

Chapter 2.1

Race and justice

Key points

- The experience of racism in one sector of society has an impact on perceptions about the administration of justice as a whole.
- For most people, the administration of justice is about going to court, lawyers and judges. Whether it is a criminal or a civil court or a tribunal will matter little from the point of view of racism or expectations of unfair treatment.
- If someone or someone known to an individual has suffered racism at school, from the police, from the health or social services or at work, then what happens in the courtroom will most probably be viewed with mistrust.
- From the point of view of experiencing racism, it does not matter if you are the defendant, plaintiff, witness, victim, respondent, juror, lawyer or judicial office holder.
- In this chapter, Black and minority ethnic communities in the UK also include the Roma and travellers, and the refugee and asylum seeker populations

The aims of this chapter are:

- to provide judges with information and background knowledge about recent achievements and new research;
- to highlight the areas where more still needs to be done;
- to suggest ways in which the judiciary can contribute to the elimination of racism.

This chapter is intended to assist judges in criminal and civil courts and tribunals. The main focus is on race issues: that is the impact of the administration of justice on the UK's diverse population, including Black and minority ethnic communities, gypsies and travellers (now within the remit of the Race Relations Act 1976) and the refugee and asylum seeker populations. (See Chapter 1.5 for background statistics, largely based on the 2001 census.)

2.1.1 The reality of racism

Racism is an attack on the very notion of universal human rights. It systematically denies certain people their full human rights just because of their colour, race, ethnicity, descent (including caste) or national origin. It is an assault on a fundamental principle underlying the Universal Declaration of Human Rights – that human rights are everyone's birthright and apply to all without distinction.¹

Since the last edition of this text on race in 1999 (the same year in which the Inquiry Report into the death of Stephen Lawrence was published) a great deal has been achieved to ensure that the administration of justice in England and Wales is free of racism and discrimination. It is important, however, to guard against complacency.

2.1.2 The wider framework

Throughout Britain there is a perception in Asian, Black and Irish communities that the criminal justice system is not just ... [and that there is a] resistance to recognising and dealing with racism within the wider system, not just in the police. This comprises failure to investigate complaints; structures dominated by White people from a small social pool; a lack of interest in widening the recruitment base; and a reluctance in becoming more accountable. Not least, distrust of the system is founded in the growing body of data which shows that Black and Irish people are differentially treated at all stages of the criminal justice process and they are disproportionately likely to be imprisoned.²

A poor perception of even one aspect of the justice system – whether it is a bad experience of the police, a family court or as a victim of crime – will have an impact on confidence in the overall system.

- A victim of crime who feels poorly treated by the courts is less likely to come forward as a witness in future cases or to trust the judge in their family case.
- A young Black person who is repeatedly stopped and searched by the police will not only mistrust them, but all people concerned with the administration of justice, as will their family and friends.
- Those who have been unfairly treated by any public authorities, or who have had confrontational experiences with them, will be less likely to believe that there is any point in relaying their side of the story.

An appearance before a court cannot be isolated from other social experiences, and the division between civil and criminal procedures does not exist in the minds of those who appear before the courts and have suffered from racism.

There is a striking and inescapable need to demonstrate fairness, not just by police services, but across the criminal justice system as a whole, in order to generate trust and confidence within minority ethnic communities, who undoubtedly perceive themselves to be discriminated against by 'the system'. Just as justice needs to be 'seen to be done' so fairness must be 'seen to be demonstrated' in order to generate trust.³

Since the enquiry into Stephen Lawrence's death, various measures have been taken to increase trust and confidence in the criminal justice system, such as the cross-cutting Criminal Justice System Race Unit to 'identify any unequal treatment in the CJS'.⁴

According to the *2000 British Crime Survey*:⁵

- people from minority ethnic groups were prepared to seek help from the police but were consistently less satisfied with the response they received than White defendants;
- when stopped by the police, Black people were more dissatisfied with the treatment they received.

Experience of the police as a suspect is a good predictor of lack of confidence in the work done by the police.⁶

People from minority ethnic communities are less confident that the criminal justice system respects the rights of, or treats fairly, people accused of committing a crime⁷ – although the concern appears to be directed more at the police than courts. Only 52% of Black people felt these rights were respected compared to 70% of White and 66% of Asian people.

However, according to the same survey, Black and Asian people are more confident than White people that the system is effective in bringing people to justice and meeting the needs of victims of crime (25% of White, 37% of Black and 42% of Asian respondents said the system meets victims' needs).

Only 50% of Black respondents who had been stopped by the police said the police were doing a good job, compared to 76% of Black people who had not been stopped by the police – clearly demonstrating that satisfaction with the police was low on the basis of contact with them, and this has a significant impact on the perceptions of the justice system as a whole. The *2000 British Crime Survey* also showed that both White and minority ethnic victims of crime had a low opinion of criminal justice agencies: 26% of White and 27% of minority ethnic victims of crime rated judges as poor; 18% of White victims and 25% of minority ethnic victims rated magistrates as poor.

The Home Office's *Citizenship Survey*⁸ showed that people from minority ethnic groups were more likely than White respondents to say they would be treated worse than people of other races when engaging with public authorities, the police, the CPS and the courts.

Among minority ethnic groups, those who had had contact with a range of public sector organisations (especially the police, the courts, CPS, Prison Service and Probation Service) were more likely to feel they would be discriminated against than those who had not had any contact.

Citizenship Survey of People, Families and Communities 2003

People from minority groups were more likely to say they would be treated worse than others as an employee of the police, prison service, courts and armed forces.

