

Home Office Research Study 244

Racist offences – how is the law working?

The implementation of the legislation on racially aggravated offences in the Crime and Disorder Act 1998

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The views expressed in this report are those of the authors, not necessarily those of the Home Office (nor do they reflect Government policy)

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Elizabeth Burney
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Summary of findings

Background

The Crime and Disorder Act 1998 introduced new offences of racially aggravated violence, harassment, public order and criminal damage, created from existing basic offences with enhanced maximum penalties. It also codified the practice of treating racial motivation as an aggravating factor in any other offence. The Institute of Criminology at Cambridge University was commissioned by the Home Office to undertake research on the implementation of these measures, fieldwork being carried out in March–September 2000.

Methodology

This report is based on three, complementary, strands of research. Case studies, based mainly on interviews, investigated the experience, practice and attitudes of police officers, prosecutors and sentencers (lay magistrates, stipendiaries and judges) in five police divisional areas; people with knowledge of the local community were also consulted. Statistical analysis of data-sets provided by the Home Office, the Crown Prosecution Service and the Metropolitan Police enabled comparison of the treatment of racially aggravated offences (RAOs) with equivalent basic offences, and also traced the flow of cases through the Criminal Justice system, from the recording of racist incidents through to the sentencing of RAOs. Secondary analysis of surveys (collected by the market research firm BMRB on behalf of the Home Office) gave further national data on experience of the legislation from police, CPS lawyers, justices' clerks, and stipendiary magistrates.

The legislation

- Police, CPS and magistrates mainly welcomed the legislation as useful in focusing attention on the racist element in crimes, and 'sending a message' that such behaviour would not be tolerated.
- The statutory RAOs covered the great majority of offences where racist behaviour was manifest.

- Many sentencers at all levels emphasised that they had previously had a duty to sentence more heavily for racial aggravation (as expressed in s82 of the Act) and that the new system imposed procedural restrictions which sometimes impeded this duty.
- The survey and interview evidence suggest, however, that prior to the legislation the racial element was not always recognised in magistrates' sentencing.
- The wide definition of racial aggravation in s28 of the Act has led to many cases being prosecuted as RAOs where the racist element is ancillary to the substantive offence, rather than the cause.
- The increases in maximum penalties for RAOs (mostly ranging from 40% to 300% in comparison with the basic offences) have distracted attention from the very wide range of seriousness involved in these offences. Together with some Court of Appeal decisions, they have led some practitioners to assume that almost all RAOs should be dealt with in the Crown Court.
- The structure of the new offences causes considerable procedural problems in magistrates' courts. If racial aggravation is not proven, the whole case is lost even if there is enough evidence to prove the basic offence. If an offence is prosecuted in the basic form, for a type of offence for which there is an aggravated variant, any racist elements cannot be presented or used in sentencing. There are also complications in the Crown Court, particularly in the case of racially aggravated common assault, for offences which in their basic form are summary only.
- To avoid some of these consequences, the prosecution often presents an additional alternative charge (of the basic offence) in the magistrates court, or alternative indictments in the Crown Court. This practice, however, facilitates defence offers of pleas to the basic offence in lieu of a trial for the aggravated form.
- In the light of some cases that were encountered, it is suggested that restorative methods in lieu of prosecution might be appropriate for many minor RAOs, provided that the victim was satisfied.

Training in and knowledge of the legislation

- The CPS was the only agency in the case study areas where systematic training in the legislation had been delivered.
- Police officers had often received training in cultural diversity but very rarely in the RAO legislation, although many would have liked it.
- Police seldom consulted the CPS before charging a crime arising from a racist incident. Police lack of knowledge of the law was seen by some prosecutors and magistrates as one factor behind the failure of RAO charges.
- The distinction in the legislation between demonstrating hostility on grounds of race, and committing a crime motivated by racism (s28[1][a] and s28[1][b]), was seldom appreciated by interviewees, except by judges and some stipendiaries, although many people made the distinction in practice. Everyone said that crimes *motivated* by racism were rare.
- The existence of s82, stating the sentencing rules on racist crimes outside the statutory ss29-32 offences, was little known even by sentencers, although the principle was familiar to them. Survey and interview evidence showed little experience of cases which might have fallen into this category.

Typology and reporting of racist incidents

- Racially aggravated offences derive from racist incidents recorded by the police, although not all incidents involve criminal offences. Under existing guidelines, any incident perceived by anybody as racist should be recorded as such.
- Recorded incidents frequently fall into the category of offensive public behaviour, usually associated with drink, and these are the most likely to be picked up by the police.
- Harassment of ethnic-minority-owned shops and food outlets is a common type of incident but likely to be less well reported by victims, especially in areas where they are racially isolated.
- Neighbour harassment is also greatly under-reported.

- In certain neighbourhoods hostility between members of different minority groups is evident, but not always treated by police as 'racist'.
- 'Road rage' and similar hostile encounters between strangers may give rise to language which creates a 'racist incident'.
- 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.
- In the study areas reporting systems varied greatly in type and quality. Reporting centres had only been established in two areas and 24 hour reporting in one. Multi-agency commitment combined with the presence of a designated anti-harassment officer seemed to produce the highest level of reporting.

Distribution of racist incidents, offences and prosecutions

- Almost half of racist incidents and over 60 per cent of racially aggravated offences are recorded by the Metropolitan Police.
- Prosecuting and cautioning of RAOs compared with basic offences is five times higher in London than in the rest of England and Wales.
- These differences are not simply population-related. Other police forces with substantial minority ethnic populations do not show comparable recording and prosecuting levels.
- Cautioning is used everywhere substantially less for RAOs than for matching substantive offences. RAOs cautioned are less than a tenth of the numbers prosecuted.

Police practices and attitudes

- It is the responsibility of the police to record racist incidents, to classify racially aggravated offences, and to investigate and charge crimes arising from racist incidents. All these stages are subject to processes of attrition common to most types

of crime, but the special procedures attached to racist incidents mean that a relatively larger volume of unsubstantiated material has to be processed and investigated.

- The different systems for recording and processing racist incidents found in the study areas reflected different approaches. These have been defined as 'victim-oriented', 'prosecution-oriented' and 'problem-oriented'. The last approach, which values a range of solutions as alternatives or in addition to prosecution, would seem to be a potentially appropriate way of dealing with neighbourhood incidents, provided victims are satisfied.
- Standards of record-keeping varied widely in the study areas. The most effective systems ensured that all incidents logged as racist entered the crime record at the beginning and stayed there permanently for intelligence purposes even if not subsequently treated as 'offences'.
- The translation of a 'racist incident' into a 'racially aggravated offence' was the point at which great variation was found in the study areas. At one extreme almost all racist incidents recorded were also recorded as RAOs. Elsewhere there was much more conservative recording of RAOs, likely to be either the result of failure to feed evidence of racism into the crime record, and/or recording practices which reflect the 'evidential' rather than the 'prima facie' approach, i.e. only recording crimes evidenced as having occurred beyond reasonable doubt.
- These differences mean that comparisons among areas based on the percentage of RAOs 'cleared-up' by means of charge, caution or summons are meaningless, since the more conservative recording systems produce far higher ratios of clear-ups to offences.
- London police wanted the power of arrest for aggravated offences of common assault and s5 public order (their commonest RAOs) but this need was not expressed in other places.
- Specialist units for investigating race crime, as in the MPS, cannot be effective if they are obliged to treat all racist incidents with the full level of investigation. The policy of limiting their role to cases where racism appears to be the *prime* motivation (MPS policy since July 2000) was introduced to make better use of their expertise. It is also intended to improve the performance of response officers who otherwise feel no 'ownership' of race cases.

- More intensive and more closely supervised investigation of racist incidents was the norm in all the study sites. Some police forces, especially the MPS, have very detailed codes of practice. These also serve to protect officers from accusations of neglecting race crime.
- As the result of the Stephen Lawrence inquiry, police officers are anxious about dealing with racist crimes, to the extent sometimes of hampering their effectiveness, e.g. by keeping to formulaic interviewing.
- At all levels, in all the study areas, police officers were found who were putting great effort into dealing with racist crime and seemed to be genuinely committed.

The role of the Crown Prosecution Service

- The CPS, like the police, is conscious of the need to respond to the victims of racist crime, yet it is often accused of the opposite. This is probably because it takes on many racist charges which are then dropped or reduced to the basic offence at a later stage in the proceedings.
- CPS lawyers agree with the great majority of police RAO charges. But more consultation prior to charge would probably reduce the number of cases under- or over-charged or presented with insufficient evidence. Local evidence was found of police practices designed to throw the responsibility for rejecting doubtful cases on to the CPS.
- Only 13 per cent of RAOs discontinued by the CPS are rejected on public interest grounds, since even minor cases are regarded as serious, compared with estimates of around 30 per cent for general samples of cases. Proportionately more are abandoned on evidential grounds, because of insufficient evidence (41%) or where a victim/witness is unwilling to proceed (35%).
- A striking feature of the processing of RAOs is the fact that so many (the exact proportion is not known) are reduced to basic offences before sentence. The legal structure described above encourages offers of guilty pleas to basic offences in place of contested RAOs. The CPS is supposed to resist these offers, but the perception of other agencies is that often it prefers to avoid a trial. This research suggests that CPS branches differ considerably on this issue, as well as on the related point of whether or not to present the alternative, basic, charge to the court.

- Key Court of Appeal judgments have encouraged the view within the CPS that almost all RAOs should be dealt with in the Crown Court. Again there are geographical differences, with London prosecutors and magistrates being more likely to opt for Crown Court.

Racist offences at court

- In most courts RAOs appear rarely. Offences of public order and minor violence are the most likely to be prosecuted as racially aggravated. In the Crown Court, the ratio of RAO cases to corresponding basic offences is 1:16 in London, but outside London it falls to 1:136.
- RAO charges are frequently contested, and the case studies showed that it is the shame of a racist label as well as a heavier penalty that defendants fear. This implies that the law is in tune with public opinion, although adverse publicity connected with cases that appear petty is always a risk.
- RAOs are twice as likely to be committed to the Crown Court for trial as equivalent 'triable-either-way' basic offences. In the Crown Court 83 per cent of RAO cases are not guilty pleas (compared with 47% for the basic offences) and in London this rises to 92 per cent (65% for the basic). It is this high proportion of contested trials, rather than a greater likelihood of the jury acquitting an RAO compared with the basic offence, that causes RAOs to have less than half the conviction rate of the basic offences.
- Survey and interview evidence suggests that racist offences falling outside the statutory group, and therefore dealt with under the procedure for heavier sentencing in s82 of the Act, are rarely presented in either magistrates' or Crown Courts. Even the existence of this section was unfamiliar to some of those who might have had to use it, although judges and magistrates said that they had previously followed the principle and continued to do so. Several would have preferred to have the legislation limited to that section.
- Particular problems vexing magistrates and judges were a) the marginal nature of the racist element in many cases, b) the inability to take racist evidence into account when potential RAOs were prosecuted in the basic form, and c) the reduction of charges to the basic form just before a trial.

