CASES (continued)	
Proving the racist element	6.51
(i) introduction	6.51
(ii) the interpretation of hostility based upon race	6.59
(iii) racist abuse of police officers	6.71
Quality of charging decisions	6.78
(i) introduction	6.78
(ii) the reduction of charges	6.81
(iii) timeliness	6.90
Alternative verdicts	6.92
Discontinuance	6.100
(i) introduction	6.100
(ii) maintaining the commitment of victims and witnesses	6.102
(iii) timeliness	6.108
Developing expertise	6.112
(i) introduction	6.112
(ii) establishing a network of ‘consultants’	6.114
Sharing experience and achieving consistency	6.121
Overview	6.126
PREPARING AND MONITORING CASES	**7.1**
File endorsements	7.2
Instructions to counsel	7.13
PRESENTING CASES IN COURT	**8.1**
Offences under section 29 to 32 of the Crime and Disorder Act 1998	8.7
Other offences committed in circumstances of racial aggravation	8.13
Acceptance of pleas	8.21
Sentencing	8.29
Conclusion	8.31
CASES OF INCITEMENT TO RACIAL HATRED	**9.1**
TREATMENT OF VICTIMS AND WITNESSES	**10.1**
Minority ethnic witnesses generally	10.1
Witnesses to racist crime	10.5
LIAISON AND COMMUNITY ENGAGEMENT	**11.1**
CASES INVOLVING MINORITY ETHNIC DEFENDANTS	**12.1**
INTRODUCTION	12.1
Methodology	12.6

REPORT ON THE THEMATIC REVIEW OF CASEWORK HAVING A MINORITY ETHNIC DIMENSION

CONTENTS

	Paragraph
REVIEWING CASES	**12.9**
Selection of the appropriate charge	12.12
Discontinuance	12.26
Acquittal rates and their significance	12.32
The wider context	12.42
(i) stop and search	12.45
(ii) bail	12.50
(iii) counter-allegations	12.53
(iv) generally	12.60
Overview	12.63
Commentary	12.72
The need for ongoing monitoring	12.77
CONCLUSIONS, GOOD PRACTICE, RECOMMENDATIONS, SUGGESTIONS AND THE WAY FORWARD	**13.1**
Conclusions	13.1
Cases arising from racist incidents	13.1
Cases involving minority ethnic defendants	13.9
The Way Forward	13.12
Good Practice	13.17
Recommendations	13.18
Suggestions	13.19

ANNEX A: Themes of the review
ANNEX B: Breakdown of file sample
ANNEX C: Charts and statistics
ANNEX D: List of national consultees
ANNEX E: The Code for Crown Prosecutors
ANNEX F: Offences under part 3 of the Public Order Act 1986
ANNEX G: The Race Relations (Amendment) Act 2000
ANNEX H: The criminal process
ANNEX I: HMCPS Inspectorate's Statement of Purpose

INTRODUCTION

1.1 This is the report of Her Majesty's Crown Prosecution Service Inspectorate's (HMCPSI) thematic review of the way in which the Crown Prosecution Service (CPS) deals with cases having a minority ethnic dimension. In particular, we have considered the quality of the casework decisions and the way in which they are reached.

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 a number of Areas and from CPS Headquarters. The decision to undertake the review at this particular time reflected the high profile which race and equality issues have in the criminal justice system and especially in the CPS. Most of the emphasis has, so far as the CPS is concerned, been on employment practices and the need to develop arrangements for community engagement. The Chief Inspector, with the full support of the DPP who had already made a commitment to ensure that prosecutions were free from bias and discrimination, considered that it was equally important that there should be an objective assessment of service delivery. This would focus on categories of prosecutions where the fairness and even-handedness of the CPS has been called into question, with an inevitable adverse effect on the confidence of minority ethnic groups in the CPS. This review was therefore undertaken with its scope determined so as to avoid covering the same issues as the inquiries by Sylvia Denman CBE[1] and the Commission for Racial Equality (CRE)[2].

1.3 Scoping and planning for the review commenced in July 2000. During its currency, the CPS itself has identified a need for permanent arrangements for monitoring this important aspect of service delivery; indeed, it is doubtful whether the CPS could fulfil its statutory obligations under the Race Relations (Amendment) Act 2000, and demonstrate that it does not discriminate in carrying out any of its functions, without such arrangements. Those obligations are set out in more detail at paragraphs 12.77 to 12.78 and at Annex G to this report. Arrangements for monitoring are now being put in place and the findings of this review of casework with a minority ethnic dimension will therefore become a benchmark for that further work. Details of this monitoring are set out at paragraphs 12.80 to 12.82.

1.4 Members of minority ethnic communities become involved with the criminal justice system in a number of ways. The most obvious ones are as the victim of a crime, which may or may not be racially aggravated, as a witness who may be required to give evidence, as a juror or as a defendant in criminal proceedings. Whilst initial contact will almost inevitably be with the police, the CPS will handle any prosecutions. Minority ethnic groups will only have confidence in the fairness and quality of their treatment at the hands of the CPS if they experience it as such. This review has therefore looked at the policies and practices of the CPS in the context of many hundreds of cases involving members of minority ethnic communities in a range of capacities. It has compared the decision-making with a control sample of other cases and considered how effective the CPS is in understanding and responding to the particular issues which are crucial to securing and maintaining the confidence of minority ethnic groups.

[1] Race Discrimination in the Crown Prosecution Service – July 2001
[2] The Crown Prosecution Service, Croydon Branch – Report of a Formal Investigation (July 2001)

The role of the CPS

1.5 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 area[3] and enjoys substantial autonomy but within the parameters of a national framework document.

1.6 The decision to prosecute an individual has serious implications for all involved - victims, witnesses and defendants. 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. The Code is set out in full at Annex E.

1.7 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. Crown Prosecutors may decide to continue with the original charges, to change the charges or sometimes to stop the case. A flowchart is provided at Annex H for readers who are unfamiliar with the criminal process.

1.8 Paragraph 2.2 of the Code provides that:

‘Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origins, sex, religious beliefs, political views or sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.’

1.9 It is their duty to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure to the defence are complied with, in accordance with the principles set out in the Code.

1.10 The Code also recognises that racist motive or hostility is a significant aggravating feature in favour of prosecution. Paragraph 6.4i provides that a prosecution is likely to be needed:

‘if the offence was motivated by any form of discrimination against the victim’s ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics.’

Scope of the review

1.11 Sixteen CPS Areas assisted us in our work: Cambridgeshire, Cheshire, Cleveland, Durham, Hampshire, Kent, Lancashire, London, Norfolk, Northamptonshire, Nottinghamshire, South Wales, South Yorkshire, Suffolk, West Midlands and West Yorkshire. These Areas represent a cross-section of the entire CPS and provided us with a mix of urban and rural environments from which to draw our evidence. We examined files from and visited all 16.

[3] Except CPS London which serves the Metropolitan Police Service and the City of London Police.

1.12 This is our first thematic review to be overseen and guided by a Steering Group. The Steering Group consisted of individuals from different backgrounds who brought to bear their particular expertise in this field. 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, Head of CPS Equality and Diversity Unit;
- Professor Gus John, Chief Executive, JTN Consultancy; Visiting Professor of Education at Strathclyde University;
- Alan Kirkwood, CPS Policy Directorate;
- Barry Mussenden, Department of Health; and
- Reverend Arlington Trotman, Churches’ Commission for Racial Justice.

1.13 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 project and assisted in the identification of key issues. They considered our emerging findings and helped to shape our recommendations. The Chief Inspector is extremely grateful to them for their time, advice and support.

1.14 The Chief Inspector is also grateful to Mr Peter Herbert and his colleagues from the Society of Black Lawyers (SBL) who assisted the review by conducting a validation exercise. This report is produced by HMCPSI but takes account of additional points raised by the Society.

Purpose and themes

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

1.16 The review sought to provide the DPP and Law Officers with an assessment of the quality of decision-making in and the handling of such cases. Our examination of casework pre-dated the implementation (on 14 December 2001) of part five of the Anti-terrorism, Crime and Security Act 2001, which created new religiously aggravated offences.

1.17 The main themes of the review have been:

- to assess the integrity of decision-making and the handling of prosecutions arising from racist incidents (within the Macpherson definition);
- to consider whether any significant proportion of such cases are not picked up as racist incidents and, therefore, not handled with appropriate sensitivity or monitored;
- to compare the decision-making process in cases where the defendant is or is not a member of a minority ethnic group; and
- to examine the reasons why the number of cases pursued under part 3 of the Public Order Act 1986 (incitement to racial hatred) appears to have fallen considerably.

1.18 A comprehensive list of the issues that we considered is set out at Annex A to this report.

1.19 In order to assess the quality of decision-making, we have compared our findings in respect of cases arising from racist incidents with data gathered by the Inspectorate about non-racist incident cases arising in the same 16 CPS Areas. Similarly, in considering the performance of the CPS in cases involving defendants from minority ethnic groups, we have compared our findings with data from the same Areas 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.

1.20 We have principally examined cases that were finalised before the inception of this review. That was to ensure that the fact that the review was taking place could not influence decision-making or the way in which such cases were handled.

1.21 The original intention of the review team was to seek evidence from a sample of minority ethnic witnesses about their experiences and the impact of giving evidence. However, this exercise coincided with a major customer satisfaction survey commissioned by the Home Office. We anticipated that the information from this study, relating to the experiences of witnesses from minority ethnic groups, would supplement that gathered in the course of the review to ensure that we were able to cover all aspects of minority ethnic involvement. Unfortunately, the number of minority ethnic witnesses identified in the survey proved insufficient to provide any statistically valid results.

1.22 We also considered cases pursued under part 3 of the Public Order Act 1986 relating to incitement to racial hatred. We spoke to representatives of the CPS Casework Directorate and the Legal Secretariat to the Law Officers (LSLO) and invited all 42 CCPs to submit written evidence.

1.23 Chapter thirteen summarises the review team's conclusions, recommendations and suggestions. The distinction between recommendations and suggestions lies in the degree of priority that the Inspectorate considers should attach to its proposals. Those meriting the highest priority form the basis of recommendations.

1.24 Chapter two sets out the methodology used in this review.

1.25 The remaining chapters examine our findings in depth and set out the evidence on which those findings are based.

1.26 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 review team

1.27 The review team comprised a Deputy Chief Inspector and three Legal Inspectors. We are particularly grateful to Professor Gus John for the amount of time he made available. The administration unit of the Northern group of HMCPSI based in York supported the team.

1.28 The Chief Inspector is grateful to the relevant Chief Crown Prosecutors for releasing their staff to participate in this review. We are grateful for the co-operation and support of all those with whom we came into contact during our work. The atmosphere in which the review was conducted ensured that the best results were obtained, so that the CPS can maintain and, where appropriate, improve the quality of its casework in this area.

Limitations of the review

1.29 We readily acknowledge the limitations to our methodology.

1.30 There are important issues of considerable concern to members of minority ethnic communities that we have not been able to give detailed consideration to due to resource limitations, reliance upon the examination of files and the need to focus on specific casework issues.

1.31 Some of those concerns relate to:

- deaths in police custody;
- allegations arising from the stopping and searching of suspects by the police;
- perceived differential approaches by the police and CPS towards counter-allegations; and
- perceived differential approaches by the police and CPS towards bail.

1.32 Each year, there are a number of cases in which a person dies while detained in police custody. In 1999/2000, there were 68 deaths recorded in police custody or when the deceased was otherwise in the hands of the police. Sixty were white people, three Asian,

two black people and three from other ethnic groups. Files are submitted to senior CPS lawyers to advise whether proceedings should be instituted. They are also considered by counsel of the highest calibre.

1.33 To enquire into such cases would be a major undertaking and is outside the remit of this review. We recognise, however, that there is concern that very few prosecutions result from such deaths and that, in some cases, failure to prosecute can undermine confidence in the criminal justice system. Where the deceased came from a minority ethnic group, it can damage relationships with the prosecuting agencies and create an atmosphere that hinders the investigation and prosecution of racist incidents.

1.34 We note that the Attorney General, in a parliamentary answer on 13 December 2001 [Official Report HL Col. 1961], announced a review of the arrangements for prosecuting deaths in custody and of the roles of the Law Officers, DPP and CPS in the process. The Attorney indicated that relevant government departments and other organisations with an interest would be consulted and that, if necessary, changes would be made. It is expected that the review will be completed by 30 June 2002.

1.35 Our report touches briefly on the remaining issues, when we discuss the wider context, at paragraphs 12.42 to 12.62. We do not, however, underestimate their importance generally or, more specifically, as factors influencing the level of confidence felt by members of minority ethnic communities in the criminal justice system.

METHODOLOGY

File examination

2.1 Sixteen CPS Areas that were the subject of routine inspections during the period of the thematic review were required to submit additional file samples relevant to the issues in this review. In particular we asked for:

- cases identified as falling within the CPS Racist Incident Monitoring Scheme (RIMS);
- cases where the defendant was a member of a minority ethnic group; and
- cases from a general sample suitable for assessing whether any racist incident cases are passing through the system without being identified.

(i) cases arising from racist incidents

2.2 The sixteen Areas were required to submit all finalised cases coming within the Racist Incident Monitoring Scheme in the period between 1 January and 30 September 2000. That produced a file sample of 586 cases.

2.3 The same questionnaire as is applied to assess the quality of review in cases examined in the ordinary course of Area inspections was used to assess the quality of review in RIMS cases. Direct comparison could then be made with the substantial volume of data gathered by the Inspectorate about non-racist incident cases. We mention that statistical comparison where relevant in the ensuing chapters of this report. In addition to the comparable questions, further questions were asked dealing with specific issues that arise in racist incident cases.

2.4 Racist incident cases typically fall within three categories of offence, namely, assaults, public order and criminal damage. Therefore, in order to ensure that we have carried out a 'like with like' analysis, we also compared our data in respect of racist incident cases to a sub-sample of similar non-racist cases from the general casework sample. The sub-sample contained only cases within those three offence categories. We refer to this sub-sample as our 'similar cases' sample.

2.5 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

2.6 The Areas (other than London) were asked to submit their first 100 cases charged after 1 January 2000 and finalised before 30 September 2000 in which the defendant was a member of a minority ethnic group. Some Areas would inevitably have a shortfall because of their ethnic composition. For CPS London, the target sample was 500 cases divided appropriately by borough. CPS case tracking systems do not at present log the ethnicity of defendants even where it is ascertainable from the file. The police were therefore asked to identify those cases from their records. In order to exclude straightforward minor road traffic cases, in which there would be little opportunity to consider the application of judgement and discretion by the prosecutors, they were asked not to include cases in which the defendant had been summonsed (rather than charged). Additional cases were subsequently sought from two of the larger Areas namely West Midlands and West Yorkshire to produce an overall file sample of 1831 cases.

2.7 Again, the same 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 16 Areas of 1255 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.

2.8 The same file examination procedure was followed as that described for RIMS cases in paragraphs 2.3 and 2.5 above.

(iii) cases from a general sample

2.9 Previous studies have considered the quality of performance in cases that have been identified and classified as arising from a racist incident. The validity of such exercises is dependent on the effectiveness of the CPS in identifying such cases. The review sought to determine whether cases are slipping through the net.

2.10 The Areas (other than London) were asked to make available for examination their last 100 finalised cases within the categories of assault, public order and criminal damage that had not been identified as arising from a racist incident. Experience shows that these are the categories of offences which are likely to include the greatest numbers of racially aggravated incidents. CPS London was requested to set aside 25 for each Branch. Inspectors on-site considered whether the Areas should have identified any as racist incident cases falling within the monitoring scheme.

Cases of incitement to racial hatred

2.11 We also considered cases pursued under part 3 of the Public Order Act 1986. These are offences relating to the stirring up of racial hatred. Because such prosecutions require the consent of the Attorney General, they are channelled through the Casework Directorate at CPS Headquarters and the Legal Secretariat to the Law Officers. We spoke to representatives of both and invited all 42 Chief Crown Prosecutors to submit written evidence about such cases and details of any trends or guidance issued to staff. We were particularly anxious to ascertain what factors may have led to a fall in such cases in recent years.

Interviews

2.12 We interviewed the RIMS co-ordinators and small groups of CPS lawyers and caseworkers from each Area about the key issues. In addition, a considerably greater number of staff interviewed in the ordinary course of Area inspections were asked to deal with a number of supplementary issues relevant to this review.

2.13 Representatives of criminal justice agencies, community and special interest groups were also interviewed. They had either a national responsibility or acknowledged expertise in respect of the issues that we were considering. Their overview was enlightening, interesting and valuable. We have included some of their helpful comments in the body of this report. A list of those interviewed is set out at Annex D.

Validation exercise

2.14 The Society of Black Lawyers was invited to nominate a small group of its members to undertake a validation exercise. They selected 300 files that had already been examined by HMCPSI inspectors. These were cases arising from racist incidents and cases involving minority ethnic defendants. 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.

2.15 There was a strong measure of agreement in relation to individual cases; where there was a difference of opinion between the inspector and the validating lawyer in relation to a particular case, it almost always related to matters such as the precise nature of the charge or an aspect of handling, rather than any other of the key decisions, such as whether to proceed at all. The SBL identified many of the same important issues as did inspectors. Moreover, their fresh and different perspective usefully identified additional matters which involved learning points for both the inspectors and the CPS.

2.16 The SBL expressed strong concern on an issue which has been a feature of successive HMCPSI reports – the failure of so many prosecutors to record properly the decisions they take and the reasons for them, as well as other important information about the handling of cases. They expressed strong concern about the implications for proper accountability both internally and to the public, including victims and witnesses. Their concerns are well founded.

2.17 Given the extent of the common ground, the vast majority of the issues raised by the Society of Black Lawyers are reflected within the overall findings. We have, however, drawn specific attention to a number of their concerns. This report has been seen in draft by the team nominated by the Society of Black Lawyers and they have endorsed it.

Consultation seminar

2.18 On 27 September 2001, a consultation seminar was held to discuss our emerging findings and possible recommendations. Representatives from all 42 CPS Areas attended and speakers included the Attorney General and the Director of Public Prosecutions. The review team presented its emerging findings and invited delegates to comment in the light of their own experiences. They also considered whether the proposed recommendations appropriately addressed concerns arising from our findings. All members of the Steering Group and review team were present to answer questions and provide further information for discussion.

2.19 This report takes account of the invaluable feedback and interesting additional points that were made at the consultation seminar. The Chief Inspector is grateful to all those who attended and contributed to its success.

CASES ARISING FROM RACIST INCIDENTS

INTRODUCTION

3.1 From 1 April 1999, it was decided that the CPS would adopt the wider more straightforward definition of a racist incident that was recommended by Sir William Macpherson in his report of the Stephen Lawrence Inquiry (recommendation 12). The Macpherson definition has also been adopted by the police, Home Office and other agencies. It states that:

'a racist incident is any incident which is perceived to be racist by the victim or any other person'.

3.2 On 30 September 1998, sections 29 to 32 of the Crime and Disorder Act 1998 came into effect creating specific racially aggravated offences of assault, criminal damage, public order and harassment. Under section 28 of the Act, an offence is racially aggravated if the perpetrator is shown, at the material time, to have demonstrated hostility towards the victim based on the victim's membership or presumed membership of a racial group or was motivated by such membership or presumed membership.

3.3 Additionally, part 3 of the Public Order Act 1986 (sections 18 to 22) sets out specific offences dealing with the incitement of racial hatred through words, behaviour, written or recorded material or by public performance.

3.4 Any other offence may be racially aggravated if it comes within the statutory (as opposed to the Macpherson) definition. There are statutory provisions and Court of Appeal guidance providing for increased levels of sentencing in cases shown to be racially aggravated.

3.5 The Macpherson definition is deliberately broad and subjective. Its adoption is intended to ensure that those who believe that they have been the victim of racist crime feel confident in reporting it. But not everything falling within that broad definition will amount to a crime, let alone a racially aggravated crime.

3.6 As Alan Kirkwood, a senior policy advisor from the CPS Policy Directorate, explained:

'There is a tension between the police investigating the case as a racist incident and it not then being prosecuted as a racially aggravated offence. There is a clear difference in the Macpherson definition of a racist incident, which is designed primarily to encourage wider reporting, and the evidence required to support a prosecution, but expectations are nonetheless raised on the part of the victim that their case will be prosecuted as racially aggravated.'

3.7 Despite the potential that the expectations of victims may be raised inappropriately, we have not found that there has been a marked increase in the charging of racially aggravated offences following the widening of the definition; nor has there been a significant increase in non-viable racially aggravated charges. For the most part, the police are adequately filtering reported incidents and only pursue cases that are realistically viable.

3.8 We set out our findings in detail in the relevant chapters below. We have found that few racist incident cases are not identified as such, although it appears that significantly more are not monitored appropriately. Review is generally of good quality but sometimes under-informed. Recent developments have led to uncertainty amongst prosecutors and there is need for updated policy guidance to clarify important issues. We consider that experienced prosecutors should be given the task of assuring quality through liaison with colleagues and others and that the CPS can do more to encourage open-minded discussion of race issues. The effectiveness of the monitoring scheme can be increased through greater involvement of and better feedback to relevant staff. We also consider that there is greater scope for community engagement, to ensure that decision-making is properly informed and that victims receive satisfactory support and assistance.

CPS POLICY AND GUIDANCE

4.1 The most relevant guidance issued by the CPS is contained in Chapter 3A of the Prosecution Manual and in the more recent specific guidance on the relevant provisions of the Crime and Disorder Act 1998.

4.2 We agree with the positive feedback that we received from prosecutors about this guidance. It is comprehensive and clear. It has been very helpful in the past but has now been overtaken by recent events and judicial development of the law.

4.3 We endorse the view expressed by many CPS lawyers that there is now a need for further guidance on racist incident casework in light of recent changes. These are changes following the Stephen Lawrence Inquiry and as a result of developments since the implementation of the Crime and Disorder Act 1998 and judicial interpretation of that legislation.

4.4 There are parallels with cases of domestic violence. Victims tend to be vulnerable, there is a significant psychological impact and the likelihood of repetition. Some staff said that the CPS should approach racist incident cases in the same way as domestic violence, for example, publish a policy statement and take a more pro-active approach. We understand that the CPS Policy Directorate is currently working on a policy statement in respect of racist incident casework. That will clearly represent a positive step.

4.5 Chief Constable Westwood, the Association of Chief Police Officers (ACPO) representative on Race Issues, explained how the police have changed their approach:

‘We used to have a hang-up about one against one cases in domestic violence. It was always the word of the husband against that of the wife so we did not pursue them. We changed our strategy and now we always arrest and pursue the cases as far as possible. The CPS has gone with us on domestic violence and cases are not lost because of failure of the police or CPS. The police now deal with racist crime in the same way but the CPS has not caught up with us. If that approach is acceptable for domestic violence, why is it not acceptable for racist incidents? The CPS is yet to take that step.’

4.6 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. That would be a suitable means of addressing the point made by Chief Constable Westwood. As to the support for a more positive approach, see paragraph 6.98.

4.7 There are limits as to how far guidance can cover all situations. Existing policy guidance can only take prosecutors so far and we have found evidence of inconsistency of approach. We make specific recommendations with regard to the need for further guidance and training at paragraph 6.128.

4.8 In short, we have found differences in approach between prosecutors about:

- the degree of evidence needed to establish hostility based on race under the Crime and Disorder Act 1998 and prove that an offence was racially aggravated (see paragraphs 6.59 to 6.70);
- whether racist abuse of police officers should be pursued as a more serious racially aggravated offence or as a simple public order matter (see paragraphs 6.71 to 6.77); and
- whether alternative charges should be added to racially aggravated offences, reducing the risk that the defendant will be acquitted altogether but increasing the risk that the racist element will not be acknowledged (see paragraphs 6.92 to 6.99).

The need for awareness

4.9 There is a degree of discretion allowed to prosecutors in decision-making that should be informed by an understanding and awareness of the wider context in which decisions are taken. The level of cultural awareness varies between prosecutors, as does understanding of the causes and impact of racism. If there are inconsistent perceptions of the context in which decisions are taken, there is the potential for different prosecutors to take different decisions in similar cases.

4.10 An example of a relevant cultural issue is a stigma amongst African-Carribbean males attached to becoming involved with the criminal justice system in any capacity. They may have concerns about the possibility of being criminalized and be reluctant to complain as a victim or appear as a witness as a result. Prosecutors need to be aware of these concerns if they are to address them. A less enlightened prosecutor faced with an indication of reluctance in such a case might merely discontinue whereas a more aware prosecutor might request that the police or other relevant agency provide appropriate support.

4.11 Some prosecutors feel vulnerable, in this sensitive area, because of their lack of a wider awareness. In the words of one:

'We need a background awareness of cultures and religions. We have to deal with new problems as a result of the influx from Eastern Europe. We can easily be accused of being racist through ignorance. Human awareness puts the rest of it into context. Different people have different life experiences and not all prosecutors have the same level of awareness. Cultural awareness can be difficult for members of staff who are not from an ethnic minority or do not have friends or associates who are.'

4.12 Another prosecutor made a similar point, saying that the CPS should be in a position to take positive action in appropriate cases:

'It would help to get more information on human awareness and issues of culture and religion. Individuals from minority ethnic communities are regularly insulted unintentionally in the magistrates' courts. There is a general ignorance about customs, such as how to handle holy books. It is important for prosecutors to be aware of such problems and able to point them out.'

The need for training

4.13 Assuring the quality of interaction between CPS staff and minority ethnic victims and witnesses is vital if the Service is to maintain trust and confidence in its handling of racist incident cases and ensure that the reasons behind its decisions are understood. Opportunities for such interaction will increase as the CPS moves towards direct communication with victims (rather than using the police as an intermediary). Lack of awareness can mean that the CPS is unable to respond appropriately to the needs of minority ethnic victims and witnesses. In some instances, it can lead to unintentional offence and the inadvertent portrayal of a negative image.

4.14 The report of Sylvia Denman CBE, 'Race Discrimination in the Crown Prosecution Service' published in July 2001 (the Denman Report) recommended (at paragraph 10.3.1 (7)) that the CPS should ensure that equality and diversity training forms an integral part of all management and staff development. The CPS has already implemented an extensive training programme dealing with diversity awareness and equality issues. That training included an illustration of how lack of awareness can have an adverse impact on the quality of casework decision-making.

4.15 We recommend, at paragraph 6.128, that the CPS Director of Human Resources should consider the provision of training for relevant staff to cover some important issues that can arise in racist incident cases. Most relate to matters of law, evidence and policy. We consider that it would put those issues firmly into context and build on the good work that has already been done for that training to include an element designed to further enhance the general level of awareness of relevant racial, religious and cultural factors.

4.16 Both CPS staff and consultees from outside the Service foresee significant benefits from joint training on race issues involving other relevant agencies. It has been extremely useful in other contexts.

> We were told about some examples of joint training initiatives that have taken place. For example, CPS South Wales held a conference in which the CCP invited representatives from minority ethnic communities to discuss issues arising from racist incident cases. Representatives of the courts, defence and judiciary also attended. Questions were taken from the audience and there was an invitation to delegates to visit and spend time in the CPS office. We were told that there was helpful input from the police and a better understanding was gained all round. The Area also held a diversity open day in which pupils from local schools visited the office and were given an insight.

