

RACE *for* **JUSTICE**

A review of CPS
decision making
for possible racial
bias at each
stage of the
prosecution process

EXECUTIVE SUMMARY

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PARTNERSHIP

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Of particular note was the contribution made by the Diversity Monitoring Project (DMP) Board, the Critical Friends Group and the External Reference Group throughout the lifespan of the project. The project was of vital importance to the CPS, not least because of concerns that had been raised over time about the way black and minority ethnic people experience the criminal justice system and the Crown Prosecution Service as part of it. At the point of issuing the contract for the Diversity Monitoring Project, the Crown Prosecution Service (CPS) was in no position to anticipate the many challenges the research would pose, especially the process of securing the overall sample of 15,000 files. For most of the CPS Areas, similarly, this was a first. CPS Inspections and Thematic Reviews had not demanded such a high level of organisation with respect to file retrieval. The success of the project depended to a great extent, therefore, upon close collaboration between the consultants and CPS headquarters, especially the DMP Board, and the co-operation of the CPS Areas.

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Finally, our thanks and deep appreciation go to Charles Willie, Associate Consultant with GJP and former Head of Equality at the National Assembly for Wales, for the various drafts of this report and for his liaison with the GJP research team in the latter stages of the Diversity Monitoring Project.

Professor Gus John
GJP
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INTRODUCTION

Rationale

1. The Crown Prosecution Service (CPS) commissioned the Diversity Monitoring Project (DMP) in the summer of 2001. This initiative was in line with the CPS' response to the findings and recommendations of the Stephen Lawrence Inquiry Report and with its publicly stated assurance 'that the Crown Prosecution Service is committed to promoting equality and ensuring that it does not discriminate in any of its functions pursuant to Section 19 of the Race Relations (Amendment) Act 2000'¹.
2. The Equality and Diversity Unit (EDU) was concerned to satisfy itself that the CPS' own institutional practices were not contributing in any respect either to the denial of justice or to a lack of public confidence in the system of prosecution, especially on the part of members of black and minority ethnic and other target groups. A key part of the prosecution process is the prosecutor's review of case files and decision making in respect of what the next stage in the process should be. The Stephen Lawrence Inquiry Report helpfully highlighted the manner in which institutional cultures and the stereotypical beliefs that underpin them could give rise to practices which obstruct the proper investigation of crime and could lead to gross denial of justice.
3. The Stephen Lawrence Inquiry Report defined 'institutional racism' as:

'... the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen and detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.'

As early as 1983, in response to the Swann report on 'West Indian Children in British Schools', the Commission for Racial Equality (CRE) provided what many have regarded as a more helpful definition:

'... a range of long established systems, practices and procedures which have the effect, if not the intention, of depriving ethnic minority groups of equality of opportunity and access to society's resources. It operates through the normal workings of the system rather than the conscious intent of the prejudiced individual.'

4. Applying either of these two definitions to an analysis of the investigation of the murder of Stephen Lawrence, it becomes immediately obvious just how crucial a role racial stereotyping played in the police treatment of witnesses and assumptions about their credibility. The police, no less than Crown Prosecutors, exercise a great deal of discretion and make judgements about individuals, their activities and the context in which they become involved with the criminal justice system. The 'normal workings of the system' predispose professionals to certain behaviours which are themselves regarded institutionally as 'normal' but which are often experienced as oppressive and discriminatory by members of target groups. Invariably, it is left to those groups to challenge those practices and reflect the organisation to itself.
5. In approaching the issue of prosecutors' decision making and the issues of equality and discrimination that might be involved in that process, the Gus John Partnership had regard to a framework of analysis developed by Professor Gus John and colleagues in the Equality and Discrimination Centre (EDC) at the University of Strathclyde. That model identifies four key aspects of inequality and discrimination: structural, cultural, institutional and personal.
6. These are major forms of inequality which structure our society in a dynamic and interactive way. They can be seen to operate in relation to different aspects of discrimination, including: racial, gender, disability, homophobic and sectarian. It is more commonplace for discussion of discrimination to focus upon the prejudiced individual and aspects such as individual attitudes, bias, beliefs and behaviour that operate at a number of levels, both overt and covert (Personal aspects). There is now a wealth of evidence, not least

¹ CPS Race Equality Scheme (May 2002)

from the submissions to the Stephen Lawrence Inquiry, that point to the need to identify other aspects of discrimination. The EDC model identifies those aspects of discrimination that are located in:

- the physical, legal, and political structures of the society (Structural)
- society's shared meanings, assumptions and 'norms' that perpetuate implicit and explicit values and bind institutions and individuals (Cultural)
- the 'business as usual' operations of institutions and the 'system' and "embedded in the 'normal' practices of institutions" (Institutional)

'In an oppressive society, the cultural perspectives of the dominant group are imposed on institutions by individuals and individuals by institutions' – EDC

The Research Remit

7. Acknowledging that it was no less affected by those various elements of discrimination than the police or any other institution, the CPS determined that in keeping with its mission and having regard to the legitimate expectations of all groups in the society, it needed to explore whether or not there was evidence of bias in the way the CPS dealt with particular target groups, principally black and minority ethnic people and women.
8. The main aim and purpose of the project was the independent examination of CPS files in order to determine whether there was '..... any bias in decision making by the CPS at each stage of the prosecution process'. Specifically, the CPS wished to satisfy itself that there was no bias on account of race and gender in respect of seven key prosecution stages in a case:
 - The review process
 - The charging process, which includes the nature of charges and the decision to reduce or increase charges
 - The decision whether to grant bail or oppose the granting of bail
 - Decisions about the mode of trial
 - Discontinuance
 - Failed cases
 - Acceptance of Plea or 'Plea bargaining'²
9. Particular attention was also to be given to 'special category' cases, namely racist incidents and Youth. Cases involving murder, rape or domestic violence were specifically excluded from the project.
10. The project consultants were required to examine a sample of the (approximately) 1.3 million criminal cases handled by the CPS across England and Wales in a given year, having regard to geographical spread and the representation of race and gender in crime statistics.
11. The project brief was directed at providing answers to three specific questions:
 - a) *Is discrimination or bias occurring at any stage of the prosecution process?*
 - b) *If so, which of the seven stages listed above should give the CPS cause for concern?*
 - c) *As a result of the findings of this research, does the CPS need to amend its policies, procedures or practices?*

² The CPS uses the term 'Acceptance of Plea'. However, for reasons set out later in the document (paragraphs 157-164) GJP will use the term 'Plea Bargaining'

METHODOLOGY

12. The source of the evidence to be examined in relation to those three questions was CPS case files and the endorsements entered on those files by CPS prosecutors. The research was to be conducted within parameters set by the CPS.
13. It was agreed at the beginning of the project that the Gus John Partnership (GJP) would aim to choose a sample of 15,000 case files from among the 1.3 million generated by the CPS in any one year. The sample was to be drawn from across 10 CPS Areas (A-J). The aim was to achieve a sample of 1,500 files from each Area, having regard to gender and ethnicity, principally, as well as to age. Though information on victims was obtained, this was limited, as neither the police nor the CPS are systematically required to collect and monitor this data.
14. Prior to the start of the research, the GJP examined a cross-section of files of cases heard in the Magistrates' and Crown Courts. The purpose of that exercise was:
 - to estimate the amount of time it would take on average to research a file and enter data into the database
 - to see whether and where the information relating to the seven key prosecution stages listed above was located in the files
15. To ensure that the sample of files met the agreed search criteria, the defendant cases should have been finalised at court between 1 September 2000 and 31 August 2001. This was contingent upon all the 10 Areas suspending their file destruction procedures such that the 1,500 files could be chosen from the totality of their cases finalised within that period. In selecting the files to be analysed, the intention was to make use of information from both the Police and CPS Case Tracking Systems. However, very early on in the file retrieval process it was clear that not all of the Police or CPS Case Tracking Systems were up to scratch when it came to logging information. Of particular note was the worrying fact that many of the files recorded on the system did not include the ethnicity of defendants. In many instances, also, the wrong ethnicity was ascribed to defendants as could be surmised from profiling information in the body of the file.
16. At the point of issuing the contract for the Diversity Monitoring Project, the CPS was in no position to anticipate the challenges that securing the overall sample of 15,000 files would pose. For most of the CPS Areas, similarly, this was a first. CPS Inspections and Thematic Reviews had not demanded that degree of organisation with respect to file retrieval.
17. The file retrieval exercise resulted in 15,000 files being identified for selection and dispatch to the GJP research team. The Gus John Partnership engaged a team of researchers to examine the files and enter data into a databank for later analysis. The research was supported by a legal team, whose responsibility was to ensure the quality and accuracy of data entry and to clear up or offer informed comment upon any legal anomalies identified by the researchers. In the majority of cases, once the data entry was completed, files were returned to the CPS Areas for retention or destruction as appropriate. Any of the 10 Areas could recall specific files at any point in the process in order to carry out their normal functions.
18. 15,000 case files were received at the GJP offices. Some 1,246 of them involved multiple defendants and invariably multiple charges. In some instances, a file would involve as many as eight defendants with an average of three charges among them. Such was the complexity of the adjustments to the database in order to accurately research prosecutors' decisions in such cases that it was decided to remove those files from the sample. Some 835 files were found to be unusable on account of the poor quality of file endorsement. Six files that were recalled by CPS were not returned for inclusion in the study. Thus, a total of 12,913 files remained and constituted the sample researched and from which entries were made in the database.

19. The data in the files was not supplemented by any information gathered by researchers from any other source. The research was based on documents only. No interviews were conducted, for example, with the police involved in the cases in the files or with the prosecutors who endorsed those files. The only indicators of their thinking processes to which our researchers had access were the endorsements in the files. Similarly, researchers had no access to Court records, to the social and economic background of the offenders (including where they lived), to the history of their involvement with the criminal justice system, their criminal record, the context of the particular case or the wider context of policing in the area in which the offence was committed. That latter context would include, for example, police operational priorities, the targeting of certain crimes committed by certain known groups in the population, and the attitude of the Courts to such crimes which, often, is both influenced by and influences public reactions to those crimes.
20. In order to provide a comprehensive response to the issues and questions posed in the project brief, a two-stage approach to the data analysis of the 12,913 files was undertaken. First, a descriptive analysis of the data was made, identifying for each aspect of the prosecution process the main findings of possible bias by identifying statistically significant differences between different ethnic groups. These were then investigated further through a multivariate statistical analysis which used logistic regression analysis to identify the possible impact of variable individual factors such as location, age, gender, the type of charge and ethnicity on the CPS decision making process.