- There was a strong demand from stipendiary magistrates and justices clerks for magistrates courts to have the same power as juries in the Crown Court to return alternative verdicts of guilt to the basic offence when the element of racial aggravation in RAOs was not proven. It is agreed that this would reduce the need for alternative charges and the pressure for the CPS to accept guilty pleas to lesser charges.

Sentencing of RAOs

- Magistrates' courts do, as intended, sentence more severely for a racially aggravated offence. Compared with basic offences, adults are almost twice as likely to receive custody and half as likely to be discharged, and fines are 50 per cent higher. Youth court sentencing is even more severe, pro rata, with the risk of custody trebled.
- In contrast Crown Court sentencing, on the available data, shows no significant average increase. However, only 151 RAO cases were sentenced in the Crown Court in 1999 (the first full year of the legislation) and comparison with basic offences is more problematic. Crown Court sentencing for RAOs should be carefully monitored in future years, in order to provide more meaningful information than can be obtained from this study's small sample.
- Seven of the judges consulted had dealt with RAO trials. They said that they sentenced more heavily for racially aggravated offences, but the amount of difference would be affected by the seriousness of the basic offence and the degree of racism involved. Some pointed out that the question of whether racial aggravation made an offence pass the custody threshold was more relevant than a percentage enhancement.
- London judges were most likely to think that too many minor RAOs, especially common assaults, came to the Crown Court.

Resource implications

- Some police estimated that processing and investigating racist crimes took two or three times as long as ordinary offences, though others claimed it made little

difference. Levels of supervision were more intensive everywhere. The London specialist units (also handling domestic violence and homophobic crime) were extremely overworked and were under-resourced in staffing and space.

- For the CPS the main extra burden was the framing of indictments, which could be very complicated.
- The most obvious extra burden on the criminal justice system is the very high level of not guilty pleas to RAOs in the Crown Court.

Main recommendations

1. Magistrates courts should be allowed to reach alternative verdicts to racially aggravated charges.
2. All sentencers should be properly informed on the implications of racially aggravated legislation (including s82 CDA 98/s153 Powers of Criminal Courts (Sentencing) Act 2000).
3. More guidance should be given on the *mens rea* required to establish hostility on grounds of race.
4. Police officers should receive more extensive training in the law on racially aggravated offences.
5. All police forces should ensure that reports of racist incidents are consistently followed through. Incidents should be entered on the 'crime screen', whether or not an offence has occurred, and the record should be retained for intelligence purposes. Data content should follow guidelines provided in the Home Office 'Code of Practice on Reporting and Recording Racist Incidents'.
6. Although direct electronic inputting of racist incidents supersedes the need for the police to use the standard 'racist incident' report form for their own purposes, it is still very desirable that the CPS receive from the police in the case file background information concerning the victim and any relevant past events.

7. Comparisons of police force performance on RAOs should not be based on detection rates, unless the procedures for recording RAOs are comparable.
8. Police should seek advice from the CPS more often before charging RAOs (although better police training would in time reduce the need).
9. Consideration should be given to allowing the CPS more discretion in using the public interest criterion to discontinue offences arising from racist incidents.
10. Practitioners should not assume (as some appear to do) that almost all RAOs must be tried in the Crown Court.
11. Prosecutors should not accept last minute offers of pleas to basic offences on grounds of expediency, when there is good evidence of racial aggravation. Victim-witnesses must be consulted, but should not be used to validate such decisions.
12. Research involving tracking of racist incidents and offences is needed to a) pinpoint the causes of attrition, and b) to gain a more complete picture of sentencing, especially in the Crown Court.

It is also suggested that:

- more use could be made of remedies other than prosecution for racist offending, especially in a neighbourhood setting; and
- restorative methods could be more widely used to deal with low-level racist offending, especially by young people.

This research covers the first two years' experience of legislation designed to give more weight to the racist element in criminal offending. The new 'racially aggravated' offences introduced on September 30th 1998 were an expression of the Government's concern at the wide social harm and affront to civilised norms inflicted by racist violence and harassment, which affect not only individual victims but potentially destabilise whole communities. The aim of the research was to find out how criminal justice agencies had responded in their use of the legislation, and in their practices and procedures.

The Crime and Disorder Act 1998 created the new offences and codified sentencing rules for all racially aggravated crimes. Sections 28-32 define racial aggravation and provide the racially aggravated form of nine existing offences of public order, violence, harassment and criminal damage, with enhanced levels of punishment. Section 82¹ deals with the sentencing of any other offences where racial aggravation is present.

There were three strands to the research, which are combined in this report. First, postal surveys were conducted by a market research organisation, BMRB, on behalf of the Home Office, asking about the experience of police (custody sergeants), Crown Prosecution lawyers, justices' clerks, and stipendiary magistrates (now renamed District Judges [Magistrates' Courts])². Secondly, extensive statistical analysis was carried out on data sets supplied by the Home Office, the Crown Prosecution Service (CPS) and the Metropolitan Police. Further analysis was also undertaken of the BMRB data. Thirdly, qualitative research was conducted in five different police divisions across the country, and their associated prosecution branches and courts. This case-study fieldwork was completed in September 2000.

The overall aim was to assess the impact of the legislation on the approach to racist incidents and racist offences of police, CPS and courts. Among other things, record keeping, evidence gathering, classification of offences, prosecution procedures and sentencing were looked at. The outcomes can be summarised in terms of perceptions, commitment, mechanisms (including the mechanism of the law itself) and resources.

1 Now consolidated in the Powers of Criminal Courts (Sentencing) Act 2000, s153. 'Section 82' terminology has been retained, as that was in use at the time of the research.

2 The term 'stipendiary magistrate' is used throughout this report, as the new title was not in use in the research period.

Qualitative research: the case study areas

The geographical unit for the qualitative research was a single police division, or command unit³, although the CPS branches and the courts relating to these usually covered larger areas. The original plan for four areas was enlarged to five so that two different police divisions in London could be included, reflecting the fact that about half of all racist incidents recorded in England and Wales come from the Metropolitan Police.

The areas were chosen to represent as far as possible a range of different characteristics: proportion and mix of minority ethnic population, urban and rural settings, metropolitan and county authorities, and different regions. In addition some preliminary data from the BMRB survey of custody sergeants were used to try to include places where the legislation appeared to be working either well or less well.

One immediate problem was that, while it was important to be able to identify issues relating to racist incidents in rural or semi-rural areas as well as urban ones, the ethnic minority inhabitants of rural police divisions are very few and racist incidents likely to be unrecognised (Dhalech, 1999). In order to get relevant information on this aspect at the same time as using resources most productively, two areas were chosen where provincial towns had significant minority ethnic populations but neighbouring villages or small towns did not. The other area outside London was part of a conurbation.

In order to avoid any of the research locations being identified descriptions of them must be confined to bare outline. They are referred to simply as 'Loc-1', 'Loc-2' etc.

Loc-1. The police division centres on the leading town and commercial hub of an otherwise predominantly rural area, in a county which as a whole has a minority ethnic population of about two per cent. Of the town's 100,000 inhabitants about four per cent belong to one of the black or Asian ethnic groups. The largest of these originates from a long-settled African-Caribbean population. Bangladeshis form the largest Asian group. In the surrounding rural and coastal districts, the presence of ethnic minorities is almost entirely limited to Chinese and Bangladeshi-operated restaurants and takeaways.

Loc-2. Here the police division, with a population of nearly 250,000, stretches over a wide area of open hills interspersed with old industrial settlements. Loc-2 covers a chain of former mill towns with intense concentrations of people from a variety of ethnicities stemming from

3 Throughout the report police 'divisions' are referred to, although in some places a different term was used to describe the local command unit.

the Indian sub-continent. Although these groups make up about ten per cent of the population of the police division, their concentration is so intense that, outside certain well-defined locations, few visible minority ethnic faces are to be seen. In contrast, Asian groups form the majority in some urban wards, where they live in old terraced housing. It is estimated that about half are under the age of 18, in contrast to an ageing white population. Unemployment and fear of crime are endemic in the run-down urban areas and among ethnic minorities.

Loc-3 is a police division of over 100,000 population within a Midlands city. Focus was on this division but, to a lesser extent, two other divisions within the city were examined. In the city as a whole, some twelve per cent of the population belong to established black or Asian population groups. More recent arrivals include Balkan refugees and asylum seekers. Loc-3 is home to large groups of Indian or Pakistani origin, including a thriving Sikh community. They mainly inhabit a concentrated inner area of old private housing and run many small shops and businesses. Peripheral social housing with high concentrations of deprivation is almost entirely 'white'. Unemployment affects different ethnic groups unevenly.

Loc-4 and **Loc-5** are London police divisions in boroughs with contrasting characteristics, such as proximity to the central area versus a boundary stretching deep into the suburbs. Each contains a vast array of ethnic diversity, typical of the modern metropolis. Many are relatively recent arrivals, frequently refugees from conflict, speaking scores of different languages and dialects. Within Loc-5, the segment of the division nearest to central London and therefore with a more inner city profile displays the most ethnic diversity, in contrast to the largely white English suburbs. Some settled black families lived there too, and very recently Balkan asylum seekers have been placed on outlying estates. In the inner sectors, Vietnamese and Somalis formed significant clusters. Altogether black people, mainly a well-established Caribbean population, formed 16 per cent of the area's population, more than twice the number of all other visible minorities. Loc-4's diversity defies summary. Middle Eastern minority groups are a significant presence, for example, and there are great contrasts in wealth and poverty. In both divisions certain peripheral council estates are seen as stereotypical sources of 'trouble'.

Research methodology for the case studies

Introductions at appropriate senior level in each agency were arranged through the Home Office. A series of interviews with police officers at different levels were then arranged, with CPS branch lawyers, and with lay magistrates and stipendiaries, plus justices' clerks and/or

court clerks. In addition, judges who had handled racially aggravated offences were able to be consulted. In each study area a solicitor from a leading local firm handling criminal cases was also interviewed.

To obtain the perspectives of minority ethnic groups, a range of people in each area were spoken to, mainly those representing the interests of different ethnic groups, and others including local councillors, youth workers, and Victim Support workers. A total of 25 interviews were conducted with these 'community' representatives. The ethnic categories of participants were: ten Asian, ten African-Caribbean, nine white, one Arab and one Somali. Although victims of racially aggravated offences were not the focus of the research, these interviews sought to illuminate their experience.

The face-to-face interviews, 131 in all, were semi-structured, and lasted between 30 minutes to one and a half hours. Most were one-to-one, but there were also a number of group discussions with police, CPS lawyers, court staff, magistrates and judges. With the police, in particular, it was important to get the perspective of officers at different levels of responsibility and with different roles, so inevitably police officers formed the largest group of informants. The final tally was 59 police interviews (including two groups drawn from shifts); 18 CPS interviews (including three in pairs or groups); five interviews with court staff (including one group); seven interviews with stipendiary magistrates and five with lay magistrates, alone or in pairs; two large mixed court groups (stipendiary, lay magistrates and court staff) one of which also included representatives from a Youth Offending Team (YOT). There were five meetings with Crown Court judges and five with defence solicitors. Other individuals supplied information by letter or telephone.