We were told about another training initiative that was arranged by CPS Durham. It was jointly delivered to an audience involving the CPS, police, probation, Crown Court, magistrates' courts and prisons. It was found to be valuable to have several different perspectives. This initiative might provide a 'blueprint' for other Areas to consider, as a means of increasing understanding and awareness about issues surrounding racist incidents.

4.17 The event began with a discussion about personal experiences of racist crime and discrimination. We were told that this overcame any reluctance to talk about the issues. The debate had to be carefully controlled but continued informally throughout the day. There was what was felt to be a valuable discussion about 'political correctness'. The key to addressing such a sensitive topic successfully is securing the services of the right facilitator.

4.18 There were practical exercises on RIMS. A blank monitoring form was displayed on screen and completed collectively following discussion. An explanation was provided of the purpose, benefits and importance of monitoring. The intention was to increase awareness of 'the bigger picture'.

4.19 Later delegates worked through several case studies. They talked about the practicalities, policy, systems and charging practices. Issues relating to victims and witnesses were also discussed. Past problem cases were analysed and lessons to be learned identified. Specific cultural and practical issues were considered, such as mode of address and making better use of interpreters. We were told that the participants found the event both valuable and enjoyable.

4.20 We commend this type of localised training to other Areas. It appears to us to provide the right ingredients for increasing awareness and achieving a better understanding of the issues. It encourages consistency and quality in racist incident casework. It is important that the CPS keeps abreast of the concerns of the local community. The contribution and participation of representatives from other criminal justice agencies is essential, if there is to be an effective and 'joined-up' approach.

4.21 We suggest that CCPs should consider whether their Areas might beneficially pursue localised consultation initiatives involving representatives of relevant criminal justice system agencies and minority ethnic communities.

MONITORING OF RACIST INCIDENT CASES

Background

5.1 The CPS Racist Incident Monitoring Scheme (RIMS) gathers information on prosecution decisions and outcomes in all cases identified by the police or CPS as racist incidents.

5.2 The information is recorded on Racist Incident Data Sheets (RIDS). It is collated and analysed by members of the CPS Policy Directorate and published annually in a report. That report is circulated within the CPS and also to relevant external agencies. The CPS published its 4th Annual report on the results of RIMS in February 2001. It covered the period from 1 April 1999 to 31 March 2000 and was the first to be based upon the wider Macpherson definition of a racist incident arising from the Stephen Lawrence Inquiry. It was also the first to cover a full year of prosecuting the new racially aggravated offences under the Crime and Disorder Act 1998.

5.3 The scheme has moved away from tracking defendants towards tracking charges, because of the interest in the new offences. Codes have been introduced in a move towards using an electronic database. It is intended that monitoring will become more sophisticated and produce better quality reports in future as a result.

5.4 The guidance for those administering RIMS provides that all racist incident cases submitted by the police for prosecution should be clearly marked in accordance with the national agreement. This alerts the CPS to deal with the case appropriately and to commence monitoring. Details of all cases identified as racist incident cases are kept by each of the 42 CPS Areas. Returns are sent monthly to the CPS Policy Directorate in York for collation.

5.5 The latest RIMS Annual report provides information which includes:

- the number of racist incident defendants submitted by each CPS Area during the reporting period;
- CPS decisions on charges put by the police;
- details of charges dropped;
- outcomes of charges prosecuted in the courts; and
- sentences imposed by the courts.

Operation of the scheme

5.6 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.

5.7 It is important that the police identify racist incident cases to the CPS when submitting the file; a box is usually provided on the front cover for this purpose. Proper marking brings monitoring procedures into play and draws the prosecutor's attention. The importance of flagging up has lessened somewhat following the introduction of specific racially aggravated offences by the Crime and Disorder Act 1998, as the nature of the charge usually speaks for itself. However, the requirement has continued since it encourages positive action and recognition by the police and CPS.

5.8 The performance of the police in identifying racist incident files has steadily improved in recent years. According to the CPS Racist Incident Monitoring Scheme Annual Report 1999-2000, the police marked 78% of cases correctly. That represented an improvement of 20% on the previous reporting year.

5.9 We were told that performance in this respect is better in some CPS Areas than in others. The general perception, however, is that considerable progress has been made. The issue has been raised at a senior level and addressed at liaison meetings.

5.10 Our examination of cases finalised between April and September 2000 suggests that the steady improvement has continued. We found that almost all cases in our file sample were clearly endorsed as racist incidents by the police (96.3%). The CPS identified the remaining cases on receipt.

5.11 Starting from June 1998, the police agreed to supply the CPS with a copy of their racist incident form (or similar computer record) in all racist incident prosecutions. The dual purpose of this is to supply additional background information to inform decision-making and to assist with identification of racist incident cases. If such a form is not submitted with the file, the prosecutor reviewing the case should notify the police and request it. This will alert the police if they have not already identified the case as a racist incident.

5.12 The performance of the police in supplying racist incident forms to the CPS is less satisfactory. The RIMS Annual Report 1999-2000 indicates that the obligation was fulfilled in only 19% of cases. The 42 CPS Areas ranged between 0% and 55%. Some prosecutors, in the 16 Areas that we visited, told us that they rarely saw a racist incident form. Others expressed surprise that the percentage supplied in their Area was as high as was indicated in the report.

5.13 Chief Constable David Westwood told us that the police are fully aware that this is a problem area and are endeavouring to improve their performance:

'Both the police and CPS are falling down in this respect. It was agreed that the police would attach their monitoring form to the prosecution file. That would mean that the police supervisor could see that the necessary jobs had been done and that the CPS had sufficient background information. Where the form is not attached, the CPS should send the file back immediately. We are working on improving our performance. At present, the police do not always attach the appropriate form and, where it is absent, the CPS do not always request it.'

5.14 Prosecutors should take properly informed decisions. That is a joint responsibility of the police and CPS.

5.15 We suggest that CCPs strongly encourage:

- **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.**

Identification of racist incident cases by the CPS

5.16 CPS staff are required to mark the file jackets clearly in racist incident cases on receipt. We found that this is done in a variety of ways and that some methods are clearer than others. Files are marked in bold or stamped with either 'racist incident', 'racist', 'racial', 'RIMS' (Racist Incident Monitoring Scheme) or 'RIDS' (Racist Incident Data Sheet). The SBL were critical of the lack of a consistent method for marking such files.

5.17 It is possible that, although the police identify a case as relating to a racist incident, it may be overlooked and that the CPS file jacket is not marked correspondingly. Almost all CPS file covers in our case sample were marked clearly that the case was a racist incident (92.2%). 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. However, that does not necessarily mean that the relevant forms will be completed and submitted so that it is also captured by RIMS. Recent research has suggested that a significant proportion of racially aggravated cases are not captured.

5.18 For a number of years, it has been apparent that Home Office figures for racially aggravated offences proceeded with in the courts have been significantly higher than those recorded by RIMS. The Home Office decided to investigate this disparity by identifying 100 cases that had been dealt with in six CPS Areas then comparing the number recorded by other agencies to that recorded under RIMS. Whilst performance varied considerably between the Areas, it was found that the CPS had captured only around 25% of those cases overall.

5.19 Ultimately, it is for the reviewing lawyer to identify cases as arising from racist incidents. Difficulty is experienced by some Areas that do not have adequate procedures to ensure that fast-tracked cases finalised at first appearance are captured by RIMS. In the past, the CPS has identified racist incident cases when they are logged in at the office. That was the point at which files were marked as racist cases and usually when the monitoring forms were attached. Under the Narey fast track procedures[4], prosecutors now often first receive their files at a police station or magistrates' court. This means that cases finalised at first appearance may not be subjected to the ordinary logging-in procedures and, as a result, may slip through the monitoring net.

5.20 Some Areas have taken steps to ensure that does not happen but others have not.

5.21 The problem was summarised by one of the prosecutors that we interviewed:

'Narey has presented a problem in that cases are being finalised quickly. We don't have the forms at the police station and it is down to the vigilance of the reviewing lawyer. The problem has been pointed out but there is a high turnover of support staff and they don't always appreciate when cases have been missed. We had more time to get things right before Narey. We don't have administrative support at the police station and lawyers are under pressure.'

5.22 In some Areas, we were told that positive action had been taken to ensure that racist incident cases are not missed in this way. Some have made the monitoring forms available at the police station so that they can be attached and the file marked when they are first reviewed.

In one Area, posters have been put up in the room at the police station where fast-tracked cases are received and initially reviewed. They remind prosecutors of the need to identify and monitor racist incidents. In another Area, standing instructions have been issued that whenever a racist incident case is finalised at first appearance it must be directed immediately thereafter to the Area racist incident monitoring co-ordinator.

Another Area has, in addition to putting up similar posters, carried out 'awareness sessions' with administrative staff. Monitoring procedures have been explained and a flowchart used to break down the process. Lawyers were given copies of the flowchart and it was felt that the initiative has had a positive impact. The Area Business Manager (ABM) then attended prosecution team meetings and spoke to staff about the need to be vigilant.

5.23 We commend these initiatives and consider them to be good practice. Those Areas who do not currently employ similar procedures will wish to consider implementing them.

5.24 We recommend that 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.

[4] Procedures by which cases are expedited so that defendants are (generally) charged and bailed by the police to appear before the next available court hearing.

We found that some local co-ordination and comparison of data takes place. One way of checking that cases have not slipped through the net is for CPS managers to compare their monitoring statistics with those compiled by the local police, to ensure that they correspond.

5.25 We recommend that CCPs should consult with the police to ensure that data collected in respect of racist incidents is accurate, up-to-date and consistent.

5.26 The mechanics of RIMS have changed considerably as a result of the introduction of the new racially aggravated offences and the recommendations of the Stephen Lawrence Inquiry. The monitoring form was revised and the CPS Policy Directorate supplied detailed guidance to the Areas.

5.27 Most CPS staff that we interviewed felt that they had adapted successfully to the new RIMS system.

Some Areas have found that the monitoring form does not cater for every possible scenario. They have provided valuable feedback by notifying those in the CPS Policy Directorate responsible for monitoring the effectiveness of the scheme.

5.28 At first sight, the revised form appears to be considerably more complicated than its predecessor. Most of those who have become familiar with it consider it to be an improvement. However, there is a general lack of awareness of the finer details of RIMS. As a result, there is dissatisfaction among some staff about what they perceive to be the complexity of the new form.

5.29 As one CPS interviewee put it:

'It looks complicated and there are too many codes. It is regarded as yet another form to fill in by busy staff. They would get used to it if they used it more regularly but they don't have that opportunity, given the infrequency of racist incident cases.'

5.30 There is also concern amongst staff about the accuracy of RIMS data due to the manner in which the data is recorded and the system is administered. In some Areas, form completion can be sporadic. That detracts from the accuracy and value of the statistics. It can be difficult for co-ordinators to gather the necessary information.

5.31 Responsibility for completing the racist incident data sheets and administering RIMS is often left almost entirely to a caseworker or administrator co-ordinator with little input from lawyers. The usual reason that we were given for this is that lawyers do not have the opportunity to complete what they regard to be a complicated form under the pressure of having to prosecute a busy court. Fast-track procedures mean that the time available for review and preparation to present cases in court is limited.

5.32 Infrequency of cases and reliance upon other staff mean that many lawyers do not become familiar with the monitoring forms and procedures. The RIMS data is often recorded by a co-ordinator not involved in the decision-making or present in court when the case is dealt with. Often, they have to determine what has occurred from the file endorsements. Such endorsements are not always complete or entirely accurate.

5.33 Co-ordinators must either make the best of the information available or seek out the lawyer who dealt with the case for clarification or further information. In some cases, this does not happen immediately after the court appearance and, consequently, the lawyer's recollection of events is not always as clear as it might be.

Effectiveness of RIMS

5.34 Any comprehensive study of CPS performance in relation to racist incident cases is dependent on the effectiveness of the monitoring scheme in capturing all relevant cases. It is possible for cases to be overlooked by the police or CPS or both – and not brought within the monitoring scheme. This review sought to determine whether, and to what extent that does happen.

5.35 Fifteen of the 16 Areas assisting the review were asked to make available for examination their last 100 finalised cases of assault, public order or criminal damage. CPS London was requested to set aside 25 for each Branch. These cases had not been identified by the Areas as racist incidents. Inspectors considered whether there were any cases within this sample that should have been identified as falling within the monitoring scheme.

5.36 This process suggested that the performance of the CPS in identifying racist incident cases is sound. We found only a handful cases that had slipped through the net.

5.37 Although experience varies, most CPS representatives expressed confidence in their systems. The majority of Areas have taken positive steps to ensure that racist incident cases are identified and do not slip through the monitoring net. For example, by using different coloured file jackets, discussing methods of ensuring that cases are identified at liaison meetings and comparing figures with the police.

Getting the best out of RIMS

5.38 Prosecutors told us that using different coloured file jackets has the positive psychological effect of drawing attention and making prosecutors more careful in their decision-making. They stand out in office systems and assist in ensuring that there is sufficient time for pre-trial review and the seeking of additional evidence and information. Colour coded files have been used effectively in cases involving child witnesses, domestic violence or youth offenders, to ensure that the relevant special considerations are taken into account.

5.39 Distinctive file jackets have been used by the CPS to good effect in the magistrates' courts but in the Crown Court standard file jackets have been used for all types of case. The introduction of distinctive file jackets for racist incidents in the Crown Court should have a similar beneficial impact on prosecuting counsel and on CPS staff handling cases at that venue.

5.40 However, not all CPS representatives that we interviewed fully understood why the monitoring is carried out or were convinced that the information gathered is being used to improve performance. They were aware of the substantial effort that goes into completing the forms and submitting them to headquarters but most had not been provided with adequate feedback of the results or an understanding of the benefits that are being achieved. There was little evidence that the RIMS Annual report had been disseminated below the managerial level of the Area Management Teams (AMT).

5.41 One prosecutor summed up the majority view:

'We don't get anything back by way of feedback. The Annual report was circulated to Branch Crown Prosecutors but no lower. A great deal of statistical information is gathered but we do not see the benefits. More should be done with the information considering the effort that has gone into collating it. Those who do the monitoring do not see the outcomes. Lawyers are not aware of national or local trends.'

5.42 Ideally, the prosecutor who presents the case at court should endorse the RIMS form. Data about decision-making is more likely to be accurate and complete if the decision-makers are involved more closely in its collection. Presenting inaccurate figures is worse than not having any figures to present. At present, too few of the decision-makers are involved in the monitoring process.

5.43 Some CPS staff lack commitment to RIMS because they have not received a proper explanation of its purpose or adequate feedback of the results. Generally, the perception that RIMS should be used to inform practices, indicate performance and generate discussion appears to be lacking. We consider that an effective presentation, explaining what happens to data and why its collection and accuracy is important, can produce great benefits.

5.44 We stress the importance of maintaining the commitment to RIMS. If that is to be achieved, there should be regular demonstration to staff of what it has accomplished, in terms of indicating the level of performance and contributing to improvement.

5.45 CPS managers will wish to ensure that they provide feedback in a manner and format that achieves this aim without over-burdening staff and adding to the pressure of work.

5.46 We recommend, at paragraph 6.128, that the CPS Director of Human Resources should consider the implementation of training for all staff dealing with racist incident cases

including an explanation of the purpose of and benefits achieved from RIMS. Increasing awareness and securing the commitment of staff is essential, if the Service is to maximise the effectiveness of the scheme.

5.47 We recommend that CCPs should ensure that all relevant staff:

- **are fully aware of the procedures involved in implementing RIMS;**
- **are fully aware of the reasons for such monitoring;**
- **participate in the monitoring process.**

Making use of monitoring information

5.48 The RIMS Annual report produces data illustrating the national picture and an individual breakdown for each CPS Area. We found that few Areas analyse the data to identify their strengths and weaknesses and to improve performance. More can be done in the use of the statistics to assess and assure quality. Areas should look critically for the reasons behind the figures and learn from them. It raises questions about policy and promotes beneficial discussion.

5.49 Alan Kirkwood told us:

'Some Areas seem to be more sophisticated than others. Each Area ought to be judging whether its figures are above or below expectations having regard to local circumstances. One factor would be the percentage of minority ethnic people, but experience shows that it would be wrong to rely on that alone. If there are discrepancies, there could be a discussion about cases in which the police choose not to charge - was there sufficient evidence and were the perpetrators cautioned?'

5.50 We found isolated examples of good practice.

In one Area, monitoring forms are used to share information with the police. Together, they look closely at outcomes, charging decisions and whether relevant forms have been exchanged. Issues raised are discussed at liaison meetings, including ensuring that there is sufficient evidence to identify the perpetrators.

Another Area told us that they are using RIMS locally to identify and address problems. They are working with a number of agencies in general racist incident monitoring for the county. This involves schools in the Area and CPS staff have been motivated to improve their performance by the fact that other agencies are relying upon them for information.

5.51 These initiatives are clearly good practices and should be adopted more widely.

5.52 Some external consultees questioned whether the current scheme captures the information needed to assess performance:

5.53 Gurbux Singh, Chairman of the Commission for Racial Equality, was one:

'We receive a copy of the RIMS Annual report. It gives some indication of initial responses by the police and ultimate outcomes in the courts but does not tell us a great deal about the critical role of the CPS in this process.'

5.54 Terry Moore, Leader of the Race Issues Group of the Justices' Clerks Society, made a similar observation:

'There is scope for further analysis and comment. Locally, in the magistrates' courts service, we examine the figures and look closely for trends. That should be happening in all agencies. It is a shared concern.'

5.55 Chief Constable Westwood agreed but was more specific:

'RIMS provides a comprehensive list of data but the statistics are too obscure to give an accurate picture of CPS performance. They do not tell me, for example, in how many cases racially aggravated offences are charged in the alternative to the basic offence and the basic offence is then accepted as a guilty plea. The statistics are very thorough but they do not provide all the information that is needed.'

5.56 In respect of the 1999/2000 Annual RIMS report, he went on to add:

'The statistics tell us that there was admissible evidence of racist hostility in 80% of all racist incident prosecutions brought by the police. From that, you might expect to find around 80% of charges pursued under the Crime and Disorder Act 1998. The statistics don't tell you that. They tell you that the original charges were unaltered in 63% of cases but they don't say whether charges were added. They don't say whether added charges were additional or in the alternative. The feeling of the police is that added charges are lesser alternatives.'

5.57 There is some merit in these observations. Clearly, RIMS is a worthwhile and important initiative for the CPS and for the criminal justice system as a whole. Some of its limitations are related to the fact that it is principally a manual system. The CPS Policy Directorate will wish to keep it under continual review in order to ensure that it captures the information needed to accurately assess the performance of the CPS in racist incident cases, at a national and local level. We anticipate that a suitable opportunity for refinement will arise with the introduction of more sophisticated IT in the shape of COMPASS – the CPS electronic filing system, which is due to start in 2003.

5.58 We suggest that 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.

5.59 The SBL expressed concern that the ethnic origin of the victim was not recorded routinely. It often had to be discerned from the paperwork and was sometimes inaccurate. The absence of any CRE standard ethnicity monitoring form hindered a proper understanding of the more sophisticated record of the victim and perpetrator profile. The CRE has advised use of the census categories wherever possible, but acknowledge that it is difficult for the police to go beyond the visual categories. The new Home Office return from the police (which started on 1 April 2001 on a voluntary basis) covers the ethnic appearance of victims of racist crimes. During our file examination, we found inconsistency in the categorisation of defendants between different police forces. Clearly, the value of monitoring data is diminished if categorisation is not consistent. The CPS will wish to work closely with the police and other criminal justice agencies to improve ethnic monitoring of defendants and victims in racist incident cases.

5.60 Representatives of other relevant agencies would welcome and benefit from greater access to national and local RIMS data. Senior representatives of Victim Support told us that they were aware of CPS monitoring but had not seen the RIMS Annual report or any analysis of the quality of performance.

5.61 Terry Moore praised those responsible for collating the data and outlined the benefits to be achieved from sharing this information:

'RIMS is excellent. It is the only reliable information that we get about racist incident cases, nationally and locally. CPS Headquarters provide me with the whole pack as a result of my representational role. I was asked to provide figures at a Justices Clerks' conference and they were able, at short notice, to produce statistics for each court centre. It facilitates a good comparison between local and national data.'

5.62 Delegates from the CPS at our consultation seminar spoke of the benefits that had been achieved through engaging with their local minority ethnic communities and sharing RIMS information relating to their Areas. There is visible local accountability for CPS performance in handling racist incident casework. Trust and confidence is increased and the reporting of racist incidents is encouraged, through positive statistical feedback that successful prosecutions are being pursued.

5.63 At a local level, and in partnership with representatives of other relevant agencies, RIMS data should be analysed and compared to the national picture, so that particular strengths and weaknesses are identified and important lessons are learned. It might be particularly illuminating for CCPs to compare their Area's performance with that of other Areas having a population with a similar ethnic blend.

5.64 We recommend that CCPs should ensure that RIMS data relevant to their Area is:

- **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.**

REVIEWING CASES

Introduction

6.1 In this chapter, we consider the quality of decision-making in relation to racist incident cases and the factors that may influence that quality. That leads us to make recommendations about the nature of the information which should be available to prosecutors, some legal issues where a common approach, which can only be achieved through some central guidance, is necessary and some training needs.

6.2 Our findings in relation to quality are based mainly on our file sample, together with comparison with corresponding information relating to the cycle of CPS Area inspections.

6.3 It is right to explain at this point the approach that the Inspectorate takes to assessing the quality of legal decisions. They 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.

6.4 Against this background, we set out our findings. We have identified and focused on a number of difficulties faced by prosecutors, illustrating the need for further guidance. In the overview at the end of this chapter, we recommend the consideration of suitable training designed to address those difficulties.

Quality of review

6.5 In order to assess the quality of review in racist incident cases (in addition to asking specific questions only relevant to such cases) we applied the same questionnaire that is applied to the general file sample in Area inspections. In this way, we could directly compare the performance in racist incident cases for the 16 CPS Areas that assisted the review with their performance generally.

6.6 Unlike the thematic review sample, that general sample is restricted to cases that were pursued. This is because Area inspectors apply a different questionnaire to a distinct sample of cases that were dropped. So that we might obtain additional information, we also applied that questionnaire to racist incident cases in our sample that had been dropped.

6.7 We have, therefore, compared our data with that obtained from the examination of 1255 prosecuted cases and 512 terminated cases in the inspections of the 16 Areas. We have highlighted specific and important findings from that comparison where relevant within the text. The comparison is set out in more detail at Annex C to this report.

(i) initial review

6.8 The overall standard of decisions whether to accept racist incident cases for prosecution at initial review is good. The data comparison is set out in more detail at table 3 of Annex C.

6.9 We examined 586 cases and found that all applications by prosecutors of the evidential test 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.

6.10 All applications by prosecutors of the public interest test at initial review in our file sample were also correct.

6.11 There was evidence that the prosecutor had identified the racism as an aggravating feature in almost all cases (96.1%).

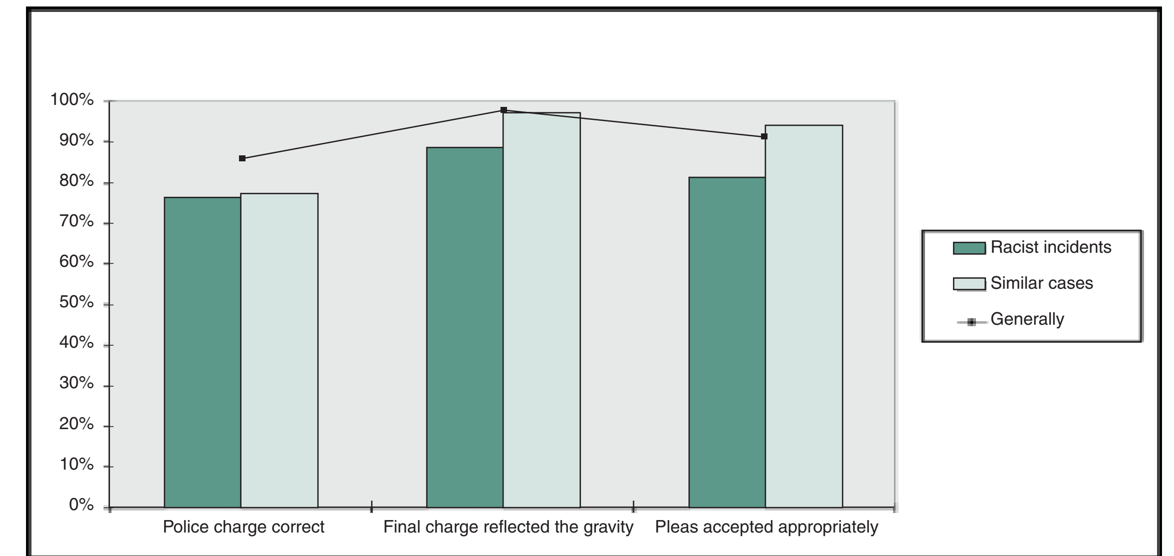
(ii) selection of the appropriate charge

6.12 Our evidence suggests that the police are less likely to get the charge right in racist incident cases than they are in other types of case. The police should be encouraged to seek pre-charge advice in difficult cases. The proportion of cases in which the charge selected by the police was correct was slightly smaller than found in 'similar cases' of assault, public order and criminal damage (76.1% compared to 77.3%). The figure for general casework was 85.9%. Our file examination did not provide support for the contention that straightforward offences of street robbery committed by black defendants against white victims are being charged incorrectly as racist incidents. We did not find any case in our file sample where that had occurred. The data comparison is set out in more detail at table 4 of Annex C.

6.13 Review is a continuous process. Prosecutors must assess the appropriateness of the police charge and thereafter take account of any change in circumstances, which may necessitate a change of charge.

6.14 There were a significant number of cases in our sample in which we considered that the charge had been reduced inappropriately – 41 of 146 (28.1%) cases in which the charge was reduced in the racist incident file sample (and the reason was apparent from the file). We also found that the final charges pursued by the CPS in racist incident cases were less likely to reflect the gravity of offending than generally - 88.9% compared to a similar cases figure of 97.3% and a general casework figure of 97.8%.

6.15 Inappropriate acceptance of pleas from defendants also appears to be significantly more common. We considered that had occurred in 18.7% of racist incident cases in which pleas were accepted compared to 5.7% in similar cases and 8.5% generally. Some of our findings about the quality of charging are summarised in the following chart and table:



Category	Racist incidents	Similar cases[5]	Generally[6]
Police charge correct	76.1%	77.3%	85.9%
Final charge reflected the gravity	88.9%	97.3%	97.8%
Pleas accepted appropriately	81.3%	94.3%	91.5%

(iii) discontinuance

6.16 If, at any stage in proceedings, the prosecutor is no longer satisfied that there is a realistic prospect of the defendant being convicted of any offence, or that it is no longer in the public interest to prosecute, the case should be terminated as soon as is reasonably practicable.

6.17 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 of our study - 14.3% compared to 13%. The data comparison is set out in more detail at tables 6 to 8 of Annex C.

