

# HM CROWN PROSECUTION SERVICE INSPECTORATE

## THEMATIC REVIEW OF CASEWORK HAVING A MINORITY ETHNIC DIMENSION

### EXECUTIVE SUMMARY

#### Introduction

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. The CPS is a national service, but operates on a decentralised basis with each of its 42 Areas led by a Chief Crown Prosecutor (CCP) who enjoys substantial autonomy.
2. The purpose of the review was to analyse and assess the quality of the handling by the CPS of casework with a minority ethnic dimension. That might arise because of the racially aggravated nature of the offence(s); by being a witness or a juror; or because one or more of the defendants comes from a minority ethnic group. The review sought to provide the DPP and the Law Officers with an assessment of the quality of decision making in, and the handling of, such cases.
3. This is our first thematic review to be overseen and guided by a Steering Group consisting of individuals from different backgrounds with particular expertise in this field. They provided expert guidance 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.
4. The Chief Inspector is also grateful to Mr Peter Herbert and his colleagues from the Society of Black Lawyers 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.

#### Methodology

5. 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.
6. Sixteen CPS Areas that were the subject of routine Area inspections during the period of the thematic review were required to submit additional file samples relevant to the issues that we were considering. We therefore examined:
    - \* 586 cases identified as falling within the CPS Racist Incident Monitoring Scheme (RIMS); and
    - \* 1,831 cases where the defendant was a member of a minority ethnic group.
  7. We compared the data obtained through examination of these files with the substantial volume of data gathered by the Inspectorate (during Area inspections) about general casework handled by the same 16 Areas.
  8. We also examined other cases from a general sample, to assess whether any racist incident cases pass through the system without being identified, and considered evidence about cases under part 3 of the Public Order Act 1986 relating to incitement to racial hatred.
  9. Inspectors interviewed small groups of CPS staff 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 about relevant supplementary issues. Inspectors also spoke to representatives of criminal justice agencies, community and special interest groups, with either a national responsibility or acknowledged expertise.
  10. The validation exercise carried out by the Society of Black Lawyers involved selection of 300 files in relation to cases arising from racist incidents or minority ethnic defendants that had already been examined by HMCPSI Inspectors. 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.
  11. A consultation seminar was held to discuss the emerging findings.

## **The main findings of the Inspectorate**

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

12. There have been encouraging improvements in the identification of racist incidents, although in a proportion of cases this does not lead to appropriate monitoring. We have identified further work which needs to be done to address our concerns if the Service is to achieve a 'clean bill of health' in relation to its handling of such cases.

13. Inspectors found that prosecutors do not always possess all of the necessary or available information when taking important decisions or have sufficient awareness of the wider context to appreciate that they are under-informed.
14. We are concerned about inconsistency in the interpretation of key legislation within the criminal justice system generally and consider that prosecutors need further guidance and clarification. We have recommended the establishing of a network of experienced prosecutors to oversee racist incident casework, monitoring consistency and assuring quality. We also consider that more can be done to encourage open-minded discussion of race issues amongst staff.
15. The quality of endorsement of the reasons for decision-making is disappointing and must improve, if the CPS is to demonstrate that it does not discriminate and increase trust and confidence through direct communication with victims.
16. Improvements can be made in the operation of the Racist Incident Monitoring Scheme, to ensure that the data produced is accurate and complete. There should be greater involvement of the decision-makers in the process, more analysis of the data and better feedback to staff of the findings.
17. The overall quality of witness care also needs to improve if it is to encourage victims to report and pursue their complaints. The benefits to be gained through dissemination by minority ethnic victims and witnesses of positive experiences are obvious. Inspectors consider that there is scope for greater and more focussed engagement with diverse communities.
18. In respect of cases relating to the stirring up of racial hatred, inspectors found that the combination of the introduction of specifically racially aggravated offences and failure, by the police and CPS, to refer cases appropriately has increased the likelihood that they may not be pursued at their correct level.

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

19. Further development is also necessary for there to be a full assurance about the quality of decision-making in cases involving minority ethnic defendants. The CPS 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. Inspectors did not find that the Service is removing differential treatment completely.
20. Our evidence suggests that the police are more likely to overcharge in cases involving minority ethnic defendants. Inspectors considered that the police had overcharged in 123 of the 1,831 cases in our file sample (6.7%). The comparative figure for overcharging of white defendants in our control sample of 1,255 white defendants was 67 cases (5.3%).

21. 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 - 98.8% 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, inspectors found that the final charges 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.
22. Inspectors also found that the discontinuance rate for cases in our file sample was 5.5%, greater than the national average for all types of case, and that acquittal rates in trials involving minority ethnic defendants were greater than for their white counterparts.
23. Again, 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.
24. 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 embarked on an extensive exercise for monitoring the impact of ethnicity on casework decision-making. That monitoring will be informed by the findings of this review and should continue where we have left off.