Access to judges was obtained through the Lord Chancellor's Department. By the end, two interviews with judges directly dealing with cases from the London study areas had been obtained, and written information from a third judge in one of the provincial study areas. It was necessary to gain a wider view of judicial experience and introductions were arranged with presiding judges in two other London courts, resulting in two further interviews, one with a group of three judges, although the latter had only experienced RAOs through plea and directions hearings. At the end of the research period, to extend the picture further, LCD agreed to circulate a list of questions formulated by the authors of this study to thirteen more presiding judges in different parts of England. Eleven replied (including the one from the study area mentioned above). Of these, two had no experience of RAOs. Two judges from these courts were followed up in a joint face-to-face interview, and a third was interviewed by telephone. Thus out of nine judges interviewed, six were from London courts, which actually reflects the London/provincial share of Crown Court cases. Judges who responded

by letter gave considered and informative replies, although only those from big cities had any significant experience of RAOs. Such cases are quite often dealt with by part-time recorders, so any future research should try to include them.

The focus of each interview was to explore the subject's perception of, and experience of dealing with, racist incidents and racially aggravated offences. Policies, procedures and outcomes were discussed and followed up wherever possible with local data or documents. In particular, the study endeavoured to discover what use was made of the legislation, what difficulties had been experienced, and what opinions people had of it. For the police, the whole process of reporting, recording, investigating, and charging was explored but note was also taken of the many possible outcomes other than a charge or caution which might emerge. Systems, including liaison with other agencies (especially the police-CPS relationship) were evaluated as far as was possible without tracking a sample of cases, though police computerised systems were able to be explored to a limited extent. Some resource implications for all agencies were drawn from interviews and general data.

Statistical data

Detailed data sets were supplied by the Home Office for four major areas: sentencing, cautions, prosecutions and outcomes in magistrates courts, and cases for trial in Crown Courts. In each case, data for racially aggravated offences (RAOs) were compared with the corresponding basic offences (see Chapter 2) – both the England and Wales totals for 1999, and for each police force area. The data were extracted by the Home Office (Research Development and Statistics) from information held by the Court Monitoring Unit, and enabled comparisons to be made between RAOs and substantive offences on factors such as the percentage of cases committed for trial or average fines for sentenced cases. The Home Office RDS also provided 1999/2000 data on Racist Incidents, and RAOs recorded (and cleared up) by each police force, as well as up to date estimates of population and ethnicity⁴.

For the Metropolitan Police, data were made available by the force's Performance Information Bureau, whose responsibilities include monitoring action on 'hate crime' of which racist crime is a substantial part. Hate crime is defined by the Association of Chief Police Officers (ACPO, 2000) as crime in which prejudice against any identifiable group of people is a factor in determining who is victimised. This data enables assessments to be made of the

⁴ These data are largely available in annual Home Office publications, but the authors were provided with the information in advance of publication.

kinds of crime involved in racist incidents, the recording and clear-up of RAOs, the ethnicity of victims, suspects and accused persons, and many other aspects of racist offending.

The CPS Racist Incident monitoring system (RIMS) tracks the progress of cases identified as racist, including s28 RAOs. Data from 1999/2000 RIMS cases were supplied through a series of summary tables. This information has been used to estimate factors such as the reasons for the early termination of cases and the extent to which charges are changed as cases progress through the system.

Survey data

A year after the implementation of the Act, the Home Office commissioned BMRB International (Social Research division) to conduct surveys of practitioners in the criminal justice system to help assess the impact of the Act. The data were collected by postal self-completed questionnaire, with four groups of practitioners.

- 1605 police custody sergeants (November/December, 1999)
- 207 CPS lawyers (November/December, 1999)
- 76 stipendiary magistrates (June/July, 2000)
- 108 justices' clerks (June/July, 2000)

The questionnaires were designed by a Home Office research team, in consultation with the Lord Chancellor's Department and BMRB Social Research⁵. Each questionnaire covered a core range of issues – including estimates of the numbers of s28 RAO cases (and s82 cases) handled, liaison with other services, training and guidance, and views of the legislation – although some issues and questions were specific to each group.

The findings from each of these surveys were prepared by BMRB as reports to the Home Office. The authors had access to these reports and to supporting tabulations produced by BMRB, but they were also provided with copies of the original data-set, to enable further analysis of the data. BMRB also made available the 'open-ended' comments from respondents for each of the surveys, which have also been useful in providing additional perspectives on the operation of the Act.

5 The questionnaire design also involved consultation with ACPO, the CPS and the Justice's Clerks' Society and the Magistrates' Association.

Overview of methodology

The core data utilised in this report is from the qualitative case study. However, in many sections of the report, it has been important to look at the national picture in order to assess broad statistical trends, or comparisons have been made between different areas, and here the Home Office data has been utilised. Data from the Metropolitan police, and the BMRB survey data, has been drawn on at several points in the report, and CPS monitoring data has been utilised in Chapter 6. Where the research questions can be investigated from both the qualitative case study findings and from one or more of the statistical data sources this has been done. It was not, of course, always possible to distinguish changes due to the introduction of the new legislation from the impact at many levels of the Stephen Lawrence inquiry.

2 The legislation: origins, problems and awareness

Mounting awareness of the extent and permanence of violence and harassment directed at people from ethnic minorities led to a commitment in the Labour Party Manifesto of 1997 to make such conduct the subject of a new criminal offence. Political pressure for specific legislation had been growing since the 1980s. There had been two unsuccessful private member's bills, the latest in 1992. The Parliamentary Home Affairs Committee, reporting on racial attacks and harassment in 1994, endorsed the need for a new law, but this was rejected by the then Home Secretary, Mr Michael Howard, on the grounds that all crimes of violence could be dealt with within existing powers.

Some steps had already been taken in previous legislation. Promotion of racial hatred was outlawed in the Race Relations Acts of 1965 and 1976 and in more detail in ss18-23 of the Public Order Act 1986. An amendment to that Act (s4A, introduced in 1995) referred to *intentional* causing of alarm, harassment or distress, and was meant to include racist behaviour. Section 3 of the Football (Offences) Act 1991⁶ outlawed racist chanting at football matches.

The size of the problem was measured in successive sweeps of the British Crime Survey which revealed the extent of victimisation of ethnic minority households and the degree to which they perceived this as being impelled by racism. In 1999 it was estimated from the BCS that there were close to 100,000 racially motivated incidents, including threats, against Asian or black people and that these constituted close to an eighth of crimes that they suffered. The largest single element consisted of threats. Two per cent of black people, four per cent of Indians and four per cent of Bangladeshis and Pakistanis said they had been racially victimised, compared with 0.3 per cent of white people (Clancy *et al.*, 2001); though it should be noted that the relative size of the white population meant that 63 per cent of racially motivated incidents were committed against white people. The main good news is that these figures are substantially down on those for 1995, with total numbers falling by close to 30 per cent. This is some way above the 22 per cent fall in all crime, including threats, over this period, but the difference was not judged as statistically significant.

Despite the element of subjectivity in the survey data, the problem was undeniable. What to do about it was less obvious. An estimated 40 per cent of racially motivated incidents against

6 Now, amended, in the Football Offences and Disorder Act 2000.

black and Asian victims were reported to the police in 1999 (up from 28% in 1995). Among white respondents reporting rates for these incidents were higher, but the proportionate increase in reporting between 1995 (54%) and 1999 (61%) was less. No laws would be effective without a far greater degree of confidence in and co-operation from the agencies of criminal justice (Malik, 1999). Much of the conduct suffered was not obviously criminal. And where crimes had been committed, it was argued that equal enforcement of ordinary criminal law, coupled with consistent application of the principle that racial motivation is a severely aggravating factor, should be relied upon (Brennan, 1999).

In both the United States and Europe there are many examples of criminal laws created especially to punish crimes committed against people by reason of race and other 'group' identities. In America state laws have proliferated to protect people on grounds of religion, sexual orientation, disability and many other categories. At the same time, problems of definition and proof have plagued 'hate crime' laws (Morsch, 1992) and the debate continues as to whether, on the one hand, prosecuting 'identity crime' is unconstitutional and divisive or, on the other hand, it is a necessary expression of fundamental social values (Jacobs and Potter, 1998; Lawrence, 1999).

The new government that came to power in May 1997 decided to act swiftly. In the words of the consultation paper issued in September 1997 (with little more than a month for consideration), 'such crimes create not only immediate misery for the victims and their families, but also wider fear and resentment within communities'. Responses were positive in favour of the proposed legislation, which was set out in detail.

Early in 1998 the inquiry into the murder of the black teenager Stephen Lawrence, which was to have momentous results, was inaugurated. An important outcome was to be a more victim-oriented approach to racist incidents. The recommended, and officially adopted, definition of a 'racist incident' – a broader category than racist crime – was 'any incident which is perceived to be racist by the victim, or any other person'. The effect of the inquiry report, which described the Metropolitan police and other institutions as 'institutionally racist', was to place racist crime high on the agenda of all institutions involved.

The structure of the legislation

The Crime and Disorder Act 1998 ('the Act') created not one offence of racist crime, but nine new 'racially aggravated' offences structured on the basis of existing offences. Section 28 defines racial aggravation and ss29-32 increase the maximum penalties for certain

offences if racial aggravation is present. Nine offences of violence, criminal damage, public order and harassment are covered. The list does not include any offences (such as wounding with intent) which already have a life sentence maximum, on the grounds that no higher penalty is possible. (For the full text of relevant sections of the Act see Appendix 1).

A quite separate provision, s82 of the Act, gives statutory status to the existing judicial practice of treating any offence as more serious for sentencing purposes if there is evidence of racial aggravation⁷. This is the principle expressed in the case of *Ribbans et al.* [1995]⁸. Section 82 also requires a pronouncement in open court that the offence was racially aggravated, seen as an important confidence building element for the ethnic minorities affected. This section, however, only applies to cases *other than* those covered by ss29-32.

The full list of ss29-32 offences and their increased maxima are presented in Table 2.1. These were chosen to cover the main types of crime which are likely to be racially aggravated. Some formerly summary-only offences become either-way offences in the aggravated form. In the case of criminal damage, seriousness is decoupled from the cost of the damage caused (monetary cost being the test for deciding which cases are summary-only in the non-aggravated form). The only offence on the list which remains summary-only is s5 public order.

The maximum sentences were chosen simply on the basis of the 'next step up' in the tariff, which, being based on the differing maxima for the basic offences, has produced a range of different enhancements. Most notably, the increase to 14 years imprisonment for racially aggravated criminal damage is by far the greatest penalty available amongst the nine offences, for what is seldom the most serious type of aggravated offence.