6.18 There were 84 racist incident cases in our file sample that were stopped. We did not find that any decision to terminate was wrong in principle. That decision was one that the inspector would have made in 74 cases (88.1%).

6.19 The prosecution is more likely to find itself unable to proceed in racist incident cases than generally. In order to record and analyse the reasons for termination, we used three main categories (evidential, public interest and unable to proceed) each broken-down into a number of specific sub-categories. It was possible to determine the principal reason for termination from the information available in 77 of the 84 cases. Of those, 32 (41.6%) were

[5] Sub-sample of non-racist incident cases of assault, public order and criminal damage arising in the same 16 Areas
[6] Data gathered by HMCPSI about non-racist incident cases arising in the 16 CPS Areas that assisted the review

terminated on evidential grounds, eight (10.4%) in the public interest and 37 (48.1%) because the prosecution was unable to proceed. By far the most common reasons why the prosecution was unable to proceed were because the victim or an important witness had retracted or had failed to attend court unexpectedly. The corresponding breakdown in the three main categories for general casework from the 16 Areas that assisted the review were 47.2%, 23.8% and 29.1%. We discuss the discontinuance of racist incident cases in more detail at paragraphs 6.100 to 6.111. A full breakdown is contained in table 7 of Annex C.

6.20 We expected that fewer racist incident cases would be discontinued in the public interest (for example, because of a significant sentence for another offence) in light of the heightened public interest in pursuing such matters. We were not surprised to find that the proportion of racially aggravated offences dropped because the prosecution runs into practical difficulties is higher than the general rate. But the extent of the difference is a matter for concern. The picture is very similar to what we found in our domestic violence thematic review (Thematic report 2/98). But one of the principal factors there was apparent reconciliation, which is much less likely in this context. We believe that the quality of witness care in relation to this category of vulnerable witnesses may be a significant factor. We describe our concerns in chapter ten.

Information taken into account in decision-making

(i) introduction

6.21 Effective co-operation with the police from the outset is essential to the effectiveness of the CPS. The CPS and police have agreed nationally a system of joint performance management (JPM). This provides a framework for assessing the overall quality of files sent by the police to the CPS, with a view to improving performance. The success and effectiveness of this system has been limited.

6.22 We found that the overall standard of police files and the level of background information in racist incident cases is no better than it is in other types of case.

6.23 CPS decisions are sometimes taken where material information is missing. Prosecutors do not always have sufficient information to present racist incident cases in their best light. Initially, that may be due to failings in the police investigation but can occur because prosecutors have not taken adequate steps to ensure that they are properly informed before deciding. This may be due to a lack of awareness or to a lack of opportunity. Prosecutors should always call for further information or a full file in any case where they do not consider that a properly informed decision can be taken on the material available.

6.24 Our evidence suggests that the police do not always gather enough background information about racist incidents reported to them or always pass the information they have gathered on to the CPS.

6.25 Representatives of Victim Support and monitoring groups told us that they have seen many cases in which they are aware that relevant background information has been supplied to the police but is not apparently known to the CPS.

6.26 If there is a prosecution, it has been agreed between the police and CPS that the racist incident form should be submitted to the CPS with the file. The CPS Racist Incident Monitoring Annual Report 1999-2000 (covering all 42 CPS Areas) reveals that this obligation was fulfilled in only 19% of cases. The Areas ranged between 0% and 55%.

6.27 The fact that racist incident forms including relevant background information are not provided in the majority of cases is particularly disappointing. If the form is not submitted with the file and the reviewing prosecutor has to request it there may be unnecessary delay. If the form is not requested, there is the risk that important information will be missed. That information could have led to helpful further evidence being sought or to improvements in the quality of existing evidence.

(ii) previous incidents

6.28 We found a general lack of information about previous racist incidents in the files that we examined. External consultees working with victims told us that the police do not always record racist incidents in sufficient detail if the case is not prosecuted. The fact that the incident was racist may be recorded but often few further details are taken.

6.29 Lack of information about earlier racist incidents can sometimes prevent pursuance of harassment charges or cases in which racism might be inferred. Also, if the incident is not recorded as a crime, the victim may not be able to pursue a criminal injuries compensation claim.

6.30 Few cases in our file sample resulted in conviction for the serious offence of racially aggravated harassment (pursuant to section 32(1)b and (4) of the Crime and Disorder Act 1998). That offence carries a maximum sentence of seven years imprisonment. It requires proof of a course of racist conduct by the perpetrator towards the victim evidenced by more than one incident. Cases in which such a course of conduct can be established by admissible evidence should be pursued as harassment wherever possible.

6.31 In most cases in our sample that were charged under section 32, a course of conduct could not be established and the prosecution was forced to accept a guilty plea to a single (and lesser) racially aggravated offence. That was generally because the police had not gathered full details about the earlier incident (or incidents) that did not lead to prosecution.

6.32 The SBL expressed concern about cases that they examined in which there was clear evidence of a course of conduct that should have been treated as harassment but the police had not pursued that charge and prosecutors had not suggested that such a charge should be pursued or even suggested that there should be further investigation to establish whether such an offence could be substantiated.

6.33 Chapter 3A of the CPS Prosecution manual provides guidance about cases in which the racism is not overt but can be inferred from the circumstances, for example, where there has been targeting of a particular shop because of the ethnicity of the proprietor. Again, we found that where the pursuance of such cases is contemplated, there is rarely sufficient information available to link individual incidents in order to prosecute them successfully.

6.34 Details of previous incidents may be extremely relevant. Failure to record them sufficiently reduces the volume and quality of background information that the police can provide initially or subsequently at CPS request.

6.35 We recommend that 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.

(iii) corroborating evidence

6.36 We were disappointed to find that further evidence was sought to establish racist hostility in only two-thirds of cases in our file sample where it was appropriate to do so (66.3%).

6.37 Lack of corroboration for evidence of racism can lead to the acceptance of guilty pleas to lesser non-aggravated offences.

6.38 Defendants in racist incident cases are often prepared to admit the basic offence, for example, an assault, but then deny fiercely the accompanying allegation of racism. On the key issue of racial aggravation, many cases rest ultimately on the word of the victim against that of the alleged perpetrator. Despite often containing information to suggest the existence of other potential witnesses, files do not always include any further evidence supporting either account. This makes it significantly more difficult for the prosecution to discharge the criminal standard of proof in respect of the racist element.

(iv) the psychological impact

6.39 Not all prosecutors appear to understand the psychological impact of racism. This was apparent from some of the decisions to reduce charges that we observed in our file sample. Consultees acting regularly on behalf of victims told us that many do not believe that the police, CPS and courts take on board the extended impact of their experiences. Apparently less serious incidents can have a disproportionate psychological impact on victims if they are accompanied by racism, extending beyond any physical trauma.

6.40 If the police do not cover the psychological impact of racist offences (in the evidence or background information) and the prosecutor does not request that information, it can undermine the seriousness that is attributed to the case.

6.41 Some police officers, prosecutors, magistrates and judges take the view that less serious instances of racist insult do not justify the ‘racially aggravated’ tag. We return to this issue in more detail at paragraphs 6.59 to 6.70. It is clear, however, that a lack of information about the psychological impact of racist offences can encourage this approach and lead to charges being reduced inappropriately.

6.42 On 1 October 2001, the Victim Personal Statement scheme was introduced throughout England and Wales. It is intended to give victims an opportunity to describe the wider effects of the crime upon them, express their concerns and indicate whether or not they require any support. One of the main purposes is to allow victims to state how the crime has affected them - physically, emotionally, psychologically, financially or in any other way. The Home Office has issued detailed written guidance, for practitioners and victims, on the taking and use of such statements.

6.43 We suggest that CCPs 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.

(v) willingness to testify

6.44 If a significant witness becomes unwilling to testify, the prosecution may be unable to proceed with the case. The police and CPS need to ensure that they remain up-to-date about the victim’s willingness to testify. A greater proportion of racist incident cases (than generally) are discontinued because the victim or a civilian witness retracts or unexpectedly fails to attend court. In our file sample that occurred in 33 of the 77 terminated cases where the reason was apparent from the file (42.9%). This is greater than the ‘similar cases’ and general sample figures of 40.6% and 24.9% respectively. The attrition rate is high and it is important that appropriate levels of assistance and support are offered to victims. We discuss the benefits of a multi-agency approach to witness care in chapter ten. We consider that there would be merit in a joint initiative that would provide, perhaps in the form of a leaflet, important information for victims of racist crime. That might include an explanation of why it is particularly important, in the general public interest as well as in the particular case, to proceed wherever possible and would provide contacts to local agencies able to offer support.

(vi) other sources of information

6.45 The police and CPS should be alert, in appropriate cases, to the fact that there may be other potential sources of evidence or background information that may strengthen their case.

6.46 We acknowledge that the consideration of additional background information and evidence is not always straightforward for prosecutors. They have to apply the strict rules of evidence and information that might seem relevant and important is more often than not inadmissible. The circumstances in which evidence about misconduct separate to the

incident charged can be introduced in evidence are severely limited. Unless it is sufficient to establish the criminal standard, an earlier additional offence or a continuing course of conduct (e.g. harassment) - which should then be charged - it is unlikely to be admissible. Nevertheless, proper consideration of this additional information can only enhance the quality of decision-making.

6.47 Suresh Grover of the Monitoring Group has assisted numerous victims of racist crime over a number of years. He told us:

'We have to adopt a strategy in cases of harassment and repeated racism. Injunctions may be necessary and the CPS needs to know that such action has been taken. There is insufficient correlation of information between the CPS and other agencies. We share information with other agencies but the CPS doesn't. There does not appear to be any quality relationship between the local authority social services and education departments and the CPS.'

6.48 We suggest that 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.

(vii) information generally

6.49 Prosecutors are under a duty to make properly informed decisions. If they suspect that they have not received material information, they should request that the police supply it before important decisions about the case are taken.

6.50 We recommend that CCPs should discuss with the police ways of ensuring that all relevant background information is submitted so that informed decisions can be made, including:

- **details of any previously recorded racist incidents involving both the complainant and defendant or either; and**
- **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.**

Proving the racist element

(i) introduction

6.51 Section 28 of the Crime and Disorder Act 1998 provides a two-limb statutory definition of racial aggravation.

6.52 The first limb requires that the perpetrator must:

- at the time of committing the offence, or immediately before or after doing so;
- demonstrate towards the victim;
- hostility based on the victim's membership or presumed membership of a racial group.

6.53 The second limb requires that the offence:

- is motivated;
- wholly or partly;
- by hostility towards members of a racial group based on their membership of that group.

6.54 Proof of either limb is sufficient to establish the racist element but it is the first limb that appears to have caused the most difficulty in practice.

6.55 It seems clear from the consultation papers and Home Office guidance accompanying the Crime and Disorder Act 1998 that Parliament intended that a wide definition should be given to hostility based on race, because proving racism is difficult.

6.56 The Home Office guidance recognised that:

'Racist crime does not simply injure the victim or their property, it affects the whole family and it erodes the standards of decency of the wider community. Trust and understanding built up over many years between communities can be eroded by the climate of fear and anxiety which can surround a racist incident.'

6.57 It went on to say that the new offences were designed:

'To ensure that a higher priority is given to the identification of the racist element of the crime in the gathering of evidence, thus preventing the racial aspect from being overlooked.'

6.58 Paragraph 3.9 of the CPS Casework Guidance document urges prosecutors to exercise considerable caution before accepting defence offers of pleas to lesser offences:

'As the Bill made progress through Parliament, concerns were expressed that the CPS might accept pleas to lesser offences, or minimise or omit information about racial motivation for the sake of expediency. In responding to such concerns, the Solicitor-General gave assurances that this would not happen and that the CPS would prosecute

those cases which were appropriate, consistent with our duties under the Code for Crown Prosecutors. It is important therefore that this assurance is borne in mind when considering offers of pleas, either to offences as an alternative to specific racially aggravated offences, or when agreeing the basis for a plea of guilty with the defence. A full file endorsement of any agreement should be made on the file jacket.'

(ii) the interpretation of hostility based upon race

6.59 The CPS has publicly stated that if hostility based on race is established there should be a prosecution. The guidance issued to prosecutors indicates that 'hostility' should be given its dictionary definition as a starting point. It should not be equated with hatred or racist motive.

6.60 However, some judges have ruled that 'mere vulgar abuse' does not constitute racist hostility. That message permeates back and has influenced the approach of some police officers, prosecutors, magistrates, prosecuting counsel and other judges.

6.61 As one prosecutor put it:

'Some judges tell us that we are charging racially aggravated offences inappropriately. It is too sensitive and delicate a subject to get wrong. They say that we have gone too far and these are not racially aggravated offences but simple offences with a racial element. Whatever is the correct position, the judiciary, CPS and police are out of line. There needs to be a consistent approach.'

6.62 Similar sentiments have been expressed to inspectors by judges consulted during Area inspections. Prosecutors sometimes find themselves in a difficult position. They may consider that they have ample evidence to satisfy the wider definition of racist hostility yet are faced with an indication from the judge that an essential element is missing and that their case will inevitably fail. Against this background, the CPS needs to develop a firm and consistent stance which ensures that all appropriate cases are pursued firmly and fairly. There must be strong support at a senior managerial level for a decision to proceed in such circumstances, if that is the appropriate course.

6.63 We suggest that CCPs should ensure that racist incident 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.

6.64 Terry Moore, Leader of the Race Issues Group of the Justices' Clerks Society, confirmed that there is also inconsistency in the magistrates' courts:

'Different Benches may take different views about what amounts to hostility based on race. Some might convict and others might not. There is inconsistency. Recent reported cases have not helped.'

6.65 We are told that it was because it was felt that so-called 'low level' racist abuse was not being taken sufficiently seriously that the definition of a racist incident was broadened. In practice, however, now that many more racist incidents are being reported, we have found that some police officers, prosecutors, magistrates and judges still look for a racist motive.

6.66 Against this background of uncertainty, different prosecutors take different approaches, sometimes even within the same CPS office. Mechanisms are not always in place, or sufficient, to assure consistency.

6.67 This leads to a lack of consistency as to whether:

- alleged racist incidents are prosecuted as such;
- racially aggravated charges are pursued;
- non-aggravated alternatives are pursued; and whether
- pleas to lesser offences are accepted.

6.68 At our consultation seminar, the DPP firmly restated the CPS position. It will prosecute cases as racially aggravated where the evidence is sufficient to satisfy the wider definition of hostility. We consider this to be the correct approach, if the Service is to give effect to the apparent intentions of Parliament. The alternative approach runs contrary to the spirit of the wider more subjective definition of a racist incident that was recommended by the Macpherson report of the Stephen Lawrence Inquiry.

6.69 The proposed prosecution right of appeal may be beneficial in securing clarification from the courts on this issue. It is clear, however, that there is an urgent need for consultation and clarification at a senior level within the relevant agencies, for the benefit of all concerned.

6.70 We suggest 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.

(iii) racist abuse of police officers

6.71 A more specific example of inconsistency is in respect of cases where a police officer is the victim of racist abuse. This can occur in a number of ways. The offence might reflect a straightforward insult accompanied by racist language and be committed by a white defendant against a minority ethnic officer or by a minority ethnic defendant against a white officer. Less obviously, it might also reflect the suggestion to a minority ethnic officer that merely to be acting as a police officer represents a failure to identify with the suffering of minority ethnic people.

6.72 Such incidents are usually pursued as a public order offence of racially aggravated words or behaviour likely to cause harassment, alarm or distress (under section 31 of the Crime and Disorder Act 1998 and section 5 of the Public Order Act 1986). When such cases reach the CPS, different prosecutors interpret the law relating to such offences in different ways.

6.73 Some cite, by analogy, case law applicable to non-racially aggravated section 5 offences. The case of the Director of Public Prosecutions v Orum [1989] 1 WLR 88 is authority for the proposition that experienced police officers are expected to exhibit greater tolerance to abuse than civilians. They are less likely, therefore, to be caused harassment, alarm or distress.

6.74 We saw several cases of this type in our file sample. In some, prosecutors argued that the defendant should be bound over to keep the peace or that the case should be discontinued, because it would be difficult to establish that the police officer was likely to suffer harassment, alarm or distress as a result of being racially abused. In some Areas, adoption of that approach has given rise to considerable disagreement with the police.

6.75 We consider this approach to be flawed and inappropriate. Racist abuse is of a particularly personal nature in that it attacks the very identity of the victim. That it goes beyond the level of other forms of abuse was recognised by Parliament through the introduction of specific racially aggravated offences with significantly increased sentencing powers. Police officers should be encouraged to ensure that they cover the psychological impact of racist abuse adequately in their statements.

6.76 Prosecutors using the DPP v Orum analogy convey a negative message at a time when recruitment and retention initiatives are designed to ensure that the ethnic make-up of the staff of prosecution agencies more accurately reflects the position in the wider society that they serve. That is an important step towards ensuring trust and confidence in the criminal justice system amongst members of minority ethnic communities.

6.77 We suggest 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.

Quality of charging decisions

(i) introduction

6.78 If, at the initial review of the case, the prosecutor decides that the evidential and public interest tests set out in the Code are met, they must then select the most appropriate charge or charges. They may decide to continue with the police charges or to amend or replace them. The charges selected should:

- reflect the seriousness of the offending;
- give the courts adequate sentencing powers; and
- enable the case to be presented in a clear and simple way.

6.79 Some police officers and prosecutors appear to be less aware of Crime and Disorder Act 1998 racist alternatives to non-public order offences, for example criminal damage and assaults. We saw quite a few cases in our sample in which incidents involving criminal damage or assault clearly accompanied by racist hostility were pursued as basic offences, sometimes where a racially aggravated public order offence was also charged.

6.80 We suggest that 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.

(ii) the reduction of charges

6.81 We saw a significant number of cases in our file sample in which we considered that the charge had been reduced inappropriately.

6.82 Chief Constable David Westwood told us of feedback received by ACPO suggesting a strong body of opinion within the police that their substantial effort in racist incident cases is being ‘plea bargained’ away.

6.83 Establishing the racist element in appropriate cases is particularly important. Its removal can have a significant impact on sentencing. The courts’ approach to sentencing should be that recommended by the Sentencing Advisory Panel in ‘Advice to the Court of Appeal – 4: Sentencing Racially Aggravated Crime (July 2000)’. The element of racial aggravation will normally lead to a significant addition to the penalty that would be imposed for the basic offence.

6.84 The CPS prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, it should always take into account the consequences for the victim of the decision and any views that the victim might express. Where possible, decisions to reduce charges should only be taken after consultation with the victim. In borderline cases, prosecutors should be careful to ensure that they have correctly understood the wishes of the victim before accepting a guilty plea to a lesser offence. Most regard the racist element as the key aspect of the case. External consultees regularly representing victims told us that many would rather proceed with a racially aggravated charge and risk losing the case altogether than accept a guilty plea to a non-racially aggravated alternative.

6.85 In a small number of cases we found that prosecutors had endorsed files to the effect that they had accepted a guilty plea to the non-aggravated alternative on the understanding that they would still outline the racist behaviour to the court. That is an incorrect approach, as the court is unable to take account of racial aggravation when sentencing in those circumstances. Paragraph 6 of the Sentencing Advisory Panel’s advice document provides:

‘...it is a serious cause for concern if charges of racially aggravated offences under sections 29-32 are inappropriately reduced to their basic offence equivalents. This is

because the statutory scheme does not permit the court to take account of racial aggravation at all when sentencing for any of the basic offences, where the racially aggravated equivalent is not charged or pursued.'

6.86 We suggest that CCPs should ensure that all appropriate staff are fully aware of the sentencing implications of removing the racial element from prosecutions.

6.87 The depth of our analysis was sometimes limited by the quality of information contained in the files that we examined. We were not always fully apprised in respect of any discussions or developments that might have taken place at court. The details of those are not routinely endorsed by prosecutors (we discuss the importance of good quality file endorsements at paragraph 7.2 to 7.12).

6.88 Nevertheless, our evidence suggests that, in a significant proportion of racist incident cases, the charges selected and pursued by the CPS do not reflect the seriousness of the offending or give courts adequate sentencing powers.

6.89 There is added significance to the inappropriate reduction of charges in cases where there is likely to be further contact between the perpetrator and victim, for example, if they attend the same place of education or if the victim has a fixed location at a particular shop or restaurant. The perpetrator may become emboldened by the watering down of the case and further offending is encouraged.

(iii) timeliness

6.90 There was also a performance difference in respect of the timeliness with which police charges were amended when they were incorrect. Amendment was timely in only 56.7% of racist incident cases compared with 61.2% in 'similar cases' and 68% generally. Almost half of all decisions to reduce charges in racist incident cases were taken at court (45.1%).

6.91 A decision taken at court is not always untimely, as there may be an unexpected change in the material circumstances. In fast tracked cases, decisions to reduce charges at court may occur at the first hearing, rather than after significant delay.

Alternative verdicts

6.92 For cases tried in the Crown Court, the Crime and Disorder Act 1998 makes provision for alternative verdicts in respect of certain racially aggravated offences. In addition, section 6 (3) of the Criminal Law Act 1967 allows for alternative verdicts where the jury find the defendant not guilty of the offence specifically charged on indictment if the allegations amount to or include an allegation of another offence

6.93 This means, for example, that a defendant charged with racially aggravated section 20 wounding can be convicted in the alternative of racially aggravated section 47 (assault occasioning actual bodily harm), racially aggravated common assault, non-aggravated section 20 or non-aggravated section 47 without those offences having to be added to the indictment.

6.94 The position is less satisfactory for racist incident cases that are tried in the magistrates' courts. In those circumstances, the prosecutor must decide whether it is necessary to add an alternative charge or charges. This can cause practical difficulties.

6.95 It is common for defendants in racist incident cases to admit the basic offence but not the racist element. It can then be the word of the victim against that of the alleged perpetrator on the issue of racial aggravation. In those circumstances, some prosecutors add a 'safety net' in the form of an alternative charge 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). Other prosecutors prefer not to add an alternative option, as they fear that the magistrates will opt for the alternative as a compromise and the true racist nature of the offence will not be established.

6.96 There would be much merit in the Government considering whether there should be a provision equivalent to Section 6(3) of the Criminal Law Act 1967 allowing for alternative verdicts in the magistrates' courts. As the law stands, we concur with the view expressed by Terry Moore:

'There are difficult practicalities in considering pursuing alternative charges in the magistrates' courts. Some prosecutors put them and others don't. There should be clear guidance. If there is sufficient evidence of racism, the case should be pursued as racially aggravated. Then the CPS has done its job and its up to the courts.'

6.97 The key to the decision whether to pursue an alternative charge in the magistrates' courts 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. We have already highlighted (at paragraphs 6.36 to 6.38) the importance of seeking further evidence of hostility based on race in order to corroborate the complainant's account. If such evidence is available, there is less need for a 'safety net'.

6.98 That is not to say that prosecutors should always add the non-aggravated alternative if the evidence of racism is uncorroborated. It is common in general casework for uncorroborated cases to be pursued. In the context of domestic violence, the CPS often quite properly pursues cases amounting to the word of the complainant against that of the defendant. We found strong support within the CPS for racist incident cases to be approached in the same manner as domestic violence, so that there is a positive and proactive approach in accordance with a published policy statement.

6.99 We have previously stressed the importance of maximising the level and quality of background information. That is particularly important in cases where the evidence of racism is uncorroborated. An early consideration of sufficient information about the credibility of the victim and their likely performance as a witness is crucial to the quality and timeliness of decision-making.

Discontinuance

(i) introduction

6.100 We have found that the discontinuance rate for racist incident cases exceeds the national average and have expressed concern generally that CPS decisions are sometimes taken where material information is missing. It is particularly important that racist incident cases are not terminated (or reduced in seriousness) without reference to relevant evidence or background information that might become available as a result of reasonable enquiry.

6.101 We recommend that 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.

(ii) maintaining the commitment of victims and witnesses

6.102 The proportion of racist incident cases that are dropped because the prosecution runs into practical difficulties is significantly greater than the general rate.

6.103 The proportion of cases that were discontinued in our file sample because the victim retracted or unexpectedly failed to attend court was almost double that for general casework. Victims may not want to come to court for a number of reasons. They may be running their own business and not want to take time away. There is also the fear of further abuse as a result of giving evidence against the perpetrator.

6.104 Unnecessary delay can lead to the withdrawal of victims and witnesses. The longer a case takes to process, particularly where there are recognised factors likely to reduce commitment, the greater is likely to be the level of attrition. The CPS should challenge inappropriate requests for adjournment by the defence. We were not told of any measures that are currently in place to expedite the review of racist incident cases or their progress through the courts. Fast track procedures can ensure that cases appear quickly before the court but not that they progress expeditiously thereafter, particularly where the charge is contested.

6.105 We recommend that CCPs should ensure that delay is kept to a minimum in racially aggravated cases and, in particular, should:

- **consult the police and courts to consider arrangements for expediting racially aggravated cases;**
- **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.**

6.106 Victims of racism may be particularly vulnerable, because of their location and, in some cases, isolated position within the wider community. The quality of victim and witness care is, therefore, particularly important. Our evidence suggests that there is room for improvement in this regard. We cover this topic in greater detail in chapter ten. Consultees acting regularly on behalf of victims told us that if an appropriate level of support is provided, they are more than willing to testify.

6.107 Suresh Grover said:

'If witnesses receive quality support, it is very rare that they are reluctant to give evidence. It is a bit of a myth that witness failure is more of a problem in racist incident cases. If a strategic view were taken on supporting witnesses, it would not be a problem. That would include supplying information and commitment from the prosecution.'

(iii) timeliness

6.108 The proportion of discontinued racist incident cases that are dropped at court (rather than in advance of a court hearing) is significantly greater than generally (69.1% compared to 53.6%).

6.109 We saw cases in our file sample that were reduced or discontinued at a very late stage, seemingly because of a fear of taking an unpopular, but correct, decision. Some prosecutors accept that the sensitivity and likelihood of complaint can lead to an over-cautious approach.

6.110 Timeliness is an important element of good quality decision-making. Considerable damage can be caused to the standing of the prosecution in the eyes of victims and members of their communities by overdue decisions to discontinue charges. The same can be said of late decisions to reduce charges, particularly where they remove the racial element from the prosecution.

6.111 We recommend 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.

Developing expertise

(i) introduction

6.112 Most CPS Areas do not have specific individuals acting as a focal point for racist incident casework. They do not have 'specialists' dealing with all or most racist incident cases but rather allocate cases to the more senior lawyers.

6.113 We consider that all appropriate staff should receive the basic level of training needed and have the opportunity to handle such cases. They may be encountered at any time and limiting the expertise can increase the risk that they will not be prosecuted properly. It is important that the necessary ability and knowledge is not confined to a small number of lawyers.

(ii) establishing a network of 'consultants'

6.114 There are obvious benefits to be gained from identifying suitable individuals to act as 'consultants'. We envisage that they would become a reference point for difficult cases and have responsibility for quality assurance. They would supervise race prosecutions within the Area and have an up to date knowledge of relevant case law. They should ensure that their CCP is kept abreast of any trends, issues and developments.