DESCRIPTIVE ANALYSIS OF THE DATABASE

21. Collecting and analysing retrospective information of the sort that the remit of this project necessitated inevitably meant that the reconstruction of events could involve a measure of subjectivity and, whilst this is a potential pitfall in all research, this was a particular issue in this project.
22. Although every effort was made to clarify and verify the file information, a major problem with data entry was the fact that in many files, prosecutors had not recorded the precise reasons for a particular decision or course of action and those were not readily apparent from a close reading of the file. Apart from members of the GJP legal team, the researchers were not lawyers, albeit most had a social research/social policy background. The database was constructed in such a manner, therefore, as to not allow the researchers to second guess the reasoning behind prosecutors' decisions. Where ambiguities arose with respect to prosecutors' file endorsements to the extent that data entry was problematic, the files were set aside for examination by the legal team or were rejected outright. Some 835 files were thus rejected by the researchers and the legal team as they did not contain enough data with respect to the range of variables in the database to warrant inclusion.
23. There are a number of factors to be borne in mind by the reader when interpreting the data, in particular statistical limitations and issues of terminology. As far as statistical analysis is concerned, given the limitations of the data the CPS enabled us to access, statistical analysis could never provide categorical **proof** of the existence or otherwise of discrimination or bias. The files carried no endorsements about the prosecutor's gender and ethnicity, nor much, if any, detail of the rationale for the representations they made in Court or the decisions they endorsed on the files. In the circumstances, all the statistical analysis could do is to identify broad differentials as between minority ethnic offenders' experience of the CPS and that of white offenders.
24. Further evidence or a different methodology may be required to obtain definitive findings. Detailed statistics have been given and these could be useful for future research. In-depth qualitative research of 33 cases with a racial element highlight areas of concern. Even if these cases are not statistically

significant, they do highlight worrying practices, which should not exist even in a small fraction of cases. This is particularly so given the seriousness of racial incidents.

25. Included in the descriptive analysis is a comparison with Home Office data with respect to different categories of defendant and their involvement in the criminal justice system.
26. Additionally and importantly, for the purposes of this report, the term Racial Dimension refers to all cases identified by the GJP researchers in their analysis of the CPS files as having a racial element involved in the case. This racial element could have been identified by the Police, CPS, Victim, Defendant or Witness and may include Racial Incidents³, Offences Chargeable as Racially Aggravated Offences⁴, Racial Crimes⁵, etc. Whilst it is recognised that these are not interchangeable and that they have different interpretations in law, for the purpose of the statistical analysis they have been banded together. In addition, a separate analysis of the racially aggravated charges (i.e. the cases which have been charged as such by the CPS and/or Police) has also been undertaken.
27. The term 'minority ethnic/ethnic minority' is used in its most generic sense to include all those designated as such in accordance with the 2001 Census categories. Currently, the same classifications of ethnic origin are not uniformly applied across all CPS Areas. This situation is about to change, however, with the adoption across all CPS Areas of the 16 + 1 classifications as listed in the 2001 Census⁶. For the purposes of this report, the following ethnic origin classifications are utilised throughout:

<i>Classifications Used</i>	<i>Police Force Classifications</i>
White	IC1 White European
	IC2 Dark European
African-Caribbean	IC3 African Caribbean
Asian	IC4 Asian
Other Ethnic Groups	IC5 Oriental
	IC6 Arab
	Dual/Mixed Heritage
	Not known

³ Racist Incident: The Stephen Lawrence Report defined a racist incident as '.....any incident which is perceived to be racist by the victim or any other person'.

⁴ Racially aggravated offences: these are offences under law which have attached a more severe penalty if it is proved that the basic offence (e.g.) assault was motivated by racial hostility.

⁵ Racial Crime is an offence where the prosecutor has to prove a racial element as part of the offence itself, or where the law allows the prosecutor to put that evidence to the court when an offender is being sentenced.

⁶ The '16 + 1' Census categories are: British, Irish, Other White, White and Black Caribbean, White and Black African, White and Asian, Other Mixed, Indian, Pakistani, Bangladeshi, Other Asian, Black Caribbean, Black African, other Black, Chinese, Other Ethnic Group. The '+ 1' refers to unknown.

DATA ANALYSIS AND FINDINGS

28. 12,913 CPS case files, retrieved from 10 CPS Areas across England and Wales were researched. When disaggregated by gender and ethnic group in relation to each of the seven stages of the prosecution process reviewed, however, sample sizes proved too small for the computed results to be statistically significant. This was particularly true for female defendants and following discussions with the CPS, it was agreed that the report brief should change from race and gender to race specifically, while retaining for obvious reasons a focus on women defendants from minority ethnic groups. The discussion of the descriptive analysis, therefore, focuses on the results for male defendants. This descriptive analysis is supplemented by the results of a detailed multivariate analysis of the data, which takes account of the possible impact of variable individual factors such as location, ethnicity, age, gender and type of charge. The findings from this more detailed analysis of the data provide the basis for assessing the reliability of the descriptive findings. Both the descriptive and detailed analysis of each aspect of the prosecution process we researched provided the basis upon which the findings, conclusions and recommendations in this report are derived.

Review Decisions

29. *Review is the process undertaken by a prosecutor to determine whether or not a case should go ahead. Review is a continuous process and includes the initial decision to prosecute a case referred by the police and any subsequent decisions made in relation to that case. Prosecutors apply the Code for Crown Prosecutors so that they can make fair and consistent decisions about prosecutions.*
30. The Code for Crown Prosecutors provides the framework of general principles against which prosecutors decided whether to bring a prosecution. Prior to accepting a case for prosecution, Crown Prosecutors are required to apply a two-stage test: the evidential test and the public interest test. The CPS must first satisfy itself that there is enough evidence to provide for 'a realistic prospect of conviction against each defendant on each charge'. The second test is the public interest test. If, and only if, the evidential test is passed, the prosecutor must decide if a prosecution is required in the public interest. It is usual for a prosecution to go ahead unless 'there are public interest factors tending against prosecution which clearly outweigh those tending in favour'.
31. The main finding from the descriptive data analysis was the lack of clear endorsements on many CPS files concerning the file review process. Endorsements as to review decisions were found on 82.3% of female defendant and 85.8% of male defendant cases. An endorsement that the evidential test was considered was present in 87.3% of female defendant files and 84.7% of male defendant files. An endorsement that the public interest test was considered was present in 81.1% of female defendant files and 75.8% of male defendant files. While this should be the case since the evidential test should have been applied first and the case should have passed that test before public interest was considered, it was also evident that in respect of both male and female defendants files were not endorsed to show that the evidential test had been applied.
32. In cases with a racial dimension review decisions are more likely to be endorsed on the CPS files for Asian and African Caribbean defendants. In such cases, files in relation to African Caribbean defendants are more likely than others to contain endorsements evidencing more than one review assessment.
33. The detailed analysis proved inconclusive. However, it highlighted the relatively poor quality of endorsements on the CPS files across all CPS Areas that took part in the study. Additionally, the analysis showed that following an evidential test it was less likely that a public interest test would be applied for African Caribbean defendants in certain CPS Areas.

Charging

- 34 *Usually, the police arrest and charge the accused person and then send the case file to the CPS. In some cases they may seek advice from the CPS before charging. The CPS then decide whether the existing charge is correct, or advise what the correct charge should be, whether there is sufficient evidence to prosecute and if so if it is in the public interest. From 2003/4, the CPS will take the responsibility from the police in most cases for deciding the charges from the outset. The charge selected should reflect the seriousness of offending; give the court adequate sentencing powers; and enable the case to be presented as clearly and simply as possible.*
35. The descriptive data analysis highlighted patterns of offending by reference to ethnicity. Whatever patterns exist within the population as a whole, however, the role of the CPS is to ensure that the right charge is applied, having regard to the nature of the crime. The descriptive data analysis suggests that among female defendants, Asian women are most likely to be charged with dishonesty offences. Offences Against the Person were particularly common in cases involving African Caribbean women and white men. African Caribbean and Asian men are more likely than white men to be charged with drugs offences, while white men are more likely to be charged with public order offences. Asian men are more likely than men from other ethnic groups to be charged with road traffic offences.
- 36 In looking at the individual public order offences, African Caribbean men are more likely (26.3%) than other male defendants (White 16.5%, Asian 14.7%) to be charged with 'threatening behaviour'. White men are more likely than other men to be charged with actual bodily harm. A charge of common assault is most common for Asian men, who are also more likely than others to be charged with obstructing a police officer.
37. With regard to outcomes, defendants from African Caribbean and Asian ethnic groups are more likely to be acquitted than white defendants. White defendants are more likely to be found guilty in cases with a racial dimension than are defendants from a minority ethnic group.
38. The detailed statistical analysis looked in particular at the likelihood of the police or CPS regarding an offence as having a racial dimension. The analysis was generally inconclusive, but two issues were that in certain CPS Areas, offences are more likely to be regarded as having a racial dimension and, also across all CPS Areas, offences are less likely to be regarded as having a racial dimension if the defendant is African Caribbean or Asian, and if the offence is criminal damage or a public order offence.

Bail

- 39 *A court can remand a defendant in custody, or can grant bail, with or without conditions. Before the first court hearing, the police can detain a defendant in custody or can grant bail, with or without conditions attached. A person granted bail is under a duty to attend court (or in some cases, a police station) on a specified date and failure to do so without reasonable cause is a criminal offence. When a court is deciding whether or not to grant bail to an accused person, the prosecutor will make representations to the court about any objections they may have to bail being granted at all, or to suggest conditions to be attached to the grant of bail. Decisions about bail are governed principally by the Bail Act 1976.*
40. The descriptive data analysis suggests that, in general, the police were more likely to grant bail to female than to male defendants. The latter were more likely to be granted bail by the courts. The CPS receive recommendations from the police concerning the appropriateness of bail. However, it is for the prosecutor to make the correct representation to the Court based on all relevant factors which will include the nature of the case, the defendant's previous convictions and whether he or she is already facing charges or on bail

for other offences. The CPS usually opposed bail on the grounds of fear of the defendant committing another offence or not attending court. However, the CPS were more likely to object to bail for both male and female African Caribbean defendants (for male African Caribbean defendants 13.2%, white 9.0%, all males 9.9%), and more likely to give the reason that they would 'obstruct justice' than for defendants from other ethnic groups.

41. The detailed analysis was generally inconclusive. However, one issue emerging from the data is the suggestion that the CPS are more likely to oppose bail in cases heard in the Crown Court (including robbery cases) and cases involving African Caribbean defendants.

Plea before Venue (Mode of Trial)

42. *Plea before Venue is the procedure whereby an accused person who is charged with an offence triable either way and who has attained the age of 18 years appears before a magistrates' court, and is asked to indicate his/her intention as to plea.*

If he/she indicates a plea of guilty, the court will proceed either to sentence him/her or to commit him/her for sentence to the Crown Court.

If he/she indicates a plea of not guilty, or fails to indicate what his/her plea will be, the court must then proceed to consider Mode of Trial.

When considering which Mode of Trial seems more appropriate, the court will hear representations from both the prosecutor and the accused before deciding which court it thinks is more suitable to hear the case. In making this decision the court will take into account the nature of the case; whether the offence is one of serious character; whether the punishment that the magistrates' court would have power to inflict for it would be adequate and any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way rather than the other.

If the court decides that it considers that the offence is more suitable for summary trial, it must then explain that decision to the accused and that he can consent to be tried by the magistrates court OR may elect to be tried by a jury at the Crown Court.