There is no scope for using the increased custodial penalties within the magistrates' jurisdiction – if they think it appropriate magistrates can of course commit to Crown Court for sentence – although the relevance of this will depend upon the normal tariffs for the basic offences. A fine may become a community penalty, or a community penalty a short term of custody. Enhanced fines, community sentences and compensation can all be applied by magistrates without recourse to custody.

7 The separation of these sections of the Act came about because Part II of the Act deals with criminal law, and Part IV with offenders.

8 16 Cr App Rep (S) 698.

Table 2.1: Racially aggravated offences and comparable basic offences

	Basic offence		Section of Crime and Disorder Act 1998 defining the RAO		Acts defining basic offences	
	Description	Maximum sentence	Section	Maximum sentence		
Assaults	GBH (Malicious wounding)	5 yrs	s29(1)(a)	7 yrs	Offs. Ag. Person Act 1861 s20	
	ABH	5 yrs	s29(1)(b)	7 yrs	(Common Law and) Offs. Ag. Person Act 1861 s47	
	Common assault	6 mths/level 5 fine	s29(1)(c)	2 yrs/fine unlimited	(Common Law and) Crim. Justice Act 1988 s39.	
Criminal damage	Damage (£5,000 or more)	10 yrs	s30	14 yrs	Crim. Damage Act 1971 s1.1	
	Damage (less than £5,000)	3 mths			Magistrates Courts Act 1980 s22	
Public order offences	Fear or provocation of violence (Threatening behaviour)	6 mths/level 5 fine	s31(a)	2 yrs/fine unlimited	Pub. Order Act 1986 s4	
	Intentional harassment alarm or distress	6 mths/level 5 fine	s31(b)	2 yrs/fine unlimited	Pub. Order Act 1986 s4A	
	Public order (Disorderly behaviour)	Level 3 fine	s31(c)	Level 4 fine	Pub. Order Act 1986 s5	
	Putting in fear of violence	5 yrs/fine unlimited	s32(1)(b)	7 yrs/fine unlimited	Prot. from Harassment Act 1997 s4	
Harassment	Harassment	6 mths/level 5 fine	s32(1)(a)	2 yrs/fine unlimited	Prot. from Harassment Act 1997 s2	
Other	Other offences	-	s82	-	Provides the test for the court to apply when considering an increase in sentence for racial aggravation for offence other than those under ss29-32	

Difficulties with the legislation

Interview and survey evidence identified three areas in which the actual construction and wording of the law on racially aggravated offences might or clearly did present problems. These are:

- Definition of racial aggravation
- Structure of the offences
- Sentence enhancement

All these matters are discussed in relation to the work of the criminal justice agencies in subsequent chapters. How far the agencies *created* problems by their interpretation of the law is a separate although overlapping issue that emerged from time to time, as described in later chapters. This section summarises the problem areas in general terms, which are further explained and illustrated in the research findings set out in the rest of the report.

1. Defining racial aggravation

The most problematic part of the legislation is the definition of racial aggravation contained s28 (see Appendix 1 for full text). The first part of this section contains the main definition:

28(1) An offence is racially aggravated for the purposes of sections 29-32 below if:

- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial group; or
- (b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.

No critics were found of s28(1)(b), which defines racial aggravation in terms of evidence of racial motivation, even amongst sentencers who objected to the way the legislation was working. But few cases reaching the courts at any level are about motivation, and it is acknowledged that proving motive can be very difficult – there is no other statute which builds it into the definition of an offence.

Although the prosecution does not have to state which limb of s28 is being relied upon, many informants made clear that 'demonstrating hostility' as defined in 28(1)(a) is the reason for the great majority of prosecutions. It was obvious from discussions with all the

agencies that, in their different roles, one of their main problems, whether stated or implied, was the question of 'where to draw the line', especially when the racially aggravated element consisted of a word or two linked in a subsidiary manner to the basic offence, or where the substance did not clearly indicate hostility based upon the victim's race.

A further, fundamental, problem in 28(1)(a) is that there is no definition provided of 'hostility' and no standard legal definition. A jury would probably accept that, while clearly less strong a word than 'hatred', 'hostility' must imply a degree of animosity, rather than mere prejudice. The degree of *mens rea* required to demonstrate hostility on grounds of race is not clear. While the use of racist language, even jokingly, is increasingly seen as socially unacceptable, and clearly has to be discouraged, does it always indicate racial 'hostility' within the meaning of the Act? This is particularly relevant to s5 public order offences where words alone may constitute the offence.

Victims' feelings are rightly taken very seriously in the context of racially aggravated offences, and although not proof of racial hostility will often provide the *prima facie* case. A charge of racially aggravated s4A POA 1986 would be appropriate where it was clear that racist language had been distinctly chosen to hurt. Less clear cut are disputes or assaults based on other factors, for example in the context of 'road rage', where one party makes a racially derogatory remark, which may reveal racial prejudice, but not necessarily that any of the 'hostility' demonstrated in the encounter was based on the other person's race rather than his or her driving.

Examples given of marginal cases included some where it was argued that the racial word used was descriptive rather than hostile. Informants often used the comparison of the jibe 'four-eyes', referring to someone wearing spectacles. Why, somebody asked, should calling someone who annoyed you a 'fat black bastard' be so different from calling them a 'fat bastard'? Context is all-important. It is clear that many cases fall down in court as the result of doubts over 'where to draw the line'. Informants frequently had difficulties with this aspect of the Act.

Section 28(1)(a) was introduced because a law which relied solely upon proving motive would have been too narrow. The result is a law which is very wide. The implications were raised at the committee stage of the Bill and the Government spokesman, Lord Falconer, stated 'the effect is that if...you say "You are a Welsh something" or "a Paki something else" proved of itself that can establish the necessary aggravating feature'⁹. In practice, cases emerged where words of this nature are used but the context did not suggest racial aggravation, or the position was unclear.

⁹ Hansard, Lords, vol 585 col 1270, 12 February 1998.

Case law so far is sparse but there are two¹⁰ appeal court judgements which fall either side of the line. In the case of *Pal*¹¹, an Asian caretaker asked some youths to leave a youth club and one, also Asian, assaulted him and called him 'a white man's arse-licker' and a 'brown Englishman'. It was held that the hostility was not directed against the victim's race as such, and therefore the assault was not racially aggravated, although the Court of Appeal added that in most cases racial abuse would aggravate a specified offence. In the case of *White*¹² a conviction for a racially aggravated public order offence (s4 POA 1986) was upheld. In this case the defendant was an African-Caribbean man who was accused by a bus conductress of attempted theft: as he left the bus he called her 'a stupid African bitch'. These words constituted the offence.

It is important to recognise that the reliance on words as proof of racial aggravation may distract from recognition of offences directed against minority victims which are expressed by actions alone. Sometimes (as in the case from Loc-2 mentioned on p.41 the context shows that these particular victims were targeted and no other reason is apparent. But proof of racial hostility or motive may be more difficult in these incidents and may deter police and prosecutors from even trying. Case-tracking research would be required to determine whether the actual wording of the statute (hostility demonstrated immediately before or after the offence) is an obstacle in such cases.

2. Structuring the offences

The device of linking racial aggravated offences (RAOs) to existing, familiar, substantive offences is generally accepted as a convenient and workable formula, especially by police involved in the charging process (although several of the substantive offences present difficulties of their own). At later stages in the process, however, the structure gives rise to significant procedural problems.

It is generally accepted that the list of RAOs covers all the most frequent types of racist crime. Several police officers said that they wished that s18 wounding had been included, although some recognised the logic of omitting offences carrying life sentences. Affray (s3 POA 1986) was another offence which the police would have liked included in the list of named RAOs (although there was little support for this at the consultation stage). The reason for not including affray lies in the definition of racial aggravation in s28(1)(a), which refers to 'the victim'. Affray is a crime against public order with no individual victim (although some argue that the public at large is the 'victim' in this context). If an RAO of affray were

¹⁰ Another case, *Weeks*, where a racial insult was used, failed because the underlying offence was not proved.

¹¹ 2000 CLR 756.

¹² The Times, 13 March 2001.

created, it could presumably be prosecuted under s28(1)(b), which refers to offences motivated by hostility towards members of a racial group; meanwhile, it has to be dealt with under s82, which allows a three year maximum sentence.

3. Racial aggravation in other offences

Section 82, CDA1998, provides for an increase in sentence, within the maxima available, for racial aggravation in offences which fall outside ss.29-32. The CPS must bring evidence of the racial aggravation, which may be tested in a 'Newton hearing'¹³ prior to sentence. In passing sentence, the judge or magistrate must state that the sentence was increased because of racial aggravation. In effect, this gives statutory recognition to the practice which was supposed to have been followed for all types of case prior to CDA1998, and is now enshrined in s153 of the Powers of Criminal Courts (Sentencing) Act 2000.

Although there is nothing particularly problematic about s82 in itself (apart from the fact that some people do not know about it, as described later) the dichotomy between it and ss28-32 provides ample scope for procedural problems. The separation of this clause from the substantive provisions, described by Padfield (1998) as 'a bizarre division', is also source of confusion.

4. Sentence enhancement

The seriousness of racial aggravation is expressed in terms of heavier maximum sentences for RAOs, nearly all of which are only accessible on indictment. The one offence that remains summary only in the aggravated form is s5 POA, for which the fine is increased from £1,000 to £2,500. Magistrates point out that the provision here (as in many other cases) is largely meaningless as few offenders are able to pay anything approaching that amount.

The Sentencing Advisory Panel (2000) assessed the increase in maximum sentences for RAOs as ranging from 40 per cent to 300 per cent. Table 2.1 (above) contains information for individual offences. In the Crown Court, the maxima for offences of wounding, actual bodily harm and harassment (putting in fear of violence) are increased to seven years compared with five for the basic form. Public order offences (ss4 and 4A POA), harassment and common assault (made indictable in the aggravated form) carry two year maxima. Fines are unlimited for these offences.

13 A hearing of facts to establish seriousness, following a guilty plea.

For criminal damage cases (£5,000 or more) racial aggravation carries a 40 per cent increase – 14 years compared with ten years for the basic offence. However, this 14 year maximum is also applicable to cases involving damage of less than £5,000, where the equivalent basic offence, triable only by magistrates although technically indictable¹⁴, carries a maximum of only three months custody (Magistrates Courts Act 1980 s22). For minor criminal damage cases, racial aggravation therefore multiplies the maximum custodial sentence by a factor of 56, a point that may have been overlooked in drafting the legislation. Additionally, according to Thomas (1998) the status of arson is not clear – does it remain a potential life sentence offence, or is the aggravated form actually contained within the criminal damage legislation and therefore reduced to a 14 year maximum?