6.115 Such individuals would develop particular expertise, providing informed advice as well as achieving consistency. They would be well placed to analyse and ensure the accuracy of monitoring data. They could act as co-ordinators within the Areas and liase beneficially with each other creating a national network. 'Area consultants' could exchange information through the CPS internal network (Connect 42) or through an Internet forum. They must be given the opportunity to develop expertise and there will be resource implications, particularly in larger Areas where more than one 'consultant' may be required.

6.116 These individuals would also provide a focal point for engagement with representatives of minority ethnic communities and liaison with CPS Headquarters. If a suitable counterpart with similar responsibilities can be identified in the local constabulary, the quality of the CPS partnership with the police in racist incident cases might be enhanced through regular consultation and discussion.

6.117 Those designated to this role would have an important part to play in promoting awareness and understanding of the wider issues that provide the context for decision-making and inform the application of the prosecutors' discretion.

6.118 The post should attract an appropriate degree of status. It should be regarded as a career development opportunity. Other prosecutors would gain expertise through training and from discussion with the designated consultants. The baton could be then passed when they have acquired the requisite level of awareness and knowledge. There should be a progressive development of expertise for all relevant staff.

6.119 We consider that this would recognise existing expertise and establish a valuable resource for the Service in its push towards achieving and maintaining a high quality and consistent response to racist crime.

6.120 We recommend 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.

Sharing experience and achieving consistency

6.121 We have been disappointed to find inconsistency and little analysis of outcomes or evidence of quality assurance. To some extent, that inconsistency is caused by external factors and we have recommended further clarification, guidance and training to cover legal, evidential and practical issues.

6.122 There does not appear to be a culture within the CPS at present of examining the context within which the work is done. We consider that there is also a need for anti-racism training and to increase awareness.

CPS representatives told us about measures in place designed to achieve consistency in racist incident casework. Those include:

- consideration of RIMs data;
- occasionally discussing the issues at Branch training days;
- discussing specific problems informally when they arise;
- occasional dissemination of case law and guidance;
- through the adverse cases system (where the cases results in acquittal at the order or direction of the judge or because there is no case to answer in the magistrates' courts);
- the CCP is kept informed of all racist incident prosecutions and looks at all files after finalisation; and
- dip-sampling by managers and discussion of issues at Area Management Team (AMT) meetings.

6.123 However, in some CPS Areas we were told that it is rare for staff to discuss race issues, either formally or informally. Generally, we did not find that there is a natural and spontaneous sharing of information and experience. Too much depends on the individual and there is inconsistency.

6.124 There should be a climate that encourages an open discussion of the issues. We were told that the lack of formal or informal discussion of race issues is partly due to a fear of accusation as a result of inadvertently making an inappropriate comment. Whilst we accept that this is a difficult and emotive topic, managers should encourage an open-minded debate in which it is clear that there is no intention of accusing anyone of being racist as a result of an innocuous comment.

6.125 We recommend that 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.

Overview

6.126 We have highlighted several areas of uncertainty and inconsistency in racist incident casework. We consider that there is a strong case for further updated guidance and clarification and for the implementation of co-ordinated national training. Such training would enable prosecutors to make better informed, high quality and consistent decisions, particularly if it allowed them to discuss issues with staff from other Areas and/or representatives of other agencies. Monitoring and validation procedures involving the 'Area consultants' should then be used to ensure that the training has been effective.

6.127 We discussed the CPS Racist Incident Monitoring Scheme (RIMS) in chapter five of this report where we highlighted the need, through guidance and training, to increase understanding among staff of its purpose and benefits.

6.128 We recommend that 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;

- **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.**

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 racist incident cases is unsatisfactory.

7.3 The problem is not unique to racist incident cases. We have highlighted the need for improvement in the quality of file endorsements generally in Area Inspection reports. The CPS Board has issued its second 'Good Practice Note' recently, arising from the work of the HMCPSI and CPS Joint Standing Committee on Good Practice. That note deals with the quality of file endorsements and provides detailed advice for Areas. There is an even greater need to ensure that there is a satisfactory 'audit trail' in sensitive cases that come under more general scrutiny.

7.4 In assessing the quality of decision-making, inspectors consider the review endorsements made by the prosecutor as part of determining whether the decisions taken were correct. In too many cases in our file sample, we found that the review endorsements were unclear or inadequate. It was sometimes impossible to discern whether the appropriate and relevant considerations had been taken into account.

7.5 File endorsements should provide sufficient evidence of the prosecutor's thinking when taking important decisions during the life of the case. They should record progress through the courts and the reasons for adjournments. Details of preparatory work that is carried out on the file by prosecutors and administrative staff should also be noted. Good quality file endorsements provide sufficient information to deal with any queries that subsequently arise regarding the case or if there is a complaint.

7.6 Failure to record decision-making adequately makes the CPS particularly vulnerable to criticism if a decision is challenged. This problem has become particularly acute as a result of recent developments.

7.7 The Race Relations (Amendment) Act 2000 came into force on 2 April 2001. It 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. The fairness of CPS decision-making will come under increasing scrutiny.

7.8 The CPS is also piloting procedures for explaining its decisions directly to victims, rather than through the police. Full roll out is scheduled for October 2002. The quality of explanations will be essential to the success of that scheme, in terms of promoting trust and confidence.

7.9 Prosecutors are accountable and should be in a position to justify their decisions if required. Direct communication means that CPS staff will be required to explain their decisions more often in future than they have had to previously. The need for completeness and accuracy is particularly important in racist incident cases, where the issues tend to be sensitive and particularly emotive. That sensitivity is heightened if a racially aggravated charge has been reduced or dropped.

7.10 It is unsatisfactory and unsafe for the Service to rely, in the absence of adequate file endorsement, upon the recollection of the prosecutor who handled a case (if that person is available to comment). That recollection may be incomplete or clouded by time. Explanations of decisions of great importance to victims or other interested parties, for example, Members of Parliament, must be well founded and reliable. They should be arrived at only after careful reference to coherent and contemporaneous records of decision-making.

7.11 It is unacceptable to provide an incomplete or inaccurate explanation for a sensitive decision due to inadequate file endorsement. Providing poor quality explanations can seriously undermine progress achieved in securing the understanding, confidence and trust of those affected by racist crime.

7.12 We recommend 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.**

Instructions to counsel

7.13 Of the 586 racist incident cases in our file sample, 78 were dealt with by the Crown Court (13.3%). We found that the quality of instructions to counsel in racist incident cases is patchy and that the overall standard is no better than seen generally. We did not always find an adequate analysis of the facts and likely issues or instructions about the acceptability of pleas.

7.14 We might have expected to find that the quality of instructions is better in this type of case, having regard to their sensitivity and the particular need to ensure that prosecuting counsel is familiar with CPS policy and the reviewing prosecutor’s perception of the case. Details of the local context, which should be available if our recommendation with regard to the use of local RIMS data is implemented, would provide useful background information and raise the awareness of counsel.

7.15 Through the then Solicitor General, the CPS made a commitment to Parliament to ensure that lesser pleas are not accepted inappropriately and that material information is not omitted in racist incident cases. If it is to fulfil that commitment in the Crown Court, the CPS should provide prosecuting counsel with high quality instructions exceeding the general standard seen in other types of case. The CPS position might also be reinforced through local liaison between CCPs and heads of chambers.

7.16 We suggest 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.

PRESENTING CASES IN COURT

8.1 It is fundamental to the professional standards of prosecutors that they do not press for or seek a particular level or type of penalty. However, the prosecuting advocate has an important duty to assist the court by bringing all relevant factors to its attention. These duties are especially important in relation to racially aggravated crime.

8.2 In addition, there is a range of serious cases dealt with in the Crown Court where the penalty may, if the sentence is considered by the Attorney General to be unduly lenient, be referred to the Court of Appeal under sections 35 and 36 of the Criminal Justice Act 1988. The prosecuting advocate has the primary responsibility in such cases for initiating the process which leads to review by the Attorney General. At present, racially aggravated offences under sections 29 to 32 of the Crime and Disorder Act 1998 are not covered by these provisions. At our consultation seminar, we found that there was substantial support for appropriate specifically racially aggravated offences to be added to the categories in which the sentence may be reviewed.

8.3 Even if the charge is not a specifically racially aggravated one under sections 29 to 32, the law still requires that the racial aggravation be taken into account for sentencing purposes as a factor increasing the seriousness if the offence is not one that has a statutory racially aggravated alternative, for example, theft.

8.4 The relevance of racial aggravation to the sentence also means that prosecutors must carefully consider the implications when deciding whether to accept a plea either to a lesser offence or on such a basis that the allegation of racial aggravation will not be pursued.

8.5 Proper discharge of these duties requires that the prosecutor should have available all the necessary information about the circumstances of the offence, the defendant and the background to the offences where that may indicate the root and nature of the racial aggravation. Where the proceedings relate to a specifically racially aggravated offence under the Crime and Disorder Act 1998, much of that information will be the same evidence on which the prosecution relies to prove its case. But where the offence is a more general one (for example, dangerous driving), the evidence to establish racial aggravation may be separate as part of the background information. The prosecutor must marshal this to ensure that it is placed firmly and objectively before the court.

8.6 It is against this background that we turn to consider the presentation of specifically racially aggravated offences, other offences where there is evidence of racial motivation and issues relating to the acceptance of pleas. Our review has been file based and inspectors were not present in court when the cases in our sample were dealt with to assess how effectively prosecutors deployed evidence and information about racial aggravation that had been gathered.

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

8.7 We received inconsistent evidence about the impact of the new offences. Some Areas now find it easier to bring the racist element to the attention of the court whereas others find it more difficult. We were told that this is because magistrates and judges take varying approaches. This is related to the issue already discussed, in the context of the quality of review, about differing interpretations of the requisite hostility based on race (see paragraphs 6.59 to 6.70 ante). Some courts apply a narrower view of that test than others and are less willing to convict of racially aggravated offences as a result.

8.8 Some prosecutors consider that the new offences had made things significantly more difficult, one told us:

'I find it almost impossible to prove racism under the new offences. We are told to put the non-racial alternative as back up. I would like to nail my colours to the mast but find that the courts are reluctant to convict of racism. I recently pursued a case where there was strong evidence of racist hostility so I did not add the non-aggravated alternative. The defendant would have pleaded guilty to that. At trial, the defendant was inexplicably acquitted.'

8.9 Other prosecutors take the opposite view. One told us:

'The new offences make things more straightforward. We know what we have to prove. The racist element tends to be an integral part of the evidence and the issue is whether the victim is believed or not. Once the racism is proved, there is no argument at the sentencing stage.'

8.10 In one of the Areas that we visited, we were told that two magistrates' courts, no more than a few miles apart, take completely different approaches. CPS decision-making in racist incident cases is therefore influenced heavily by the location of the court and what is known about its attitude.

8.11 It is very difficult for the CPS to provide a consistent national response to racist incident cases if it has to operate in a climate of inconsistent interpretation of the legislation by the courts. We have discussed our concerns about this unsatisfactory position in some detail earlier in this report and highlighted the need for urgent consultation and clarification, so that the correct way forward may be identified.

8.12 We consider that there is some scope in relation to cases dealt with in the magistrates' courts to test adverse rulings on appeal. However, the more serious cases are in the Crown Court where the prosecution has at present only a very limited right of interlocutory appeal on a point of law - seldom if ever relevant to such cases. The prosecution is therefore effectively without a remedy when confronted with a case in which a judge either rules against it or gives a clear indication that, if the case is pursued it will fail on the particular point. The Law Commission has recently proposed that prosecutors should, in certain circumstances, have greater rights of appeal. We express the hope that these proposals will be taken forward in a manner which addresses the problem we have identified.

Other offences committed in circumstances of racial aggravation

8.13 Where an offence is not capable of being charged as a specifically racially aggravated offence, but there is evidence of racial aggravation, it must be brought to the attention of the court where it is proper so to do. The court is then under a statutory duty to treat the racial aggravation as a factor increasing the seriousness of the offence (section 153 of the Powers of Criminal Courts (Sentencing) Act 2000 - formerly section 82 of the Crime and Disorder Act 1998).

8.14 The number of cases falling within this category has diminished significantly following the implementation of the Crime and Disorder Act 1998. A large majority of racist incident cases are now pursued under those provisions. Of 581 cases in our sample (in which there was sufficient information to tell) we considered that it was appropriate for 485 to be pursued initially under the Crime and Disorder Act 1998 (83.5%). A breakdown of the offences that were ultimately pursued is provided at Annex C to this report.

8.15 We examined a significant number of cases in which the final offence was not a specifically racially aggravated one or a non-aggravated alternative (e.g. common assault). In such cases the racism might be overt, for example where the allegation involves the making of offensive and annoying telephone calls. In other cases, for example, of theft, there might not be any direct evidence of racism and it may be necessary to invite the court to infer that the offence was committed in circumstances of racial aggravation.

8.16 It is in the latter type of case that the quality of background information takes on particular importance.

8.17 Guidance to prosecutors is provided by paragraphs 3a.52 and 53 of the CPS Prosecution Manual. That states:

'In such cases, the admissible evidence and any other relevant material must be assessed carefully to determine whether the totality of the material is sufficient to justify drawing the inference'.

'If you conclude that it is proper to draw an inference, appropriate background information which can be supported by admissible evidence should be presented to the court. While it is for the court to draw the inference, the duty is on you to present the material which supports the contention of motivation based on racial hostility.'

8.18 Relevant background information is not supplied routinely by the police or requested by the CPS. We have expressed concern generally in chapter six about the level and quality of information that is taken into account by prosecutors when making decisions.

8.19 We found very few cases of inferred racism in our file sample. Such cases can reflect a more subtle and premeditated form of racist behaviour. They must not be overlooked.

8.20 In cases where racial aggravation is established, whether by direct evidence of overt racism or by inference, it is particularly important that the full extent of the psychological impact upon the victim is brought to the attention of the court, so that it may have a direct bearing on sentence.

Acceptance of pleas

8.21 Paragraphs 6.8 to 6.128 set out our findings in relation to the review of racially aggravated cases to determine whether the proceedings should continue and, if so, on what charge. There is a significant proportion of cases where that decision is revisited in the context of the defendant's willingness to plead guilty to a different (usually lesser) charge. We found a similar degree of uncertainty amongst prosecutors about when it was appropriate to accept pleas and in particular to pursue basic alternatives to racially aggravated charges brought under the Crime and Disorder Act 1998. Once again, prosecutorial discretion seemed to be influenced by perceptions as to the likely attitude of the particular court.

8.22 Alan Kirkwood explained some of the factors that can influence prosecutors in deciding to accept a guilty plea to a lesser alternative:

'Acceptance of lesser pleas is common. Even if we choose to pursue a racially aggravated offence, there is a tendency to reduce when we get to court, particularly if the victim does not really want to give evidence. The 'bird in the hand' argument is advanced. There is anecdotal criticism that the CPS accepts pleas too readily, but faced with a nervous and reluctant witness, it is sometimes difficult to resist. When this situation arises, it is important that the prosecutor, before deciding whether to accept a plea, seeks the victim's views personally. Taking time to put a nervous victim at ease, as well as explaining the consequences of accepting a plea to a lesser offence, can provide much needed support and reassurance and will ensure that the right decision is taken.'

8.23 We examined the extent to which charges are reduced and at what stage. We also endeavoured to assess whether such action was properly taken.

8.24 The level of charge was reduced in 155 of the 586 racist incident cases in our file sample (26.5%). In 65 of those 155 cases, the reduction was from a racially aggravated charge to a non-aggravated alternative (41.9%), as opposed to from a racially aggravated charge to a lesser racially aggravated charge. This is a particularly significant step, as it means that the racist element is removed from the case and cannot be taken into account in sentencing.

8.25 We have already expressed concern about the quality of decisions to reduce charges and their timeliness in detail in chapter six. We considered that the reduction was inappropriate in 28.1% of cases in our file sample in which the charge was reduced. We also considered

that there had been an inappropriate acceptance of pleas in 18.7% of racist incident cases in which pleas were accepted. That was more than twice the comparative rate found for general casework (8.5%). Almost half of all decisions to reduce charges in racist incident cases were taken at court (45.1%).

8.26 Accepting the 'bird in the hand' may not necessarily be the most appropriate outcome. We spoke to several external consultees who regularly provide support and advice to victims of racist crime. They provided cogent evidence that victims usually regard the racist element as the most important aspect of the case. If told that there is a realistic prospect of conviction, most would rather proceed with a racially aggravated charge and risk losing altogether, rather than accept a guilty plea to a non-racially aggravated alternative.

8.27 Suresh Grover told us:

'No one wants to lose cases but victims tend to be very angry if the racist element is not presented as a feature. It is more important to victims than conviction. They want to be believed by the prosecution and see justice.'

8.28 In some cases, it is clear that the victim is reluctant to testify and that it is appropriate to accept a lesser plea. However, where the position is less straightforward, prosecutors should be careful to ensure that they do not make incorrect assumptions and fully understand the wishes of victims. A victim's decision to agree to the acceptance of a lesser plea should always be properly informed.

Sentencing

8.29 Prosecutors do not at present have a role in sentencing beyond the duties referred to in paragraphs 8.1 to 8.6 above. However, we received many comments during our review about a lack of consistency and firmness of sentencing in some courts. As we have already mentioned (at paragraph 8.2) the provisions of sections 35 and 36 of the Criminal Justice Act 1988 dealing with unduly lenient sentences do not include racially aggravated offences. There is a strong case that they should - and this could be achieved by subordinate legislation.

8.30 We recommend 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.

Conclusion

8.31 Our overall conclusion in relation to case presentation is that in the large majority of cases racially aggravated offences are pursued to their proper conclusion. But the handling of a significant minority would be improved if the prosecutor had better background information about the offence and the victim, especially the effect which it had had on him

or her, and the victim's likely attitude to giving evidence. Greater consistency of approach by the courts would also assist in achieving more confident and consistent handling by prosecutors. Consideration should be given to extending the powers of the Attorney General in relation to unduly lenient sentences.

CASES OF INCITEMENT TO RACIAL HATRED

9.1 Part 3 of the Public Order Act 1986 creates a number of offences, the essence of which is some form of behaviour intended or likely to stir up racial hatred. Details of the relevant offences are set out at Annex F to this report. These offences relate to:

- using words or behaviour or displaying written material stirring up racial hatred (section 18);
- publishing or distributing written material stirring up racial hatred (section 19);
- public performance of a play stirring up racial hatred (section 20);
- distributing, showing or playing a recording stirring up racial hatred (section 21); and
- broadcasting a programme stirring up racial hatred (section 22).

9.2 We were specifically invited to examine the reasons why the number of cases pursued under part 3 of the Public Order Act 1986 appears to have fallen considerably. We also consulted representatives of the CPS Casework Directorate and Legal Secretariat to the Law Officers (LSLO) because proceedings for these offences require the consent of the Attorney General. We invited the 42 CCPs to submit written evidence.

9.3 All such cases are channelled through the CPS Casework Directorate and considered by an experienced lawyer from the LSLO before they are put before the Attorney General. Cases range in seriousness from long-standing perpetrators downwards. Sometimes written information containing racist language is handed out in public houses.

9.4 CPS procedures now require that, in order to achieve consistency in this specialist area, cases should be referred direct to the Casework Directorate within CPS Headquarters. The police will deal directly with the Casework Directorate. On occasions, these procedures are not followed.

9.5 It is rare for the police to charge without advice and the Casework Directorate usually takes over the case before charge. The police tend to approach them at an early stage for advice on specific literature. Sometimes it is extremely difficult to find the evidence on which to base a case as the literature tends to be subtly written and the perpetrators may be difficult to identify.

9.6 In our interview at the LSLO, we were told that the perpetrators are predominantly white and tend to be linked to known racist groups. Most cases deal with low-level offenders rather than the organisers.

9.7 The Casework Directorate usually considers only the evidential test of the Code; this may involve advising the police to carry out further enquiries before submitting papers to the Attorney General. He will take the final decision. We were told that some cases slip through the net and are referred straight to the LSLO by Areas.

9.8 There is an overview by the LSLO of whether the evidential test is satisfied. A lawyer from the LSLO considers the public interest factors and whether there are specific issues for the Law Officers. There is a presumption that where the evidence discloses an offence of incitement to racial hatred, the public interest will require a prosecution. It is for the Attorney General to finally decide whether or not to prosecute. In practice, almost all applications for consent are granted.

9.9 We were provided with a breakdown of cases of alleged incitement to racial hatred handled by the LSLO between 1988 and 2000. It is apparent that a high point occurred between 1995 and 1997 and that the numbers have gone down since then. It was equally apparent, however, that the numbers of cases per year between 1988 and 1994 were very similar to those seen since 1997. This suggests to us that there was a significant increase during that three-year period followed by a return to previous levels, rather than a general decline over a longer period.

9.10 Nevertheless, we have sought to establish why there has been a reduction in the number of such cases submitted to the LSLO since 1997.

9.11 The view of those responsible for handling such cases was that the reduction reflected a change of approach by the police:

'It is not that we are turning more cases down, the police do not seem to be bringing as many cases. We also don't see as many initiatives from the police as we used to. Cases tend to be based upon police intelligence and don't just come along. Part 3 offences do not seem to be targeted as much as they were in the past. I'm not sure whether the 90s bulge was because of police operations or whether it is a resource issue.'

9.12 We are grateful to the significant number of CCPs who responded to our invitation to comment. They confirmed that a small number of cases are submitted for consideration each year and that most relate to the possession or distribution of racially inflammatory written material.

9.13 Racist behaviour which could previously have fallen within part 3 of the Public Order Act 1986 may now be covered by specifically racially aggravated offences introduced by the Crime and Disorder Act 1998. That Act came into force on 30 September 1998. This enables cases to be progressed more quickly and avoids the need for an application to the Attorney General – which can be a cumbersome process.

9.14 The impression gained from the evidence that we have received is that the police are now more inclined to use these specific offences to address racist behaviour. This means that some offences that were previously submitted for consideration under part 3 of the 1986 are now being charged under the 1998 Act. It would also appear that the casework referral guidance is unclear and the police are submitting some part 3 charges to the CPS Areas, rather than to the Casework Directorate.

9.15 This would explain the fall off in part 3 cases since the Crime and Disorder Act was implemented.

9.16 A prosecutor in one Area that we visited provided an example of such a case that had not been referred directly to the Casework Directorate:

'Sometimes the police can go over the top and charge a part 3 offence inappropriately. We had a case in which a defendant was having a bad day at the DSS. He put racist comments on a form and handed it in. We reduced the charge from a part 3 allegation to a racially aggravated public order offence'

9.17 Evidence received from the CCPs provided further confirmation. As one put it:

'We receive very few such cases – less than 5 or so a year, and they are invariably overcharged. With the advent of the statutorily racially aggravated offences, such instances have become even more rare.'

9.18 Whilst this might explain the reduction in the number of part 3 cases, we are concerned to find that there is uncertainty about casework referral. This has been identified as a specialist area and cases should be referred to lawyers with relevant experience and expertise in the field. It is important that part 3 offences are always pursued in appropriate cases. If cases are not referred correctly, there is the danger that they will be reduced inappropriately or not pursued at a level reflecting the gravity of the offending.

9.19 We recommend that 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.

TREATMENT OF VICTIMS AND WITNESSES

Minority ethnic witnesses generally

10.1 Our original methodology contemplated a detailed consideration of the experiences of minority ethnic witnesses in cases generally, rather than merely those involved in racist incident cases. We envisaged distributing questionnaires and following them up in appropriate cases with court observations and interviews, to provide the opportunity for witnesses to comment more fully on their experiences.

10.2 We discovered, in the early stages of planning, that the Home Office intended to carry out a wider survey of witness satisfaction levels. That exercise would be on a larger scale than we could resource and would cover the same ground. We decided, therefore, that our review should consider the Home Office findings and attempt to build on them.

10.3 The results from the Home Office Survey were published in Home Office Research Study 230 Witness satisfaction: findings from the Witness Satisfaction Survey 2000.

10.4 Unfortunately, the number of minority ethnic witnesses identified in the survey proved insufficient to provide any statistically valid results. The Home Office intends to increase the sample of minority ethnic witnesses for the 2002 survey.

Witnesses to racist crime

10.5 The introduction to the CPS public statement on the treatment of victims and witnesses provides (at paragraph 1.1):

> *'It is vital that victims of, and witnesses to, crime have faith in the criminal justice system. The Crown Prosecution Service is at the heart of that system and the manner in which the CPS treats victims and witnesses is extremely important.'*

10.6 Victims of racist crime are often particularly vulnerable. A fixed location can mean that they are susceptible to intimidation or further attack. They may be isolated and lack the level of support that is available to members of the ethnic majority. There may be language difficulties that present a barrier to effective communication. The Trials Issues Group (TIG) has published guidance on the use of interpreters in criminal proceedings. The guidance advocates the use of the National Register of Public Service Interpreters for spoken language and suggests alternative sources when difficulties arise in finding a suitable interpreter for a particular language. In some parts of the country there is a shortage of suitable interpreters. Her Majesty's Magistrates' Courts Service Inspectorate (HMMCSI), in its report on 'The Review of the Use of Sign and Foreign Language Interpreters in the Magistrates' Courts Service (October 2001), has found (at paragraph 2.35) that some court centres:

'would find it difficult to meet the needs of their foreign language population, as they either have no National Register interpreters at all or, where they do have local interpreters, they are for languages other than those in the greatest demand.'

10.7 Historically, the racist crimes that are brought to the attention of the authorities have represented a very small proportion of the overall number of such offences. Cases that result in charges being brought by the police represent the small tip of a large iceberg.

10.8 Research into the reasons for the low levels of reporting in the past suggested that many victims of racist offences had such little confidence in the criminal justice system that it was seen as irrelevant. Their perception, often born of experience, was that the criminal process provided little or no protection against further harassment of those who it expected to give evidence. It can make victims feel considerably more anxious and stressed than they were. Victims have been seen as having little right to information or explanation. The criminal trial process has been regarded more as putting the victim on trial, in facing hostile cross-examination in public while the defendant may exercise his right not to give evidence. As a result, victims have put up with racism until a very serious crime is committed.

10.9 Improving the performance of the CPS in racist incident cases will have little impact if most victims are unwilling to report matters to the police. Recent figures have shown that the levels of reporting have increased dramatically following the widening of the definition of a racist incident. That welcome improvement might be lost, if victims and witnesses are dissatisfied by the way in which they are treated if the matter is pursued to trial.

10.10 The quality of victim and witness care in racist incident cases is particularly important. Providing a high-quality service to victims and witnesses can go a long way towards increasing the trust and confidence in the criminal justice system amongst members of minority ethnic communities. That should maintain and increase the levels of reporting, the number of successful prosecutions and maximise the opportunity for the courts to impose deterrent sentences.

10.11 In smaller close-knit communities, the impact of the quality of CPS performance is heightened. There tends to be a greater awareness of the existence of pending prosecutions and sharing of experiences, positive or negative. Negative experiences or perceptions about the CPS performance in a case may be communicated quickly beyond the immediate family and associates of a disappointed victim. Similarly, the opportunity for dissemination of positive experience is greater.

10.12 We might have expected to find that the quality of witness care in racist incident cases is above average. Although we were given some examples of excellent witness care, generally, our evidence suggests that this is not the case. Both internal and external consultees told us consistently that the quality of victim and witness care is not always satisfactory and no better than experienced generally.