If the accused chooses to be tried summarily, the case will proceed to a summary trial and the accused, if convicted, will be sentenced either by the magistrates, or committed for sentence to the Crown Court.

If the accused elects trial by jury, the case will then be committed for trial to be heard in the Crown Court by a judge and jury.

43. The descriptive data analysis revealed little difference between the experience of defendants. The analysis did show, however, that African Caribbean defendants are more likely than defendants from other ethnic groups to opt for a jury trial. Of all defendants who opted for a jury trial around 13% subsequently pleaded guilty. Of those, white defendants were more likely to plead guilty than African Caribbean and Asian defendants.

Here, the detailed analysis was also generally inconclusive but did highlight that African Caribbean and Asian defendants were more likely to plead not guilty or to enter no plea. In addition the CPS was more likely to regard a Magistrates' Court as suitable for racial offences that could be heard either in the Magistrates' or the Crown Court.

Discontinuance

44. *A case is discontinued if it is stopped pre-trial either because the evidence is no longer sufficient (and is not likely to be forthcoming) to provide a realistic prospect of conviction (e.g. witnesses withdrawing their allegations or refusing to attend Court, other evidence pointing against the defendant's guilt becoming available), or because it is no longer in the public interest to prosecute the defendant.*
45. The descriptive data analysis showed that African Caribbean defendants were more likely than white defendants to have their case discontinued, while Asian defendants were less likely than white defendants to have their case discontinued.
46. The detailed analysis was inconclusive; however, it did suggest that discontinuance was more likely as a consequence of a file review where the defendant was African Caribbean, where the defendant was aged 10 to 17, and when the case involved criminal damage, robbery, public order, weapons, or a racial offence. As far as youth defendants are concerned, prosecutors operate a policy of considering appropriate alternatives to prosecution, such as reprimands or final warnings and that could account for the level of discontinuance among youth defendants.

Failed Cases

47. *A case is considered to have failed if the defendant has not been convicted or cautioned for any offence.*
48. The descriptive data analysis revealed that cases involving a racial dimension were slightly more likely to fail than cases taken as a whole. The failure rate was lowest for defendants aged 18 to 34. Overall, cases involving an African Caribbean defendant are most likely to fail. In cases with a racial dimension, the probability of failure is much higher for those cases in which the defendant is Asian or African Caribbean. For African Caribbean defendants, the potential failure rate was higher in those cases which went to the Crown or Youth Court. African Caribbean defendants were less likely than those from other ethnic groups to be acquitted during the course of the trial.
49. The detailed analysis provided little by way of definitive statistical evidence. However, the analysis suggested that in all CPS Areas, cases involving African Caribbean and Asian defendants were more likely to fail, as were those involving 10 -17 year olds. For all defendants, cases involving robbery, drug possession and drug supply were less likely to fail.

Plea Bargaining

50. *Plea bargaining (or 'plea acceptance' as the CPS prefers to call it) is a process initiated either by the defence or the prosecution. The defence may offer to plead guilty to a less serious offence in exchange for the more serious charge being dropped. The prosecution may charge a less serious offence in place of a more serious charge if a particular plea is made. In offences involving racial aggravation, for example, the defence might offer to plead guilty to one or more charges if the racial aggravation component is dropped (e.g. pleading guilty to harassment instead of not guilty to racially aggravated harassment).*
51. When considering whether pleas entered or indicated by a defendant are acceptable, prosecutors will assess whether the Court will be equipped with sufficient sentencing powers to properly reflect the gravity of the offending.

52. 'Plea bargaining' has come to have mainly negative connotations for black and minority ethnic people, many of whom regard it as a process by which lawyers get together and agree on a 'settlement' of a particular charge, not necessarily to their advantage. This practice has been a source of discontent in black and minority ethnic communities for many years in that it is largely regarded as compromising the dispensation of justice. While there clearly are circumstances in which plea bargaining is perfectly justified, the overwhelming experience of its use that black and minority ethnic people have had over the years has been negative. We deal with this matter more fully in the Conclusions in this report.
53. The descriptive data analysis suggested that plea bargaining/plea acceptance occurred in over a fifth of cases involving a racially aggravated offence. The practice was more common where the defendant was white, especially where a racial dimension was involved or the charge was racially aggravated. The percentage of cases involving plea bargaining/plea acceptance in which there was a racial dimension or in which the charge was racially aggravated was much higher for white defendants than for those from other minority ethnic groups. The CPS was more likely to accept a plea in such cases where the defendant was white and a guilty plea was more likely for white than African Caribbean defendants. However, the number of cases involving defendants from minority ethnic groups was too small for these differences to be statistically significant.
54. The detailed statistical analysis whilst not conclusive revealed that plea bargaining was most likely to occur in certain of the 10 CPS Areas, where the offence involved drug supply, public order, weapons or a racial offence. The analysis also revealed that in certain of the 10 CPS Areas plea bargaining was less likely where the defendant was African Caribbean.

Youth Cases

55. *The Youth Court deals with young people aged 10 – 17.*
56. For youth cases the descriptive data analysis suggests that young people are most likely to be charged with dishonesty and offences against the person. Outside of these charges, for the first recorded police charge, white defendants are most likely to be charged with criminal damage, Asian defendants most likely to face public order charges, while African Caribbean defendants are more likely than those from other ethnic groups to be charged with drugs offences.
57. Cases involving African Caribbean and Asian defendants are more likely to fail than those involving white defendants. Plea bargaining/plea acceptance is more common for white defendants than those from other ethnic groups, especially in cases with a racial dimension. Cases with a white defendant were much less likely to be discontinued than those with an African Caribbean or Asian defendant.

Women defendants

58. The descriptive data analysis suggested that women tend to be charged with a more limited range of offences overall than men. The largest category is dishonesty offences, followed by offences against the person, with road traffic, public order and miscellaneous offences featuring more or less in that order. Asian women are most likely to be charged with dishonesty offences.
59. Cases involving African Caribbean women were most likely to fail, and most likely to be discontinued. They were also least likely to involve plea bargaining/plea acceptance. In cases with a racial dimension, more than 50% of all cases involving an African Caribbean defendant failed, a much higher percentage than for

white defendants, and the chance that such a case would be discontinued was also much higher than for cases with white defendants. Plea bargaining was more common for cases in which the defendant was white, especially where there was a racial dimension.

Advice Files

60. *Advice files are files sent by the police to the CPS, usually before an offender is charged with any offence, requesting advice about whether there is enough evidence to provide a realistic prospect of conviction for any offence and if so, which charges are the most appropriate. Files should contain details of the advice given to the police and the reasons for that advice*
61. Whilst not a specific focus of this project, we have conducted a descriptive analysis of Advice Files. Despite the file retrieval team's efforts to secure advice files in the sample retrieved from each CPS area, there were too few files recorded in the data set for reliable analysis of differentials by gender and ethnic group to be undertaken. Only 55 files for women and 15 for African Caribbean people were identified. Moreover, the reason for the advice communicated to the police was not recorded for two-fifths of white women. In the majority of cases, the reason given for the advice is 'insufficient evidence to prosecute', and the advice given in more than 3 in 5 cases was to 'take no further action'. Advice files, which would normally be kept with the main files examined by the research team, were present in only 1% of cases with a white defendant, 1.5% of those with an Asian defendant and 0.5% of cases with an African Caribbean defendant. In most cases, ethnicity was either not recorded or attributed to one of the 'other' ethnic groups.

Victims

62. This was not a specific focus of this project, either, but we have attempted to conduct a descriptive analysis of Victims involved in the cases in the files. There were, however, too few cases with a racial dimension in which the ethnic group of both victim and defendant are coded for detailed analysis of the data to be undertaken. Where information was available, this showed that cases in which the defendant was African Caribbean or Asian were more likely to fail than those in which the defendant was white. Plea bargaining/plea acceptance was more likely when the defendant was white. Overall, nearly half of all victims in these cases (46.9%) were classified to 'other' ethnic groups, while 44.2% were from African-Caribbean or Asian ethnic groups and only 8.9% of victims were white. In contrast, 77% of defendants in these cases were white. This is not so surprising as, typically, racist crime is perpetuated against African Caribbean and Asian people by white people and only in a minority of cases are white people the victims of racist crime.

Race Cases

63. The analysis of race cases is in two parts: first, cases identified by the researcher as having a racial dimension and second, cases where a racially aggravated charge has been brought by either the police or CPS. *(For the purpose of this report the term Racial Dimension refers to all cases identified by the GJP researchers, in their analysis of the CPS file, as having a racial element involved in some form. That racial element could have been identified by the Police, CPS, Victim, Defendant or Witness and may include Racial Incidents, Racially Aggravated Offences or Racial Crimes).*

All Racial Dimension and Racially Aggravated cases – by ethnic origin, and gender of the defendant.

	White	African Caribbean	Asian	Other Ethnic Groups	Not Recorded	Total
<i>Dimension</i>						
Female	75	17	5	1	1	99
Male	426	53	50	18	3	550
Not recorded	0	0	0	0	2	2
Total	501	70	55	19	6	651
<i>Aggravated</i>						
Female	46	8	3	1	0	58
Male	265	27	10	8	1	311
Not recorded	0	0	0	0	1	1
Total	311	35	13	9	2	370

Racial Dimension

64. In more than 75% of cases with a racial dimension, racial language was used, most commonly in cases involving women defendants. White defendants were more likely than average to have used racial language. Asian (male) defendants were least likely to have used racial language.
65. The police were more likely to identify the case as a racist incident where the defendant was white than where the defendant was African Caribbean or Asian. They were least likely to do so where the defendant was an Asian male. A defendant interview took place in a higher percentage of cases involving white defendants, than for cases with an African Caribbean or Asian defendant. Certain types of offence are more likely to involve interview, e.g. relatively low level public order cases, will rarely involve an interview since the charge is usually based on the behaviour of the defendant.
66. The police were slightly more likely than the CPS to identify a case as involving racial aggravation. This is as it should be, since the police have an agreement with CPS that they would mark the cover sheet (MG1) of files sent to CPS so as to draw their attention to all racist incident cases. CPS expects prosecutors to be alert to entries on those forms and information in the body of the file and identify cases missed by the police as racial incidents, and as a consequence consider whether the case can be prosecuted as a racially aggravated offence, or if there is evidence of racial aggravation to present to court at sentence.
67. It is CPS policy to monitor racist incident cases. CPS has been gathering information on prosecution decisions and case outcomes in such cases since 1995. A racist incident case is tracked by the CPS if it meets the Stephen Lawrence Inquiry Report definition, i.e. ‘..... A racist incident is any incident which is perceived to be racist by the victim or any other person.’ In its Legal Guidance, the CPS provides guidance to prosecutors on how to complete the Racist Incident Data Sheet (RIDS) and requires one RIDS to be completed for each defendant case identified either by the police or CPS as a racist incident. N.B. Cases identified as Racist Incidents may not be prosecuted as racially aggravated offences if there is insufficient evidence.