The main issue posed by these sentencing changes and the indictable nature of almost all RAOs is that magistrates' courts have to decide whether to commit RAOs to Crown Court or retain them for sentencing within their own maximum of six months imprisonment. The cases of *Miller* [1999]¹⁵ and *Saunders* [2000]¹⁶ have made the issue of venue more prominent (Chapters 6 and 7). Some magistrates would like aggravated s5 POA to become either-way; some others think aggravated s4 POA could just as well be summary only.

Procedural problems

The distinctions between, on the one hand, RAOs and basic offences, and on the other, the RAOs and all other offences potentially racially aggravated, are the cause of many a procedural headache. The main issues concern alternative charges in the magistrates' court and alternative verdicts in the Crown Court (Chapters 6 and 7).

Magistrates cannot sentence or find anyone guilty for an offence other than the one on the information. Therefore, if an RAO is charged, and the racial aggravation is not proved, the whole case fails even if there is ample proof of the underlying offence. To avoid this, an alternative charge, of the basic offence alone, may be entered. There is a great variety of opinion and practice as to when, and whether, this is desirable, given that it tends to weaken the case for the aggravated variant (Chapter 6).

Nobody can be sentenced for an offence which is more serious than the one for which he has been found guilty. Therefore somebody who has pleaded guilty or been found guilty of a basic offence cannot be sentenced more heavily because of evidence which could have

14 *R. v Fennell* CLR [2000] 677.

15 Court of Appeal 15 March 1999.

16 Cr.App. R. (S) 71.

been used to charge an RAO, nor can any of that evidence be referred to. The aggravated variant must always be used in appropriate cases.

In the Crown Court, juries can normally find alternative verdicts to charges less serious than the one on the indictment. Because several of the either-way RAOs are summary in their basic form, special provision has been made for juries to find guilt on the alternative basic offences of public order or harassment where they reject evidence of aggravation (ss31 [4][b] and 32[6]). There is no such provision for common assault in its basic form, unless it is entered separately on the indictment, since this is already the practice when the main charge is an unaggravated s47 of the OAPA (see Table 2.1, 1861) (actual bodily harm).

If the charge is one which falls under s82, and the defendant denies the substance of the offence, evidence of racial intent may be irrelevant to proving the basic charge and can only be introduced after a finding of guilt. There may then have to be a Newton hearing to prove the racial aggravation (Thomas, 1998).

Suppose, further, that the charge is wounding with intent (s18 OAPA), again with facts suggesting the presence of racial aggravation. The jury this time rejects the intent, but cannot go straight to the aggravated variant of the less serious offence of s20 wounding, because this would mean relying on facts which have not been part of the case. The only solution is to introduce RAO s20 as an alternative. For good measure, some prosecutors add a third count of the basic s20, as an insurance against losing the case completely.

It follows from all this that any evidence of racial aggravation which emerges during the case cannot be referred to, or used in sentencing, if the charge is one of a basic offence for which an aggravated variant is available. The CPS face a dilemma in marginal cases – whether to charge only the basic offence and avoid any mention of racist language, or to charge the RAO and risk losing the case (Chapter 6). In these cases the legislation has made it harder to obtain a conviction as well as a sentence reflecting the full picture of the incident. This can be a source of great frustration to sentencers, who point out that prior to the Act they would have been able to sentence in a manner appropriate to the racist content (Chapter 7).

The absence of religion

Religion is not included in this legislation, although at the drafting stage there was some demand, mainly from Muslims, that it should be. A subsection (28[3]) was inserted in recognition that hostility on grounds of religion (or anything else) might co-exist with racial

hostility. It was thought that in practice the overlap of religion and ethnicity was so great as to exclude few cases where hostility was expressed against a person's faith. An awkward distinction, however, was created when the definition of 'ethnicity' in s28(4) relied upon that used in anti-discrimination law, which includes Jews and (since the case of *Mandla* [1983]¹⁷) also Sikhs – but not Muslims. This research was designed in part to sound out opinion and experience of religion as an issue distinct from race in criminal incidents (Chapter 3).

How the legislation is viewed by those who operate it

The interviews with police, prosecutors, court staff and sentencers, together with some of the data from the postal survey, provide the first overview of attitudes to, and experience of using, the legislation. The remainder of this chapter summarises the opinions expressed, many of which relate to the issues raised in the previous section. It also looks at training in and knowledge of the legislation, or lack of the same, amongst those who use it.

There is a general consensus, with some exceptions, amongst police officers and Crown Prosecution Service lawyers, that a law specifically targeting racist crime is useful and necessary. This view came out in the interviews and in the questionnaire survey. 71 per cent of CPS lawyers and 57 per cent of Custody Sergeants surveyed agreed that "...[the] legislation was a useful way of tackling racist crime". Justices' clerks were also largely in favour, with 64 per cent of those surveyed agreeing there was a need for the new legislation.

Sentencers interviewed (lay magistrates, stipendiaries and judges) were much more divided and likely to point out that the power to sentence more heavily for crimes with a racist element already existed and that the new statute impeded rather than assisted the delivery of justice. The reasons for the latter opinion are directly concerned with the way the law is working in practice, which forms the main subject of this review.

Reasons for welcoming racially aggravated offences legislation were mostly of two kinds: expressive and instrumental. The former concerned its likely impact as general deterrence and as a form of social education. Many people felt it 'sent a message' to the public concerning the abhorrence of racist crimes, although at the same time there was little expectation that offenders would modify their behaviour as the result of heavier sentences. Some people thought that the shock of prosecution might jolt people who had used racist abuse when drunk.

17 1 All E.R. 1062 HL.

Stipendiary: *One thing that has tended to shock me quite substantially is how many people in their mitigation say "I'm really sorry, I'm not really racist at all, it's just that I drank so much at the time and this is what came out".*

Interviewer: *So it must be in there somewhere.*

S: *That's it. So there's quite a lot of sub-conscious racism that people haven't recognised in themselves. So one effect of the legislation is to bring it out from everybody's point of view. Not only the tribunal but the people themselves. (Loc-4)*

Nobody condoned the thoughtless use of racist language but there was a current of opinion, most often expressed by stipendiary magistrates and defence solicitors, that the law came down rather hard on people who, in the course of 'normal working class mayhem' as one person put it, uttered words which were part of their natural vocabulary. For them, the law was simply ahead of the times:

There is a slight gap between the legislation and some areas of social attitude...I think it will change people's perception ultimately. (Solicitor, Loc-5)

Instrumental reasons for supporting the idea of specific legislation concerned the impact on the agencies of justice. 'It concentrates the mind' was a frequent comment. Some police felt that it gave them a precise instrument in their heightened effort against racist crime which was previously lacking. Justices' clerks, court clerks and defence lawyers sometimes said that whereas, previously, magistrates had been supposed to sentence more heavily for a racist element, in the past they had not observed this happening. The survey of justices' clerks brought out this point quite strongly in the comments made by those favouring the legislation:

Many offences had clear racial motivation but were not treated as truly aggravated in terms of sentence. The post-Lawrence agenda had not been delivered.

Courts were unsure as to the weight to attach to racism – now it is clear that greater punishment is right.

There was reluctance, despite previous judicial guidance, to act on racial motivation as an aggravating feature.

Other reasons given for supporting the legislation included the need for higher sentences if the magistrates' courts were to respond appropriately, especially having the power to commit to Crown Court. Another comment was that having specific offences enabled the Government to monitor racist crime better.

Among negative comments were objections to a law which protected one category of vulnerable persons when the case could be made for many other groups. A few people saw the legislation as potentially divisive and damaging to race relations, or thought that it might focus on the victim's ethnicity against their wishes. Some police officers felt that the law, and the racist incident procedures which fed the prosecution process, gave too much scope for minority groups to claim preferential treatment (Chapter 4).

In the course of the local interviews some individual black police officers and prosecutors were met who thought that the emphasis on racist language had gone too far. One of these said:

It's not going to make a blind bit of difference to a person who punches someone in the face and calls them a white cunt or a black cunt if he gets six months in prison. Why would calling you a black cunt merit nine months? And why would it merit twelve months or fifteen months? In my opinion it's a ludicrous suggestion. It clearly should reflect the fact that it's an unpleasant offence, and it does damage the wider society. But to grossly exaggerate the significance of the use of words I think undermines the Act itself. (CPS lawyer, Loc-5)

Many people thought that the law should be more finely tuned to distinguish between 'real' racists and others:

I feel we don't want to build more barriers than there are already. And I think that it is important to distinguish those people who are deeply racial and set out to upset somebody, to those that in drink have made some sort of comment. (CPS lawyer, Loc-1)

More detailed criticisms of the Act by prosecutors, court staff and sentencers are set out in later chapters. Most focus on the procedural problems. A minority questioned the necessity for the legislation at all, or would have preferred s82 on its own. Judges who agreed in principle to specific legislation sometimes thought that it should have been limited to motivation (s28[1][b]). Even people who knew little about the law, such as many of the police interviewees, were clear in their minds that racially *motivated* crime was different to, and worse than, the ancillary use of racist language. However, the Act does not indicate any difference in seriousness between s28(1)(a) and s28(1)(b).

Training in and knowledge of the legislation

Many of those who apply the legislation do not have detailed knowledge of its contents or related case law. There are established sources of information to which they can turn, if they have the time and inclination, but at most levels the comparative rarity of cases means that becoming informed on this subject is not a priority. The stream of new legislation made it more unlikely that any particular provision would receive much attention.

The CPS appeared to be the only agency where training on the specifics of the legislation had been systematically supplied. Eighty four per cent of CPS lawyers surveyed had received some training, mainly through written guidance (although it must be remembered that the survey sample was chosen from those with most experience of dealing with RAOs). The fieldwork found places where this had gone further. Loc-2's CPS branch lawyers recalled that prior to the Act there had been a day's training on issues relating to racial aggravation, and the importance of highlighting it, followed by an hour's in-house training following the implementation of the legislation. In Loc-1 branch prosecutors had shared a training day with court clerks. In Loc-5, not all prosecutors could remember whether they had had training but others confirmed that they had. Loc-3 prosecutors had had a half-day's training, not shared with any other agency. A supplementary CPS branch outside the study areas was also interviewed (CPS-ex), where a lawyer engaged to train prosecutors in the new legislation had gone on to train police in the same area, which seems good practice. It could have contributed to the relatively high level of racially aggravated offences handled by that branch.

Prosecutors sometimes assumed that police and magistrates had received training on racially aggravated offences but it was found in the study areas that this was far from the case. As far as magistrates were concerned, at least four out of the five lay magistrates' benches in the study had not been trained in the subject in any way, although training packs had been made available to Magistrates' Courts Committees by the Lord Chancellor's Department. It was pointed out that the revised Magistrates Association Sentencing Guidelines, including revised sections on racially aggravated offences, would be discussed as they came into force in September 2000 (two years after the implementation of the legislation). Magistrates were all undergoing compulsory race awareness training but the changes in the law were not included.