There is clearly a need to restore confidence in the administration of justice among all communities, including the White majority population. However as the impact of justice is on people from minority communities, this can affect contacts between the courts and court users.

The regular collection of data detailing ethnicity, as envisaged by the provisions of section 95 of the Criminal Justice Act 1991 in conjunction with the Race Relations (Amendment) Act 2000, in the courts is of vital importance in enabling a clearer understanding of the progress in promoting good relations between the communities.

The development of ethnic monitoring in the criminal system has seen a move from a reactive approach to provide data to counteract the publication of misleading information, to a coordinated approach to ethnic monitoring of the main decision points. However such developments have been on monitoring and resources have not been put into understanding the statistics. The more comprehensive data which is becoming available on the criminal justice system will help in this process but it also needs to include more detailed statistical and qualitative analysis to make this possible.⁹

The *Citizenship Survey* also showed a decline in confidence in good race relations, which the research demonstrated could be linked to the heightened reporting about immigration and the civil disturbances in the northern towns in 2001.

- Forty-three per cent of respondents felt that there was more racial prejudice in Britain today than five years ago.
- At least a third of ethnic groups consider there to be more prejudice now than five years ago.
- White respondents were more likely to predict that there would be more racial prejudice in five years' time: 44% said this compared to 32% of Asians, 27% of Black people, 26% of people of mixed race and 19% of Chinese people.

Profiles of Prejudice¹⁰

In 2001, a MORI survey found that:

- 64% of respondents said they were prejudiced against at least one minority group;
- 35% said they felt prejudiced towards travellers or gypsies (Roma);
- 34% said they felt prejudiced towards asylum seekers or refugees;
- 18% said they felt prejudiced towards minority ethnic people;
- 17% said they felt prejudiced towards gay or lesbian people.

However, personal contact with minority groups decreased the likelihood of prejudice, and lack of contact increased it. London has the highest minority population and the lowest levels of negative feelings towards those minority communities, including the refugee and asylum seeker populations.

These findings underline two key messages.

1. Promoting good race relations and maintaining and restoring confidence in justice is a continuous process. Despite all the efforts made since the *Stephen Lawrence Inquiry* report, confidence remains at a low level among some groups.
2. Courts and the judiciary are part of the communities they serve and as judges we need to take account of, and promote, efforts to strengthen community cohesion. Courts cannot be immune from this wider pessimism about community relations – it is all the more important that the administration of justice is fair and seen to be fair to all concerned.

As a result of the civil disturbances in 2001, the government established an Inter-Departmental Ministerial Group, which published a report, *Building Cohesive Communities*, in December that year. It developed a working definition of community cohesion:

- there is a common vision and a sense of belonging for all communities;
- the diversity of people's different backgrounds and circumstances are appreciated and positively valued;
- those from different backgrounds have similar life opportunities; and
- strong and positive relationships are being developed between people from different backgrounds, in the workplace, in schools and within neighbourhoods.¹¹

Consultation

Another key development since the last edition of this material is the new stress on consultation and engagement on the part of all public authorities. The Race Relations (Amendment) Act 2000 requires public authorities to consult their local communities,

and consultation has also developed as part of local crime prevention strategies through Crime and Disorder Prevention Partnerships. Criminal justice agencies have made attempts to reach groups of people whose voices are less often heard, for example, minority communities, travellers and young people.

In recent years, public authorities have developed a range of ways in which to consult local communities and users. This can include user surveys¹², user groups, independent advisory groups, focus groups, citizen panels, open meetings, telephone interviews and consultation through websites.

It is important that judges too are informed of and can contribute towards consultation mechanisms and ways in which to involve court users in more systematic two-way discussions about court services (although clearly not about individual cases or the judicial process itself).

The criminal justice system has come a long way, but there is still far to go. It is important that we as judges are aware, not only of what occurs in our own courts but of these wider developments which all have an impact across the administration of justice.

2.1.3 Summary

The judicial office holder's role is crucial in tackling racial discrimination and promoting good race relations in all aspects of the administration of justice. The Race Relations (Amendment) Act 2000 now puts a statutory obligation on public authorities to do so. It is therefore essential that all judicial office holders keep in mind the following:

- The impact that our own actions may have on perceptions of and confidence in other parts of the justice system.
- Knowledge and information about what happens outside court can help us to ensure that what happens inside is fair and seen to be fair.
- We should be aware of new developments in equality legislation when managing our courts, both in terms of applying the law itself but also ensuring that equality legislation is not breached by any aspect of court operations.
- There has been a decline in confidence in good race relations more generally which in turn can affect perceptions at court. Courts cannot be immune from this wider pessimism about community relations – it is all the more important that the administration of justice is perceived as fair to all concerned.

- The impact of justice is often greater on people from minority communities, as is the wider impact of discrimination, and this can lead to dissatisfaction with other parts of the justice system which may influence the perceptions and possible behaviour of people from minority communities when they come to court.
- The wider responsibilities of case management now involve a concerted effort to ensure that all processes are *seen to be taking account* of the varying dimensions of diversity.
- It is important that we are informed of and can contribute towards consultation mechanisms about court services.
- The possibilities of participation in crime prevention and other local partnerships, attendance at court open days, contacts with community groups, and school and college visits, where appropriate, are all ways in which we can encourage consultation, dialogue and community cohesion.

Chapter 2.2

The impact of justice on different groups

Key points

- Successive British Crime Surveys¹³ have shown that minority ethnic groups are more likely to be victims of crime for both household and personal offences.
- Indians, Pakistanis and Bangladeshis were overall at greater risk than Black or White people.
- Minority groups were significantly more at risk than White people from burglary and vehicle crime.
- Risks of personal crime were highest for Black people.