68. (RIDS) forms were completed in only 48.5% of all cases with female defendants, and 43.5% of cases involving male defendants. In cases with male defendants, a form was completed for 49.3% of cases with white defendants, but only 24% of cases with Asian defendants and 18.9% of those with African Caribbean defendants.

Racially Aggravated

69. Overall, there were 370 racially aggravated cases, 58 involving female defendants, and 311 involving male defendants. All but 12 of the female defendants were white. 265 (85.2%) of the male defendants were white.
70. In cases with female defendants, only 13.5% involved racial language. 12.9% were identified as a racist incident by the police; only 10.3% involved a defendant interview and only 8.4% (4) had a completed RIDS form.
71. For cases involving male defendants, 71.3% involved racial language, the police identified 65.9% as involving a racial dimension, a defendant interview occurred in 54.8% of cases and RIDS forms were completed for 42.9% of cases. Racial language was involved in a larger percentage of cases where the defendant was white than where the defendant was African Caribbean. Defendant interviews occurred in 57.8% of cases with a white defendant, but only 37.1% of those with an African Caribbean defendant. RIDS forms were completed in 46.3% of cases with white defendants, compared with only 28.6% of cases where the defendant was African Caribbean.
72. For male defendants, the percentage of cases recorded as racially aggravated by the CPS was slightly lower than the percentage recorded by the police, regardless of the ethnic group of the defendant (across all defendants, the CPS recorded 49.1%, and the police 52.9%). Both the police and the CPS were more likely to record cases involving a white defendant as being racially aggravated than when the defendant was African Caribbean.

CASE STUDIES – SPECIFIC RACE CASE ANALYSIS AND FINDINGS

Analysis

73. Of the 12,913 files researched, 651 were considered to have an identifiable 'racial dimension'. Of these 651 files, as part of the limited review undertaken by the GJP researchers in the data entry process, 50 files were set aside for Professor John's attention because of their content and the potential qualitative analysis that could be brought to them. Although identified by researchers for their potential interest, this did not mean that these 50 files were the only ones with qualitative content that might raise concerns, nor indeed were they selected as the 'worst case examples' of the 651 'racial dimension' files. The legal team and Professor John could have scrutinised every one of those 651 files but that would have been prohibitively expensive. Instead, Professor John provided guidance to the researchers in order to secure some 50 files for in-depth review by lawyers and himself.
74. Of these 50 files set aside, on further inspection four were found to be not especially noteworthy in that while, on the face of it, it appeared that the Legal Guidance was not followed, there were justifiable reasons for the decisions the prosecutors took. Those files were therefore not retained for analysis. The project's legal team undertook an in-depth review of the remaining 46 files which were then passed to Professor John for qualitative analysis.
75. This in-depth review involved a close examination of all the information in the files and a detailed analysis of each file. This detailed analysis is not included as part of the main report for reasons of anonymity, but was subsequently reviewed in conjunction with CPS lawyers and where necessary amended. The case study findings that follow therefore reflect an agreed position between GJP and the CPS.
76. It should be noted that whilst there has not been an in depth study of the remaining 601 cases not referred to Professor John, these together with the 50 files set aside for in depth consideration are statistically analysed in comparison to all cases throughout the data analysis exercise. **It should also be noted that the manner in which the cases in the 46 files were dealt with is not viewed as being representative of the practice of CPS lawyers across the sample. Those files should therefore be regarded as case studies which, through the in-depth analysis undertaken, highlight issues of concern that the CPS needs to address.**
77. The case study analysis takes the form of a qualitative review of issues and outcomes identified by the research team, and in its findings provides a view of the role of the police and CPS in these cases together with an assessment of the possible impact on the victim and perpetrator.

Findings

78. As stated above, the case study of these 46 cases provides a qualitative view based on the in-depth review of the approach and actions of the police and CPS in each case, and is not necessarily representative of general practice.
79. Whilst it was not always possible to be clear as to the reason for a particular course of action, given the quality (and sometimes the absence) of file endorsements on some files there were a number of common facts, issues and areas of concern that could be identified from the 46 case studies. The most striking finding of the analysis showed that in the overwhelming majority of the case studies, the victim is of African-Caribbean (19.5%) or Asian origin (39.1%) and the defendant is white (63%).

80. With regard to the charging process and plea bargaining, three issues emerged from the analysis:
- the general failure on the part of both the police and CPS to properly acknowledge and/or record racial aggravation in the 46 cases (41.1%), even when there was clear evidence to have reached such a judgement. This failure was further amplified by
 - the acceptance of a lesser charge (which did not include the racially aggravated element) by both the police and CPS (34.5%)
 - the CPS downgrading a number of racially aggravated offences put forward by the police (23.8%)
81. There was little to note from the case studies with regard to bail, or mode of trial (plea before venue). In terms of outcomes, the high number of discontinued and failed cases is of concern as is the completion of only four Racial Incident Data Sheets (RIDS) from the 46 case studies (8.6%). More specifically, the following provides an analysis of the role of the police and CPS from the case study exercise undertaken.

Role of the Police

82. Whilst not a focus of this project the role of the police is directly linked to the CPS' actions as part of the prosecution process. The review of these 46 cases demonstrates this link and in a number of the files an apparent lack of awareness/acknowledgement within the police force about the correct way to charge and process cases which involved racial aggravation. This is clearly shown by the fact that of the 46 cases reviewed in 19 of the cases the police failed to recognise that racial aggravation was involved, despite there being evidence to the contrary primarily from the victim but also on occasions from the perpetrator. Evidence of this is provided in 10 separate cases where the victims clearly state that they regarded the incidents as racially motivated and provided evidence of racial aggravation, yet the police took no notice and charged on a less serious basis, without taking into account the racially aggravated aspect.
83. A specific example which helps to put this into context is the case where a 17 year old white male defendant who is charged with common assault stated that the Asian male that he assaulted had called him a white bastard and punched him. The white male defendant subsequently admitted that he was lying about his reason for the assault. He also admitted that in the alleged retaliation he had 'punched the Asian male a few times' and owned up to 'going over the top and punching him too often and too hard'. The victim, a 15-year-old Asian boy, told the police very clearly that he was the victim of an unprovoked attack. He suffered serious injuries, including 2 black eyes. He reported beyond doubt that he had been racially abused and believed the attack was motivated entirely by racial hatred. His assertions were corroborated by two independent witnesses. Nonetheless, although appearing to identify the incident as 'racial', the police did not charge the defendant with a racially aggravated offence.
84. It is regrettable there is such a lack of awareness and acknowledgement on the part of the police in some of these 46 cases, given the extensive efforts that have been made by the majority of forces, following the 1998 Crime and Disorder Act, to publish and disseminate material on the procedures to be followed in cases where a racial dimension has been alleged. Additionally, following the Stephen Lawrence Inquiry, Community and Race Relations Training has been provided in most if not all police forces.
85. Additionally, in some CPS/force areas, both Chief and Branch Crown Prosecutors (Heads of Unit) and senior police officers attend and are official members of Racial Incident Monitoring Groups. Such groups pay particular attention to promoting an understanding amongst the public and practitioners in the criminal justice system of the definition of a racist incident, the difference between a racist incident and a racially aggravated offence, the relatively new charge of 'committing a religiously aggravated offence', as well as improving the means and the level of reporting of such offences and incidents in their area.

86. Such monitoring groups typically publicise and emphasise the fact that they exist in order to provide reassurance to black and minority ethnic communities and the public more generally that agencies are working together to deal with the perpetrators of race hatred and racist crimes and afford vulnerable communities protection under the law. Indeed, in many CPS/Force Areas, communities are heartened by the fact that these two key criminal justice agencies are collaborating with other partners, including local councils and black and minority ethnic (BME) communities, in tackling race hatred and race crimes. That single case, therefore, however unrepresentative it may be of police practice in that CPS/Force Area has the potential to undermine not just the work of a Racial Incident Monitoring Group but, more crucially, BME confidence in the police and CPS in that area. It could also lead, more alarmingly, to a collective sense of frustration and anger among Asian and African-Caribbean young people at the apparent collusion of the police with perpetrators of race hatred and racist crimes and with the structured denial of justice. Against the background of events in Northern cities and towns (Bradford, Oldham, Burnley) in recent times and the growing presence of the British National Party in mainstream politics, representing the people while peddling race hatred, every such case as we have just described is one too many.

Role of the CPS

87. In 33 of the 46 case studies, errors or faults on the part of CPS prosecutors have been accepted and acknowledged by the CPS following their own re-examination and review of the case study files. This part of the analysis therefore concentrates specifically on these 33 files.
88. As with the police, the case studies demonstrate an apparent lack of awareness/knowledge on the part of prosecutors about the correct charging and processing of cases which involve racial aggravation, but to an even greater extent than the police. Common to the 33 cases is what appeared to be a tendency on the part of the CPS not to take forward racially aggravated offences, often citing 'insufficient evidence' and/or 'public interest' as reasons for this, even when there is compelling evidence to the contrary.
89. Of particular concern was the fact that in these 33 cases only 2 RIDS forms were completed, when in all of those cases there was clearly a racial dimension that, at the very least, should have been recorded. This calls into question the extent to which CPS managers consistently monitor prosecutors' practice as far as the use of RIDS forms is concerned, a matter to which we return later in this report.
90. This is perhaps typified by an example of an incident outside a night club where the defendant sets out very clearly in his interview with the police that he was racially abused and that the people who abused him then went on to attack him and hit him in the head with a weapon. No enquiries were made with the complainant about the allegation that he called the defendant a 'paki'.
91. No reference is made on the file to the racial nature of the defendant's allegation, not even on the case summary which should include a reference to any anticipated defence. In addition, no RIDS or police racial monitoring form was completed. In this case, the police racial monitoring form was not sent on to the CPS with the file and the CPS for their part did not complete the Racist Incident Data Sheet (RIDS) at the conclusion of the case as they were required to do.
92. Another aspect of the CPS' review of cases that gave cause for concern was the quality of endorsements on some files which made it difficult to ascertain why certain actions had been taken. This is a longstanding issue in the CPS and one to which HMCPsi repeatedly draws attention in its reports. It is thrown into sharp relief in the cases under discussion. In the case just mentioned, for example, a review of the file should have provided the opportunity for the CPS to correct any errors made by the police, and to note their reasons for reducing certain charges. This is critical, given the fact that only 5 of the 15 cases charged as racially aggravated by the police were in fact accepted by the CPS as being racially aggravated.