Discussing the question at one court, the justices' clerk pointed out that lay justices had only two training days a year and a mass of changes to absorb. She thought that this particular legislation might be better addressed in a bulletin or as part of a sentencing exercise. The

relationship with clerks, of course, assumes that lay magistrates will get the necessary advice from that source when necessary, and the postal survey showed that more than three-quarters of clerks had received (mainly written) training. Stipendiary magistrates interviewed were well aware of the legislation but the survey of stipendiaries revealed that one third had received no training on the legislation and another third had had only written guidance.

A branch prosecutor remarked that this was a developing subject upon which regular training inputs should occur. CPS branches all receive advice and updates in bulletins from their headquarters, and from this source learn about appeal court decisions affecting the conduct of racially aggravated prosecutions. Evidence was found that this has a strong influence on practice. It would be even better if new developments and their implications could be equally disseminated throughout all agencies involved.

Police officers were generally aware of the existence of the legislation, and that certain ordinary offences could be classified as racially aggravated but little more than that. In the postal survey, less than a quarter of custody sergeants said that they had received training. This is not unusual for any legislation, according to CPS lawyers and court staff who complained that the police nowadays had too little knowledge of the law. Examples were given of badly drafted charges, and choice of the incorrect charge – either racial aggravation wrongly charged, or the wrong basic offence chosen. The CPS too was not immune from mis-charging RAOs and cases were mentioned which had been lost for this reason, usually through specifying the wrong basic offence.

No training in the legislation had been given to the officers interviewed, and many would have liked some. Training opportunities were scarce, yet some forces were delivering to all employees a two-day course in 'diversity' awareness, with sparse reference to legal remedies. Even the CSU staff who in London receive a more focused course have often had minimal explanation of the legislation itself. This is one constable's description of the content, highlighting its apparent irrelevance:

And there was a guy on the racial...it was good to speak to him and have his experiences but it also included history basically on different cultures and where they come from and...some of it wasn't relevant in my opinion. You just couldn't possibly learn everybody's history of the religions and different cultures that there are today...It felt like we were being preached at...being taught by police officers who had been on a diversity training thing and they've found the light you know. They used to treat victims whatever like this and now they've been on this course they treat them like this and this is the way to do it. We don't really want to know that he's found that light.

We were asked on how we thought the course was run and would we change anything and we said yes, we'd put more legislation in it because it did not touch on the racially aggravated side of things. You were given a leaflet on it, a handout. Considering that's the new thing that's coming out we didn't feel they covered that at all. And we said that at the end. That was brought up, considering it was a community safety unit course it was designed obviously for people on the CSU and it didn't deal with the legislation that you are actually dealing with. I believe since then they've changed the course.

A few police officers were met who had taken the trouble to learn about the legislation from the internet or in studying for exams. Only one CSU officer mentioned attending a course with legal content, and another knew all about the Act through creating a database. More typically uniformed officers said that although they might receive brief bulletins at the time new legislation was introduced, they were expected to take their own initiative in following this up on the screen. Mostly they were too busy to do so and would only consider seeking information from this source or from colleagues if a case came up. Officers were nearly always aware that the legislation provided enhanced sentencing for specific racially aggravated offences of violence and public order but usually no more than that. Detectives were better informed but did not often seem aware of the difficulties underlying the concept of hostility. Their complaints about the Act were usually about the limited powers of arrest for some of the offences.

Custody officers had a computer screen with specimen charges; only two that were spoken to made use of the Police National Legal Database. The postal survey data confirms that custody sergeants most frequently used the computer package (23%) or advice from fellow-sergeants (20%) when deciding whether or not to charge an RAO.

Across all agencies, the most ignorance and vagueness surrounded the existence and use of s82, that part of the Act which lays down the approach to offences which have evidence of racial aggravation but which do not fall within the group of offences specified in ss29-32. Police, in particular, tended to think of the legislation as something affecting only the listed offences. People might be aware that racial aggravation needed to be highlighted and sentenced more heavily wherever it occurred, but not that there was a separate part of the Act addressing this, let alone being able to say what it was. Senior sentencers were also among those ignorant of this part of the Act, whilst insisting that their practice had always followed its rule.

Attrition from report to conviction

'Attrition' is a common feature within the criminal justice process, as potential offences, charges and convictions make their way through the system's many 'gateways'. Subsequent chapters examine gatekeeping elements that are of particular importance to RAOs, some of which relate to policing practices (Chapters 3 and 4) and some to the procedural problems described above.

Table 2.2 shows that in 1999 RAO convictions equated to only 5.5 per cent of recorded RAO offences. This attrition rate is slightly more than for other offences – *Criminal Statistics, 1998* (Home Office, 2000d) showed convictions for indictable (plus a few associated summary) offences to be 6.7 per cent of recorded crimes. The table also indicates that in 1999 recorded RAOs equated to only 45 for every 100 racist incidents. Of course, an individual racist incident will not necessarily involve an offence (whether RAO or other) – and conversely an incident may involve several offences. But the relationship between the police recording of racist incidents and RAOs is an important question for this research, and is addressed in Chapters 2, 3 and 4. Table 2.2 also shows that, at the court stage, RAO convictions appear to be low in relation to numbers prosecuted. As part of this process, the number of RAOs tried in the Crown Court is significantly below the number committed for trial by magistrates. These later stages in the attrition process are discussed in Chapters 6 and 7.

Table 2.2: Racially aggravated offences and racist incidents: numbers of cases*: 1999 (or 1999/2000)

1.	Racist incidents recorded by the police (1999/2000)	47,814
2.	Racially aggravated offences recorded by the police (1999/2000)	21,750
3.	Racially aggravated offences detected by the police (1999/2000)	7,506
4.	RAOs prosecuted	3,815
5.	RAOs cautioned	363
6.	RAOs convicted in magistrates courts	1,073
7.	RAOs sentenced in magistrates courts	1,008
8.	RAOs committed for sentence to Crown Court	65
9.	RAOs committed for trial to Crown Court	990
10.	RAOs for trial in Crown Courts	494
11.	RAOs convicted in Crown Court	132
12.	RAOs sentenced in the Crown Court (including those committed for sentence)	151

Sources: Home Office (2000a); Povey et. al (2000); data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1).

Note: Lines 4 to 12 are based on the number of separate offences dealt with in 1999 (not the numbers of defendants or offenders).

A typology of racist incidents

Racism knows no bounds of class, age, gender or ethnicity of victim/perpetrator. It is nevertheless possible to recognise certain social settings which produce similar manifestations. The racist incidents described by police and other informants were readily classifiable into seven main types.

1. Street encounters, particularly in town centres, in which drink plays a large part, leading to verbal abuse and other forms of low level public disorder. Assaults may occur, accompanied by racial abuse. Probably the bulk of recorded racist incidents fall into this category. (The record may be skewed by the fact that public order incidents come most readily to the attention of the police).
2. Abuse and persistent harassment of small shopkeepers or take-away food staff – again, late night drunkenness may play a large part. Outlets where the staff are isolated minority ethnic individuals in otherwise all-white areas may be especially subject to long-term harassment or low level abuse, to the extent that they come to regard such behaviour, especially from youths, as ‘normal’.
3. Similar experiences in a neighbour situation. Harassment may come from one individual, from families or from groups of children and young teenagers. Estates characterised by multiple deprivation and social problems are particularly prone to this, as to other forms of anti-social behaviour, but private suburban housing also produces examples. As Sibbitt (1997) found, a local climate where racism is condoned is most likely to produce perpetrators. Often it is only reported once it becomes ‘unbearable’.
4. Youth ‘gangs’, to a greater or lesser degree ethnically oriented, in confrontations with one another. Despite evidence of overt inter-ethnic hostility the authorities tend to regard the incidents as ‘youth trouble’ rather than ‘race trouble’.
5. Name calling and bullying among young children.

6. Encounters between strangers where an altercation, most often in the form of 'road rage', is accompanied by racial abuse.
7. Politically motivated hate-mail and graffiti.

Serious pre-meditated racial attacks are extremely rare, although most of the situations described above are capable of escalating into serious violence. In most cases mentioned, an 'ordinary' assault or public order infringement had become a racist offence by virtue of the actual words used by the perpetrator 'at the time of committing the offence, or immediately before or after' (CDA 1998 s28[1][a]). Verbal abuse alone was found in 38 per cent of the racially motivated incidents recorded by police in 1996/7 (Maynard and Read, 1997) and the impression is that, possibly due to greater police awareness, this is now an even greater proportion.

Politically-motivated racist incidents in the study areas were focused on refugees. In Loc-5 hate mail, believed to be from Combat-18, had been sent to the refugee centre, and the British National Party had been recruiting outside a school where a large mob attacked six Kosovan pupils. White youths were said to be attacking refugee youths in the streets.

In the division next to Loc-3 National Front leafleting was thought to be a factor behind a rise in incidents against Balkan asylum seekers, although the fact that some of the latter had been prosecuted for sexual offences also played a part. There had been a spate of National Front and British National Party graffiti in various parts of the city. In the town centre, begging by refugees had attracted hostility. Heightened hostility and propaganda against refugees was noted by police at times when political debate on the subject escalated.

A distinction can be made, if only for the sake of modifying stereotypes, between a) racist incidents perpetrated by indigenous white individuals against anybody else from a different ethnic background or heritage, and b) perpetrators who are themselves from a minority ethnic background. This may be a false distinction. Yet police officers and community workers often have confused or conflicting views about the status of racist incidents involving minority ethnic perpetrators.

The issue of minority ethnic racism is often evaded (Bowling, 1999), but the nature of racism in the multi-ethnic inner cities cannot be understood without reference to this factor (Merry, 1981). The complex backgrounds involved mean that any preventive action must take account of differing social, psychological and political factors. Outside the inner cities, and in certain areas within them, the traditional white perpetrators dominate, and across the nation as a whole this is the real problem.

Some examples from the study areas show how the different typologies reflect the differing characteristics of locations. Anywhere that embraced the local nightlife centre, large or small, was likely to be the focus of Type 1, the drunken public order type of racist incident. There is an overlap with the racist incident directed against the fast-food outlet or corner shop (Type 2). The most repetitive yet least recognised of these are often in small country towns where evening after Friday evening local youths insult and taunt the long-suffering Asian or Chinese staff. In the court at Loc-1 a case was brought of such a kind, where after years of this treatment a shop-worker had retaliated, so that the case against the true perpetrators was lost on grounds of provocation, and the racist element went unacknowledged.

Another version of the shop-harassment type features younger perpetrators, often 10-14 year olds, who on some pretext – perhaps having been refused the purchase of alcohol or cigarettes – decide to pick on the shopkeeper with name calling and graffiti. Racist harassment of a corner shop on the Ryelands estate in Lancaster became a national scandal after media coverage, and an appeal court judgment (*Hussein and Livingstone v Lancaster City Council* 31 HLR [1999]), revealed the extent of the persecution suffered for years by the owners.