2.2.1 Victims of crime

As shown in the previous chapter, the *2000 British Crime Survey* has also consistently shown lower levels of satisfaction with the police responses to their crime from Black and Asian respondents. For personal crime, for example, 22% of White respondents were very dissatisfied, compared to 33% of Asian and 30% of Black respondents.

The problem of over-representation of minority groups among victims of crime is not explained away, of course, by accounting for it in terms of other demographic differences. The fact that some minority groups are economically disadvantaged means they not only have to cope with the direct effects of poverty but they also lack the financial means to protect themselves against crime. In other words, they are doubly disadvantaged.¹⁴

Racist incidents

Since the murder of Kelso Cochrane in 1959 there have been more than 90 murders where racism is known, or widely believed, to have focused violence on Black or Asian people ... The murder of Stephen Lawrence symbolises not only the scores of Black and Asian people who have been murdered by racists in Britain, but also the thousands of others who, day-in, day-out, are intimidated, abused, and assaulted just because of the colour of their skin.¹⁵

The *2000 British Crime Survey* estimated that there were 280,000 racially motivated incidents in 1999, a decrease from the estimated 390,000 in 1995, which matches the decrease in crime more generally. The risk of being a victim of a racially motivated crime was estimated as:

- 4.2% for Bangladeshis and Pakistanis,
- 0.3% for White respondents,
- 3.6% for Indians,
- 2.2% for Black respondents.

Emotional reactions to racially motivated incidents were more severe than for other types of crime: 42% of all respondents said they were affected compared to 19% for other sorts of incidents. Fifty-five per cent of Black victims said they were very much affected. About a half of victims reported being fearful, compared to a fifth of victims of other types of crime.

Reporting rates for minority ethnic victims for these crimes have increased from 28% in 1995 to 40% in 1999. Reporting rates for White victims for these crimes have increased from 54% in 1995 to 61% in 1999.

A new definition of racist incident was adopted across criminal justice agencies after the Stephen Lawrence Inquiry report: **A racist incident is any incident which is perceived to be racist by the victim or any other person.** Racist incidents reported to the police have risen.¹⁶ In 2001/02, there were 30,113 racially aggravated offences recorded by the police, an increase of 20% on 2000/01.¹⁷ Of these, 50% concerned harassment, 11% other wounding, 17% common assault and 21% criminal damage.

In the same year:

- 8,892 people were cautioned or prosecuted for racially aggravated offences, twice the number for the previous year;
- 30% were convicted at magistrates' courts;
- 1,749 people were committed to Crown Court for trial.

Homicide

Of the 2,297 homicides recorded by police over the three years from 1999 to 2002, the number of Black victims tripled, and figures were 24% times higher for Asian victims and 5% higher for White victims.

Crown Prosecution Service (CPS)

A recent report of HM Crown Prosecution Service Inspectorate¹⁸ made a number of key findings on racist incidents.

- There was concern about interpretation of key legislation in the system overall; prosecutors needed further guidance.
- The quality of witness care needed to improve to encourage victims to report and pursue their complaints.
- Cases relating to incitement to racial hatred were not being pursued at the correct level because of the introduction of new racially aggravated offences and failure of the police and CPS to refer cases appropriately.

A serious concern was as follows:

Inspectors examined a significant number of cases in which they considered that the charge had been reduced inappropriately - 41 of 146 (28.1%) cases in which the charge was reduced in the racist incident file sample. Inappropriate acceptance of pleas from defendants also appears to be significantly more common. Inspectors considered that had occurred in 18.7% of racist incident cases in which pleas were accepted, compared to 8.6% generally and 5.7% in similar cases.¹⁹

Another area of concern was the interpretation of hostility based upon race where, 'some judges have ruled that "mere vulgar abuse" does not constitute racial hostility'.²⁰ In this area there was a lack of concern and more guidance was required.

In 2002 a further piece of research²¹ looked at the implementation of the new racially aggravated offences in the Crime and Disorder Act 1998 between March and September 2000. Among key findings were:

- There is a 'considerable' procedural problem at magistrates' courts where if racial aggravation is not proved, the whole case is lost even if there is evidence to prove the basic offences.
- There were also complications at the Crown Court for offences which in basic form were summary only.
- 'To avoid some of these consequences, the prosecution often presents an additional alternative charge ... this practice, however, facilitates defence offers of pleas to the basic offences in lieu of a trial for the aggravated form.'²²
- Some prosecutors and magistrates saw police lack of knowledge of the law as one factor behind the failure of racially aggravated offences charges.
- Harassment of minority-owned food outlets was common but under-reported, as was neighbour harassment.

- 'Recorded racist incidents have trebled in two years but this is considered to be the product of greater willingness and opportunity to report, and greater police awareness. Under-reporting is still perceived as extensive, and many people are said neither to trust the police nor to believe that reporting will solve anything.'²³

At court:

- Racially aggravated offences appear rarely.
- These charges are frequently contested (partly because of the shame of the racist label as well as the heavier penalty).
- They were twice as likely to be committed to Crown Court than similar, triable either way cases.
- Judges and magistrates were concerned about the marginal nature of the racist element, the inability to take racist evidence into account when prosecuted in the basic form, and the reduction of charges to basic form just before a trial.
- Magistrates' courts did sentence more severely for racially aggravated offences (as intended).
- Crown Court sentencing showed no significant average increase (although in the first year of operation there were not many cases).