93. Of even greater concern is the fact that 25 of the 33 cases were either discontinued or resulted in the defendant pleading guilty to a lesser charge not including the racially aggravated element accepted by the CPS.
94. An example of this relates to a case where the CPS could and should have increased a police charge, with regard to the attack on an off duty black policeman by a white female. Despite clear and compelling evidence and the insistence of the police officer that this was a racially aggravated crime and that he wanted it prosecuted as such, the CPS declined to do so. Even more concerning was the fact that this particular case was monitored by the CCP.
95. Another concern identified in the 33 case studies was that of plea bargaining, where the CPS either initiated discussions with the defence regarding a plea to a lesser charge than that originally preferred or accepted such a plea put forward by the defence. This occurred in no less than 12 of the 33 cases. The plea bargaining process in some cases involved an offer (that could be from either prosecution or defence) to plead guilty to another, usually less serious, charge if the race dimension is removed altogether. In the 12 cases mentioned, 'public interest' was given as the main reason for the CPS' decision. However, in some of these cases the assessment of the public interest made by prosecutors seemed questionable.
96. An example of this was the case where a defendant admitted that he 'could have been racist but was drunk at the time'. The Asian shopkeeper whom he abused stated that there was a racist comment made. The police officer heard the defendant call the shopkeeper a 'black bastard'. In what can only be described as surprising, the CPS in their review of the charges stated that they did not continue with the racially aggravated charge because the offending comments were made after the defendant had been arrested. As a consequence the CPS accepted a plea to harassment in return for dropping the charge of racially aggravated harassment.
97. The outcomes of the 33 cases also provide some revealing insights into the actions and practice of some prosecutors. From the review, 17 of the 33 cases were either discontinued, dropped or no evidence was offered by the CPS. A close scrutiny of the files suggests that in many of those 17 cases there appears to be little or no justification for any of those decisions. Indeed, none is offered by the prosecutors themselves by way of a file endorsement explaining the reason for the decision.
98. An example of this is provided by the case where a white male assaults and racially abuses ('have you got a problem, you Paki f*****'), two Asian males who are known to him. The reason given for the assault is that the two victims allegedly laughed at the white male perpetrator previously. Serious injuries are sustained in a prolonged attack by the white male and others. The matter is clearly identified as being racially motivated, but is discontinued by the CPS on the basis of insufficiency of evidence. There is nothing in the file to suggest that witnesses had withdrawn their co-operation or to outline why the prosecutor felt there was not a realistic prospect of a conviction.
99. As with the police, it is difficult to determine whether these prosecutors were simply unaware of CPS policy guidance and how to approach such cases, or whether there were other factors influencing their decision making in the file review process. The file endorsements do not allow researchers to answer basic questions that are begged by such practices. For example:
- Did the prosecutor have access to or use the 'Legal Guidance' CPS made available to all prosecutors following the 1998 Crime and Disorder Act?
 - Did the prosecutor seek advice from colleagues, especially from managers, if they had doubts about how to proceed? Was the prosecutor's decision based upon such advice?
 - Did the prosecutor or the advice take into account the possible response of the victim to the CPS decision?
 - Was the victim informed of the reasoning behind the CPS decision and if so, how?

100. Whilst it is accepted that the type of decision-making exemplified by these cases may not represent general practice, the fact that it is happening at all must give cause for serious concern. As the vast majority of the perpetrators in the 46 cases were white males, and the victims mostly Asian males, the issues highlighted in the discussion above on the role of the police applies even more to the CPS.
101. We do not know the effect that such decisions had as it was outside the scope of this project to conduct follow up interviews with either victims or perpetrators. However, the outcomes in cases such as these may very well be to leave the perpetrators with a feeling of having been 'let off' and as a consequence to feel confident about perpetrating further racially motivated offences, or boasting about their actions and rubbishing their victims. The consequence for victims, on the other hand, could very well be an erosion of confidence in the criminal justice system generally and in the CPS in particular. What is more, it could also lead to the conviction in the minds of minority ethnic communities (not for the first time) that the failure of some CPS/Police Areas to take appropriate action in cases such as these amounts to the failure of the State to protect them and guarantee their human rights. Such a conviction have led in the past to sections of minority ethnic communities feeling compelled to organise to protect themselves.

CONCLUSIONS

102. We noted in the 'Acknowledgements' our indebtedness to Sir David Calvert Smith QC, Director of Public Prosecutions, for his personal commitment to this project and the support he gave throughout. He took the decision to open the CPS to this level of public scrutiny at a time when the service was still smarting from critical findings of the study carried out by Sylvia Denman and of a formal investigation by the CRE. And all of that in the midst of some uncertainty, if not unease among prosecutors about the very concept of 'institutional racism' and the DPP's bold acknowledgement, post Macpherson, of the likelihood that the CPS, like other large institutions, could be institutionally racist.
103. There is limited value in seeking definitively to determine whether an organisation such as the CPS is or is not 'institutionally racist'. A more constructive approach is to seek to establish the nature and extent of any tendencies which in fact disadvantage minority ethnic people. The positive identification of such tendencies, far from being a damning admission of culpability on the part of individuals, should be seen, rather, as a necessary step towards a sophisticated understanding of the challenges faced by an organisation. It is part of a self-critical process aimed at improving the organisation's relationships, culture and effectiveness.
104. Precisely because 'institutional racism' is unconscious or systemic in nature, it is difficult to identify or observe. The accumulation of anecdotal evidence, the drawing of inferences from apparently discriminatory outcomes and the persistence of unfair patterns are therefore key indicators of the existence of a problem. There will often be plausible alternative explanations for patterns and processes which, on close examination, could be shown to be indicative of 'institutional racism'.
105. In reading these conclusions, it is important to note the limitations of the Diversity Monitoring Project, some of which we have already presented in paragraphs 19 and 23 above. The project examined files in finalised cases. It was not a research exercise that tracked prosecutors' case review practice contemporaneously, interrogating the reasoning behind their representations in Court at any of the stages of the prosecution process and behind their file endorsements, the response of defendants, witnesses and victims to CPS decisions and practice or the interface between CPS, the police and the Courts. The research did not include an examination of the operational culture of the CPS and the context in which prosecutors responsible for the files in the sample operated. Barring those which were set aside for their attention, the files were not examined by experienced lawyers nor were those lawyers able to interview the police and prosecutors who had been involved in prosecuting the case.
106. Additionally, a number of vitally important explanatory variables could not be included in the database because CPS files do not carry that information (cf. paragraphs 19 & 23). As such, statistical analysis cannot prove the existence of bias one way or the other. In relation to accessing the information the files do contain, researchers found files were of widely varying quality. Some contained all relevant documents and information to facilitate the research, while many lacked key documents and information. The reason generally put forward for this was under-funding and/or under-staffing. Whilst we would not doubt that these factors help to explain the reason for the files being kept to such a poor standard, the fact remains that in very many cases prosecutors had failed to endorse the files appropriately.
107. This project attempted to answer a number of important questions about the prosecution process and the understanding and awareness prosecutors bring to their decision-making and exercise of discretion when reviewing cases. Given the limitations outlined, however, the research could not be expected to make any sweeping generalisations about institutional cultures in the CPS such as the Stephen Lawrence Inquiry did, primarily in relation to the police. That inquiry investigated the conduct of the police and the CPS in one single, albeit horrendous, case. It involved more than 30 lawyers spending in excess of nine

months analysing tens of thousands of pages of material and questioning all relevant witnesses about their involvement in the case.

108. By contrast, the Diversity Monitoring Project looked at just under 13,000 cases, the researchers spending approximately 20 to 40 minutes on each case in what was, exclusively, a file examination and data entry exercise.

'Institutional racism' and prosecution decisions

109. The charge that 'institutional racism' is a feature of British society does not imply that all white people are racists. The potential impact of 'institutional racism' on prosecution decisions is inevitably difficult for the present Inquiry to assess. The principal focus of the Denman investigation was employment practices and workplace culture. Her report acknowledged, however, that there had not been any systematic analysis of casework within the CPS. Denman recognised that it was appropriate for some tentative observations to be made in this area, particularly since there are inextricable links between adoption of good employment practices and the delivery of the 'core' business of the CPS. It was felt that insofar as 'institutional racism' manifests itself within the CPS, it could impact on all aspects of the Service. It was necessary, therefore, for the Service to satisfy itself that the workplace culture Denman had cause to investigate and the arrangements and behaviours that gave rise to it were not themselves affecting the way prosecutors conducted their core business, i.e. prosecuting cases.
110. The possibility that 'institutional racism' might infect the review process and decisions within it is a notion which prosecutors find especially difficult to contemplate in view of their particular professional code. Since the inception of the CPS, the concept of 'independence' in the prosecution function has been central to the ethos of the Service. The Code for Crown Prosecutors' aims to ensure that prosecutors make fair and consistent decisions. However, that Code cannot in itself ensure the integrity of prosecution decisions or the proper use of discretion by prosecutors. Guarding against unconscious discriminatory assumptions, stereotypes or practices is also essential.
111. It is for that reason that, against the background of the Stephen Lawrence Inquiry and the Denman investigation, and anticipating the Race Relations Amendment Act, the Director of Public Prosecutions was totally justified in his decision to establish the Diversity Monitoring Project and interrogate the case review process for any evidence of bias or discrimination.
112. Public confidence in every arm of the criminal justice system is essential to the protection of individual rights and the maintenance of social order in the society. As such, there is an onus on every police officer, every prosecution lawyer, every magistrate and every judge to accept personal responsibility for their thinking, for their attitude towards the public and especially towards those whom the society constitutes target groups, and their actions and decisions in respect of those groups.

Research Findings in Context

113. The project brief was directed at providing answers to three specific questions:
- a) Is discrimination or bias occurring at any stage of the prosecution process?
 - b) If so, which of the seven stages listed above should give the CPS cause for concern?
 - c) As a result of the findings of this research, does the CPS need to amend its policies, procedures or practices?

114. For reasons given above (paras. 19, 23, 99-101) the results of the statistical analysis of the data from this study does not allow us to answer the question of discrimination and bias definitively one way or the other. The evidence from the multivariate analysis, even after taking account of factors such as location, age, gender, the type of charge and ethnicity, is generally not conclusive. There are, nevertheless, a number of important issues raised by the findings presented above:

The review process

115. The review process is key to the progress of any case through the system. Yet, despite the fact that in practically every inspection report the Chief Inspector points to the need for improvement in file management, this remains perhaps the biggest single problem as far as the process of reviewing cases is concerned. The fact that in this study 835 files were rejected outright because they contained too little information to be included in the sample, that many more failed to indicate clearly whether or not a review had been conducted and that even where cases had been reviewed there was often no record of the reasoning behind the prosecutor's decision must call seriously into question the management of the whole case review process.
116. By its very nature, the CPS is outward facing. Its internal culture is clearly important in that it influences prosecutors' conduct of the Crown's affairs in their interface with the police, witnesses and the Courts. Some CPS Areas demonstrated evidence of management scrutiny of prosecutors' case management and file review practices. In those Areas, prosecutors' handling of files and recording of reasoning behind decisions is highly commendable. In some CPS Areas, such good practice is sustained across all CPS branches while in others there are marked variations as between branches and the Area office.
117. In any one CPS Area there will be a body of prosecutors with varying lengths of experience. Some Areas have experienced staff who informally share good practice and support others who are not so experienced. Most Areas engage prosecuting advocates as agents in the Magistrates' Court and as prosecuting counsel in the Crown Court who are not employees of CPS but from whom CPS and the public have a right to expect the same level of competent and knowledgeable service. What our research clearly demonstrated is that while 'back-to-back' Courts, absence of time and lack of administrative support are factors affecting the quality of file management across the Service, where a CPS Area is led and managed by a Chief Crown Prosecutor who has a sound management focus, one finds sophisticated file storage and retrieval systems no less than high quality, monitored file endorsement. As in other public and corporate organisations, the quality of leadership and management in CPS Areas is a good indicator of organisational performance and quality of service delivery. But, such a management culture is crucial for another obvious reason, i.e. developing public confidence in the Service.