Racist neighbour harassment (Type 3) can be even more soul destroying, but those recorded as racist incidents vary in the extreme from the odd bit of damage to property which, if not repeated, is unlikely really to indicate a racial motive, to cases where people have suffered denigrating remarks, deliberate damage and assaults on themselves and their children for years on end. One case emerged where the victim had suffered abuse for 30 years and had only recently complained. Repeat victimisation may comprise only 'small' incidents such as eggs thrown at a house but it is the deliberate and repetitive nature which is cumulatively so damaging (Bowling, 1998).

Evidence from local surveys (for example Saulsbury and Bowling, 1991) shows the vulnerability of minority ethnic residents in places where they are indeed a very small minority, and that racism seems quite localised (Brimicombe *et al.*, 2001). This was also the view of many of the informants, and conversely the reason given for the relatively low level of racist incidents reported from neighbourhoods where Asian groups were in the majority (Loc-2 and Loc-3). However, these neighbourhoods sometimes had their own inter-ethnic tensions.

Police were often not sure whether to classify Type 4 – youth group cross-ethnic clashes – as racist incidents or youth disorder. In Loc-4, where there were regular, almost ritual, confrontations and violence in public spaces among youths from different Middle Eastern backgrounds these were regarded as racist incidents. So were attacks by African-Caribbean youths on Somalis in Loc-5. But in a high-rise estate in a division bordering Loc-3, youths

from Bangladeshi and Pakistani backgrounds had rival gangs who committed quite serious offences of violence against each other, which had not been classified as racially aggravated. In Loc-2, what might be interpreted as inter-ethnic gang clashes had a large element of rivalry between drug traffickers. Although not what Parliament had in mind when framing the law, inter-communal hostilities must often fall into the definition of racial aggravation set out in the Act.

White victims of racist incidents

There was some confusion amongst police officers as to whether the law applied to white (majority) victims (Chapter 4). There was no doubt in their minds, as they made clear, that such victims existed, and not just among the Irish, Scots and Welsh. This was mentioned particularly in Loc-2, where the Asian police officer with responsibility for racist incident victims said that he had often tried to persuade white students at local schools and colleges who had suffered racist abuse from their Asian peers to report the incidents, but they did not want to. Of course some police officers might feel a need to emphasise that racism is not one-sided, and equally some white people might want to claim their share of victimisation. At the same time, the local climate may affect the readiness of police officers to prosecute minority ethnic perpetrators.

There is no information nationally on the ethnicity of victims or perpetrators of racist incidents, but the Metropolitan Police Service has its own classification system¹⁸. MPS monitoring statistics show that one in four victims of RIs in London are recorded as 'White European'. In 42 per cent of cases with White European victims, the suspects are 'African-Caribbean', and in a further 14 per cent they are 'Indian/Pakistani'. Clearly the police are prepared to record and to investigate RIs involving white victims and ethnic minority suspects (at least, in London).

Also, speculation about uneven treatment of different ethnic groups does not find support from the MPS data. Comparing the reported ethnic appearance of suspects (recorded when the RI is investigated) with accused persons (those detected) shows there are no substantial differences (Table 3.1). This seems to indicate that cases are pursued with equal vigour whatever the ethnicity of the suspect. It was also found that 85 per cent of the accused were charged or summonsed, ten per cent were cautioned and five per cent dealt with in other ways, irrespective of ethnic group.

¹⁸ For statistical purposes, victims and suspects are grouped under the seven broad categories shown in Table 3.2. This classification is necessarily based on the appearance of the individual, rather than a detailed knowledge of ethnicity; for example, Bangladeshis will be grouped under 'Indian/Pakistani'.

Table 3.1: Ethnic appearance of suspects and accused: MPS, 1999/2000*

Ethnic appearance	Accused	Suspects
White European	68.6%	63.3%
Dark European	4.3%	3.2%
African-Caribbean	19.7%	20.1%
Indian/Pakistani	6.3%	7.8%
Arabic/Egyptian	0.8%	1.0%
Chinese/Japanese	0.3%	0.4%
Unknown	0.1%	4.2%
Total	100.0%	100.0%
(no. of cases)	(3,280)	(27,017)

*Source: MPS Racist incident monitoring data. 'Accused' are all persons arrested and proceeded against in connection with these incidents. 'Suspects' are the number of suspect descriptions recorded (more than one description may be obtained for any one suspect).

Police officers as victims

Another disputed issue is whether it is right for police officers who are subject to racist abuse in the course of an arrest to claim to be victims of racial aggravation. Ever since the introduction of POA 1986, s5, police have successfully claimed to have been 'alarmed and distressed' by abuse and indeed this has been the most prolific use of that section (Brown and Ellis, 1994). There seems no reason why, if that is acceptable, the racially aggravated variant should not be, and that officers should not also be protected by the aggravated s4A (intent to cause alarm, distress etc). The case of *R v Jacobs*¹⁹ confirms this. Some minority ethnic police officers thought that abuse of any kind was so common that they just ignored it or answered back, but others had brought successful cases themselves and this seems to be quite a regular pattern. Charges have even been brought based on racist abuse uttered in the custody suite, although it is open to dispute whether this is a 'public place' (Maynard and Read, 1997).

Cases involving white officers were mentioned less often and were probably less likely to be charged. Opinion was divided as to whether this was something you just put up with as part of the job. Indignation had been aroused among ethnic minority spokespeople in Loc-1 when one of the very first cases brought under the Act was the prosecution of a black man for racist abuse against a white officer.

19 The Times, 28th December 2000.

Religion and hostility

Concern had been expressed, particularly by Muslims, that religious as distinct from racial hostility was not included in the legislation, although an amendment introduced in subsection 28(3) stating that it was immaterial if an offender's hostility was also partly based upon religion was found acceptable. Very little mention was found of incidents of hostility from indigenous white perpetrators directed at Muslims or any other religious group, although there was occasional mention of jeering at distinctive clothing. Loc 4 was the only area where anybody raised the question of general hostility against Muslims. More often religious hostility was mentioned as occurring between Asian or Middle Eastern minorities, where religion was part of a bundle of historical/political animosities. Though some of the informants thought that religion should be covered, there was no very strong demand for it, even among minority ethnic representatives²⁰. Often people confused the issue of crime with that of discrimination, with which they were more concerned. Several people thought that religion was a different issue to race, being something that you 'choose' as opposed to being born with, and some police officers thought that it was more urgent to include homophobic crime.

Although not a high profile issue in any of the research locations, religious animosity between Sikhs and Muslims was the cause of several cases handled by the additional CPS branch visited. Muslims complained that Sikhs were exploiting their legal 'ethnicity' (Chapter 2) to gain advantage. One such case, charged as racially aggravated, had been sent up to CPS headquarters for a decision and the result was not known.

A Christian church, and a church hall, were targets for Muslim graffiti in Loc-2, thought to be the work of local youths. The more serious incident, involving desecration of bibles, was recorded by the police as a racist incident after members of the congregation said that they saw it that way.

The distribution of racist incidents and offences

The geographical distribution of recorded racist incidents and racially aggravated offences is extremely skewed, with, as might be expected, the largest numbers generally emanating from police forces with large minority ethnic populations. The vagaries of recording practices (see Chapter 4) result in some odd contrasts, but the overwhelming dominance of London is undeniable. The enormous diversity of the Greater London population far exceeds

²⁰ There were six Muslims among the community participants, and they too were divided, though on balance favouring the inclusion of religion in principle.

anything in any other part of the country and this alone goes a long way to explain the 49 per cent share of racist incidents, and the 64 per cent of recorded racially aggravated offences compared with the rest of the country (Table 3.2). However, as shown later in this report, the MPS has the most developed systems for reporting and dealing with RIs (and ‘hate crime’ generally) and it seems that the large number of cases is partly a consequence of the system in place.

Table 3.2: Racist incidents, racially aggravated offences and ethnic minority population; by police force groups

Police force group	Ethnic minority population*		Racist incidents		Racially aggravated offences recorded	
	No.	%	No.	%	No.	%
1. London (MPS and City)	1,189,300	43.7%	23,401	48.9%	13,890	63.9%
2. Three conurbations with ethnic population above 6%	750,900	27.6%	5,990	12.5%	1,810	8.3%
3. Three conurbations with ethnic population below 6%	75,900	2.8%	2,538	5.3%	605	2.8%
4. Five counties with ethnic population above 4%	282,600	10.4%	3,797	7.9%	1,011	4.6%
5. Nine counties with ethnic population between 2% & 4%	200,800	7.4%	5,451	11.4%	2,201	10.1%
6. 21 counties with ethnic population below 2%	225,100	8.3%	6,637	13.9%	2,233	10.3%
England and Wales total	2,724,600	100.0%	47,814	100%	21,750	100%

Sources: Home Office (2000a); Povey *et al.* (2000)

Notes:

* Estimated population (aged ten and over) classified as Black, Asian and Other (including Chinese); mid-1999 data, from the Appendix A of the ‘Section 95’ publication (Home Office, 2000a).

For full details of police force grouping, see Appendix D; in later tables forces in groups 2 and 3 are listed by name.

Reporting racist incidents

The huge growth in racist incidents brought to the attention of the police – a threefold increase in two years in England and Wales – is recognised as being largely a product of increased reporting and recording (Home Office, 2000a). The most recent British Crime Survey estimates actually show a very significant drop in racist victimisation of ethnic minorities, of nearly one third since 1995 (Home Office, 2000a). No agencies in the study areas, including those representing potential victims of racism, could say for certain how far, if at all, their figures depicted a real increase, although there were local pockets of fresh hostility, especially against asylum seekers. As with domestic violence, the increased recording is thought to be due to a combination of more encouragement to report, more ways of doing so, greater awareness on the part of the police, more serial recording of repeat incidents, and the active involvement of other agencies in recognising and responding to incidents.

All the study locations showed different combinations of report facilities (or lack of them), but there was no clear correlation between the means of reporting and the recorded numbers of racist incidents and offences (see Tables 2.3 and 4.2), which depended also on police practices.

The Report of the Stephen Lawrence Inquiry supplied several recommendations on reporting and recording of racist incidents (recommendations 12–16). Even if police remain the main channel for reporting, the involvement of social housing landlords, schools and community organisations is a vital ingredient for capturing a wider range of incidents, and in April 2000 the Home Office issued a Code of Practice (Home Office, 2000b) for reporting and recording in response to recommendation 15 of the Report.

In its recommendation 16, the inquiry emphasised the importance (with due multi-agency consultation) of a) the means to report at locations other than police stations and b) the ability to report 24 hours a day. Only one place was found (Loc-3) where 24-hour reporting, other than to the police, had been established. Locations varied considerably in the extent to which non-police reporting facilities were available. The commonest facility was a *self-report form* distributed in places like housing offices and doctors' surgeries, and to agencies serving the needs and culture of minority ethnic groups. *Reporting centres* within community-based organisations requires the formal involvement of non-police individuals trained to record incidents in standard and reliable way (Home Office, 2000b). It was found that these were less common. Outside these arrangements, many key individuals are in a position to encourage victims to come forward, and may even be employed to do so. Police

are increasingly encouraged to use 'community intelligence' to locate racist incidents and perpetrators. All divisions had an active commitment, through designated and/or local officers to develop links of this kind.