10.13 The view expressed by one prosecutor, dealing regularly with racist incident cases, was not untypical:

'The CPS has a lot to learn about witness care. Problems with minority ethnic witnesses are worse than generally but the standard is unsatisfactory across the board. The criminal justice system is impersonal and the CPS does not do enough.'

10.14 In some Areas, more effective liaison with the local courts about listing arrangements may have a positive effect. A prosecutor, from a busy Area, told us:

'We flag up cases in which there are language difficulties and the need for an interpreter. Special care is taken to keep witnesses away from defendants. However, we are caused major problems by courts multiple listing of trials. We are unable to spend any time with victims. The courts don't appear to give listing priority to racist incident cases. Interpreters attend and are told that there is insufficient court time. This is a waste of resources. Multiple listing also means that we sometimes have to prosecute racist incident trials with limited opportunity to prepare.'

10.15 In some cases, the quality of witness care can be crucial to the success of the prosecution. Suresh Grover told us that it is very rare for witnesses to be reluctant to give evidence if they receive quality support.

10.16 Senior representatives of Victim Support said that there is work to do in improving the level of understanding. As one put it:

'Victims and witnesses from ethnic minorities do not appear to be treated any differently to other witnesses. There is a lack of understanding of the CPS role. They tend to know who the police are because they have a high profile. Beyond that, it is confusing. There might be understanding at community leader level, but it does not always percolate down.'

10.17 As long ago as 1994, the Home Affairs Committee, in its third report on Racial Attacks and Harassment, recommended (at paragraph 54):

'that the CPS should always seek to explain their actions to victims of racial incidents when charges are downgraded, or when cases are discontinued.'

10.18 External consultees, including advocacy agencies, acting on behalf of victims told us that the CPS has, in the past, been reluctant to explain its decisions and provide relevant information. If decisions to reduce or discontinue are not explained adequately, adverse assumptions are sometimes made inappropriately about the efficiency of the prosecution. That can have a detrimental impact, in terms of the level of confidence in the prosecution amongst minority ethnic communities. There is a feeling amongst support groups that, in some cases, there has been a tendency to hide behind bland stock phrases.

10.19 As Suresh Grover put it:

'The quality of explanation is much better in serious and high profile cases. The CPS have sat with families and explained their decision-making. In less serious cases, it is always just 'insufficient evidence'. We don't know whether there has been a full and proper investigation. It would help our working practices and provide guidance for future investigations if fuller explanations were given.'

10.20 The CPS is implementing new procedures for explaining its decisions directly in cases with an identifiable victim, rather than through the police. Victims will be contacted, by telephone or letter:

- to inform them of a decision to drop or substantially alter a charge; and
- to explain the reasons for the decision.

10.21 If the victim is not satisfied with the explanation, the CPS will offer a face-to-face meeting in cases of death, child abuse, serious sexual offences, racially aggravated offences and any other offence at the prosecutor's discretion.

10.22 Completion of training and the roll out of these procedures is scheduled for October 2002. The quality of the explanations that are provided to victims will be essential to the success of the scheme.

10.23 We were heartened to receive a positive example of good practice in communicating with a victim that has improved the standing of the CPS amongst victims and victim's representatives.

> Harjinder Singh, of the Birmingham Racial Attacks Monitoring Group told us:
>
> *'A couple of years ago, the CPS would not have any contact with us. They said that they needed to retain their objectivity. We had a particular case of racist abuse where the CPS decided that there was insufficient evidence. The police explained the decision, but the victim was very unhappy and came to us. We were able to arrange a face-to-face interview with the CPS for the victim and the decision was explained. The victim was not happy with the decision but felt much more satisfied after it was explained in person. The CPS approach has been different since that case.'*

10.24 We consider that direct and appropriate communication of this nature is clearly the way forward for the Service. A general perception that charges are inappropriately dropped or reduced can only be reversed, and confidence in the prosecution increased, if such decisions are justified to victims and adequately explained.

10.25 CCPs will wish to ensure that adequate explanations are provided to victims in racist incident cases for decisions to discontinue or to reduce charges, particularly in cases where a lesser offence is pursued in place of an aggravated offence under the Crime and Disorder Act 1998.

LIAISON AND COMMUNITY ENGAGEMENT

11.1 It is widely recognised that the adoption of a 'joined-up' partnership approach within the criminal justice system by relevant agencies to shared problems has a greater impact than where each agency operates in isolation, approaching the same issues in differing ways. The latter can give rise to conflicting practices and inefficiency.

11.2 Representatives of the CPS meet regularly with their counterparts from other agencies to discuss a wide variety of issues of common interest. Much has been achieved for the benefit of the agencies and those whom they serve through close co-operation and by the agreement of complementary protocols and procedures.

11.3 CPS Headquarters actively encourages liaison on issues surrounding racist incidents, not only with other agencies but also with minority ethnic community representatives. CPS policy is to encourage a partnership approach and for Chief Crown Prosecutors to develop links with the local community. Whilst there is extensive evidence of such relationships being developed, in some Areas CPS representation is not felt to be at a sufficiently senior level. Not all CCPs have a sufficiently high profile amongst minority ethnic communities.

11.4 Gurbux Singh told us:

'It is a welcome new role for CCPs to reach out into their communities. We have not, however, received much evidence of CCPs successfully doing so. There has been good feedback from some Areas, but generally not much. The message from local Racial Equality Councils is that CPS representation is not at a sufficiently senior level to have any credible impact.'

11.5 The Glidewell report envisaged that CCPs might achieve a similar profile and standing to Chief Constables. Chief Constable David Westwood also suggested that there is more that can be done in this regard:

'Most CCPs are not reaching out into the communities in the way that I do. There is a feeling that they shy away from it. The reason given is the need to preserve a judicial independence. However, their independence is not compromised at a strategic level. I don't tend to see the CCPs at the type of meetings that I attend. They do not yet appear to have the same status, role and functions in the community as the Chief Constables.'

11.6 Chief Crown Prosecutors have a pivotal role to play in raising the profile of the CPS within the minority ethnic communities and securing confidence that it will provide a high quality service in racist incident casework. They should not make assumptions as to the most effective approach towards achieving this aim. Consultation with suitable representatives of minority ethnic groups should identify the best method.

11.7 We found that liaison at a practitioner level between the CPS and other agencies on race issues is patchy. We were told that it is very good in some Areas but non-existent in others.

We were given good examples of beneficial liaison in Areas in which:

- a senior prosecutor attends regular meetings of a racial harassment forum and participates in joint initiatives;
- consultation with the local REC is good and the CPS participates in their events;
- the CCP attends meetings of a local minority ethnic police liaison group;
- the CCP has liased with the local REC about recruitment;
- the BCP has addressed the local racial equality forum and a senior prosecutor attends REC meetings;
- the CCP attends local multi-agency panels dealing with race issues;
- the CCP chairs a race issues group and regularly meets with REC representatives;
- a senior prosecutor attends a racial attacks group to discuss issues including the level of racist incidents, patterns and general safety issues; and
- a senior prosecutor was invited to address community groups to explain the difference between the roles of the police and CPS and discuss the reasons for reluctance to report.

11.8 We consider that the CPS should do more to utilise the experiences of its minority ethnic staff. They have an insight that other staff do not necessarily possess and might be expected to bring a higher level of awareness and understanding to bear in their decision-making, scrutiny of police charges and practice in court. We have discussed, at paragraphs 6.121 to 6.125, the need for open-minded debate. Regular sharing of perspectives between white and minority ethnic staff on contentious issues should increase the general level of awareness. One prosecutor put this point to us quite forcefully:

'The CPS needs to make more use of the added value provided by the experience of its black staff. It needs to allow prosecutors and caseworkers the right degree of support to operate in the communities. It needs to get around the table and reach out. We need to widen the prosecutor's perspective, even if that means taking them out of court for a time. If prosecutors are seen as having more of a social role, they can have a greater impact. Otherwise, they are divorced from the issues.'

11.9 We are convinced that there are significant benefits that can be achieved from meaningful liaison with representatives of minority ethnic communities. There must be a dialogue. That was clearly evident from the experiences of one CCP:

'Liaison has been extremely beneficial. Few in the CPS were aware of the scale of the problem. Previously, there had been little contact with the views, concerns and fears of the communities. It has also addressed a general ignorance about the role of the CPS. It has been extremely useful to get this across. Reporting has increased. We have been able to reach out to the community. We have gained valuable information about how to deal with witnesses correctly and human awareness. It has been eye opening and has kick-started our efforts in respect of training.'

11.10 To summarise, there are benefits to both the minority ethnic communities and the CPS from regular and effective liaison**:**

- it enables CPS staff to broaden their awareness and understanding of race issues so that decisions and case-handling are better informed;
- it can provide minority ethnic communities with an understanding of the work and approach of the CPS which enables them to see individual decisions in their proper context;
- the CPS benefits by minimising the risk of unwarranted public criticism; and
- proper dialogue will not only increase public confidence but is likely to provide a greater level of co-operation between minority ethnic communities and the prosecuting authorities.

11.11 On 12 June 2001, the CPS Board issued its first 'Good Practice Note' arising from the work of the HMCPSI and CPS Joint Standing Committee on Good Practice. It deals with the developing of community links and provides detailed advice for Areas on achieving effective community engagement. It sets out guiding principles, examples of ways in which effective engagement can be achieved and draws attention to potential constraints. The CPS has also been running community engagement seminars across the country since November 2001.

11.12 We recommend 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;**
- **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.**

11.13 In some cases, the views of the victim and other relevant information are known to a victim support and incident monitoring group. Consultation between the CPS and monitoring groups has been sporadic and not always as fruitful as both parties would wish it to be. Quite properly, the CPS has been careful to retain its independence at all times. It must prosecute cases on behalf of the public and not just in the interests of the victim.

11.14 Without compromising independence, we consider that there is greater scope for liaison between the CPS and the monitoring groups, in the interests of ensuring that decision-making in racist incident cases is properly informed and that victims receive an appropriate level of support and assistance.

11.15 We suggest 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, liase with them.

CASES INVOLVING MINORITY ETHNIC DEFENDANTS

INTRODUCTION

12.1 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.

12.2 We make no apology for repeating paragraph 2.2 of the Code which states:

'Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.'

12.3 A major purpose of our review has been 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.

12.4 There has been no directly comparable exercise. Dr Bonny Mhlanga's study in 1999, 'Race and Crown Prosecution Service Decisions', set out to assess the influence of the ethnic factors in decisions made by the CPS relating to 5,517 young offenders who came to its notice during a two-month period (September – October 1996). Although our exercise was a wider one, the broad issues were the same.

12.5 Whereas earlier research had suggested that members of minority ethnic groups received harsher treatment from the police and courts, Dr Mhlanga found that Asian, black and other minority ethnic defendants often receive more favourable outcomes from prosecutors' decisions than their white counterparts. He suggested that the underlying explanatory factors accounting for the differences required further exploration. We have attempted to build upon this valuable research.

Methodology

12.6 The Areas (other than London) were asked to submit their first 100 cases charged after 1 January 2000 and finalised before 30 September 2000 in which the defendant was a member of a minority ethnic group. We expected that some Areas would have a shortfall because of their ethnic composition. For CPS London, the target sample was 500 cases divided appropriately by borough. Additional cases were subsequently sought from two of the larger Areas namely West Midlands and West Yorkshire to produce an overall file sample of 1831 cases.

12.7 Paragraph 2.7 of this report describes the direct comparison effected between this file sample and the 1,255 cases which formed a control sample from the same 16 Areas and in which the defendant was not from a minority ethnic group. For the purposes of comparison, we refer to these as "white defendants" even though our minority ethnic defendant category also included some defendants who were white in appearance, for example, Eastern European.

12.8 Our conclusions are therefore based on consideration of a total of 3,066 cases. Our approach to such assessments was set out briefly at paragraphs 2.3 and 2.5 in the context of racially aggravated offences. The same principles apply. Each case was examined initially by an experienced Legal Inspector (a solicitor or barrister). If that inspector disagreed with a decision, it meant that he or she considered that it was wrong in principle; a decision would not be classified as 'incorrect' merely because the inspector might have come to a different conclusion. The Deputy Chief Inspector provided a 'second opinion' in relation to decisions considered to be incorrect.

Reviewing cases

12.9 We found that the quality of initial review in cases involving minority ethnic defendants is good and on a par with the general standard. We agreed with the application by the prosecutor of the evidential test at initial review in almost all cases in our file sample (99.3%). The comparative figure for our control sample of white defendants was 99%. The data comparison is set out in more detail at table 9 of Annex C to this report.

12.10 Similarly, we considered that almost all applications by prosecutors of the public interest test at initial review in our file sample were correct (99.7%).

12.11 We saw few cases where we considered that the decision whether to accept the case for prosecution at initial review was wrong in principle – even though we might not have made the same decision ourselves or might have pursued a different charge to that selected by the prosecutor.

Selection of the appropriate charge

12.12 If the evidential and public interest tests of the Code are met so that a case is accepted for prosecution, the prosecutor must then determine the most appropriate charge or charges. Charges should reflect the seriousness of the offending, give the court adequate sentencing powers and enable the case to be presented in a clear and simple way.

12.13 As with racist incident cases, in order to assess the quality of charging in cases involving minority ethnic defendants, we used the same questionnaire that is applied to the general file sample in Area inspections. This meant that we could directly compare charging decisions in cases involving minority ethnic defendants with those in respect of white defendants for the 16 CPS Areas that assisted the thematic review.

12.14 In assessing the quality of charging, where we considered that the charge pursued was incorrect, we recorded the reason within the following categories

- the level of charge was too high (overcharged);
- the level of charge was too low (undercharged);
- the wrong charge had been pursued (although at the right level);
- there was a minor cosmetic error; or
- any other reason.

12.15 We found that there is a greater tendency for the police to overcharge in cases involving minority ethnic defendants. The charge laid by the police was incorrect in 188 cases in our file sample of cases involving 1831 minority ethnic defendants (10.3%). Of those cases, the police had overcharged in 123 (6.7%). The comparative figure for overcharging of white defendants in our control sample of 1255 white defendants was 5.3% (67 cases). The data comparison is set out in more detail at table 10 of Annex C to this report.

12.16 At the initial review of a case, the prosecutor may continue with the police charge or decide to amend or replace it. After that review, for these purposes, the offence then pursued becomes 'the CPS charge' (even if the police charge is unaltered).

12.17 We did not find that the CPS is more likely to overcharge minority ethnic defendants at initial review. The CPS charge was incorrect in 78 cases in our file sample of cases with minority ethnic defendants (4.3%). The CPS had overcharged in 47 (2.6%) cases involving minority ethnic defendants. The comparative figure for CPS overcharging of white defendants in our control sample was slightly greater (3.4% - 43 cases).

12.18 At initial review, our evidence suggests that the CPS is addressing overcharging of minority ethnic defendants to a degree. Of the 123 cases that were overcharged by the police, 33 remained overcharged after consideration by the CPS (26.8%). In the remaining 14 cases (of the 47), the prosecutor had overcharged by increasing the police charge inappropriately.

12.19 It appears, however, that prosecutors rectify overcharging in almost all cases by the time that they are finalised. The proportion of cases in which the final charge reflected the gravity of offending was almost identical for minority ethnic and white defendants – 97.4% and 98.4% respectively. These figures, reflecting general casework, mask differences in respect of some types of offence. In comparing public order cases, for example, we found that the CPS is less likely to get the final charges right in respect of minority ethnic defendants. They reflected the gravity of offending in 98.1% of cases involving white defendants compared to 91.9% for black defendants and 94.8% for Asian defendants.

12.20 Statistics published by the Home Office pursuant to section 95 of the Criminal Justice Act 1991, in addition to revealing apparent differences in the treatment of white and minority ethnic defendants in the criminal justice system, have shown small variations between black and Asian defendants. We also found some evidence of this in the context of public order and assault cases, where there tends to be a wider discretion in charge selection than, for example, in cases of dishonesty. We have already mentioned one example in paragraph 12.19 above. In cases of assault, we found that the police charges were correct in 91.5% of cases involving Asian defendants compared to 86.2% for black defendants. The comparative figures for whether the CPS ultimately applied the charging standard correctly were 97.7% and 95.6% respectively. The data comparison is set out more fully at tables 14 and 15 of Annex C to this report.

12.21 We take this opportunity to mention our concern that some cases are reviewed on the basis of factual summaries, rather than following consideration of admissible evidence. In those cases, it was not possible for inspectors to determine whether the appropriate charges had been pursued. These cases are a very small minority, being 84 out of 1831 cases in our sample (4.6%). We have previously commented on this issue in our report on the Evaluation of Lay Review and Lay Presentation (Thematic report 2/99). The CPS Board subsequently reaffirmed that cases should not be allowed to proceed on the basis of summaries alone.

12.22 We found that there is often a link between poor file quality and compliance with fast-track procedures. Those procedures should not be adhered to slavishly, if it means that decisions are taken without proper foundation and that cases are not subjected to the degree of consideration that they would ordinarily receive.

12.23 Overcharging is far more difficult to detect from a factual summary prepared by the officer investigating the case than it is from a file containing the admissible evidence and relevant background information. Defendants not represented by a solicitor may plead guilty without appreciating that the charge overstates the criminality of their behaviour. Even where a defendant is represented, it is the duty of the prosecutor to ensure that charges properly reflect the seriousness of the offending and that an appropriate basis for sentence is presented to the court.

12.24 We have referred in another context to the importance of prosecutors having full information as the basis for properly informed decisions. It is essential that the CPS insists that minimum file standards are always met and require remedial action in those cases where that is not the case, particularly in cases that are fast-tracked. If the CPS is to provide a fair and consistent service, it must ensure that its decision-making is well founded.

12.25 We recommend 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.

Discontinuance

12.26 If, on initial review or at any subsequent stage in proceedings, the prosecutor is no longer satisfied that there is a realistic prospect of the defendant being convicted of any offence, or that it is no longer in the public interest to continue, the case should be terminated as soon as is reasonably practicable – immediately if the defendant is in custody.

12.27 Our evidence suggests that cases involving minority ethnic defendants are significantly more likely to be discontinued than generally. The discontinuance rate for cases in our file sample was significantly greater than the national average for all types of case (18.5% compared to 13%).

12.28 Whereas the CPS national discontinuance rate reflects all types of case, our sample excluded cases in which the defendant had been summonsed. That was because there would be little opportunity to consider the application of judgement and discretion in straightforward minor road traffic cases. The rate of discontinuance in such cases tends to be greater than it is for more substantial offences. If, therefore, summonsed cases were excluded from the national figure it is likely that it would be lower than 13% and the difference that we have found would be greater.

12.29 In almost all cases in our minority ethnic defendant sample that were dropped, we considered that the CPS decision to discontinue was correct (95.7%) – higher than the average in assessment of discontinuance decisions in our cycle of Area inspections to date. The data comparison is set out in more detail at tables 11 to 13 of Annex C to this report.

12.30 The proportion dropped by the CPS because a witness was considered to be unreliable was almost double that for white defendants in our control sample (11% compared to 5.8%). This suggests that the police may make a less critical assessment of the credibility of the complainant in cases where the defendant is from a minority ethnic group.

12.31 A slightly higher percentage of minority ethnic defendant cases were dropped because a caution was felt to be more suitable (5.2% compared to 4.8% for white defendants). This tended to confirm a view expressed by the Society of Black Lawyers that the police appear less willing to caution minority ethnic defendants for a first offence or when the offence was the first after a significant gap.

Acquittal rates and their significance

12.32 We have already set out (in paragraph 6.3 above) the test that we apply to assess the quality of review. It is a test which deliberately recognises that legal decision-making is often difficult and frequently turns on legal or evidential issues of professional judgement. Different lawyers may, perfectly properly, take different views in relation to the same case. This explains why the number of cases where inspectors conclude that the quality of the prosecutor's decision about evidential sufficiency is so poor as to be wrong in principle is

quite low. Moreover, the decisions in a large proportion of cases are quite clear cut both as regards the sufficiency of the evidence and the public interest.

12.33 However, there are also many cases in which the correct decision is far from obvious. There may be conflicting or incomplete evidence. Key witnesses may be uncertain about what they saw or lack credibility. These cases require careful consideration and an informed application of the prosecutor's discretion and professional judgment.

12.34 In this context, the rate of acquittal after trial may provide us with an important indicator of performance. If the acquittal rate is high, it might be taken to suggest that prosecutors are not weeding out weaker cases in which that outcome is more likely than conviction. Conversely, if the acquittal rate is very low, it may mean that the CPS is getting it right but it could equally mean that they are 'playing it safe' and only pursuing cases in which a conviction is almost guaranteed.

12.35 Within a sample of cases large enough to attract statistical validity, and in the absence of differential treatment, we might expect to find similar rates of acquittal after trial for minority ethnic and white defendants. In fact, our evidence suggests that minority ethnic defendants are more likely to be acquitted after trial than white defendants.

12.36 The same file examination questionnaire as is applied more generally to cases examined in Area inspections was used to assess the quality of review in cases in our sample of cases where the defendant was from a minority ethnic group. Area inspectors had applied that questionnaire to cases involving white defendants that were examined in the inspections of the 16 Areas that assisted the thematic review. We used the data from those cases as our control sample for the purpose of comparing performance generally.

12.37 However, that questionnaire does not require the inspector to record whether the defendant was convicted or acquitted. We had to additionally ask that question of our sample of cases involving minority ethnic defendants. This meant, therefore, that we had an acquittal rate for cases involving minority ethnic defendants but not a directly comparable figure from our control sample for white defendants (as we had in all other categories).

12.38 In order to assess our evidence about the rates of acquittal after trial we have taken figures from the Home Office bulletin 'Section 95 Findings – Ethnic differences on decisions on young defendants dealt with by the CPS' (2000) by Gordon Barclay and Dr Bonny Mhlanga. That bulletin presented additional analysis of data collected by Dr Mhlanga in his study of persons under the age of 22 whose cases were dealt with by the CPS in September and October 1996.

12.39 There were 144 cases in our file sample that went to a full trial. In 101 magistrates' court trials, 55 defendants were convicted and 46 acquitted. That gave an acquittal rate of 45.5% compared to 41% for white defendants in Dr Mhlanga's sample. There were 43 Crown Court trials in our sample in which 25 defendants were convicted and 18 acquitted. The acquittal rate was, therefore, 41.9% compared to 30% for white defendants.

12.40 Our sample involved defendants of all ages rather than just youth cases and the cases were more recent. Whilst we cannot draw firm conclusions based upon a limited number of trials, this may provide an important indicator of CPS performance if weak cases against minority ethnic defendants are not being weeded out as successfully as they are in cases in which the defendant is white. We have also found that the proportion of cases in which the final charge reflected the gravity of offending was almost identical for minority ethnic and white defendants. The apparent difference in acquittal rates might be attributed, therefore, to a lack of complete thoroughness in carrying out the gatekeeping role.

12.41 In the light of our findings, CPS Areas should ensure through heightening awareness amongst staff and in partnership with the police, that they are in a position to identify, discuss internally and provide feedback to the police in respect of cases in which there appears to be evidence of differential treatment.

The wider context

12.42 We acknowledge limitations to our methodology. The review has been file-based and we are reliant, to a substantial degree, on the quality of information provided by the files.

12.43 Earlier in this report, we set out some important issues that are of considerable concern to members of minority ethnic communities and those working on their behalf. We recognise those concerns and that they can give rise to distrust of and sometimes hostility towards the police and CPS. Resource limitations and the need to focus on specific casework issues have prevented us from giving detailed consideration to these issues. We are, however, able to make what we hope is a worthwhile contribution to the debate.

12.44 Issues of concern to members of minority ethnic communities in respect of CPS decision-making include:

- allegations arising from the stopping and searching of suspects by the police;
- differential approaches towards counter-allegations; and
- differential approaches towards bail.

(i) stop and search

12.45 Our evidence suggests that prosecutors do not always have the insight or opportunity to explore issues surrounding inappropriate inter-action between minority ethnic suspects and police officers or differential approaches towards white suspects and minority ethnic suspects.

12.46 Home Office research has revealed that members of minority ethnic groups are significantly more likely to be stopped and searched by the police. Where the defendant is charged as a result, it is not always because of any goods, substances or implements found but from the nature of the engagement between the police officer and the minority ethnic individual.

12.47 The file will not usually give any indication that the behaviour of the officer might have been inappropriate or provocative. Prosecutors should, however, be aware of the potential for that to occur and for the possibility, as a result, that the defendant has been overcharged or should not have been charged at all. Further inquiry may be appropriate, for example, where the nature of the defendant's response appears to be inexplicable or where the charge laid by the police is out of proportion to the behaviour complained of.

12.48 Some prosecutors that we spoke to displayed an impressive awareness of these less obvious factors for consideration. One accepted, however, that there is inconsistency:

'Some prosecutors have the insight and others don't. Some have a cut and dry attitude - this is the evidence full stop. Some look at it in more depth. They will question whether the defendant should have been stopped in the first place. For others, it doesn't matter why they were stopped, they have still committed an offence.'

12.49 Prosecutors possessing the necessary insight may not always have the opportunity to explore reservations of this nature or they may feel that it is unlikely that further enquiry, particularly with the police, will lead to anything of value or to any reconsideration of the case. In such circumstances, it may be more appropriate to make timely inquiries in other directions, for example with the defendant's solicitor. It is far better that a properly informed decision about the likelihood of conviction, or the most appropriate charge, is taken at an early stage of proceedings.

(ii) bail

12.50 There is a perception amongst minority ethnic communities that minority ethnic defendants are less likely to be granted bail and more likely to receive bail conditions.

12.51 Where they have decided to oppose bail, the police will usually supply the prosecutor with a written summary of the alleged facts and an indication of the grounds upon which they rely under the Bail Act 1976. It is difficult for prosecutors to go behind that limited information at such an early stage. It may then be some weeks before the CPS receives an adequate file containing admissible evidence, so that more considered decisions can be taken about the likelihood of conviction and whether it is appropriate for the defendant to be remanded in custody.

12.52 If the police have misinterpreted or overstated the case, it is very difficult for the prosecutor to reach that conclusion at the first hearing on the basis of a brief factual summary. With the necessary insight about the potential for differential treatment, prosecutors might make further inquiries, if they suspect that the information upon which the application for remand in custody is based does not fairly and accurately reflect the case.

(iii) counter-allegations

12.53 Another area of concern amongst minority ethnic communities is the approach of the prosecution towards cases involving counter-allegations, when it is necessary for the police to take a decision about which party is to be regarded as the victim and which the defendant. In cases where one party is white and the other is from a minority ethnic group, it is a commonly held view that it is more likely that the white person will be regarded as the victim.

12.54 This is a particularly sensitive issue in cases where it is felt that the behaviour of the minority ethnic individual has occurred in response to racially aggravated offending on the part of the white 'victim'.

12.55 Counter-allegations must be scrutinised very carefully. Suresh Grover told us:

'It is a common tactic by white defendants to fabricate counter-allegations. We had seen our clients charged with more serious offences as a result. The CPS should deal with this but doesn't.'

12.56 Terry Moore added:

'I am aware of cases in which counter-allegations have resulted in victims being prosecuted. They tend to come unstuck at trial, as the counter-allegation is exposed as a fabrication. Retaliation is sometimes pursued without due regard to the level of provocation.'