Listening and Acting

118. Prosecutors, like the police, exercise powers of discretion with such far reaching consequences for the dispensation of justice and the way people experience the criminal justice system that the CPS should put in place measures to ensure the proper management of prosecutors and scrutiny of their practice. Each Unit Head and Chief Crown Prosecutor should be required to demonstrate evidence of operating performance management and review measures such that the CPS could be satisfied:
- a) that there is a Common Standard across all CPS Areas for file management and a Competency Framework for prosecutors and for CCPs, including in the latter case, competences with respect to the performance management, support and supervision of prosecutors

- b) that the dispensation of justice is not being compromised
- c) that CPS processes and the practice of individual prosecutors are not themselves contributing to a diminution of confidence in the Service and in the CJS on the part of any section of the community

119. There are internal and external drivers for the CPS to nurture and embed such a management culture. In the last 4 years, the CPS has taken unprecedented steps to improve its effectiveness, to work in partnership with other partners in the criminal justice system and with communities, to consult with and listen to those communities and to enhance their confidence in the criminal justice system. A critical starting point for the Service and especially for the Attorney General, Lord Goldsmith QC and the Director of Public Prosecutions, both of whom have declared their up-front, personal commitment to promoting equality and non-discrimination, was the fact that the sections of our society that engage with the criminal justice system the most were the very ones that were expressing deep misgivings about its capacity to ensure that they received fair, consistent and non-discriminatory treatment and were not denied justice.

120. Among the many steps, some commendably proactive, the CPS has taken are:

- Commissioning, receiving and building an action plan in response to the Denman Report
- Taking ownership of and acting upon the findings of the Commission for Racial Equality report on their Croydon branch
- Establishing the Attorney General's Race Advisory Group
- Establishing the Equality and Diversity Unit
- Establishing the Senior Managers' Advisory Group on Diversity
- Appointing a team of Regional Equality and Diversity Officers to provide advice and support to CPS Areas
- Establishing the Attorney General's review of the CPS' role in respect of prosecuting cases involving deaths in custody
- The production of an impressive Race Equality Scheme and Action Plan
- The issuing, after wide consultation, of a Public Policy Statement and Guidance on prosecuting cases of racist and religious crime – identified by CRE as a model of good practice
- Putting in place the Direct Communication with Victims policy on communicating CPS decisions to victims where a charge is dropped or significantly altered
- Putting in place the IT driven COMPASS Case Management System
- Supporting the development of the National Black Crown Prosecution Association
- CPS Action Plan response to HMCPSI Thematic on Casework with an Ethnic Minority Dimension
- Developing a national training package on prosecuting racially and religiously aggravated crime, establishing a cadre of national tutors across all CPS Areas, involving people from other criminal justice agencies and from the wider community in developing the training package, delivering training at Area level to meet local needs and inviting CJS partners/community groups or individuals to participate and maintaining updating the tutor network on new developments.

121. We commend the Equality and Diversity Unit and all its staff under the leadership of Dr. Rohan Collier for the lead they have given in respect of many of the above initiatives.

122. The Service is undergoing rapid change as a result of the Glidewell recommendations and a range of other reforms in the criminal justice system, including the Auld recommendations on charging, that have far

reaching implications for the way the CPS operates. In preparation for fully implementing the Auld proposals on charging, the CPS has been piloting the new arrangements. The evaluation of the pilots suggests that with the CPS having sole responsibility for charging, the Service will see marked benefits, e.g. a reduction in levels of discontinuance as a consequence of getting charges right at the beginning of a case.

123. Additionally, more and more new areas of legislation require guidance to ensure the proper implementation of the law, thus enhancing the public visibility and accountability of the CPS (e.g. Prosecuting Racist and Religious Crime). The findings of this study suggest that accountable performance management is necessary in order to ensure that prosecutors make fair and consistent decisions in applying 'The Code for Crown Prosecutors', the new CPS Policy on Prosecuting Racist and Religious Crime and the CPS Race Equality Scheme. We believe that far from undermining the concept of 'independence' in the prosecution function, this performance management focus will ensure that that function is being discharged in accordance with the Vision of the CPS and its 5 strategic priorities as set out in its Race Equality Scheme.
124. During the course of this research and in acknowledgement of the difficulties the researchers were highlighting with respect to the quality of file endorsements, the Critical Friends Group conducted an exercise whereby they consulted with colleagues in CPS Areas on the issue and produced a set of recommendations for consideration by the Service. These comments on our findings and the recommendations that flow from them are offered without prejudice to any output from the work of the Critical Friends Group.
125. We have dealt with management issues with respect to case review at some length. This next section summarises the issues emerging from the overall findings in relation to: Bail, Plea Before Venue (Mode of Trial), Discontinuance, Plea Bargaining, Failed Cases and Cases with a Racial Dimension.

Bail, Plea Before Venue, Discontinuance, Plea Bargaining, Failed Cases and Race Cases Findings

Findings from the Data Suggest

- The CPS is more likely to object to bail for African Caribbean defendants than for other defendants and more likely to object on the basis of a substantial risk of justice being obstructed for African Caribbean defendants than for other defendants.
- African Caribbean defendants are more likely to be tried in the Crown Court than white defendants, while Asian defendants are less likely to do so. Of all ethnic groups, Asian defendants are most likely to present their plea at a Magistrates' Court and be tried in such a Court when the charge is capable of being tried in the Magistrates or Crown Court.
- African Caribbean defendants are more likely than white defendants to have their case discontinued before trial, while Asian defendants are less likely than white defendants to have their case discontinued before trial.
- Discontinuance was more likely where the defendant was African Caribbean, or/and when the case involved criminal damage, robbery, public order, weapons, or a racial offence.
- Cases involving African Caribbean women are most likely to fail, and most likely to be discontinued.
- In all CPS Areas, cases involving African Caribbean and Asian defendants were more likely to fail than those involving white defendants.
- Cases with a racial dimension are more likely to fail than cases taken as a whole.

- The CPS was less likely to view a Magistrates' Court as a suitable trial venue in cases involving African Caribbean and Asian defendants.
- The CPS was more likely to regard a Magistrates' Court as a suitable trial venue in cases involving racially aggravated offences.
- Plea bargaining is less likely where the defendant is African Caribbean.
- Plea bargaining is much more common where the defendant is white, especially in racial dimension and racial aggravation cases.
- RIDS were completed in only 43.5% of racial dimension cases and in 42.9% of racial aggravation cases.
- In some CPS/Police Areas, the police are more likely than the CPS to identify a case as involving racial aggravation.
- At the review stage, the CPS should have identified the racially aggravated element in a number of offences that the police overlooked and adjusted charges accordingly.

Issues emerging from the findings

- Definition of offence and variation of charge:
 - Are the correct charges being brought by the police and the CPS?
 - Are Prosecutors varying charges appropriately at the review stage?
- Deracialising race crimes
 - Evidence of some prosecutors' preparedness to 'deracialise' crimes by accepting a guilty plea to a lesser offence in return for dropping the racially aggravated charge
- Racial or racist language
 - When does it cease to be banter? Who decides that it is banter? Are there gradations of acceptability when such language accompanies the offending act?⁸
 - How long after a physical act must such language be used for it not to be considered to constitute racial aggravation? The 1998 Crime & Disorder Act defines this as 'at the time of the offence or immediately before or after'. How should 'immediate' be interpreted?
 - How is the use of discretion in such cases monitored by the Police and the CPS as a managerial and quality control issue?
- Argument advanced by Prosecutors that reluctance to bring such charges or decisions to accept pleas to lesser offences are often the result of Prosecutors' experience or perception of how certain judges/tribunals treat racially aggravated offences

⁸ Concern has been expressed about the way cases involving racist abuse are prosecuted, and in particular the apparent dismissal of such language as 'mere vulgar abuse' or 'banter'. Early decisions of the court (DPP v PaL [2000]) whilst making clear that in the normal course of events racially abusive insults would usually be sufficient to establish racial hostility, left doubt in some minds about whether such abuse might be attributed to other causes, such as being aggrieved about being refused entry to certain premises. Later cases (DPP v Woods [2001] and I [2002]) have made it quite clear that racially abusive language will normally be sufficient to establish racial aggravation as defined by Section 28 of the Crime and disorder Act and that it is immaterial whether the hostility was founded on any additional basis (in McFarlane the argument initially was about parking). At the time the research was conducted, the cases of Woods and McFarlane, and the clear direction given by them was not available.

- Issue of Prosecutors’ duty to abide by the requirements of the legislation and by the Guidelines that guide their practice in this respect
- Once the post-Glidewell charging recommendations are fully implemented, will prosecutors continue to charge such offences on the basis of the anticipated reaction of certain judges/tribunals?
- Effects on victims who experience being denied justice through the CPS’ failure to prosecute and who fear repeat actions by their assailants. The role of CPS in providing information and reassurance to victims through the Direct Communication with Victims scheme
- Emboldening effects on perpetrators of not having their illegal acts dealt with robustly by the Courts
- Charge attrition in racially aggravated cases is a much more serious issue than in the generality of cases
- The messages sent out to defence lawyers, defendants and to black and minority ethnic victims and communities when prosecutors engage in plea bargaining and remove the racially aggravated element of a charge, especially when they instigate it
- Witness care and the impact of the treatment of witnesses, including victims, on the processing and outcome of such cases, i.e. communicating with witnesses regularly about the progress of the case and dealing with such anxieties as they might have about providing evidence

The above findings, which take account of all the cases reviewed, indicate that there are broad differentials for a variety of possible reasons, in the way African Caribbean and Asian people experience the CPS’ involvement in the prosecution process as compared to white people. Having regard to the remit of this study and the CPS’ concern about possible evidence of ‘bias’ and ‘discrimination’, the key issue is what reasons are actually recorded for the presence of these trends?