Among the report's recommendations were:

- Magistrates' courts should be allowed to reach alternative verdicts to racially aggravated charges.
- Sentencers should be properly informed of the implications of the legislation (including section 153 Powers of Criminal Courts (Sentencing) Act 2000).
- Police officers should have more extensive training.
- Prosecutors should not accept last-minute offers of pleas to basic offences on grounds of expediency.
- Research was needed to pinpoint the causes of attrition and gain a more complete picture of sentencing, particularly at Crown Court.

In July 2003, the CPS published a new policy on Racist and Religious Crime after consulting 120 minority groups, faith communities and criminal justice partners in which it gave a commitment to prosecute racist and religious crime firmly and robustly, including not accepting pleas to less serious offences when evidence of racial hostility was present.

Summary

- We should be aware that minority communities are more at risk of crime in general as victims and that the impact of racist crime affects all victims more severely.
- It is valuable to make inquiries about measures that local victim support groups can take, and the national and local patterns of racist crime.
- Racially aggravated offences ought to be utilised as fully as possible (some elements may have been missed by the police/CPS) to promote confidence and encourage the reporting of racist crime.

2.2.2 Suspects and offenders

The statistics we are publishing today show that people from Black and minority ethnic groups are more likely than the rest of the population to believe that the criminal justice system (CJS) as a whole is doing a good job but continue disproportionately to run foul of the CJA. A modern, fair and effective criminal justice system is not possible whilst significant sections of the population perceive it as discriminatory and lack confidence in it delivering justice ... the statistics fail to answer the question whether the differences seen in arrest rates, cautioning and sentencing reflect underlying differences in types of offences, or whether they reflect discrimination by the system ... We need to get behind the numbers to understand the process through which discrimination may be occurring ... we need to ensure that the CJS bases its decisions and actions on effective law enforcement. In doing this it must not be influenced by prejudice or political correctness.

Race and the Criminal Justice System 2002, Home Office

These words announced the introduction of the new cross-departmental Race and Criminal Justice Unit in the Home Office. They also highlight the continuing debate about the causes for the over-representation of Black and minority people as suspects and offenders. Whilst patterns of offending in different areas or at different times may show differences between Black and White offenders – for example, that White people are more likely to be imprisoned for burglary and Black people for robbery – there is no research to show that any particular ethnic group is more likely to commit crime.

In the space available here, some key statistics are set out, followed by brief reference to the most important recent research.

Since the wider introduction of ethnic monitoring of criminal justice, statistics have shown consistent patterns of outcomes, as summed up in the Home Office publication *Race and the Criminal Justice System 2002*:

- People from minority ethnic groups are more likely to be stopped and searched by the police.
- In 2001/02, Black people were eight times more likely to be stopped and searched than White people, an increase over the previous year. In the Metropolitan Police Service, searches of White people fell by 8% but rose by 30% for Black people and 40% for Asians. In the country as a whole, searches of White people dropped by 2% but rose by 6% for Black people and 16% for Asians.
- Minority ethnic people are more likely to be arrested: Black people were five times more likely to be arrested than any other group.
- Black people are less likely to be cautioned than either Asian or White people.
- People from minority communities were more likely to be remanded in custody.
- Minority ethnic people are more likely to plead not guilty and more likely to be acquitted.
- Black people were less likely to be fined or discharged and more likely to receive a community sentence.
- Black defendants dealt with by the Youth Justice Board were more likely to be remanded in custody than White or Asian young people; in most areas they were more likely to be given Detention and Training Orders than White young people and less likely to be discharged or fined.

'Partly as a result of the above, ethnic minority groups represent a disproportionate percentage of the prison population.'²⁴

The policing and prosecution of offenders

Increased knowledge and awareness by those actually delivering the service at street level is clear from the widespread knowledge of the definition of a racist incident and the improvement of service provision to the lesbian, gay, bisexual and transgender communities ... More needs to be done. More will always need to be done. In addition to driving change forward and consolidating progress police leaders must ensure that whatever the barriers ... there is no regression.

Winning the Race: Embracing Diversity HMIC 2000

However, a 2002 survey, *Policing for London 2002*²⁵ found that confidence in policing was low amongst the minority ethnic communities:

- The legacy of discrimination and over-policing continues to overshadow the service's relations with Black people, and the danger persists of replicating similar problems with other groups.²⁶
- 'The police cannot ultimately be effective in tackling crime unless they re-engage with the public.'²⁷

A further report,²⁸ found that:

- Black people were more likely than any other ethnic group to be stopped by the police while in a car (though not, as before, on foot).
- Being Pakistani or Bangladeshi was also a predictor of this kind of stop.
- Thirty-nine per cent of Black males under 30 had been stopped in a car compared to 25% of young White men.
- Black respondents were more likely to be stopped more than once.
- Black respondents were the least satisfied with the way in which the stops were handled.

Complaints against the police

Whilst complaints are not always proven, they are indicators of dissatisfaction. In 2001/02, 9% of complaints made against the police were from Black people, 6% from Asians and 2% from other minority ethnic groups.

Deaths in custody

From April 2002 to March 2003 there were 104 deaths in police custody.²⁹ Of these, 22 were from minority ethnic groups compared to seven in the previous year. In 2002, a report³⁰ analysed the process for investigating and providing redress after deaths in custody. The main focus was on the police but it also examined deaths in prison and in mental hospitals. It made detailed recommendations as to how the system can be improved. In 2003, the Court of Appeal ruled that there should be an inquiry into the death of Zahid Mubarek in Feltham Young Offenders Institution. A day before he was due to be released, the young South Asian man was murdered by his cell mate who had a history of violence and overt racist views. In November 2003, the Home Office announced that it has asked the Police Complaints Authority as a matter of urgency to investigate the rise in number of minority ethnic people dying in police custody.