12.57 The CPS should be pro-active in cases of counter-allegation and, if appropriate, should not wait for the court to decide. It is important that prosecutors do not merely endorse the charging decision of the police.

12.58 We acknowledge that this is not always a straightforward task. As one prosecutor put it:

'Counter-allegation cases are difficult to prosecute. The prosecutor should ask for more information in order to decide which party is telling the truth. We often find that neither side is telling the full truth.'

12.59 Prosecutors may require additional information if they are to fully consider and compare the account of each party. Initially, the defendant's version of events may have been edited and condensed in the factual summary of the case or in the short descriptive note of the interview prepared by the investigating officer. That account may be inaccurate or incomplete or reflect the possibly incorrect perception of the officer about the respective roles of the parties.

(iv) generally

12.60 Whilst we acknowledge the practical difficulties and constraints under which prosecutors must operate, we consider it important that their decisions are taken after due consideration of the relevant factors. Informed decision-making in cases involving minority ethnic defendants requires a clear understanding of the wider context and an awareness of the type of issues that we have discussed in this section.

12.61 We recommend that CCPs should ensure that prosecutors are fully aware of the issues surrounding the potential for:

- **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.**

12.62 We recommend that CCPs should ensure that they have mechanisms in place to encourage, in respect of cases potentially falling within the categories set out in the recommendation at paragraph 12.61 (above);

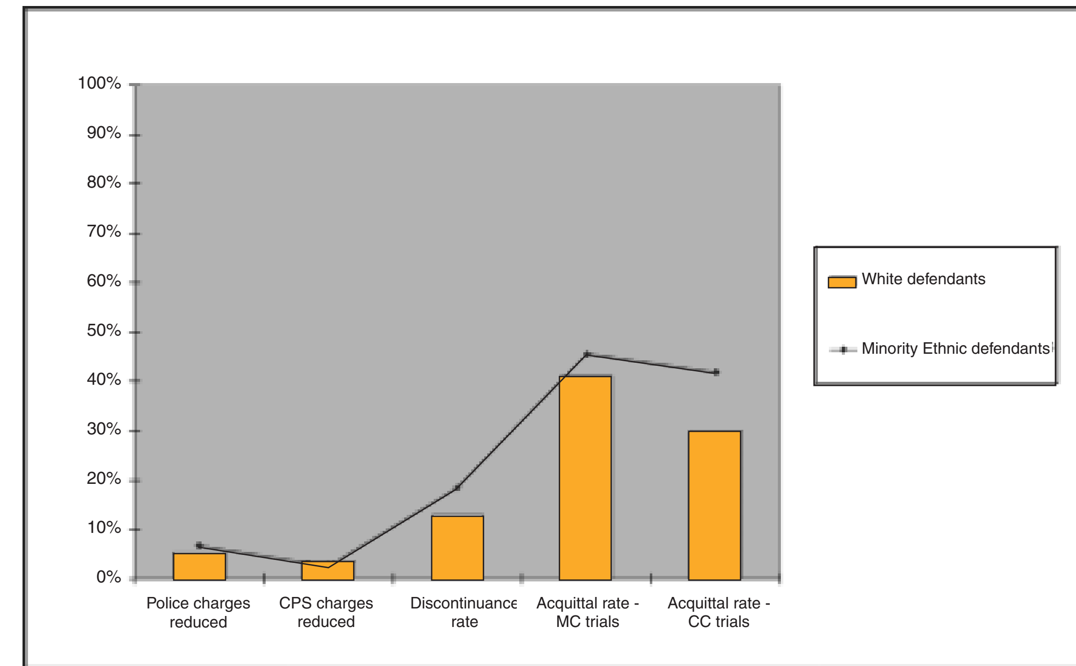
- **referral by prosecutors to line managers for discussion;**
- **liaison with appropriate representatives of the police; and**
- **feedback to staff on the outcome of such liaison.**

Overview

12.63 To summarise, therefore, our evidence suggests that in cases involving minority ethnic defendants:

- there is a greater tendency for the police to overcharge;
- the final charge is equally likely to reflect the gravity of offending;
- there is a greater likelihood of discontinuance; and
- there is a greater likelihood of acquittal.

12.64 The following chart compares data for cases involving minority ethnic defendant from the 16 Areas with data for white defendants in the same important categories:



Category	White defendants	Minority Ethnic defendants
Police charges reduced	5.3%	6.7%
CPS charges reduced	3.4%	2.6%
Discontinuance rate	13%	18.5%
Acquittal rate - MC trials	41%	45.5%
Acquittal rate - CC trials	30%	41.9%

12.65 Our findings are very similar to those of Dr Bonny Mhlanga in his 1999 study. That research was restricted to young offenders but also revealed a higher rate of charge reduction and discontinuance for minority ethnic defendants.

12.66 Dr Mhlanga suggested that there might be two possible interpretations of his findings. At paragraph 4.2 he states:

‘Interpreting the meaning and significance of differences in the treatment of ethnic minority groups at each stage of the CPS decision-making process is no easy matter. A difference between some minority groups and whites that remains even after taking into account the influence of a wide range of legal and non-legal variables might be taken to suggest that the CPS systematically treats such groups favourably. However, some lawyers deny this possibility on the grounds that they are bound solely by the evidential and public interest

tests and that race is not a legally relevant variable. To this they also add that they do not see defendants before reaching their decisions, and that, until recently, the case papers gave no indication of ethnicity.'

12.67 A second alternative explanation is set out in paragraph 4.3:

'An alternative view of the findings could be that the CPS are performing their required independent role in selecting cases appropriate for prosecution, and that the differences observed in the treatment of ethnic minority defendants reflects differences in the quality of cases received by the service. That is to say, one possible interpretation is that the CPS are downgrading, or even rejecting outright, cases where the police have shown bias against minorities. It is not possible, on the current data, to distinguish between the two alternatives, and further research, involving detailed studies of individual matched cases, would be needed to decide.'

12.68 The CPS has a 'gate-keeping' role within the criminal justice process. It must apply the Code for Crown Prosecutors to ensure that prosecution occurs only in appropriate cases and that cases are pursued at the correct level.

12.69 The second alternative explanation suggested by Dr Mhlanga describes the performance by prosecutors of that gate-keeping role. If differential treatment occurs when the case is in the hands of the police, there is greater need for the CPS to take remedial action by discontinuing or reducing a larger proportion of cases in which the defendant is from a minority ethnic group. One would expect to find, therefore, increased rates of discontinuance and charge reduction.

12.70 Our findings provide support for Dr Mhlanga's second alternative finding - that the CPS is addressing overcharging and inappropriate charging of minority ethnic defendants by the police, rather than systematically treating such groups more favourably.

12.71 We cannot conclude, however, that the Service is satisfying its gate-keeping role to the full extent that it must if it is to ensure that differential treatment is eliminated. If that were the position, we would not have found increased rates of acquittal after trial or that some cases involving minority ethnic defendants remain overcharged following initial consideration by the CPS. In some cases in our sample, it was not possible for inspectors to say categorically that the case should have been reduced or discontinued because of the poor quality of the file.

Commentary

12.72 In any case in which the defendant is from a minority ethnic group, prosecutors must be alert to the dangers of unwitting discrimination. A prosecutor from a large Area with a significant minority ethnic population gave us an explanation of how this can arise:

'Prosecuting in an Area like this, where there is a higher proportion of black defendants, can affect your perception. Even if you are open-minded, there can be subconscious stereotyping. This is inevitable and self-perpetuating, unless the organisation takes positive steps to continually refresh its prosecutors. This stereotyping impairs the ability of prosecutors to redress overcharging and inappropriate prosecutions.'

12.73 Gurbux Singh, Chairman of the Commission for Racial Equality, said that the CPS must always guard against complacency:

'Some prosecutors think that they cannot be discriminatory, but racial discrimination is often unwitting and subconscious.'

12.74 The Denman report, 'Race Discrimination in the Crown Prosecution Service' published in July 2001, deals principally with issues surrounding differential treatment in respect of recruitment and career progression. However, the report also considers whether discrimination might be at work in casework decision-making and, at paragraph 9.4.7, warns of the potential for it to occur:

'Although the 'evidential test' applied by Crown Prosecutors is an objective test, the application of that test is inherently subjective, particularly in relation to assessing the credibility of witnesses. The potential for discrimination, through stereotyping and lack of cultural awareness, is obvious. There is plainly the need, therefore, for CPS lawyers to be alert to the potential for 'institutional racism' in the taking of prosecution decisions.'

12.75 After considering the original findings of Dr Mhlanga and the evidence of differing acquittal rates provided by the follow-up paper ('Ethnic Differences in Decisions on Young Defendants dealt with by the Crown Prosecution Service' (Gordon Barclay and Dr Bonny Mhlanga)), Sylvia Denman put forward the following analysis:

'The more likely explanation is as follows: (a) the police are discriminating against black and Asian defendants in their charging decisions; (b) some of these discriminatory charging decisions are weeded out when the CPS reviews the case; but (c) other cases which should not have been allowed to go forward to trial are not being weeded out by the CPS. If this analysis is correct, then the CPS would appear to be discriminating against ethnic minority defendants by failing to correct the bias in police charging decisions and allowing a disproportionate number of weak cases against ethnic minority defendants to go to trial. This would provide a good illustration of how lack of vigilance, rather than a conscious discrimination, may give rise to 'institutional racism'.'

12.76 Our findings are consistent with those of Dr Mhlanga and with the analysis of Sylvia Denman. They are also supported by the validation exercise conducted by the Society of Black Lawyers. This provides us with welcome reassurance that we have considered and identified relevant factors and are in a favourable position to suggest an appropriate way forward.

The need for ongoing monitoring

12.77 The Race Relations (Amendment) Act 2000 came into effect on 2 April 2001. It extends the scope of the Race Relations Act 1976 in placing a general duty on listed public authorities to be proactive in promoting race equality. It requires them to work to avoid unlawful discrimination before it occurs and to promote equality of opportunity and good relations between persons of different racial groups.

12.78 The Act 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. Subject to safeguards designed to prevent the inappropriate circumventing of criminal proceedings, casework decisions such as those whether to prosecute, about the most appropriate charges, bail and mode of trial are now liable to scrutiny. There will be a greater need for the Service to monitor and assess the impact of its policies. A more detailed explanation of the relevant legislative provisions is set out at Annex G.

12.79 We have earlier discussed the CPS scheme for monitoring racist incident cases (RIMS) in some detail. When we commenced this review, the CPS did not have mechanisms in place to monitor the quality of casework by ethnicity so as to identify inappropriate decisions and overcharging.

12.80 During the course of the review, we became aware of important proposals for monitoring of some aspects of service delivery. An independent consortium is to carry out extensive comparative research into the impact of ethnicity on CPS decision-making. This work has now started and the proposal is to examine 15,000 files.

12.81 Monitoring will be in respect of defendants with review, bail, charging and discontinuance having been identified as key areas. The exercise will be informed by the results of this thematic review. Areas of concern will be taken up where this thematic review leaves off. A sufficiently large sample of cases has been taken so that those where the necessary information about ethnicity is unavailable may be set aside without losing statistical validity. The aim of this research is to see if any discriminatory patterns emerge in the findings. The research started in September 2001 and will be completed towards the end of 2002. Ethnic monitoring has also been added to the specification of COMPASS - the CPS electronic filing system, which is due to start in 2003.

12.82 The project will compile a substantial body of statistics before moving on to the more complex task of analysis. Statistics will be used to monitor the impact of policy changes. Concerns have been expressed by minority ethnic CPS staff that some white lawyers see minority ethnic victims as less credible witnesses and that black victims have to satisfy a higher standard of proof to get their cases accepted. We have some reservations about whether the monitoring of defendants by ethnicity, if not accompanied by similar monitoring of victims, will provide the information needed to investigate whether those perceptions are valid. This may be a significant limitation to the existing arrangements.

12.83 Nevertheless, this is clearly a positive development. It is an interim measure in that work continues towards implementing a sophisticated electronic system for the monitoring of ethnicity and linking the police, CPS and courts. As with the monitoring of racist incident cases, it will be essential to secure commitment through effective communication of the value of this exercise for the CPS and its staff. The monitoring will be costly and it will be important to ensure that the resulting information is effectively promulgated and analysed by managers at all levels so that appropriate lessons are learned.

12.84 Ensuring fairness in the criminal justice system is a shared responsibility. Locally and nationally, it can only be achieved by close co-operation and through a partnership approach.

12.85 We feel sure that the Service, in partnership with the police and other relevant agencies, will wish to make the fullest use of the information provided by the monitoring exercise and the findings of our review together with any other available feedback and performance indicators to eliminate differential treatment of defendants from minority ethnic groups.

12.86 We recommend 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 consistent:

- **levels of charging.**
- **rates of discontinuance; and**
- **rates of acquittal.**

CONCLUSIONS, GOOD PRACTICE, RECOMMENDATIONS, SUGGESTIONS AND THE WAY FORWARD

CONCLUSIONS

Cases arising from racist incidents

13.1 This review has sought to provide an assurance (or otherwise, if necessary) to the DPP that the quality of decision-making in and the handling of cases having a minority ethnic dimension is sound. Any positive assurance that we are able to provide about cases arising from racist incidents must be qualified in light of the concerns that we have raised. We have identified where we consider that there is work to be done in addressing those concerns, if the Service is to achieve a 'clean bill of health'.

13.2 There have been encouraging improvements in the identification of racist incident cases, although it appears that a significantly proportion are not being monitored appropriately after they have been identified. We have drawn attention to the possibility that fast-tracked cases may escape the monitoring net and to the need to have systems in place to ensure that they are captured.

13.3 We are concerned to find that prosecutors do not always possess all the necessary or available information when taking important decisions. The police are not asked to remedy deficiencies in the content of files and prosecutors do not always have sufficient awareness of the wider context to appreciate that they are under-informed.

13.4 It is essential for the Service to achieve a consistent approach. Varying interpretation of the key legislation is currently undermining that aim. At present, too much depends upon the individual handling the case or the location in which the offence was committed. The time has arrived for revised guidance and for clarification in respect of important issues. We consider that a suitable training initiative is needed to address a background of uncertainty and to ensure that all relevant members of staff have a satisfactory level of understanding and awareness. Suitable individuals should be appointed to oversee racist incident casework. Their monitoring of consistency and quality would evaluate, and hopefully validate, the impact of training.

13.5 The quality of endorsement of the reasons for decision-making must improve if the Service is to fulfil its obligations under the Race Relations (Amendment) Act 2000 and demonstrate that it does not discriminate. The anticipated benefits from direct communication with victims, of increased trust and confidence, will quickly dissipate if decisions cannot be justified or explained adequately because records are incomplete.

13.6 The Racist Incident Monitoring Scheme (RIMS) is a valuable and important initiative for the CPS and for the wider criminal justice system. We consider, however, that more can be done in terms of involving the decision-makers in the scheme, explaining its purpose, providing feedback of its findings and analysing the data, locally and nationally. Maintaining the commitment of those operating the scheme is vital to the completeness and accuracy of data and the overall success of the initiative.

13.7 The rate of victim withdrawal is high and the overall quality of witness care needs to be improved if it is to encourage victims to report their complaints to the police and then see them through. The benefits to be gained through dissemination by minority ethnic victims and witnesses of positive experiences are obvious. We consider that there is scope for greater and more focussed engagement with diverse communities. It does not compromise independence if approached in the right manner with an awareness of the potential constraints.

13.8 We have also found that the combination of the introduction of specifically racially aggravated offences and failure by the police and CPS to refer cases appropriately creates a risk that serious racist incident relating to the stirring up of racial hatred may not be pursued at their correct level.

Cases involving minority ethnic defendants

13.9 Again, we are unable to provide an unqualified assurance that the quality of decision-making in cases involving minority ethnic defendants is sound. The CPS has a 'gate-keeping' role. It must ensure that prosecution occurs only in appropriate cases and that cases are pursued at the correct level. It should stop cases when there is no longer a realistic prospect of conviction or if continued prosecution is not in the public interest. We have not found that the Service is fully satisfying that role to remove differential treatment completely.

13.10 The problems are similar to those encountered in racist incident cases. Prosecutors do not always have the opportunity for proper consideration due to incomplete information and the expeditious manner in which some cases are dealt with. Nor do they always have the insight or opportunity to explore issues to the extent necessary to detect unfairness. Minimum file standards must be enforced, so that all casework decisions may be properly informed and well founded. The type of training that we have proposed should increase the overall level of awareness.

13.11 We are convinced, however, that the Service is moving in the right direction. It is pursuing a number of positive initiatives in furtherance of the Macpherson and Denman recommendations and has recently embarked on an extensive exercise for monitoring the impact of ethnicity on casework decision-making. That monitoring will be informed by the findings of our review and should continue where we have left off.

THE WAY FORWARD

13.12 This report contains a number of recommendations and suggestions designed to address the concerns that we have highlighted. The initial response of the CPS will be to produce an action plan covering the issues raised, which should include a challenging but achievable timetable for implementation. HMCPSI will have the opportunity to comment on the CPS proposals before they are finalised.

13.13 We will monitor the impact of our recommendations and scrutinise service delivery during our second cycle of Area inspections, when we will assess, at a local level, the progress that has been made. There will also be the opportunity to undertake a shorter follow-up thematic review to consider how the CPS has addressed these issues at a national level.

13.14 Performance will be monitored closely through improved operation of RIMS and by the new ethnicity monitoring initiative. We expect that the Area 'consultants' will assure the quality of casework handling locally. Our report also contains information that should assist those outside the CPS to assess the quality of its performance in this important area of casework.

13.15 It is a key aspect of the Inspectorate's role to identify and promote good practice. A Joint Standing Committee on Good Practice (JSCGP) has been established with the CPS to identify and enable dissemination of good practice to Areas through the CPS Board. The JSCGP will consider the practices to which we have drawn attention.

13.16 It was not within the scope of our work to consider all the many issues arising in casework having a minority ethnic dimension. Nevertheless, we trust that the review has provided an indication of the way forward for the CPS and that this report contains important information upon which they and others might build.

GOOD PRACTICE

13.17 In the course of this review, we have observed systems and practices that assist the CPS in its handling of cases arising from racist incidents. We have highlighted them in the appropriate sections of the report. For ease of reference, we list them here under the chapter headings in which they appear. We commend those practices where:

CPS policy and guidance

i a conference was held in which the CCP invited representatives from minority ethnic communities, courts, defence and judiciary to discuss issues arising from racist incident cases;

ii a diversity open day was held in which pupils from local schools visited the CPS office and were given an insight;

iii a training initiative was arranged by a CPS Area and jointly delivered to an audience involving the CPS, police, probation, Crown Court, magistrates' courts and prisons as a means of increasing understanding and awareness about issues surrounding racist incidents;

Monitoring cases

iv positive steps have been taken to ensure that fast-tracked cases are monitored by:

- making monitoring forms available at the police station so that they can be attached and the file marked when they are first reviewed;
- putting up posters in the room at the police station where fast-tracked cases are received and initially reviewed reminding prosecutors of the need to identify and monitor racist incidents;
- providing standing instructions that whenever a racist incident case is finalised at first appearance it must be directed immediately thereafter to the Area racist incident monitoring co-ordinator;
- carrying out 'awareness sessions' with administrative staff in which monitoring procedures were explained and a flow chart used to break down the process; and
- the Area Business Manager (ABM) attending prosecution team meetings and speaking to staff about the need to be vigilant.

v CPS managers compare their monitoring statistics with those compiled by the local police, to ensure that they correspond;

vi Areas finding that the monitoring form does not cater for every possible scenario have provided valuable feedback by notifying those in the CPS Policy Directorate responsible for monitoring the effectiveness of the scheme;

vii monitoring forms are used to share information with the police and they together discuss issues and look closely at outcomes, charging decisions and whether relevant forms have been exchanged;

viii a CPS Area is working with a number of agencies and local schools in general racist incident monitoring for the county;

Reviewing cases

ix measures are in place designed to achieve consistency in racist incident casework including:

- consideration of RIMs data;
- discussing the issues at Branch training days;
- discussing specific problems informally when they arise;
- dissemination of case law and guidance;
- the CCP is kept informed of all racist incident prosecutions and looks at all files after finalisation; and
- there is dip-sampling by managers and discussion of issues at Area Management Team (AMT) meetings;

Treatment of victims and witnesses

x a victim advice and support group were able to arrange a face-to-face interview with the CPS for the victim and a sensitive decision was explained in person;

Liaison and community engagement

xi good examples of beneficial liaison occur, including where:

- a senior prosecutor attends regular meetings of a racial harassment forum and participates in joint initiatives;
- consultation with the local Racial Equality Council (REC) is good and the CPS participates in their events;
- a CCP attends meetings of a local minority ethnic police liaison group;
- a CCP has liased with the local REC about recruitment;
- a BCP has addressed the local racial equality forum and a senior prosecutor attends REC meetings;
- a CCP attends local multi-agency panels dealing with race issues;
- a CCP chairs a race issues group and regularly meets with REC representatives;

- a senior prosecutor attends a racial attacks group to discuss issues including the level of racist incidents, patterns and general safety issues; and
- a senior prosecutor was invited to address community groups to explain the difference between the roles of the police and CPS and discuss the reasons for reluctance to report.

RECOMMENDATIONS

13.18 In the light of our findings, we have identified where improvements may be made. For ease of reference, we have grouped our recommendations under the chapter headings in which they appear in the report. We recommend that:

Cases arising from racist incidents

Monitoring racist incident cases

i 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 (paragraph 5.24);

ii CCPs should consult with the police to ensure that data collected in respect racist incidents is accurate, up-to-date and consistent (paragraph 5.25);

iii that CCPs should ensure that all appropriate staff:

- are fully aware of the procedures involved in implementing RIMS;
- are fully aware of the reasons for such monitoring;
- participate in the monitoring process (paragraph 5.47);

iv CCPs should ensure that RIMS data relevant to their Area is:

- 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 (paragraph 5.64);

Reviewing cases

v 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 (paragraph 6.35);

vi CCPs should discuss with the police ways of ensuring that all relevant background information is submitted so that informed decisions can be made, including:

- details of any previously recorded racist incidents involving both the complainant and defendant or either; and
- 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 (paragraph 6.50);

vii 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 (paragraph 6.101);

viii CCPs should ensure that delay is kept to a minimum in racially aggravated cases and, in particular, should:

- consult the police and courts to consider arrangements for expediting racially aggravated cases;
- 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 (paragraph 6.105);

ix CCPs should satisfy themselves that they have mechanisms in place to ensure that racist incident cases are reviewed in timely fashion at all stages (paragraph 6.111);

x 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 (paragraph 6.120);

xi 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 (paragraph 6.125);

xii 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;

- 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 (paragraph 6.128);

Preparing cases

xiii 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 (paragraph 7.12);

Presenting cases in court

xiv 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 (paragraph 8.30);

Cases of incitement to racial hatred

xv 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 (paragraph 9.19);

Liaison and community engagement

xvi 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;
- 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 (paragraph 11.12);

Cases involving defendants from minority ethnic groups

Reviewing cases

xvii 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 (paragraph 12.25);

xviii CCPs should ensure that prosecutors are fully aware of the issues surrounding the potential for:

- 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 (paragraph 12.61);

xix CCPs should ensure that they have mechanisms in place to encourage, in respect of cases potentially falling within the categories set out in recommendation xviii (above);

- 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 (paragraph 12.62);

xx 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:

- levels of charging;
- rates of discontinuance; and
- rates of acquittal (paragraph 12.86).

SUGGESTIONS

13.19 The distinction between recommendations and suggestions lies in the degree of priority that the Inspectorate considers should attach to its proposals. Those meriting the highest priority form the basis of recommendations. We suggest that:

CPS policy and guidance

i CCPs should consider whether their Areas might beneficially pursue localised consultation initiatives involving representatives of relevant criminal justice system agencies and minority ethnic communities (paragraph 4.21);

Monitoring racist incident cases

ii CCPs should strongly encourage:

- 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 (paragraph 5.15);

iii 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 (paragraph 5.58);

Reviewing cases

iv 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 (paragraph 6.43);

v 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 (paragraph 6.48);

vi 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 (paragraph 6.63);

vii 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 (paragraph 6.70);

viii CCPs should ensure that cases in which a police officer is the victim of a racially aggravated offence are not reduced in seriousness inappropriately (paragraph 6.77);

ix 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 (paragraph 6.80);

x CCPs should ensure that all appropriate staff are fully aware of the sentencing implications of removing the racial element from prosecutions (paragraph 6.86);

Preparing cases

xi 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 (paragraph 7.16);

Liaison and community engagement

xii 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, liase with them (paragraph 11.15).