Bail

126. With respect to ‘Bail’, the evidence indicates that for all defendants the usual reasons for the CPS objecting to bail are: fear of the defendant committing another offence and/or fear of the defendant not attending Court. In the case of African Caribbean defendants, however, evidence suggests the CPS objects on the grounds of fear that they may ‘obstruct justice’ more than they do in relation to any other ethnic group.
127. File endorsements do not indicate why prosecutors have that anxiety specifically in the case of African Caribbean defendants. There is a tariff of bail conditions that a Court could impose and it is open to the CPS to make representations to the Court to impose conditions in relation to whatever concerns they may have about the potential conduct of a defendant while on bail.
128. File endorsements do not tell us why, across CPS Areas, prosecutors have a concern about the likelihood of African-Caribbean defendants ‘obstructing justice’ while on bail, or why the bail conditions available to the Courts are not considered sufficient to deal with this ‘tendency’ on the part of such defendants. There are no file endorsements to suggest any correlation between the seriousness of the offence and that specific objection to bail in the case of African Caribbean defendants.
129. Here we have a reason for opposing bail being applied in respect of one ethnic group more frequently than for any other ethnic group. Is that based on stereotyping or on hard evidence of past conduct in respect of the particular defendants in the sample on whose behalf bail applications are being made? File endorsements do not provide such detailed information about the reasoning behind prosecutors’ objections in respect of this particular ethnic group.

Plea Before Venue (Mode of Trial)

130. With regard to Plea Before Venue (Mode of Trial) the evidence indicates that the CPS was less likely to view a Magistrates' Court as the suitable trial venue in cases involving African Caribbean and Asian defendants.
131. The CPS was more likely to regard a Magistrates' Court as the suitable trial venue for racial offences.
132. The research sought to establish whether, in relation to similar offences, the CPS' representations as to trial venue were the same for all defendants. Similar cases should lead to similar decisions with respect to the jurisdiction of the Magistrates' Court, for example, and should not be influenced in any way by the ethnicity of the defendants. This finding suggests that there is a discrepancy which needs to be explained. The endorsements in the files do not provide such an explanation.
133. If, in the sample of cases we researched, the CPS was less likely to see the Magistrates' Court as a suitable venue for 'either way' cases involving African Caribbean and Asian defendants and, consequently, made successful representations for those to be committed to the Crown Court, then those defendants could have received much higher sentences if found guilty than those of other ethnic groups who would have been found guilty for similar offences in the Magistrates' Court. This potentially unequal outcome would constitute evidence of racial bias unless it could be demonstrated that the ethnicity factor was entirely incidental.

Trial Venue

134. With regard to trial venue for racial offences, the legislation governing the prosecution of such offences in our sample is the Crime and Disorder Act 1998. That Act, as amended by the Anti-terrorism, Crime and Security Act 2001, falls outside the scope of this study as cases in our sample would have been finalised prior to that amended legislation. Incitement to Racial Hatred (sections 17-29, Public Order Act 1986), though a racial offence, also falls outside the scope of this study. Cases in this category are not dealt with in CPS Areas but are referred to the CPS Casework Directorate for action by a specialist prosecutor. They can only be prosecuted with the consent of the Attorney General. No cases that are dealt with only by Casework Directorate were included in our sample.
135. The Crime and Disorder Act 1998 effectively adds an 'aggravated' element to a number of existing offences. Some of those offences can only be tried in the Magistrates' Court in their basic form, i.e. without the element of racial aggravation. Racially aggravated 'harassment, alarm or distress' offences can be tried in the Magistrates' Court only, in either their basic or aggravated form. The others are 'either way' cases in their aggravated form. As with offences in their basic form, the Crown Court can impose more severe penalties (longer custodial sentences and higher fines) than the Magistrates' Court in respect of racially aggravated offences.
136. Findings in this study indicate, not surprisingly, that more white defendants are charged and convicted for racial offences than African Caribbean and Asian defendants. The fact that in relation to the cases in our sample the CPS was more likely to see the Magistrates' Court as a suitable trial venue for racial offences would indicate that white defendants were potentially being advantaged for the same reasons that African Caribbean and Asian defendants were potentially disadvantaged, as argued above.
137. The Courts can and do impose higher penalties for racially aggravated offences than for the said offences in their basic form, the offences in their aggravated form carrying higher statutory maximum penalties. This, as we have observed, is especially the case in the Crown Court. Some defence lawyers 'plea bargain'

and offer the CPS a plea of guilty to the offence in its basic form in return for dropping the racially aggravated offence. Where a prosecutor may already be harbouring doubts about the known or perceived attitude of a magistrate or a judge to that type of offence, the defence's plea may well be accepted.

138. When these two findings are juxtaposed, then, the CPS would appear to be putting white people committing race crime at an advantage in the prosecution process by deciding on the Magistrates' Court as a venue for hearing charges relating to racial offences, and placing African Caribbean and Asian people committing other offences at a potential disadvantage by seeing the Magistrates' Court as a less suitable venue for hearing charges against them. If convicted in the Crown Court, they are likely to receive higher sentences than in the Magistrates' Court.

The Publication of CPS Prosecution Policy

139. The publication of an updated CPS Prosecution Policy with respect to 'racist and religious crime', introduced in July 2003, is intended to ensure that the CPS prosecutes racist and religious crime in a fair, robust and consistent manner, especially having regard to the increase in such crime and the concerns of vulnerable communities. The Policy and Guidance make clear the CPS' expectations of prosecutors with respect to the proper identification of offences, the charging process, plea acceptance and other aspects of the prosecution process. We have already indicated that that policy was produced after widespread consultation and is an example of best practice in that its comprehensiveness reflects both the extent and the results of the consultation.
140. The Guidance accompanying the policy does not deal specifically with the issue of trial venue, albeit it makes it absolutely clear that prosecutors should 'not minimise or omit relevant and admissible evidence of racial or religious aggravation' at any stage in the prosecution process, including sentencing. In the light of the above discussion, the CPS should consider the advice it might give to prosecutors with respect to Plea Before Venue in cases of race crime, over and above existing guidance on Mode of Trial.
141. It was clearly the wish of Parliament to empower the Courts to deal with race crime as a specific issue of growing concern to the nation and with regard to the safety and well being of minority ethnic communities. The CPS is committed to ensuring that prosecuting advocates make full use of the provisions of the legislation and send a signal to would-be perpetrators of race crime, no less than to minority ethnic people, about the vigour and thoroughness with which it will prosecute racist and religious crime.
142. Both the HMCPSP Thematic Inspection Report on Casework Having a Minority Ethnic Dimension (April 2002) and this study have highlighted weaknesses in relation to CPS handling of racially aggravated offences. We endorse the recommendations of the Chief Inspector in the thematic inspection report in respect of the CPS scrutiny of the prosecution of race crime which are reproduced in the Guidance. The CPS is monitoring through its various structures the actions Chief Crown Prosecutors are taking to apply those recommendations in their Areas. We believe that this process of implementation will be further enhanced by the proposals discussed earlier in respect of management competences.
143. Having regard to what we have stated in these conclusions about building a management culture in the CPS with respect to the review of cases and the management of files, we take the view that the CPS needs to make explicit what it requires of Chief Crown Prosecutors with respect to checks and balances and support for advocates in relation to the recording and prosecution of racist and religious crime. Legal Guidance was available to Crown Prosecutors throughout the period covered by the files examined by HMCPSP during the thematic inspection and by those in our sample. Yet, both the thematic inspection and this research could still point to matters of serious concern with regard to charging and prosecuting in

relation to race crime. Without structural changes to build in management accountability for the way racist and religious crime is prosecuted and recorded across the Service, there is no reason to believe that, excellent though it is, the Guidance will be followed such that there are consistent and common standards of prosecution and recording of these offences.

144. The new Policy and Guidance on Prosecuting Racist and Religious Crime deal understandably, with the role and practice of prosecuting advocates in relation to the process of prosecution, including interface with witnesses. But, as the Policy itself notes, 'the CPS is one part of the criminal justice system'. Having regard to prosecutors' concerns about their experience at the hands of certain District and Crown Court Judges when they have tried to prosecute cases in the manner intended by Parliament and detailed in guidance from the CPS itself, one would wish to see other parts of the criminal justice system having due regard to that Guidance and the standards of prosecuting the CPS expects of its prosecutors.
145. Prosecutors across the 42 CPS Areas have experiences of taking race crime cases through the Courts and finding that certain judges adopt an attitude of intolerance in relation to certain charges properly brought by the CPS in the first instance, irrespective of the quality of the evidence to support those charges. We have indicated above how that experience could influence the way a prosecutor reviews cases involving racially aggravated offences. In view of the range of partnerships being established to promote joint working between different parts of the criminal justice system, one would hope that the appropriate bodies will have regard to the real difficulties prosecuting advocates are on record as expressing with respect to the way some have experienced the judiciary in the prosecution of race crime.
146. The CPS has a stated commitment to improving the quality of its prosecutions. Moreover, its performance with respect to prosecuting racially aggravated offences falls squarely within the ambit of public scrutiny of its assessment of the implementation of its Race Equality Scheme. As such, we believe that the CPS should designate persons responsible for monitoring and advising upon the prosecution of racist and religious crime (including how to deal with Judges in situations such as described), prosecutors' completion of the Racist Incident Data Sheet (RIDS) and the tracking of cases as part of the Racist Incident Monitoring Scheme (RIMS). As we have observed, crimes of 'incitement to racial hatred' are dealt with by a specialist prosecutor in Casework Directorate. Similarly, until such time that a critical mass of prosecuting advocates with experience of dealing with the vagaries of prosecuting racist and religious crime is available within the Service, a 'specialist prosecutor' in each CPS Area should have responsibility for overseeing the prosecution of such crimes. She or he would own responsibility for tracking all such cases at every stage of the prosecution process and for monitoring and reporting on performance in their Area.
147. Such a specialist prosecutor will be supported in their work by the training course on racially and religiously aggravated crime and the establishment of a national network of tutors on racially and religiously aggravated crime to deliver that training across all CPS Areas. The training involves local partners in the criminal justice system (e.g. Crime and Disorder Reduction Partnerships) and is planned so as to encourage participation by people from communities in those partnership areas.

Discontinuance

148. With regard to discontinuance, the analysis of the data has revealed that:

- African Caribbean defendants are more likely than white defendants to have their case discontinued, while Asian defendants are less likely than white defendants to have their case discontinued.
- Discontinuance was more likely as a consequence of a file review where the defendant was African Caribbean.
- Cases involving African Caribbean women are most likely to be discontinued.

149. A decision to discontinue a case prior to trial is the result of a file review. It comes about either as a result of an initial review, or in the light of subsequent information that alters the initial decision. If, having regard to the available evidence, it is determined that there is no realistic prospect of a conviction, or that in the presence of such evidence it is not in the public interest to bring the case, then a decision to discontinue is taken.
150. These overall findings in relation to discontinuance would suggest that, in the case of African Caribbean men and women, charges are being inappropriately brought by the police, without sufficient evidence or the prospect of obtaining that evidence.
151. This would suggest that prosecutors are identifying and eliminating a larger number of cases brought by the police against African Caribbean people as compared to similar cases brought against those of other ethnic groups, including white people. Whilst this represents good practice as far as the CPS review of cases is concerned, it raises questions about what appears on the face of it to be a tendency on the part of the police to bring charges against African Caribbean people on the basis of flimsier evidence than they would in the case of whites or members of other ethnic groups.