Prosecution

In the 1999 report³¹ by the CPS, the decision-making process in cases of 5,500 young people from 22 CPS branches was reviewed. It found 'significant differences in outcomes for the two largest ethnic minority groups relative to comparable cases involving white defendants'. Consistent with earlier research, high acquittal rates were found for Black and Asian defendants for some offences, putting into question the CPS's gate-keeping role.

Whilst most of the 2001 CPS Denman Report³² was concerned with how the CPS acted as an employer, the following observation was made:

There is unwarranted complacency within the Service over the possibility of race discrimination in the prosecution process. The available statistics suggest that the CPS ought, at the very least, to have serious concerns in this area ... the currently prevailing view risks jeopardising the Service's ambitions in relation to victims and witnesses and more widely in relation to improving contact with the communities which it serves.³³

This led to a series of reviews, amongst which the most recent findings³⁴ were:

- African Caribbean men were more likely than Asian or White men to be charged with 'threatening behaviour'; White men more likely to be charged with actual bodily harm, and Asian men with common assault.
- The CPS was more likely to oppose bail for male and female African Caribbean defendants.
- African Caribbean defendants were most likely to have their case discontinued and Asian defendants less likely than White defendants.
- African Caribbean defendants were more likely to opt for trial by jury and to plead not guilty.
- African Caribbean men and Asian men were more likely to be acquitted.

Sentencing

The most thorough and comprehensive research on sentencing remains the 1992 Hood report.³⁵ As the collection of ethnic monitoring data becomes more comprehensive, more research on these lines will take place in future to pinpoint any areas of possible concern.

The key findings of the Hood report were:

- When a range of over 100 possible legally relevant variables had been taken into account (e.g. previous offences) Black defendants stood between a 5% and 8% greater overall chance of an immediate prison sentence than White defendants.
- In cases of medium gravity – where judges have more discretion than in the more serious cases – the difference was 13%.
- The research also found differences in non-custodial penalties. Judges were more likely to choose a ‘high tariff’ alternative to custody for Black defendants than for Whites; Black adult males were dealt with at a higher point in the scale of punishments than were Whites.
- Neither African Caribbean nor Asian defendants were placed on probation as readily as Whites. This was partly due to probation officers recommending probation less (they recommended probation for 26% of Whites, and only 16% of Black and 9% of Asian defendants). Fewer Black defendants had social inquiry reports at the time of sentencing – 42% of Black defendants and 43% of Asians compared to 28% of White offenders were sentenced without a pre-sentence report.

***Ethnic Minorities and the Criminal Courts*³⁶ 2003**

Based on 1,252 interviews with defendants, witnesses and practitioners, and observation of 500 cases, this research investigated the extent to which minority defendants in Crown Courts and magistrates’ courts felt their treatment to have been unfair, whether they attributed this to racial bias and if so whether it affected their confidence in the criminal courts. Some of the key findings of this research were:

- Thirty-three per cent of Black defendants, 27% of Asian defendants and 29% of White defendants at Crown Court said their treatment had been unfair as did 25% at magistrates’ courts.
- Only one in ten Black defendants at magistrates’ courts and one in five at Crown Court, and one in eight of all Asian defendants, said this was related to their ethnicity.
- Most complaints were about severity of sentence rather than the conduct or attitude of judges or magistrates.
- There were no complaints about racist remarks from the Bench.
- Thirty-eight per cent of Black defendants at Crown Court, 34% of Asian defendants and 40% of White defendants said they would not expect to be treated fairly next time they came to court.

- However there was more difference at magistrates' courts where 39% of black defendants and 35% of Asian defendants said this compared to 15% of white defendants – though only 9% said this was because of their racial origin.
- A lower proportion of Black than White lawyers and staff thought that nowadays there is always equal treatment of ethnic minorities by the court.
- Thirty per cent of Black lawyers said they had personally witnessed incidents in court that they regarded as racist compared to 13% of White lawyers and 11% of Asian lawyers.
- All 26 judges and two-thirds of 125 magistrates had received training in diversity issues and only five people said it had not been helpful.

The report noted:

This research suggests a substantial change for the better in perceptions of ethnic minorities of racial impartiality in the criminal courts. Several judges mentioned that attitudes had altered markedly in recent years and magistrates reported a substantial decline in the frequency of racially inappropriate remarks. Many lawyers also reported that racial bias or inappropriate language was becoming 'a thing of the past'.³⁷

The researchers put these positive results down to general social improvements including the efforts made by the Lord Chancellor's Department to raise awareness, for example through its training. They pointed out that more could be done and the findings should not lead to complacency. For example:

- Efforts should be made when passing sentence to demonstrate that no element of racial stereotyping or bias has occurred.
- Confidence in the courts would be enhanced if more minority staff were seen to be playing a role as judges, magistrates and court staff.

The report noted: 'Many judges agreed that more could be done to avoid the impression of the courts as "White dominated institutions".'³⁸

Prison population in 2002³⁹

The ethnic minority prison population has increased by 124% since 1992 and is linked to the increase in the population of foreign nationals, who include the asylum seeker and Roma populations. The rise in minority ethnic British nationals alone is 55%.

- Among sentenced males, a higher proportion of White prisoners were in prison for violent or sexual offences (34%) or burglary (19%) than Black prisoners (24% and 9% respectively).