ANNEX A

THEMES OF THE REVIEW

A POLICY AND MANAGEMENT ISSUES

1 Whether policy guidance available to prosecutors and caseworkers in relation to decision-making in and handling of cases with a minority ethnic dimension is adequate, clear and readily accessible
2 Whether relevant guidance is kept under review and updated as necessary
3 Whether CPS prosecutors and caseworkers are sufficiently aware of relevant guidance
4 Whether there is adequate monitoring by CPS managers of the quality of decision-making and handling of cases with a minority ethnic dimension
5 Whether RIMS is effective in capturing details of all relevant cases

B REVIEW

1 Identification of racist incident cases in order to accord appropriate consideration
2 Quality of application of the evidential test
3 Quality of application of the public interest test
4 Level and quality of background information taken into consideration
5 Whether additional evidence to establish racist hostility or motive is sought in appropriate cases
6 Whether additional evidence to establish the impact upon the victim is sought in appropriate cases
7 Quality of decisions not to proceed
8 Selection of the appropriate charge

C PREPARING CASES

1 Quality of file endorsements
2 Quality of instructions to counsel
3 Level of compliance with and effectiveness of RIMS

D PRESENTING CASES

1 Treatment of victims and witnesses from minority ethnic groups
2 Whether evidence of racist hostility or motive is brought to the attention of the court

E GENERAL

1 What more can or should be done?
2 What more can or should the CPS do?

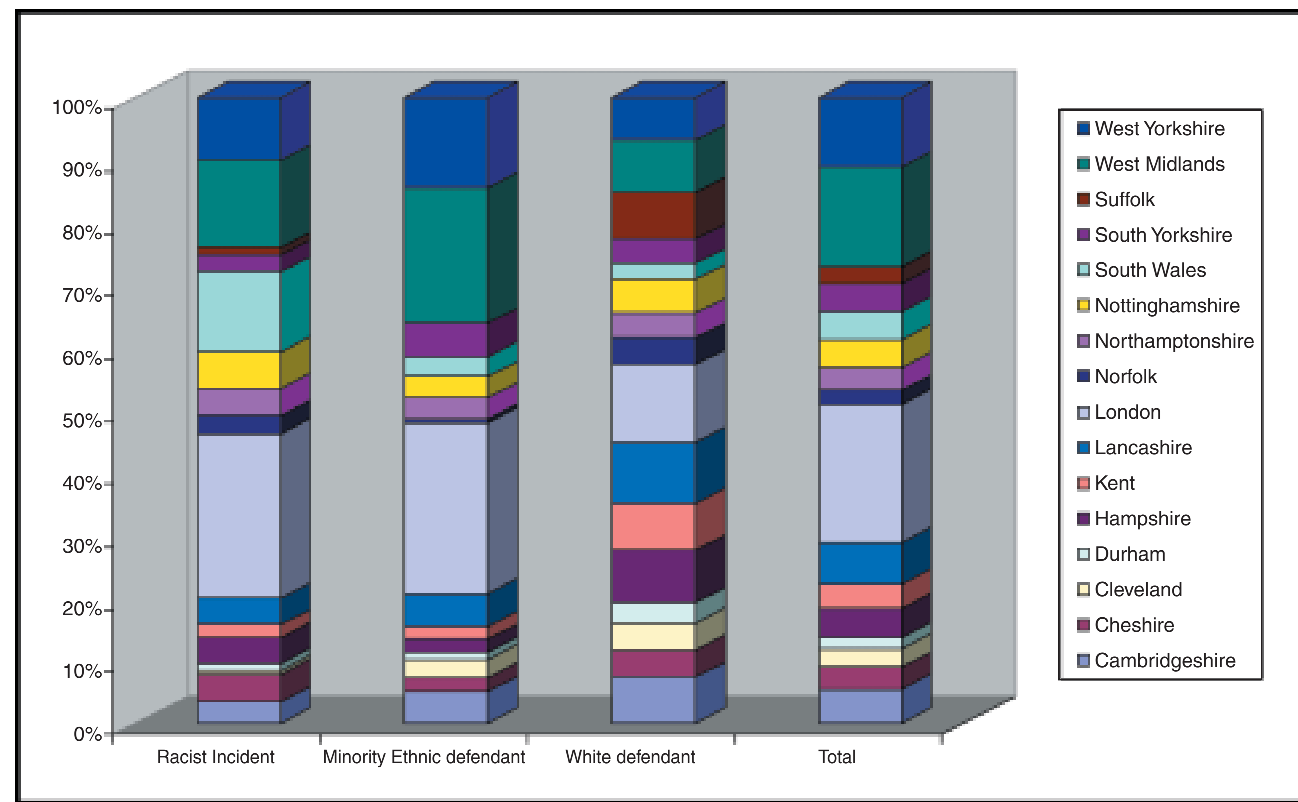
ANNEX B

BREAKDOWN OF FILE SAMPLE

Area	Racist Incident	Minority defendants	White defendants*	TOTAL
Cambridgeshire	20	91	92	**203**
Cheshire	26	41	55	**122**
Cleveland	3	54	54	**111**
Durham	7	20	40	**67**
Hampshire	24	39	105	**168**
Kent	12	37	94	**143**
Lancashire	25	96	122	**243**
London	154	499	156	**809**
Norfolk	17	13	54	**84**
Northamptonshire	25	61	49	**135**
Nottinghamshire	34	61	68	**163**
South Wales	75	59	32	**166**
South Yorkshire	16	98	49	**163**
Suffolk	7	0	94	**101**
West Midlands	82	399	106	**587**
West Yorkshire	59	263	85	**407**
TOTAL	586	1831	1255	3672

*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'.

FILE SAMPLE PROFILE - BY CPS AREA



ANNEX C

CHARTS AND TABLES

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

Key to file samples

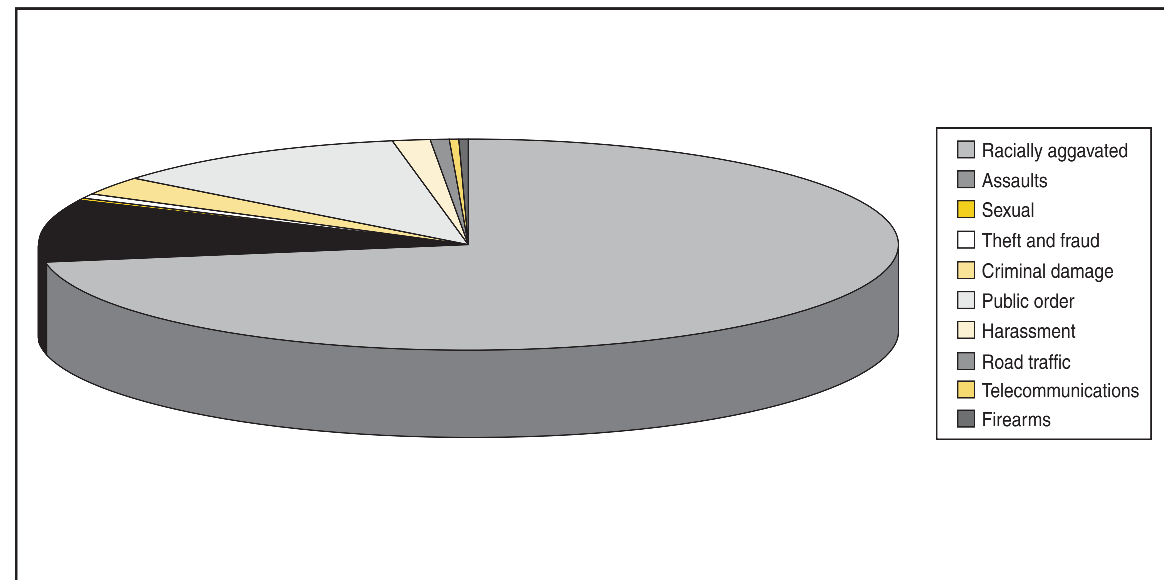
1. Racist incident – thematic review sample of 586 cases taken from 16 CPS Areas
2. Minority ethnic defendant – thematic review sample of 1831 cases taken from same 16 CPS Areas
3. White defendant – control sample of 1255 cases taken from same 16 CPS Areas
4. All defendants – minority ethnic defendants and white defendants samples combined

1. ETHNICITY PROFILE

Ethnicity of defendant	Case Type			
	Racist Incident		Minority ethnic defendants	
	Number	%	Number	%
White	508	86.7%	NA	NA
Black	30	5.1%	762	41.6%
Asian	37	6.3%	850	46.4%
Other	9	1.5%	206	11.3%
Not known	2	0.3%	13	0.7%
TOTAL	**586**	**100%**	**1831**	**100%**

Offence type	Racist Incident		Minority ethnic defendants		White defendants	
	No.	%	No.	%	No.	%
Racially aggravated	422	72%	4	0.2%	0	0%
Homicide	0	0%	3	0.2%	4	0.3%
Assaults	51	8.7%	268	14.6%	357	28.4%
Sexual	2	0.3%	45	2.5%	109	8.7%
Theft and fraud	7	1.1%	711	38.8%	421	33.5%
Criminal damage	19	3.2%	98	5.4%	83	6.6%
Drugs	0	0%	173	9.4%	77	6.1%
Public order	69	11.8%	228	12.5%	108	8.6%
Harassment	8	1.4%	15	0.8%	0	0%
Road traffic	3	0.5%	252	13.8%	36	2.9%
Telecommunications	4	0.7%	1	0.1%	0	0%
Dangerous dog	0	0%	0	0%	3	0.2%
Licensing	0	0%	0	0%	10	0.8%
Public justice	0	0%	18	1%	14	1.1%
Firearms	1	0.2%	7	0.4%	11	0.9%
Miscellaneous other offences	0	0%	8	0.4%	22	1.8%
TOTAL	**586**	**100%**	**1831**	**100%**	**1255**	**100%**

RACIST INCIDENTS – OFFENCE TYPE PROFILE



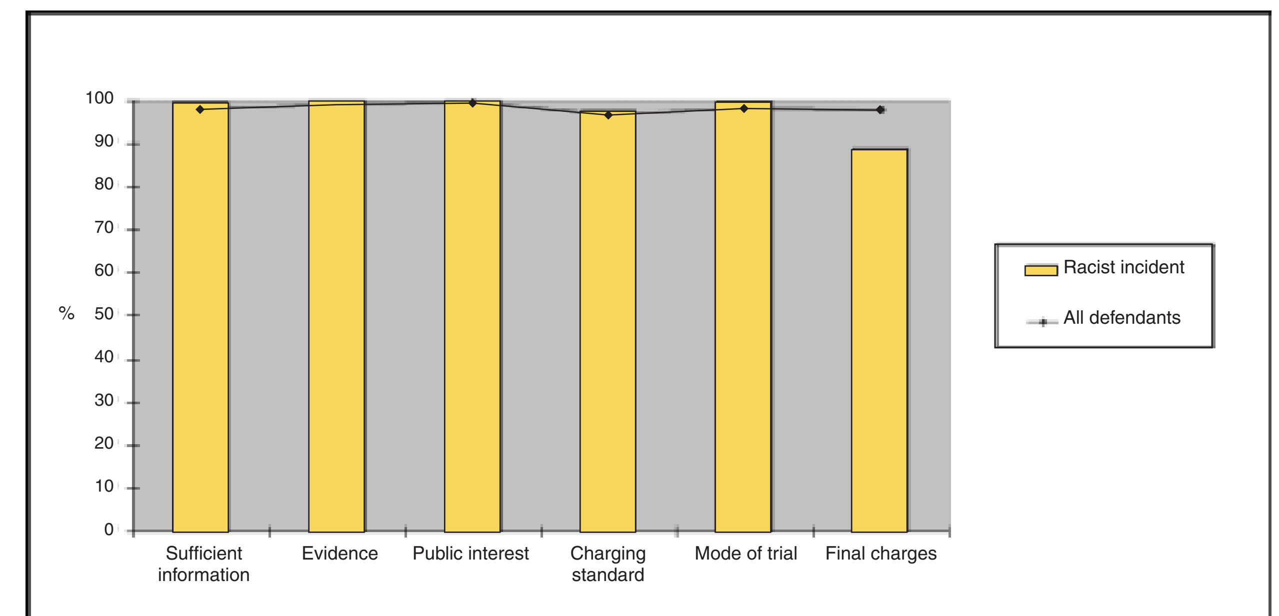
CASES ARISING FROM RACIST INCIDENTS

Key to file samples
1. **Racist incident** – thematic review sample of 586 cases taken from 16 CPS Areas
2. **Minority ethnic defendant** – thematic review sample of 1831 cases taken from same 16 CPS Areas
3. **White defendant** – control sample of 1255 cases taken from same 16 CPS Areas
4. **All defendants –** minority ethnic defendants and white defendants samples combined

3. THE REVIEW DECISION

Category	Racist Incident			All defendants		
	Yes	No.	%	Yes	%	No.
Was the case reviewed by the correct type of prosecutor?	583	0	100%	2871	11	99.6%
Sufficient information on 1st hearing to allow case to continue?	583	3	99.5%	3018	58	98.1%
Was the decision to proceed on the evidence correct?	577	0	100%	2996	24	99.2%
Was the decision to proceed in the public interest correct?	577	0	100%	2982	5	99.8%
Was relevant charging standard applied correctly at initial review?	480	12	97.6%	888	28	96.9%
Were the mode of trial guidelines followed?	403	1	99.8%	1688	27	98.4%
Was there a need for further review?	300	286	51.2%	986	2088	32.1%
If so, had there been a further review?	277	9	96.9%	831	121	87.3%
Did the final charges reflect the gravity of the offending?	519	65	88.9%	2996	68	97.8%

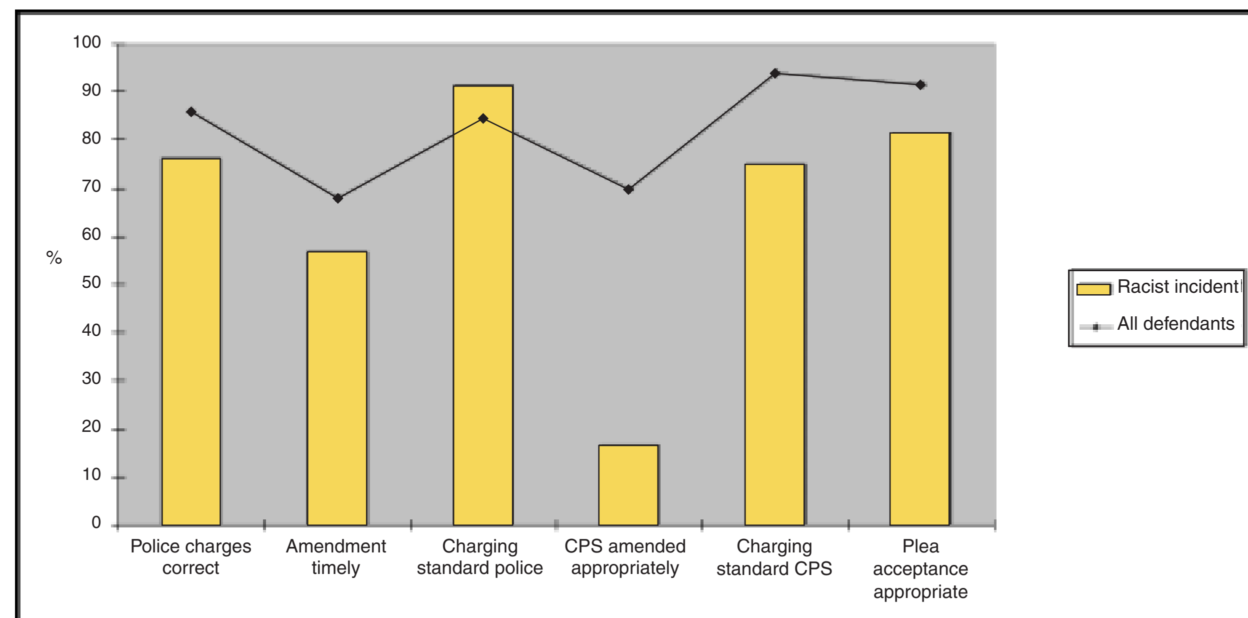
THE REVIEW DECISION - SELECTED CATEGORIES



4. CHARGE HISTORY

Category	Racist Incident			All defendants		
	Yes	No.	%	Yes	%	No.
Were the police charges correct when preferred?	445	140	76.1%	2628	432	85.9%
Police charges amended at first reasonable opportunity?	85	65	56.7%	342	161	68%
Appropriate charging standard applied correctly by police?	435	41	91.4%	533	96	84.7%
Charges accepted/advised by CPS required later amendment?	71	513	12.2%	256	2699	8.7%
Charges accepted/advised by CPS appropriately amended?	14	70	16.7%	204	88	69.9%
Appropriate charging standard applied correctly by CPS?	45	15	75%	531	34	94%
Were the amendments or substitutions to CPS charge timely?	24	2	92.3%	133	72	64.9%
Was acceptance of the pleas proper?	148	34	81.3%	354	33	91.5%
Was acceptance of the pleas timely?	184	9	95.3%	351	36	90.7%
At Crown Court, evidence that CPS lawyer consulted?	51	8	86.4%	88	23	79.3%

CHARGE HISTORY – SELECTED CATEGORIES



4. CHARGE HISTORY (continued)

Category	Racist Incident		All defendants	
	Cases	%	Cases	%
POLICE CHARGES: REASONS FOR AMENDMENT OR SUBSTITUTION				
To reduce the level of the charge	43	30.3%	192	41.5%
To increase the level of the charge	64	45.1%	49	10.6%
Wrong charges	33	29.2%	72	15.6%
Minor cosmetic error	1	0.7%	43	9.3%
Other	1	0.7%	107	23.1%
CPS CHARGES: STAGE OF PROCEEDINGS WHEN THE REQUIREMENT TO AMEND AROSE				
Initial review	61	89.7%	85	36.8%
Summary trial review	6	8.8%	37	16%
Committal review	1	1.5%	91	39.4%
At trial	0	%	18	7.8%
CPS CHARGES: STAGE OF PROCEEDINGS WHEN ARRANGEMENTS TO AMEND MADE				
Before first hearing	1	9.1%	13	7.8%
Summary trial review	4	36.4%	25	15%
Committal review	1	9.1%	72	43.1%
At trial	5	45.5%	57	34.1%
CPS CHARGES: REASONS FOR AMENDMENT OR SUBSTITUTION				
To reduce the level of the charge	17	23.3%	92	34.2%
To increase the level of the charge	46	63%	17	6.3%
Wrong charges	9	12.3%	33	12.3%
Minor cosmetic error	0	0%	30	%
Other	1	1.4%	97	36.1%

5. SPECIFIC ISSUES ARISING IN RACIST INCIDENT CASES

Category	Racist Incident		
	Yes	%	No.
Was there admissible evidence of racist hostility or motivation on the file?	552	31	94.7%
If appropriate, was further evidence sought to establish racist hostility or motivation?	59	30	66.3%
Were the circumstances such that an inference of racist hostility could be drawn?	6	578	1%
If so, did the prosecutor recognise that it was such a case?	1	3	25%
Was there sufficient background information in the file about racial hostility or motivation?	541	25	95.6%
If not, did the prosecutor request further background information from the police?	2	22	8.3%
Did the prosecutor identify the racial hostility/motivation as an aggravating feature?	538	22	96.1%
Should the charge(s) initially pursued have been under the Crime and Disorder Act 1998?	485	96	83.5%
Was the charge initially pursued under the Crime and Disorder Act 1998?	431	152	73.9%
If yes, was it under the right section?	415	13	97%
If a racially aggravated charge pursued, was it appropriate to also pursue an alternative offence?	20	408	4.7%
If so, was an alternative charge also pursued?	34	394	7.9%
If applicable, were appropriate instructions given to prosecutor about acceptability of pleas?	170	35	82.9%
Was the case dealt with at the appropriate venue?	398	1	99.7%
Was the level of charge reduced?	155	431	26.5%
If so, was the reduction appropriate?	105	41	71.9%
If reduced, was that decision taken at court?	69	84	45.1%
Was a plea to a lesser offence accepted in place of a racially aggravated offence?	65	416	13.5%
If so, was that course of action appropriate?	37	23	61.7%
Was that decision taken at court?	37	28	56.9%
Could the prosecution have done more to avoid discontinuance?	25	63	28.4%
If defendant was acquitted after trial, could the prosecution have done more to prevent acquittal?	6	39	13.3%
Did the instructions bring the racially aggravation to the attention of counsel?	52	9	85.2%
Did counsel originally instructed attend the plea and directions hearing?	33	25	56.9%
Did counsel originally instructed attend the trial?	9	13	40.9%
Did counsel originally instructed attend the sentencing hearing?	21	18	53.8%

6. TERMINATED CASES

Key to file samples

1. Racist incident – terminated cases within thematic review sample cases taken from 16 CPS Areas
2. Minority ethnic defendant – terminated cases within thematic review sample
3. White defendant – control sample of 512 terminated cases taken from same 16 CPS Areas
4. All defendants – minority ethnic defendant and white defendant samples combined

Category	Racist Incident			All defendants		
	Yes	No.	%	Yes	%	No.
Was the initial decision to proceed on the evidence correct?	79	0	100%	730	39	94.9%
Was the initial decision to proceed in the public interest correct?	78	0	100%	649	15	97.7%
Were the police given the full reasons for the decision?	74	10	88.1%	702	88	88.9%
Were the full reasons for termination found on the file?	82	2	97.6%	801	64	92.6%
Did termination occur at the earliest appropriate opportunity?	81	2	97.6%	726	123	85.5%
Decision to terminate one that the inspector would make?	74	9	89.2%	776	64	92.4%

7. REASONS FOR TERMINATION

Category	Racist Incident		All defendants	
	Cases	%	Cases	%
REASONS FOR TERMINATION – EVIDENTIAL				
Inadmissible evidence – breach of PACE	0	0%	4	0.5%
Inadmissible evidence – other reason than PACE	0	0%	3	0.4%
Unreliable confession	0	0%	2	0.2%
Conflict of evidence	10	13%	70	8.3%
Essential legal element missing	6	7.8%	199	23.5%
Unreliable witness or witnesses	6	7.8%	67	7.9%
Unreliable identification	10	13%	54	6.4%
REASONS FOR TERMINATION – PUBLIC INTEREST				
Effect on the victim's physical or mental health	0	0%	6	0.7%
Defendant elderly or in significant ill health	3	3.9%	12	1.4%
Genuine mistake or misunderstanding	0	0%	1	0.1%
Loss or harm minor and one incident	0	0%	7	0.8%
Loss or harm put right	0	0%	3	0.4%
Long delay between offence or charge to trial	1	1.3%	17	2%
Very small or nominal penalty likely	3	3.9%	108	12.8%
Informer or other public interest immunity issues	0	0 %	5	0.6%
Caution more suitable	1	1.3%	42	5%
REASONS FOR TERMINATION – PROSECUTION UNABLE TO PROCEED				
Case not ready and adjournment refused	3	3.9%	23	2.7%
Offence taken into consideration	0	0%	1	0.1%
Victim refuses to give evidence or retracts	19	24.7%	154	18.2%
Other civilian witness refuses to give evidence or retracts	2	2.6%	17	2%
Victim fails to attend unexpectedly	11	14.3%	32	3.8%
Other civilian witness fails to attend unexpectedly	1	1.3%	8	0.9%
Police witness fails to attend unexpectedly	0	0%	4	0.5%
Documents produced	0	0%	6	0.7%
Defendant deceased	1	1.3%	1	0.1%

8. REASONS FOR TERMINATION - SUMMARY

Category	Racist Incident		All defendants	
	Cases	%	Cases	%
REASONS FOR TERMINATION – SUMMARY				
Evidential	32	41.6%	399	47.2%
Public interest	8	10.4%	201	23.8%
Prosecution unable to proceed	37	48.1%	246	29.1%

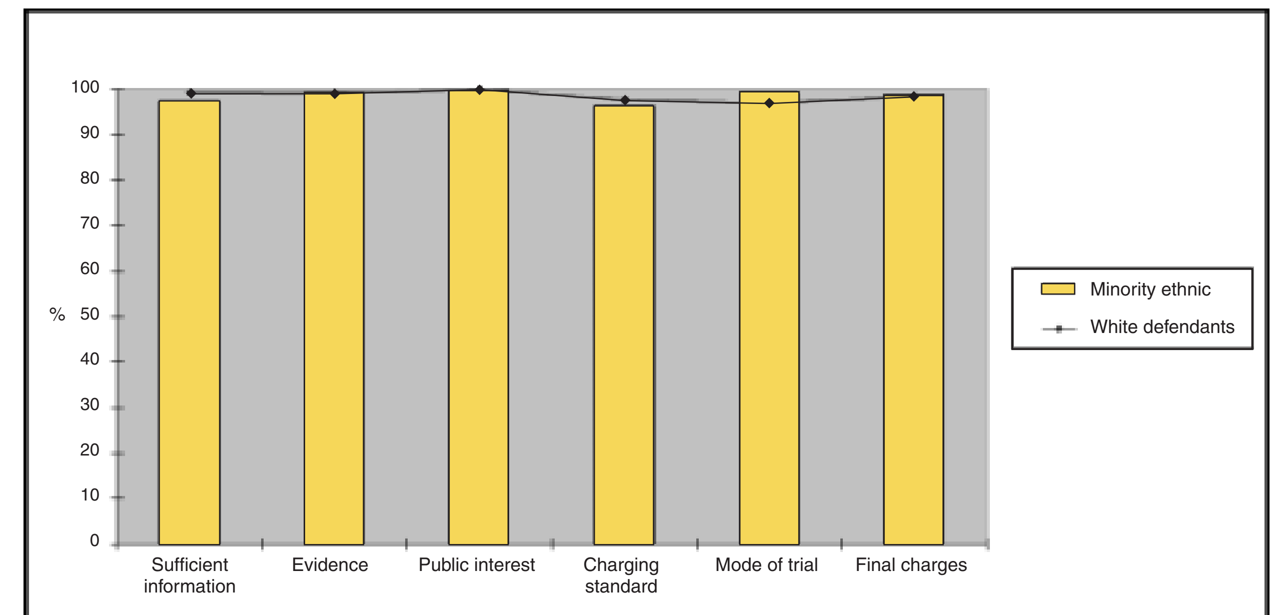
CASES INVOLVING MINORITY ETHNIC DEFENDANTS

Key to file samples
1. **Racist incident –** thematic review sample of 586 cases taken from 16 CPS Areas
2. **Minority ethnic defendant –** thematic review sample of 1831 cases taken from same 16 CPS Areas
3. **White defendant –** control sample of 1255 cases taken from same 16 CPS Areas
4. **All defendants –** minority ethnic defendants and white defendants samples combined

9. THE REVIEW DECISION

Category	Minority ethnic defendants			White defendants		
	Yes	No.	%	Yes	%	No.
Was the case reviewed by the correct type of prosecutor?	1715	3	99.8%	1156	8	99.3%
Sufficient information on 1st hearing for case to continue?	1778	51	97.2%	1240	7	99.4%
Was the decision to proceed on the evidence correct?	1761	12	99.3%	1235	12	99%
Was the decision to proceed in the public interest correct?	1745	5	99.7%	1237	0	100%
Was relevant charging standard applied correctly at initial review?	448	17	96.3%	440	11	97.6%
Were the mode of trial guidelines followed?	991	6	99.4%	697	21	97.1%
Was there a need for further review?	483	1340	26.5%	503	748	40.2%
If so, had there been a further review?	421	57	88.1%	410	64	86.5%
Did the final charges reflect the gravity of the offending?	1773	48	97.4%	1223	20	98.4%

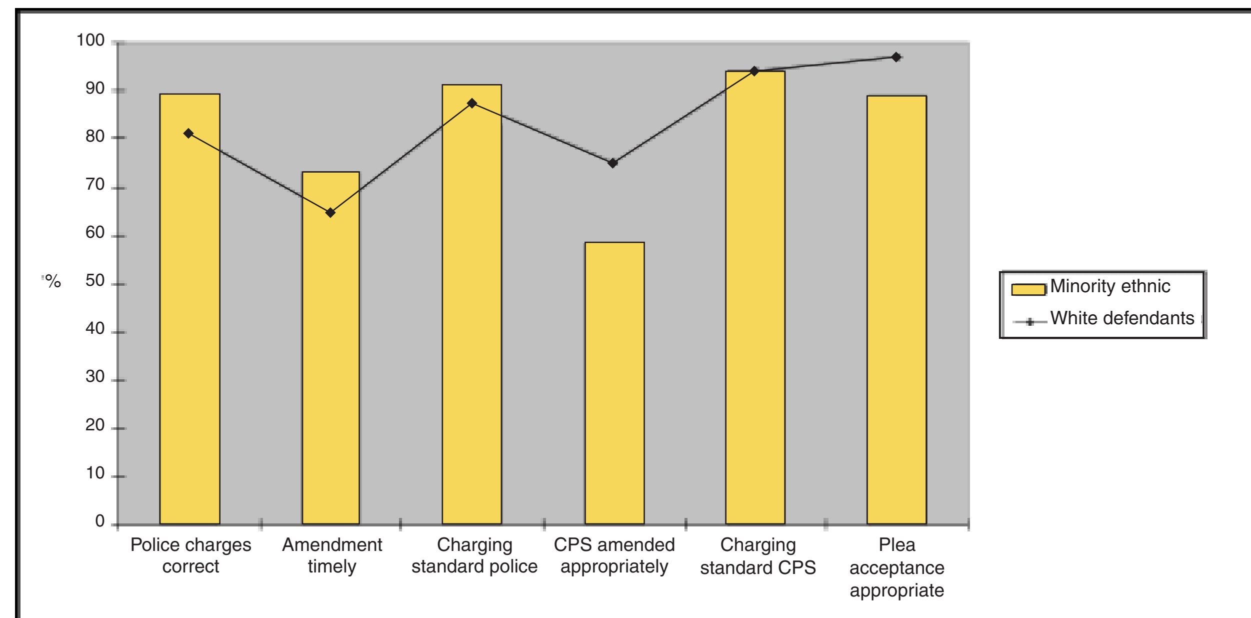
THE REVIEW DECISION – SELECTED CATEGORIES