### **The way forward**

25. The CPS will produce an action plan covering the issues raised. It should include a challenging but achievable timetable for implementation. We will monitor the impact of our recommendations and scrutinise service delivery during our second cycle of Area inspections. We also expect to undertake a shorter follow-up thematic review at an appropriate juncture.
26. The CPS will monitor its performance through improved operation of RIMS and its new ethnicity monitoring initiative. Our report contains information that should assist others to assess the quality of CPS performance in this important area of casework.
27. 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.

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

28. **Widening of the definition** - 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.

29. **Policy and guidance** - there is 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 including judicial interpretation of that legislation.
30. **Identification of racist incident cases** - 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. Almost all CPS file covers in our case sample were marked that the case was a racist incident (92.2%). During our examination of a general sample of cases, we found only a handful of racist incident cases that had slipped through the net.
31. **The operation of RIMS** - in some Areas, frequency of cases and reliance upon other staff mean that many lawyers do not become familiar with the monitoring forms and procedures. 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.
32. **Getting the best out of RIMS** - not all CPS staff fully understand why the monitoring is carried out, or are convinced that the information gathered is being used to improve performance. At present, too few of the decision-makers are involved in the monitoring process.
33. **Making use of monitoring information** - in some Areas, monitoring is used to share information with the police and other agencies for mutual benefit. Issues raised are discussed at liaison meetings. There is scope for other Areas to do likewise.
34. **Review** - the quality of initial review in cases arising from racist incidents is good. We did not find any case in our file sample in which the decision whether or not to accept the case at that stage was unreasonable.
35. Inspectors considered that the charge selected by the police was correct in fewer cases than generally - 76.1% compared to 85.9% - although that performance was only slightly worse than found in similar (non-racist incident) cases of assault, public order and criminal damage (77.3%).
36. Inspectors examined a significant number of cases in which they 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. Inappropriate acceptance of pleas from defendants also appears to be significantly more common. Inspectors considered that had occurred in 18.7% of racist incident cases in which pleas were accepted compared to 8.6% generally and 5.7% in similar cases.
37. **Information taken into account in decision-making** - inspectors found that the overall standard of police files and the level of background information is no better than it is in other types of case. CPS decisions are sometimes taken where material information is missing and prosecutors do not always have sufficient information to present racist incident cases in their best light.

38. **The interpretation of hostility based upon race** - 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. Against this background of uncertainty, different prosecutors take different approaches. Mechanisms are not always in place, or sufficient, to assure consistency.
39. **Developing expertise** - most CPS Areas do not have specific individuals acting as a focal point for racist incident casework. Inspectors found that there is little formal or informal discussion of race issues, partly due to a fear of accusation as a result of inadvertently making an inappropriate comment.
40. **Case preparation** - the overall quality of initial and continuing review endorsement in racist incident cases is unsatisfactory and the overall standard of instructions to counsel is no better than seen generally.
41. **Cases of incitement to racial hatred** - our evidence suggests that the police are now more inclined to use the specific racially aggravated offences to address racist behaviour. Casework referral guidance is unclear and the police submit some cases directly to the Areas, rather than to the CPS Casework Directorate.
42. **Witness care** - although we were given some examples of excellent victim and witness care, our evidence suggests that the quality is not always satisfactory and no better than experienced generally.
43. **Liaison and community engagement** - CPS Headquarters actively encourages liaison on issues surrounding racist incidents, not only with other agencies but also with minority ethnic community representatives, and Inspectors found several examples of beneficial liaison in Areas. However, not all CCPs have a sufficiently high profile amongst minority ethnic communities and liaison at a practitioner level between the CPS and other agencies on race issues is patchy.

#### **Specific findings - cases involving minority ethnic defendants**

44. **Review** - the quality of initial review in cases involving minority ethnic defendants is good and on a par with the general standard. Inspectors considered that the application by the prosecutor of the evidential test at initial review was reasonable in almost all cases in our file sample (99.3%). They also considered that almost all applications by prosecutors of the public interest test at initial review in our file sample were reasonable (99.7%).
45. **Selection of the appropriate charge** - inspectors considered that the police charge was incorrect in 188 cases in our file sample of cases involving 1,831 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 1,255 white defendants was 67 cases (5.3%). 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 - 98.8% and 98.4% respectively.

46. **Discontinuance** - our evidence suggests that cases involving minority ethnic defendants are more likely to be discontinued than generally. Inspectors found that the discontinuance rate for cases in our file sample was 5.5% greater than the national average for all types of case (18.5% compared to 13%).
47. **Acquittal rates** - our evidence suggests that acquittal rates are higher in cases involving minority ethnic defendants. 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 a Home Office figure of 41% for white defendants (Section 95 Findings - Ethnic differences on decisions on young defendants dealt with by the CPS (2000) by Gordon Barclay and Dr Bonny Mhlanga). There were also 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 in the Home Office study.