- Twenty-one per cent of Black male prisoners were held for robbery compared to 12% of White prisoners, and for drug offences there were 33% of Black prisoners compared to 12% of White prisoners.
- Eighty-four per cent of female foreign nationals were held for drugs offences.

Race and Prisons: A Snap Shot Survey⁴⁰

In a small scale survey of nine prisons, all prisoners were asked their views about race relations in prison, and 295 staff and 1,223 prisoners completed questionnaires (of which 233 were women). Seminars for staff and prisoners were held at one women's prison and at a young offender's institution. Amongst the findings:

- Despite a high level of commitment in the Prison Service, as shown in its RESPOND programme, the race relations message was still not getting through at ground level.
- There were weak links with community organisations.
- Race Relations Liaison Officers were overworked and other staff left race issues to them rather than taking responsibility themselves.
- Racist incidents were common and were rarely reported.

Summary

Research and statistics consistently demonstrate that Black and minority ethnic people are more likely:

- to be stopped and searched;
- to be arrested;
- to die in police custody;
- to receive differential prosecution of the offences with which they have been charged;
- to receive differential sentences.

Unsurprisingly, trust in the impartiality of the justice system is low and confidence in race relations poor: we need to be even more forceful in demonstrating that our courts are free from bias, stereotyping and unfair discrimination.

Chapter 2.3

Race and the civil courts and tribunals

Key points

- More systematic monitoring of the work of courts and tribunals would ensure there is no improper discrimination.
- This would ensure courts and tribunals deal fairly and sensitively with all those appearing before them.

2.3.1 Impact on minority ethnic communities

It is still the case that much less is known about the impact of civil courts and tribunals on people from minority ethnic communities, even though there is likely to be considerable impact.

For example, it is important that courts and tribunals are able to deal fairly and sensitively with people appearing before them:

- In immigration appeal cases – refugees and asylum seekers in particular may have experience of authority in their own country which leads them to fear police and courts; there may also be resentment at the detention of refugees and new welfare provisions which apply.
- In mental health tribunals – there is some evidence to suggest over-diagnosis among Black communities of mental health problems and to respond with compulsory treatment in the secure mental health system.
- In the family court – here it is essential to balance rights of children and family members with different family patterns and customs.
- As claimants in small claims and other civil courts: are minority defendants deterred from using the civil courts to seek redress? Is as much done in the civil courts to assist with information, interpretation and access to justice as is done in the criminal courts?

More systematic ethnic monitoring of the work of these courts would assist practitioners to ensure there is no room for improper discrimination. A recent report⁴¹ established that court users are willing to provide data about ethnic monitoring in order to increase understanding.

Potential for discrimination in the application of orders

The Crime and Disorder Act 1998 includes provisions which tend to blur the boundaries between the criminal and civil courts particularly in the following orders:

- anti-social behaviour orders,
- parenting orders,
- child safety orders,
- local child curfews.

Local authorities and police forces are being urged to make more use of these provisions and it is therefore essential that courts are aware of the potential for discrimination in their application, as well as the need for cultural sensitivity in areas such as parenting (see Part 4 Children).

2.3.2 Recent research

Housing Possession Cases in the County Court: Perceptions and Experiences of Black and Minority Ethnic Defendants

Based at three county courts, researchers conducted focus groups and interviews with people from different minority communities and a sample of 150 cases was examined. Interviews were also held with judges and court staff, and staff of county court advice schemes. Key findings included the following:

- There was a language barrier at all stages for those without English as a first language – the report suggests that even simple measures such as signs at court in different languages could have an immediate positive impact.
- The focus groups asked for improvements in access to appropriate legal advice and services.
- There was also a deep-rooted fear of official processes which was made worse by failures of communication.
- Almost all focus group respondents expressed fear of prejudice within the civil court because of not having an English-sounding name, or because of skin colour.

- This fear was often based on anecdotal evidence or experiences in other areas – notably employment – and racist media portrayals of different communities.
- Tackling this fear was seen as very important in terms of building trust in the fairness of the civil justice system.
- Although judges on the whole were White and male, no defendant felt they had been treated unfairly.
- Because some minority groups are prone to be socially excluded, for example those disproportionately dependent on housing benefit, they may suffer compounded disadvantages.

Child Protection Litigation in a Multi-Cultural Setting 2003

This study explored the ethnic monitoring statistics available about parents and followed through a number of cases in order to examine whether legal criteria were sensitive to culturally diverse parenting approaches. The findings support the need for ethnic monitoring of public law proceedings, not only to allow for policy considerations but also to ensure that the court has relevant written evidence before it – including the importance of ethnicity and culture.

The study noted:

... some worrying gaps in the information before the court. The clear message of the study is that both courts and other professionals need to be aware that, where appropriate, attention is drawn to culturally diverse contexts. This is equally important from the parents' perspective, so as to ensure fair and just treatment in courts that justice has to be done and it also has to be seen to be done.

(See further Chapter 1.2, section 1.2.3.)

A further study, *Ethnic Diversity and the Tribunal System* has been commissioned as part of the 2003 programme of research at the Department of Constitutional Affairs, as well as a review of the tribunal system as a whole. Issues to be addressed by the two-year research project include the possible under-representation of the Black and minority ethnic communities among tribunal staff and users, their perceptions of and confidence in tribunals in relation to their operation and to the outcomes of tribunal adjudication. The research has been commissioned by the DCA as part of the second phase of its research programme on Courts and Diversity.