10. CHARGE HISTORY

Category	Minority ethnic defendants			White defendants		
	Yes	No.	%	Yes	%	No.
Police charges amended at first reasonable opportunity?	145	54	72.9%	197	107	64.8%
Appropriate charging standard applied correctly by police?	318	65	83%	215	31	87.4%
Charges accepted/advised by CPS required later amendment?	78	1753	4.3%	181	962	15.8%
Charges accepted/advised by CPS appropriately amended?	53	38	58.2%	151	50	75.1%
Appropriate charging standard applied correctly by CPS?	337	22	93.9%	194	12	94.2%
Were the amendments or substitutions timely?	28	25	52.8%	105	47	69.1%
Was acceptance of the pleas proper?	230	29	88.8%	124	4	96.9%
Was acceptance of the pleas timely?	237	21	91.9%	114	15	88.4%
At Crown Court, evidence that CPS lawyer consulted?	39	4	90.7%	49	19	72.1%

CHARGE HISTORY – SELECTED CATEGORIES



10. CHARGE HISTORY (continued)

Category	Minority ethnic defendants		White defendants	
	Cases	%	Cases	%
POLICE CHARGES: REASONS FOR AMENDMENT OR SUBSTITUTION				
To reduce the level of the charge	123	65.4%	67	24.5%
To increase the level of the charge	12	6.4%	37	13.6%
Wrong charges	28	14.9%	44	16.1%
Minor cosmetic error	13	6.9%	30	11%
Other	12	6.4%	95	34.8%
CPS CHARGES: STAGE OF PROCEEDINGS WHEN THE REQUIREMENT TO AMEND AROSE				
Initial review	33	54.1%	52	30.6%
Summary trial review	13	21.3%	24	14.1%
Committal review	5	8.2%	86	50.6%
At trial	10	16.4%	8	4.7%
CPS CHARGES: STAGE OF PROCEEDINGS WHEN ARRANGEMENTS TO AMEND MADE				
Before first hearing	2	5.9%	11	8.3%
Summary trial review	7	20.6%	18	13.5%
Committal review	4	11.8%	68	51.1%
At trial	21	61.8%	36	27.1%
CPS CHARGES: REASONS FOR AMENDMENT OR SUBSTITUTION				
To reduce the level of the charge	47	60.2%	43	22.8%
To increase the level of the charge	6	7.7%	11	5.8%
Wrong charges	13	16.7%	20	10.6%
Minor cosmetic error	1	1.3%	29	15.3%
Other	11	14.1%	86	45.5%

11. TERMINATED CASES

<u>Key to file samples</u>

1. Racist incident – terminated cases within thematic review sample cases taken from 16 CPS Areas
2. Minority ethnic defendant – terminated cases within thematic review sample
3. White defendant – control sample of 512 terminated cases taken from same 16 CPS Areas
4. All defendants – minority ethnic defendant and white defendant samples combined

Category	Minority ethnic defendants			White defendants		
	Yes	No.	%	Yes	%	No.
Was the initial decision to proceed on the evidence correct?	295	7	97.7%	435	32	93.1%
Was the initial decision to proceed in the public interest correct?	278	1	99.6%	371	14	96.4%
Were the police given the full reasons for the decision?	301	41	88%	401	47	89.5%
Were the full reasons for termination found on the file?	326	18	94.8%	465	46	91%
Did termination occur at the earliest appropriate opportunity?	321	31	91.2%	405	92	81.5%
Decision to terminate one that the inspector would make?	331	15	95.7%	445	49	90.1%

12. REASONS FOR TERMINATION

Category	Minority ethnic defendants		White defendants	
	Cases	%	Cases	%
REASONS FOR TERMINATION – EVIDENTIAL				
Inadmissible evidence – breach of PACE	1	0.3%	3	0.6%
Inadmissible evidence – other reason than PACE	1	0.3%	2	0.4%
Unreliable confession	1	0.3%	1	0.2%
Conflict of evidence	32	9.2%	38	7.6%
Essential legal element missing	55	15.9%	144	28.9%
Unreliable witness or witnesses	38	11%	29	5.8%
Unreliable identification	29	8.4%	25	5%
REASONS FOR TERMINATION – PUBLIC INTEREST				
Effect on the victim's physical or mental health	0	0%	6	1.2%
Defendant elderly or in significant ill health	6	1.7%	6	1.2%
Genuine mistake or misunderstanding	0	0%	1	0.2%
Loss or harm minor and one incident	3	0.9%	4	0.8%
Loss or harm put right	2	0.6%	1	0.2%
Long delay between offence or charge to trial	7	2%	10	2%
Very small or nominal penalty likely	32	9.2%	76	15.2%
Informer or other public interest immunity issues	3	0.9%	2	0.4%
Caution more suitable	18	5.2%	24	4.8%
REASONS FOR TERMINATION – PROSECUTION UNABLE TO PROCEED				
Case not ready and adjournment refused	11	3.2%	12	2.4%
Offence taken into consideration	0	0%	1	0.2%
Victim refuses to give evidence or retracts	73	21%	81	16.2%
Other civilian witness refuses to give evidence or retracts	7	2%	10	2%
Victim fails to attend unexpectedly	19	5.5%	13	2.6%
Other civilian witness fails to attend unexpectedly	3	0.9%	5	1%
Police witness fails to attend unexpectedly	1	0.3%	3	0.6%
Documents produced	5	1.4%	1	0.2%
Defendant deceased	0	0%	1	0.2%

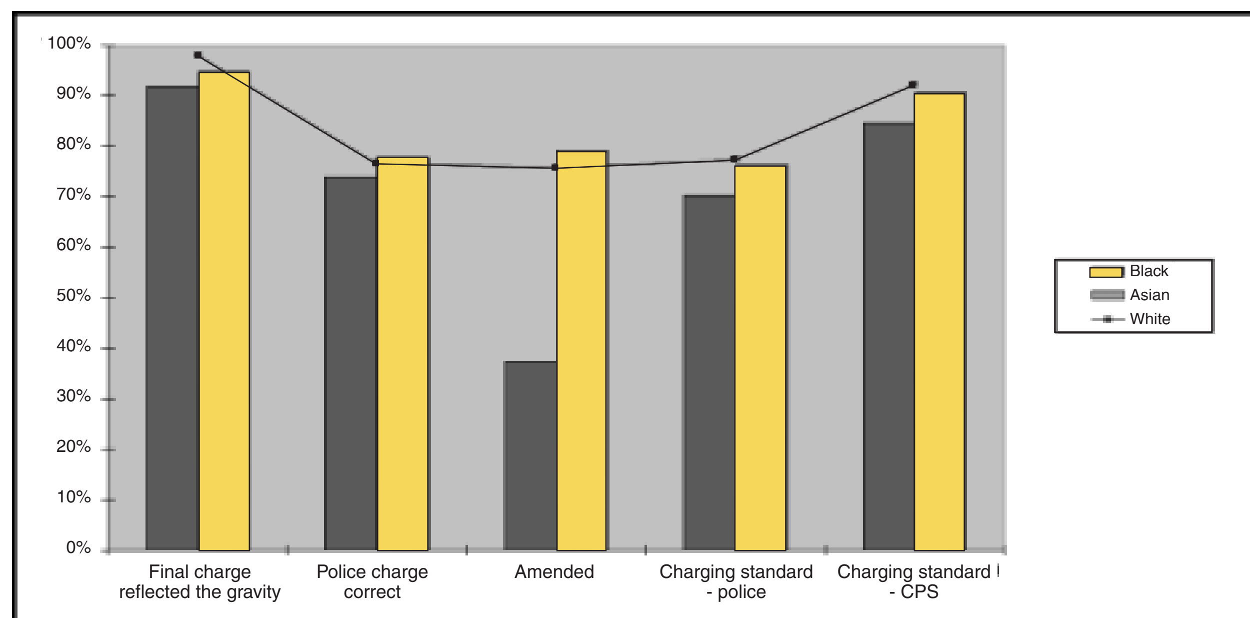
13. REASONS FOR TERMINATION

Category	Minority ethnic defendants		White defendants	
	Cases	%	Cases	%
REASONS FOR TERMINATION – SUMMARY				
Evidential	157	45.2%	242	48.5%
Public interest	71	20.5%	130	26.1%
Prosecution unable to proceed	119	34.3%	127	25.5%

14. CHARGING - PUBLIC ORDER CASES BY DEFENDANT ETHNICITY

Category	White	Black	Asian
Final charges reflected gravity of the offending?	98.1%	91.9%	94.8%
Police charges correct when preferred?	76.6%	74%	77.8%
Police charges amended at 1st reasonable opportunity?	75.9%	37.5%	79.3%
Charging standard applied correctly by police?	77.5%	70.3%	76.2%
Charging standard applied correctly by CPS?	92.3%	84.6%	90.7%

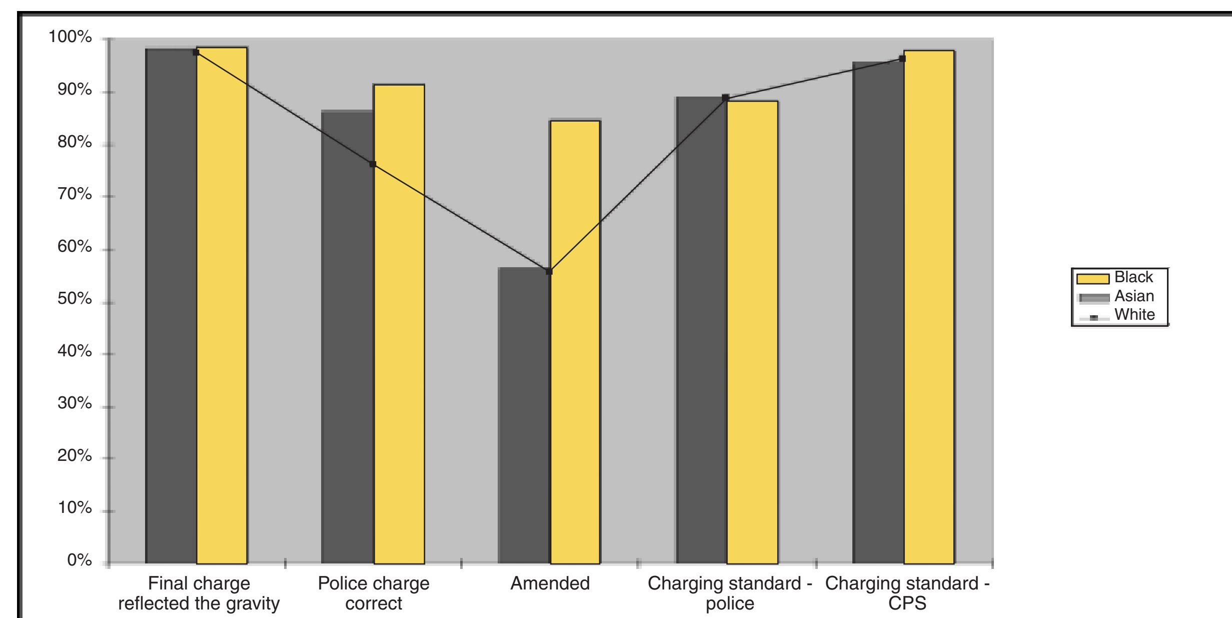
CHARGING – PUBLIC ORDER CASES BY ETHNICITY



15. CHARGING - ASSAULT CASES BY DEFENDANT ETHNICITY

Category	White	Black	Asian
Final charges reflected gravity of the offending?	97.5%	98.2%	98.5%
Police charges correct when preferred?	76.3%	86.2%	91.5%
Police charges amended at 1st reasonable opportunity?	55.8%	56.3%	84.6%
Charging standard applied correctly by police?	88.8%	89%	88%
Charging standard applied correctly by CPS?	96.3%	95.6%	97.7%

CHARGING – ASSAULT CASES BY ETHNICITY



ANNEX D

LIST OF NATIONAL CONSULTEES

A representative of the Legal Secretariat to the Law Officers
Reeva Bell, National Black Crown Prosecution Association
Anthony Forsyth, Victim Support National Office
Deborah Singer, Victim Support National Office
Suresh Grover, The Monitoring Group
Kiran Ballay, The Monitoring Group
Alan Kirkwood, CPS Policy Directorate
Josie Brown, CPS Policy Directorate
Dr Bonny Mhlanga, Senior Research Officer, Home Office
Terry Moore, Leader of Race Issues Group, Justices' Clerks Society
Gurbux Singh, Chairman, Commission for Racial Equality
Chris Boothman, Director of Legal Services, Commission for Racial Equality
Veronica Hill, Legal Strategy, Commission for Racial Equality
Harjinder Singh, Birmingham Racial Attacks Monitoring Group
A representative of the CPS Casework Directorate
Chief Constable David Westwood, ACPO representative on Race Issues

ANNEX E

THE CODE FOR CROWN PROSECUTORS

The Crown Prosecution Service is a public service for England and Wales headed by the Director of Public Prosecutions. It is answerable to Parliament through the Attorney General.

The Crown Prosecution Service is a national organisation consisting of 42 Areas. Each Area is headed by a Chief Crown Prosecutor, and corresponds to a single police force area, with one for London. It was set up in 1986 to prosecute cases instituted by the police. The police are responsible for the investigation of crime. Although the Crown Prosecution Service works closely with the police, it is independent of them.

The Director of Public Prosecutions is responsible for issuing a Code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985, giving guidance on the general principles to be applied when making decisions about prosecutions. This is the fourth edition of the Code and replaces all earlier versions. For the purposes of this Code, 'Crown Prosecutor' includes members of staff in the Crown Prosecution Service who are designated by the Director of Public Prosecutions under section 7A of the Act and are exercising powers under that section.

1. Introduction

1.1 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case a prosecution has serious implications for all involved – victims, witnesses and defendants. The Crown Prosecution Service applies the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions.

1.2 The Code helps the Crown Prosecution Service to play its part in making sure that justice is done. It contains information that is important to police officers and others who work in the criminal justice system and to the general public. Police officers should take account of the Code when they are deciding whether to charge a person with an offence.

1.3 The Code is also designed to make sure that everyone knows the principles that the Crown Prosecution Service applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims fairly and to prosecute fairly but effectively.

2 General Principles

2.1 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which Crown Prosecutors must approach every case.

2.2 Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.

2.3 It is the duty of Crown Prosecutors to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

2.4 It is the duty of Crown Prosecutors to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.

2.5 The CPS is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.

3. Review

3.1 Proceedings are usually started by the police. Sometimes they may consult the Crown Prosecution Service before starting a prosecution. Each case that the Crown Prosecution Service receives from the police is reviewed to make sure it meets the evidential and public interest tests set out in this Code. Crown Prosecutors may decide to continue with the original charges, to change the charges, or sometimes to stop the case.

3.2 Review is a continuing process and Crown Prosecutors must take account of any change in circumstances. Wherever possible, they talk to the police first if they are thinking about changing the charges or stopping the case. This gives the police the chance to provide more information that may affect the decision. The Crown Prosecution Service and the police work closely together to reach the right decision, but the final responsibility for the decision rests with the Crown Prosecution Service.

4. Code Tests

4.1 There are two stages in the decision to prosecute. The first stage is **the evidential test**. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, Crown Prosecutors must decide if a prosecution is needed in the public interest.

4.2 This second stage is the **public interest test**. The Crown Prosecution Service will only start or continue with a prosecution when the case has passed both tests. The evidential test is explained in section 5 and the public interest test is explained in section 6.

5. The Evidential Test

5.1 Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

5.2 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt.

5.3 When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

Can the evidence be used in court?

a Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of conviction?

Is the evidence reliable?

b Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?

c What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?

d If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?

e Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?

f Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further

evidence which the police should be asked to seek out which may support or detract from the account of the witness?

5.4 Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

6. The Public Interest Test

6.1 In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: "It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution". (House of Commons Debates, volume 483, column 681, 29 January 1951.)

6.2 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

6.3 Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution.

6.4 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

a a conviction is likely to result in a significant sentence;

b a weapon was used or violence was threatened during the commission of the offence;

c the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);

d the defendant was in a position of authority or trust;

e the evidence shows that the defendant was a ringleader or an organiser of the offence;

f there is evidence that the offence was premeditated;

g there is evidence that the offence was carried out by a group;

h the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;

i the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;

j there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;

k the defendant's previous convictions or cautions are relevant to the present offence;

l the defendant is alleged to have committed the offence whilst under an order of the court;

m there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or

n the offence, although not serious in itself, is widespread in the area where it was committed.

Some common public interest factors against prosecution

6.5 A prosecution is less likely to be needed if:

a the court is likely to impose a nominal penalty;

b the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;

c the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);

d the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;

e there has been a long delay between the offence taking place and the date of the trial, unless:

- the offence is serious;
- the delay has been caused in part by the defendant;
- the offence has only recently come to light; or
- the complexity of the offence has meant that there has been a long investigation;

f a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;

g the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;

h the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution solely because they pay compensation); or

i details may be made public that could harm sources of information, international relations or national security;

6.6 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

The relationship between the victim and the public interest

6.7 The Crown Prosecution Service prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test Crown Prosecutors should always take into account the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victim's family.

6.8 It is important that a victim is told about a decision which makes a significant difference to the case in which he or she is involved. Crown Prosecutors should ensure that they follow any agreed procedures.

Youths

6.9 Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However Crown Prosecutors should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the youth's past behaviour is very important.

6.10 Cases involving youths are usually only referred to the Crown Prosecution Service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither of these were appropriate. Reprimands and final warnings are intended to prevent re-offending and the fact that a further offence has occurred indicates that attempts to divert the youth from the court system have not been effective. So the public interest will usually require a prosecution in such cases, unless there are clear public interest factors against prosecution.

Police Cautions

6.11 These are only for adults. The police make the decision to caution an offender in accordance with Home Office guidelines.

6.12 When deciding whether a case should be prosecuted in the courts, Crown Prosecutors should consider the alternatives to prosecution. This will include a police caution. Again the Home Office guidelines should be applied. Where it is felt that a caution is appropriate, Crown Prosecutors must inform the police so that they can caution the suspect. If the caution is not administered because the suspect refuses to accept it or the police do not wish to offer it, then the Crown Prosecutor may review the case again.

7. Charges

7.1 Crown Prosecutors should select charges which:

a reflect the seriousness of the offending;
b give the court adequate sentencing powers; and
c enable the case to be presented in a clear and simple way.

7.2 This means that Crown Prosecutors may not always continue with the most serious charge where there is a choice. Further, Crown Prosecutors should not continue with more charges than are necessary.

7.3 Crown Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

7.4 Crown Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.

8. Mode of Trial

8.1 The Crown Prosecution Service applies the current guidelines for magistrates who have to decide whether cases should be tried in the Crown Court when the offence gives the option and the defendant does not indicate a guilty plea. (See the 'National Mode of Trial Guidelines' issued by the Lord Chief Justice.) Crown Prosecutors should recommend Crown Court trial when they are satisfied that the guidelines require them to do so.

8.2 Speed must never be the only reason for asking for a case to stay in the magistrates' courts. But Crown Prosecutors should consider the effect of any likely delay if they send a case to the Crown Court, and any possible stress on victims and witnesses if the case is delayed.

9. Accepting Guilty Pleas

9.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime. Crown Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Crown Prosecutors must never accept a guilty plea just because it is convenient.

9.2 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, Crown Prosecutors must bear in mind the fact that ancillary orders can be made with some offences but not with others.

9.3 In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

10. Re-starting a Prosecution

10.1 People should be able to rely on decisions taken by the Crown Prosecution Service. Normally, if the Crown Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why the Crown Prosecution Service will re-start the prosecution, particularly if the case is serious.

These reasons include:

a rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand;

b cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the Crown Prosecutor will tell the defendant that the prosecution may well start again; and

c cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

ANNEX F

OFFENCES UNDER PART 3 OF THE PUBLIC ORDER ACT 1986

USING WORDS OR BEHAVIOUR OR DISPLAYING WRITTEN MATERIAL STIRRING UP RACIAL HATRED

Section 18

(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if -

(a) he intends thereby to stir up racial hatred, or
(b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

PUBLISHING OR DISTRIBUTING WRITTEN MATERIAL STIRRING UP RACIAL HATRED

Section 19

(1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if -

(a) he intends thereby to stir up racial hatred, or
(b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

PUBLIC PERFORMANCE OF A PLAY STIRRING UP RACIAL HATRED

Section 20

(1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance is guilty of an offence if -

(a) he intends thereby to stir up racial hatred, or
(b) having regard to all the circumstances (and, in particular, taking the performance as a whole) racial hatred is likely to be stirred up thereby.

DISTRIBUTING, SHOWING OR PLAYING A RECORDING STIRRING UP RACIAL HATRED

Section 21

(1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting is guilty of an offence if –

(a) he intends thereby to stir up racial hatred, or
(b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

BROADCASTING A PROGRAMME STIRRING UP RACIAL HATRED

Section 22

(1) If a programme involving threatening, abusive or insulting visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) is guilty of an offence if –

(a) he intends thereby to stir up racial hatred, or
(b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) The persons are –

(a) the person providing the programme service,
(b) any person by whom the programme is produced or directed, and
(c) any person by whom offending words or behaviour are used.

ANNEX G

THE RACE RELATIONS (AMENDMENT) ACT 2000

The Race Relations (Amendment) Act 2000 came into effect on 1 April 2001. The Act extends the scope of the Race Relations Act 1976 to prohibit race discrimination by public authorities in carrying out any of their functions (section 19B). For the CPS, this means that casework decisions are liable to scrutiny as well as employment functions.

The Act also makes other important changes to the law on discrimination. There is now a general statutory duty to eliminate unlawful discrimination, promote equality of opportunity and good relations between persons of different racial groups (section 71(1).

Casework decisions will include the decision whether or not to prosecute, on charges, bail, mode of trial and whether to call a particular witness. Subject to specific safeguards, all of these decisions could be actionable in civil proceedings. Other decisions could also be captured by the legislation, for example, choice of counsel.

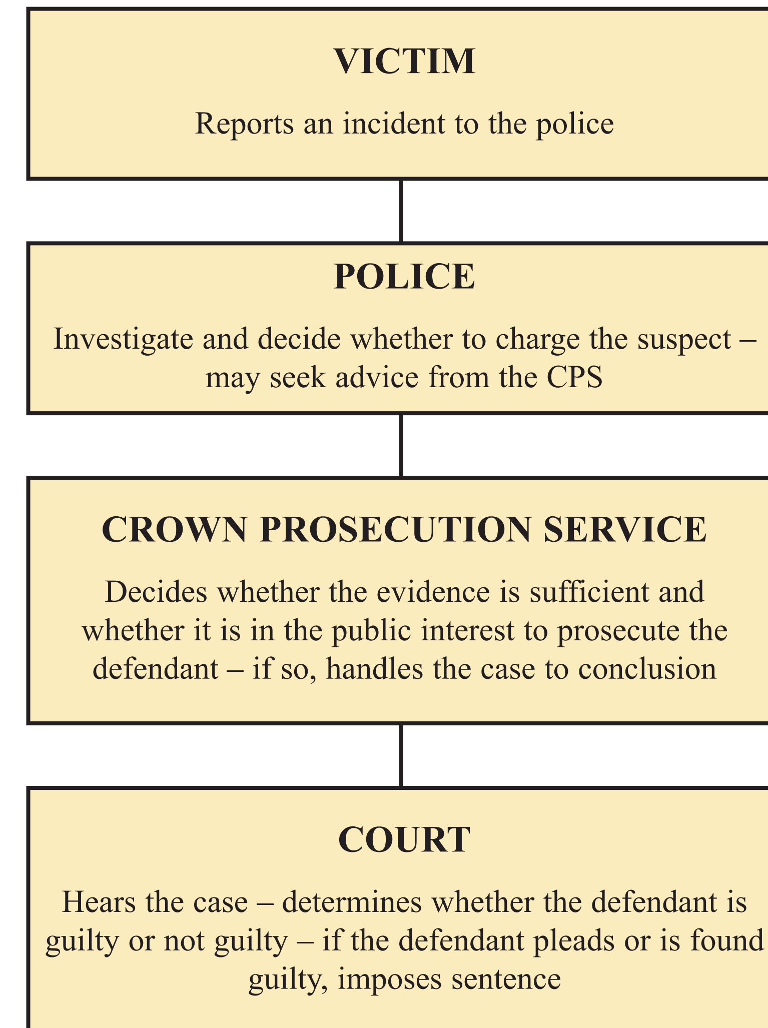
Under section 65 of the Race Relations Act 1976, a potential complainant can submit a form to a prospective respondent (a 'section 65 questionnaire') to assist him or her in deciding whether or not to institute proceedings and to help him to present his case more effectively. The Race Relations (Amendment) Act 2000 safeguards the criminal process by providing for circumstances in which public prosecutors or investigators can decline to answer all or part of a section 65 questionnaire without the civil court subsequently drawing adverse inferences.

The power to proceed against a public authority is limited by section 19F of the Race Relations (Amendment) Act 2000, which excepts decisions not to institute criminal proceedings or to terminate them. This exemption extends to the acts done for the purpose of enabling such decisions to be made. It is intended to prevent proceedings under the Act being used as a means of discovering reasons behind a decision not to prosecute, thereby preserving the criminal courts as the sole forum for determining guilt. The remedy of judicial review remains available for a person wishing to challenge the basis of a prosecution decision.

ANNEX H

THE CRIMINAL PROCESS

The following flowchart illustrates the progress of a typical criminal case and provides a brief explanation of the roles of the agencies:



ANNEX I

HM CROWN PROSECUTION SERVICE INSPECTORATE

Statement of purpose

To promote the efficiency and effectiveness of the Crown Prosecution Service through a process of inspection and evaluation; the provision of advice; and the identification and promotion of good practice.

Aims

1 To inspect and evaluate the quality of casework decisions and the quality of casework decision-making processes in the Crown Prosecution Service.

2 To report on how casework is dealt with in the Crown Prosecution Service in a way which encourages improvements in the quality of that casework.

3 To report on other aspects of the Crown Prosecution Service where they impact on casework.

4 To carry out separate reviews of particular topics which affect casework or the casework process. We call these thematic reviews.

5 To give advice to the Director of Public Prosecutions on the quality of casework decisions and casework decision-making processes of the Crown Prosecution Service and other aspects of performance touching on these issues.

6 To recommend how to improve the quality of casework and related performance in the Crown Prosecution Service.

7 To identify and promote good practice.

8 To work with other inspectorates to improve the efficiency and effectiveness of the criminal justice system.

9 To promote people's awareness of us throughout the criminal justice system so they can trust our findings.