### **Good practice**

48. Inspectors drew attention to the following practices or initiatives, which might be regarded as good practice.

#### ***CPS policy and guidance***

- \* a conference in which the CCP invited representatives from minority ethnic communities, courts, defence and judiciary to discuss issues arising from racist incident cases;
- \* a diversity open day in which pupils from local schools visited the CPS office and were given an insight; and
- \* a training initiative arranged by a CPS Area and jointly delivered to an audience involving the CPS, police, probation, Crown Court, magistrates' courts and prisons used as a means of increasing understanding and awareness about issues surrounding racist incidents.

#### ***Monitoring cases***

Positive steps taken by Areas to ensure that cases arising from racist incident cases are monitored by:

- \* making forms available at police stations 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;
- \* the Area Business Manager attending prosecution team meetings and speaking to staff about the need to be vigilant;
- \* CPS managers compare their monitoring statistics with those compiled by the local police, to ensure that they correspond and to together discuss issues looking closely at outcomes and charging decisions;
- \* Areas finding that the monitoring form does not cater for every possible scenario providing valuable feedback by notifying those in the CPS Policy Directorate responsible for monitoring the effectiveness of the Scheme; and
- \* a CPS Area working with a number of agencies and local schools in general racist incident monitoring for the county.

### ***Reviewing cases***

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

- \* consideration of RIMS data to confirm its accuracy by reference to other local indicators (eg. police statistics);
- \* 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
- \* dip-sampling by managers and discussion of issues at Area Management Team meetings.

### ***Treatment of victims and witnesses***

- \* a victim advice and support group arranging a face-to-face interview with the CPS for the victim in which a sensitive decision was explained in person.



### ***Liaison and community engagement***

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 liaised with the local REC about recruitment;
- \* a Branch Crown Prosecutor (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 and suggestions**

49. The distinction between recommendations and suggestions reflects the greater degree of priority which inspectors would attach to the former.
50. Inspectors have made 20 recommendations identifying those aspects of CPS performance which they considered needed development. These were:
  - \* ensuring that there are mechanisms in place to identify and monitor all racist incident cases;
  - \* comparing monitoring data with that of the police;
  - \* increasing the involvement in, and the commitment of, staff towards monitoring;
  - \* improving the analysis of monitoring data;
  - \* consulting with the police to improve the quality of information about previous racist incidents;

- \* consulting with the police to improve the quality of background information generally;
- \* ensuring that there are mechanisms in place so that all relevant information is considered before important decisions are taken;
- \* ensuring that delay is kept to a minimum;
- \* ensuring timely review;
- \* identifying suitable individuals to act as ‘consultants’ with a quality assurance role;
- \* encouraging discussion of relevant issues in an atmosphere supportive of open - minded debate;
- \* considering the implementation of wide-ranging training;
- \* improving the quality of file endorsements;
- \* the Attorney General should consider seeking an extension to his powers to refer unduly lenient sentences to cover some racially aggravated offences;
- \* ensuring that cases properly charged under part 3 of the Public Order Act 1986 are referred directly to the CPS Casework Directorate;
- \* improving the quality of liaison with minority ethnic communities;
- \* consulting with the police to assure the quality of information upon which decisions are based;
- \* ensuring that prosecutors have sufficient awareness of the wider context;
- \* ensuring that cases in which there appears to have been a differential approach are referred appropriately for liaison and feedback; and
- \* ensuring that all monitoring data and other information is used to the full in order to eliminate differential treatment.

51. Inspectors have also recommended 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.

52. The report also identifies 12 aspects of performance in which inspectors suggest that the CPS will wish to take action. These relate to:

- \* pursuing localised consultation initiatives;
- \* encouraging the police to improve the rate of submission of racist incident forms;
- \* considering whether the information provided by RIMS is sufficient to assist assessment of the quality of CPS performance;
- \* consulting with the police to assure the quality of victim personal statements;
- \* inquiring into other potential sources of background information;
- \* involving a senior a lawyer in cases where a judge questions the presence of a racial element;
- \* achieving a common understanding about what constitutes hostility based on race;
- \* ensuring that cases in which a police officer is the victim of a racially aggravated offence are not reduced inappropriately;
- \* ensuring that relevant staff are aware of the full range of racially aggravated offences available under the Crime and Disorder Act 1998;
- \* ensuring that relevant staff are aware of the sentencing implications of removing the racist element;
- \* assuring the quality of instructions to counsel; and
- \* liaising more effectively with racist incident monitoring groups.

53. The full text of the report may be obtained from the Corporate Services Group at HMCPS Inspectorate (telephone 020 7210 1197).

HMCPS Inspectorate  
April 2002