Summary

- To promote fair treatment of minority ethnic groups in the courts we can try and ensure that adequate arrangements are in place for the provision of information in other languages, interpreters, religious texts for the swearing of oaths, prayer rooms and other facilities required by colleagues, victims, witnesses and litigants from different cultures and faiths.
- The wider introduction of ethnic monitoring of court decisions (civil, criminal and tribunals) would be valuable as a means of promoting openness and accountability, identifying trends and patterns, and indicating areas where more research would be productive.

Chapter 2.4

Practitioners working in the justice professions

2.4.1 Some key statistics⁴² in 2001/02

Magistrates' courts staff. People from minority ethnic groups were:

- 5.9% of over 10,000 staff whose ethnic origin is known;
- none of the 39 Justices' Chief Executive;
- 1.5% (two people) of 128 Justices' Clerks;
- 5% (16 people) of 300 Senior Legal Managers;
- 6% of court clerks.

Crown and combined court staff. People from minority ethnic groups were:

- 2.9% of grades up to Senior Executive Officer (but 43.9% not known);
- none of the 19 Grade 7 and above staff.

*Judiciary.*⁴³ People from minority ethnic groups were:

- none of the 12 Lords of Appeal in Ordinary;
- none of the five Heads of Division;
- none of the 106 High Court judges;
- 1% (seven people) of the 610 circuit judges;
- 3% (45 people) of recorders;
- 8.5% (six people) of recorders in training;
- none of the 18 district judges;
- 2.2% (17 people) of the 760 deputy district judges;
- 2.7% (three people) of the district judges (magistrates' courts);
- 6.3% (11 people) of the deputy district judges (magistrates' courts).

Magistracy:

- 5.6% (1,590) of the 28,479 lay magistrates.

Legal professions:

- 6.5% of the 86,603 solicitors with practising certificates;
- 6.2% of 68,466 solicitors in private practice;
- 8.2% of 10,338 barristers;
- 5.7% of QCs appointed in 2003.

After the *Stephen Lawrence Inquiry* report, the Home Secretary and subsequently the Lord Chancellor set ten-year targets for the recruitment, retention and progression of minority ethnic staff in the civil service and in the police and other justice organisations. Efforts have been made by all relevant organisations to recruit a workforce which reflects the composition of the general population. The figures above suggest that:

- progress is being made in increasing the level of recruitment of minority staff in all organisations;
- where information is available, it suggests that some agencies – particularly the police and the prison service – have a lower retention rate for minority staff;
- the proportion of minority staff is still far lower at the higher grades;
- the level of missing or unknown data appears to be increasing rather than decreasing.

The TUC has recently published research confirming that, whilst some real progress has been made over the past ten years in combating race discrimination at work, racism persists, often in a disguised form. In-depth interviews revealed more subtle forms of racism including being passed over for promotion, putting up with racist language and management only paying lip service to equal opportunities policies.⁴⁴

2.4.2 Research and other reports

Career Progression of Ethnic Minority Officers 1999⁴⁵

This research compared the career profiles of minority ethnic and White officers. Key findings included:

- Minority officers were twice as likely as White officers to resign and their rate of dismissal was two to three times higher.
- Asian officers took five months and Black officers took 16 months longer (on average) to reach sergeant rank than White officers.

- Asian officers took 16 months and Black officers took 23 months longer to reach inspector rank.

The report noted:

Central to the findings of this report is that although officers had some common concerns, the effect on the careers of ethnic minority officers has been unequal. According to the definitions used in the Lawrence report ... this is enough in itself to conclude that institutional racism has played a part in defining the careers of ethnic minority officers.⁴⁶

Factors Affecting the Decision to Apply for Silk and Judicial Office 2000⁴⁷

Using questionnaires and interviews, this research sought the views of senior lawyers from a wide range of backgrounds. It aimed to identify the factors which influenced women and minority ethnic groups. Key findings included the following:

- Agreement on the need for openness, objectivity and selection on merit in the appointment process and support for recent changes introduced by the Department for Constitutional Affairs to encourage applications from more under-represented groups.
- Dissatisfaction with the process was higher among women, solicitors and minority ethnic respondents.
- Factors which deterred applications included:
 - effects of indirect racial discrimination on the capacity of minority barristers to build a practice;
 - the need to be 'known' and the role of social networking in the consultation process;
 - difficulties faced by solicitors in the consultation process.

Independent Inquiry into the CPS⁴⁸

The Inquiry was asked to look at barriers to minority ethnic recruitment and progression, the internal grievance systems and the extent of discrimination within the service. Key findings included the following:

- The under-representation of minority staff at higher grades was evident.
- A significant number of minority ethnic staff had experienced racial discrimination within the CPS.

- Most did not complain because of lack of confidence in the procedure and fear of victimisation.
- The CPS had produced many policy documents, and set up working groups and committees, but the results were not reflected in daily practice.
- The concept of institutional racism was not generally understood or acknowledged.
- There were signs of a growing backlash against equal opportunities among White staff.

The report noted: 'There remains a significant constituency within the CPS who do not recognise any race equality problems within the service.'⁴⁹

Commission for Judicial Appointments Annual Report 2003

In its Annual Report for 2003, the Commission states in regard to diversity: 'We reject the notion that the "trickle up" of women and ethnic minority practitioners from the lower ranks of the profession will redress the lack of diversity in the judiciary.' It observed:

- evidence of narrow and inappropriate views about suitability for appointments to Silk and judicial office 'amongst people who are influential';
- a perception of bias which deterred some minority candidates;
- a wider systematic bias in operations of the judiciary and legal professions that affected the position of women, minority candidates and solicitors;

This has led to proposals for reform of the appointment procedures.