Failed Cases

152. With regard to failed cases, the data analysis shows that in all CPS Areas, cases involving African Caribbean and Asian defendants are more likely to fail than those involving white defendants, as were those involving 10-17 year olds.
153. Given what the research reveals in relation to discontinuance, it means that even after CPS has eliminated those cases that had no prospect of a conviction, 'in all CPS areas' still more cases involving African Caribbean and Asian defendants were failing than those involving white defendants.
154. Having regard to what the 'discontinuance' findings suggest as far as CPS file review performance is concerned, these findings on failed cases would appear to indicate:
- either, that the discontinued cases were so obviously unsustainable that a decision not to proceed was readily taken in each case;
 - or, that prosecutors were exercising their discretion to proceed with prosecutions of African Caribbean and Asian defendants with less care and thought, thus risking failure, than with prosecutions of white defendants.
155. Whilst the statistical analysis does not point to bias, this nevertheless raises questions with respect to assumptions based on ethnicity and race that prosecutors bring to the process of reviewing cases. It also further underscores the effects of the tendency of the police to bring charges against African Caribbean and Asian defendants without adequate evidence.

Plea Bargaining/Plea Acceptance

156. Plea Bargaining has been a source of concern to minority ethnic communities throughout the last four decades. There was a time when not only the Courts but prosecuting and even defence advocates genuinely believed that the narratives of minority ethnic people about their experiences at the hands of the police ran contrary to the consensual view and their own experience of what the British Police were like. Protestations of innocence, of wrongful imprisonment and of police malpractices and abuse of power too often fell on the deaf ears even of those who undertook to defend them in the Courts. As a consequence, defence lawyers would actively encourage and even bully minority ethnic defendants into pleading guilty to offences which they had not committed and would offer those guilty pleas to prosecutors, sometimes in

exchange for lighter sentences and often for nothing more than the convenience of having the matter disposed of quickly. This practice is believed to have resulted in the unnecessary and unjust criminalisation of untold numbers of minority ethnic people in every generation since 1960.

157. Indeed, the growth of defence committees and legal campaigns around criminal charges in communities up and down the country, beginning with the Mangrove 9 trial in 1969 through to the post-riot trials in London, Manchester, Liverpool and elsewhere in the 1980s, coincided with the realisation within minority ethnic communities that they could take control of their own cases and work only with those lawyers who were disposed and willing to act according to their instructions and in full consultation with them.
158. Plea bargaining therefore has come to have mainly negative connotations for minority ethnic people, many of whom regard it as a process by which lawyers get together and agree on a settlement of a particular charge, not necessarily to their advantage. In relation to race cases such as those set aside by researchers for the attention of our legal team and Professor Gus John, as discussed above, plea bargaining could be perceived as a process by which race crimes are deracialised to the advantage of white defendants indulging in what CPS has itself generically described as 'hate crime'.
159. It is in acknowledgement of that historical concern within minority ethnic communities that the Tender Specification for this research specifically identified 'Plea and Plea Bargaining' as one of the seven stages in the prosecution process that the study should address with respect to evidence of bias or discrimination.
160. In the context of racist and religious crime where for the most part minority ethnic people are the victims, plea bargaining whether initiated by the defence or the CPS takes on a particular significance. We have already discussed the cases in our sample in relation to which both the CPS and ourselves share various concerns. We therefore welcome the policy declaration in the CPS Guidance on Prosecuting Cases of Racist and Religious Crime:

'It is CPS policy not to accept pleas to lesser offences, or omit or minimise admissible evidence of racial or religious aggravation for the sake of expediency'.⁹

161. That section of the Guidance deals with 'Accepting pleas'. The Guidance does not appear to acknowledge the possibility that prosecuting advocates could initiate the process of plea bargaining, as we found in our study. As such, while it could be inferred from the Guidance on plea acceptance that CPS invitations to the defence to 'offer' pleas would run contrary to the CPS' commitment as quoted above, this needs to be stated explicitly to prosecutors and reinforced through monitoring by Chief Crown Prosecutors or the 'Specialist Prosecutor' as recommended.
162. The Guidance provides advice to prosecutors (in accordance with CPS' Direct Communication with Victims [DCV] policy) about explaining to victims or/and witnesses the circumstances in which CPS considers it appropriate to alter or drop a charge. Again, no specific mention is made here of the decision to accept a plea, especially where that is as a result of the falling away of evidence to prove racial or religious aggravation. Bearing in mind that many victims of or witnesses to racist and religious crimes are more interested in redress for the racial or religious aggravation than in CPS action against the perpetrator for the basic offence (e.g. racially aggravated intentional harassment, alarm or distress as distinct from that offence without the racial aggravation), a full explanation of a decision by CPS to accept a plea of guilty only to the basic form of that offence becomes crucial. For that reason, victims of racist and religious crimes must be encouraged to use the opportunity available to write or make Victim Personal Statements such that they could be used by prosecutors in their communication with them in accordance with the DCV policy.
163. We take the view that plea bargaining/plea acceptance is such a critical issue as to warrant full use of the DCV policy and a specific focus on this aspect of support for victims and witnesses in the training mentioned in (141) above.

⁹ CPS Guidance in Prosecuting Cases of Racist and Religious Crime (July 2003), Page 11

Lessons from the findings

164. This research has examined files in relation to cases finalised between September 2000 and August 2001. The statistical analysis of the data does not permit us to say categorically that there is or is not bias and discrimination occurring in the prosecution process. The differentials the analysis has thrown up, however, raise some key questions that are not answered by prosecutors' file endorsements. They nevertheless confirm the findings of earlier research, e.g. the study conducted by Dr Bonnie Mhlanga.¹⁰
165. The results of the statistical analysis suggest that African Caribbean and Asian defendants are brought to trial on a less sound basis than white defendants, but that the Court process corrects this to a certain extent. This should not be interpreted to mean that the CPS and the Courts are more lenient in their treatment of black and Asian people, as some commentators suggested in respect of Dr Mhlanga's findings. The evidence in our study points in the direction of a tendency on the part of the police to bring charges against African Caribbean and Asian people, men and women, on the basis of poorer evidence than in the case of whites.
166. Some might argue that the differentials discussed in this report have also been known to exist for some considerable time. That raises the question as to why, in spite of all the reforms of structures and practices, the introduction of new criminal justice legislation and training in race awareness across entire Services in the light of the Stephen Lawrence Inquiry Report, those trends persist at the interface between minority ethnic people and the criminal justice system.
167. We have acknowledged (in paragraphs 119-124 above) the rapid change the CPS is undergoing and in many instances leading. One would hope that the combination of Guidelines, a performance management culture, the introduction of the new charging system and the new Case Management System, as well as the implementation of its Race Equality Scheme would assist the CPS in answering many of the questions raised by these trends in our findings.
168. The Crown Prosecution Service now employs a higher number of BME staff, especially in London, than it did at the start of this project. Some of those staff are in managerial positions and could influence policy and decision making. In their roles both as prosecutors and managers, minority ethnic staff have experiences from which the rest of the service could and should learn. Those staff now have the opportunity to channel their views directly through the various structures that exist in the CPS or through the National Black Crown Prosecutors Association (NBCPA).
169. The NBCPA should be facilitated to develop a much more formal and structured relationship with CPS and its various policy making and management processes. We take the view that if the Association is resourced such that it could provide opportunities for supporting minority ethnic colleagues and enabling them to speak with a common voice about the professional issues that affect them, there should be a more structured way of linking the Association with the strategic management of the CPS. At the very least, we believe that they should be part of any arrangements the CPS makes for taking forward the recommendations in this report and for assessing the impact of its Race Equality Scheme across the Service as a whole.
170. The CPS cannot be sure that whatever was going on in 2000/2001 to yield the above results from a study of CPS files is not being repeated in the day to day practice of prosecutors. Whatever changes in working practices or in levels of accountability might result from that impressive raft of initiatives it has taken in the last 3 years, it is important that the CPS take steps now to attend to the possible explanations for the differentials this research has highlighted and to implement the recommendations that follow.

¹⁰ Mhlanga, B. (1999) *Race and Crown Prosecution Decisions*, London, The Stationery Office

RECOMMENDATIONS

The Review Process

Recommendation 1

CPS should establish a 'Common Standard' for the management of case files across the service and a 'Competency Framework' for prosecuting advocates and for Chief Crown Prosecutors to govern:

- Case review
- File endorsement
- Use of Racist Incident Data Sheets (RIDS)
- Engagement with the Racist Incident Monitoring Scheme

Recommendation 2

As part of defining competences with respect to the review process, CPS should revisit guidance on file endorsement, anticipating the full introduction of COMPASS and the monitoring and benchmarking requirements of the Race Equality Scheme

Recommendation 3

CPS should take proactive steps to grow and nurture a management culture within the organisation with clear lines of management accountability being established and with procedures for monitoring the performance of prosecuting advocates and sharing best practice

Recommendation 4

Prosecutors should be provided with adequate levels of professional and administrative support to facilitate their competent management of the file review process

Recommendation 5

In the context of the 'Charging Pilots' and CPS imminently assuming sole responsibility for charging, monitoring measures should be put in place to monitor by ethnicity, gender and age the progress of cases from initial charge to finalisation

Recommendation 6

In the light of the findings of this study, monitoring should focus upon prosecutors' representations with respect to mode of trial, discontinuance, failed cases, acquittals and sentence

Prosecuting Cases of Racist and Religious Crime

Recommendation 7

'Specialist Prosecutor(s)' should be appointed/designated in each CPS Area with the responsibility for overseeing the prosecution of cases of racist and religious crime, including:

- supervising the identification of appropriate charges
- monitoring file endorsement
- monitoring prosecutors' endorsement of RIDS

- making decisions about altering or dropping charges
- making decisions about accepting pleas
- monitoring prosecutors' operation of the Direct Communication with Victims (DCV) policy
- Area/Branch application and management of the Racist Incident Monitoring Scheme
- providing support and supervision to prosecutors, particularly in respect of dealing with whatever problems might be encountered with respect to judicial attitudes to their prosecuting particular cases of racist and religious crime
- ensuring that prosecuting advocates from outwith the CPS operate in accordance with CPS Guidance and operational culture

Recommendation 8

CPS through the good offices of the Attorney General should take the lead in establishing a holistic approach, across the Criminal Justice System to the issues highlighted by this research, not least in respect of the handling of race crimes by the police, the CPS and the Courts

While most partners in the criminal justice system have been receiving training in respect of race and criminal justice, including judges and magistrates, the evidence emerging from this research would suggest that all operators in the CJS need to have their awareness raised with respect to race charge attrition, its effects on people's perceptions of the seriousness with which the CJS treats the issue of racist and religious crime and to take joint action to prevent such attrition

Recommendation 9

Attention should be paid to the experience of minority ethnic Crown Prosecutors in relation to applying the legislation and the Guidance, and the insights they could bring to CPS with respect to developing public confidence and delivering more effective prosecutions

Recommendation 10

The National Black Crown Prosecutors Association should be invited to work with CPS in monitoring the implementation of these recommendations across the Service, in assessing the implications of the recommendations for the CPS' Race Equality Scheme and the impact of the Scheme on the internal culture and the performance of the CPS