Issues raised in earlier research⁵⁰

Earlier findings relating to the legal profession had observed:

- fewer employment opportunities for minority law students;
- less opportunity for minority lawyers to get all-round experience to assist with progression;
- minority barristers tending to be limited to a small number of chambers and unable to develop a full range of work.

Summary

Good race relations in our courts can be achieved by:

- ensuring that all practitioners appearing in court are treated with respect and do not suffer discrimination because of their race/ethnicity;
- challenging racist behaviour in court whether this is among colleagues or from the public and court users;
- at all times showing our own understanding and awareness of diversity in the way we manage proceedings at court.

Notes

- ¹ *Racism and the Administration of Justice*, Amnesty International (2001).
- ² *The Future of Multi-Ethnic Britain*, Parekh *et al.*, Runnymede Trust (2000).
Note: the term 'Asian' is widely used in the collection of data to refer to people of South Asian descent.
- ³ *Stephen Lawrence Inquiry* report, 1999, para 46.30.
- ⁴ *Race and the Criminal Justice System*, Home Office (2002).
- ⁵ *Ethnic Minorities experience of crime and policing: findings from the 2000 British Crime Survey*; Home Office Research Findings 146 and Home Office Research Study 223.
- ⁶ *Ibid.*
- ⁷ *Confidence in the Criminal Justice System: findings from the 2000 British Crime Survey*, Home Office research findings 137 (2001).
- ⁸ *2001 Home Office Citizenship Survey: people, families and communities*, Home Office research study 270, September 2003.
- ⁹ *The Development of ethnic monitoring in the CJS*, Gordon Barclay, Home Office, June 2003.
- ¹⁰ *Profiles of prejudice: the nature of prejudice in England*, Stonewall, Citizenship 21.
- ¹¹ *Building Cohesive Communities*, December 2001.
- ¹² For example LCD survey of court users on magistrates waiting times; Home Office witness satisfaction survey 2000.
- ¹³ *Ethnic Minorities' experience of crime and policing: findings from the 2000 British Crime Survey*.
- ¹⁴ *Ibid.*
- ¹⁵ *Violent Racism*, Ben Bowling, Home Office (1998).
- ¹⁶ *Statistics on Race and Criminal Justice, 2002*, s 95 report.
- ¹⁷ New racially aggravated offences were introduced in the Crime and Disorder Act 1998.
- ¹⁸ *HM Crown Prosecution Service Inspectorate: Thematic Review of Casework Having an Ethnic Minority Dimension* (2002).
- ¹⁹ *Ibid.*
- ²⁰ *Ibid.*
- ²¹ *Implementation of the legislation on racially aggravated offences in the Crime and Disorder Act 1991*, Elizabeth Burney and Gerry Rose, Home Office Research Study 2444, July 2002.
- ²² *Ibid.*
- ²³ *Ibid.*
- ²⁴ *Race and the Criminal Justice System*, Home Office (2002).

- ²⁵ *Policing For London*, FitzGerald, Hough, Joseph and Qureshi, Willan Publishing (2002).
- ²⁶ Ibid.
- ²⁷ Ibid.
- ²⁸ *Crime, Policing and Justice: Experience of Ethnic Minorities: findings from the 2000 British Crime Survey*, Home Office Research Study 223, October 2001.
- ²⁹ Deaths During or Following Police Contact 2002/3, Home Office *Statistical Bulletin* 049/2003.
- ³⁰ Greta Vogt and John Wadham, Liberty and the Civil Liberties Trust, March 2002.
- ³¹ *Race and CPS Decisions*, Bonny Mhlanga, CPS (1999).
- ³² Report of independent investigation into the CPS, CPS (2001).
- ³³ Ibid.
- ³⁴ *Race for Justice: a review of CPS decision making for possible racial bias at each stage of the prosecution process 2003*, The Gus John Partnership commissioned by the CPS.
- ³⁵ *Race and Sentencing: A study in the Crown Court*, Hood (1992).
- ³⁶ *Ethnic Minorities and the Criminal Courts*, Roger Hood, Stephen Shute and Florence Seemungal, LCD Research (2003).
- ³⁷ Ibid.
- ³⁸ Ibid.
- ³⁹ The prison population in 2002: a statistical review. Home Office research findings 228 and Prison Statistics (2002).
- ⁴⁰ *Race and Prisons: A Snap Shot Survey*, NACRO (2000).
- ⁴¹ *The Introduction of a Question on Ethnic Background into the Civil Justice System, 2001*, a qualitative study where willingness to provide such information was clearly expressed provided confidentiality was respected.
- ⁴² Unless otherwise stated, the figures are drawn from *Statistics on Race and the Criminal Justice System*, Home Office (2002).
- ⁴³ DCA Ethnic Minority Appointments 01/09/03.
- ⁴⁴ 'Black Voices at Work' (2003) TUC, reported in the *Equal Opportunities Review* No. 117, p. 3.
- ⁴⁵ Home Office Police Research Series paper 107.
- ⁴⁶ Ibid.
- ⁴⁷ Department for Constitutional Affairs, Kate Malleson and Fareda Banda.
- ⁴⁸ The Denman Inquiry March 2001.
- ⁴⁹ Ibid.
- ⁵⁰ Entry into the Legal Profession, Law Society 1994; Ethnic Minorities and Recruitment to the legal professions, Law Society and CRE 1990; Black People Working in the Criminal Justice System, NACRO 1992; Bar Council Race Relations Survey 1989.