Table 3.3: Reporting facilities in the five study areas

Area	Multi-agency anti-harassment forum	Racial harassment worker	Reporting centres	Self-report forms	24-hour reporting
Loc- 1	Yes	Yes	Yes	Yes	No
Loc- 2	No	No	No	No	No
Loc- 3	Yes	Yes	Yes	Yes	Yes
Loc- 4	Yes	Yes*	No	Yes	No
Loc- 5	No	In housing department only	No (limited on-screen reporting)	Yes	No

Note:

* part of area only.

The mere existence of a facility did not necessarily mean it was being used effectively, but some of the differences among police divisions do matter. Loc-2 had no formal arrangements and no self-report form, and no Race Equality Council (REC) to carry matters forward, so that racist incidents had a low profile. Loc-3 had the fullest range of facilities, but many were at an early stage of development and clearly had not done much during 1999 to boost the numbers of cases dealt with by the police. Loc-1 was also well-provided, and the relatively high level of reporting was probably due to the extent to which racial harassment was an established priority. A county-wide multi-agency committee had been set up in 1995 to combat racial harassment, leading to the appointment of a full-time racial harassment officer (RHO) in 1998. The following year, a pilot network of reporting centres were set up, staffed by people trained by a police inspector in the correct procedures.

The first year of the reporting centres produced only eight racist incidents out of a total of 145 reported, none of which led to charges. The housing department was the main source of non-police reports. There was a good working relationship between the RHO, the police and the housing department, ensuring that the victim was getting appropriate support and target hardening in the form of CCTV, panic alarms etc. It has been noted elsewhere that effective action on racial harassment often depends upon a specialist worker (Lemos, 2000). The low take-up at reporting centres did not discourage plans to extend the facility county-

wide, since it was recognised that in rural areas the number of victims would be few, but their isolation and lack of recognition likely to be worse.

Loc-3 also had a racial harassment project, set up by the local REC in 1999. The inadequate recording of incidents by the police (see Chapter 4) makes it harder to judge the extent of reporting, but the REC's own caseload showed a 56 per cent increase. It seems that the project was picking up neighbour harassment unknown to the police. Not all of its cases were passed on to the police, if the co-ordinator thought another agency more appropriate. The REC was proceeding with setting up reporting centres, but the police showed some ambivalence towards third-party reporting on the grounds that this might delay the vital early stages of investigation (as it was felt had happened in the past).

In keeping with the enthusiasm for multi-agency working throughout the city, an umbrella Anti-Harassment Forum had produced effective joint action in Loc-3, with a particularly complicated neighbour case being cited as an example of success. Mediation had been used on occasions, mainly (as elsewhere) for non-crimes.

In London the boroughs had, or were setting up, monitoring groups which were intended to provide a community input into checking the quality of investigation of racist crime. It is hard for such groups to gain access to enough information to judge overall performance, and in Loc-4 the group was confined to examining a very small number of cases that came to its notice. In another borough there had been clashes of opinion, with monitors advising victims not to co-operate with the prosecution where they thought the wrong charge had been brought.

It is unlikely that RECs and other community organisations speaking for minority ethnic interests will always see eye to eye with the police but it should still be possible to manage the relationship in a constructive way. In Loc-5, the borough commander stressed the importance of 'understanding one another's roles', particularly when community organisations were speaking for both victims and suspects.

Community views

In all the study areas, similar reasons were given by community workers and spokespeople for non-reporting of racist incidents. The main ones were:

- Racist abuse was seen as 'part of life' – not aware that action could be taken;
- Bad encounters with police in the past, or a perception that incidents which were reported would not be acted upon;

- Seeing no useful purpose in reporting, or too trivial;
- Unable to identify perpetrator;
- Would report if they could speak to ‘the right kind of person’ (someone knowledgeable, sympathetic and able to communicate);
- Language barriers; and
- Scared of repercussions/reluctant to antagonise neighbours further.

Sometimes people want the incident noted even if they do not want it pursued.

Police explanations for non-reporting echoed most of these perceptions. In addition, especially in areas with strong Asian or Middle Eastern communities, where inter-minority conflict was apparent, they also ascribed the lack of reporting to ‘wanting to sort it out among themselves’. Everywhere it was acknowledged that there were certain ethnic groups – such as Afghans in Loc-2, Arabs in Loc-4, Somalis and Vietnamese in Loc-5, and Chinese everywhere – with whom it was particularly hard to make police contact and who were unlikely to report any sort of crime unless really severe. The most vulnerable groups, especially refugees, were least likely to have any constructive contact with police.

It is relatively easy for senior police to relate at a certain level with ‘spokesmen’ (nearly always male and elderly) from various minority ethnic organisations. It is much harder for effective knowledge of victimisation of youths and women (especially Asian women) to be conveyed to the police. Working through voluntary agencies who serve these groups is likely to be the best way forward. Some agencies are not willing to work with the police, but others say that they would welcome more pro-active work by the police to reduce racist victimisation.

Many people speaking for the victims of racism felt that police attitudes had not really changed, citing bad experiences on the street or when reporting as victims. The attitude of front desk staff was a problem – it appeared that civilian staff were not always able to pick up on the racist element in a report. When praise was heard it usually related either to certain senior policemen who were seen as trying to change things, or to particular local or designated officers who had struck up a very good rapport with people from different ethnic backgrounds and were trusted. Trust was the essential ingredient.

Sometimes strong views were expressed against the wider criminal justice system, with the CPS and the judiciary apparently being regarded with the most suspicion. There seems to be a lot of misinformation about the role of the CPS, blamed for a perceived ‘uncaring’ attitude to victims. On the issue of racist crime, even community workers fighting discrimination sometimes knew nothing of the racially aggravated offences legislation and that heavier sentences were being passed. Those who were aware did not think that

potential victims knew anything about the legislation and that they might be more ready to report if they did.

Among the suggestions for action were: more publicity about the law; local publicity about successful prosecutions; a national advertising campaign against racist crime similar to the 'drink-drive' campaign²¹. The main message from the small sample of community contacts was that racism would not be reduced through reactive measures alone, and that social education, especially if targeted at perpetrators, was the only hope in the long run. Many people within the criminal justice system, and many police officers, said the same.

21 The MPS publicity campaign against 'hate crime' had barely started when the fieldwork took place.

4 Dealing with racist incidents – police procedures and concerns

Each police force in the study areas had their own methods of handling racist incidents (RIs), from the initial receipt of a report right through to a crime 'clear-up'. In different degrees police action was complemented with action by other agencies, both statutory and voluntary. Local strategies within crime and disorder partnerships affected the way RIs were dealt with.

In operational terms at least three models could be identified for policing racist incidents: victim-oriented; investigative/prosecution oriented; and problem-oriented. Clear priorities emerged in the study areas, although none operated one model to the exclusion of the other two. These differences were expressed in the structures adopted for handling racist incidents.

Recording racist incidents and crimes

Recent research (Burrows *et al.*, 2000, HMIC, 2000) distinguishes two different approaches to crime recording practised by different police forces: the 'evidential' and the 'prima facie'. The former allows more discretion in weeding out allegations not considered beyond reasonable doubt; the latter, seen as less open to bias, and more useful for purposes of problem-oriented policing, takes reports at face value for counting purposes. The recording of racist incidents, regardless of force practice in general, should follow ACPO guidelines (2000) which take an uncompromising 'prima facie' path. Following the Stephen Lawrence Inquiry recommendation a racist incident is 'any incident perceived as racist by the victim or by any other person'. Moreover policies that require all racist incidents be investigated limit the exercise of discretion at later stages of the process.

Burrows *et al.* also describe different mechanisms in use for creating the computer crime record – mainly by means of transferring from a pro-forma filled in by the officer involved, but increasingly by direct computer inputting. It was found that these differences produce a variety of methods for processing racist crime. Forces following the 'paper route' rely on the officer flagging an offence as racist on his crime report form and/or attaching to it a special racist incident form. Forms are then passed on to a computer inputter (whose screen should display a race 'tag' although it was found not to be the case in one study area). Other forces require the officers themselves to input their race cases ('incidents' as well as 'offences') directly onto the crime screen, by-passing the need for a paper form.

In all the study areas, racist incidents were subject to special police procedures and supervision. In Loc-1, a fast track had been set up for racist incidents, whereby reports were phoned in directly to the force operations room where they became part of a special category of 'serious events of the day'. On that basis they were distributed within twelve hours (or sooner if urgent) to the appropriate sector inspector and to the divisional support team. A report was then picked up by a beat officer who became responsible for entering it on the computerised crime recording system, flagged as racist. The same would apply for any incident directly identified by that officer. In addition, a common racist incident form was used to transmit information about victims between agencies. All incidents remained on the crime record even if written off as 'no crimes', in case another incident occurred to link to a pattern (an important element in the system, also found in the Metropolitan Police).

In Loc-3, the response officer was responsible for identifying an incident as racist and for filling in a paper crime report. The paper process had recently been streamlined so that, instead of a special form being required for racist incidents which was then used in compiling the crime report form, the same form was used for both, and the racial element prominently entered, even when the incident was recorded as a 'no-crime'. It was hoped that this would deal with undercounting of racist incidents due to the use of two different forms, as well as raising the awareness of officers to the potential seriousness of 'minor' racist incidents.

The system in Loc-2 was much less developed, although changes were in prospect at the time of the research. A racist incident form was filled in by response officers and sent to the Minorities Officer responsible for support to victims (see below), but this was not integrated with the crime record. Patrol officers were relied upon to fill in an RI tick-box on their crime report form, but there was no automatic transmission of the racist tag to the computer record, without which it was not easy to track the progress of these cases.

In the Metropolitan Police (Loc-4 and Loc-5), racist incidents transmitted from response officers, or via other agencies, were entered directly on to the crime screen by the officer on the scene. Duty inspectors were informed directly from the first attendance at the scene, something not otherwise required except for the most serious crimes such as rape and murder. The specialist Community Safety Units (see below) picked up racist incidents daily from the screen.

More than one offence, or none, may be linked to a single racist incident. Moreover, not every offence associated with a racist incident is necessarily racially aggravated, or recorded as such. MPS monitoring data for 1999-2000 shows that even when assaults, harassment and criminal

damage are recorded, about one in four offences were classified as basic offences, rather than racially aggravated (Table 4.1). There are many possible factors involved, one being incidents tagged by police as racist solely because of the parties being of different ethnic groups (as the researchers were told had tended to happen in the early days of the system). But practices vary greatly between different police forces in this crucial area, as Chapter 5 shows.

Table 4.1: All offences recorded by the police, that were linked to racist incidents: MPS, 1999/2000

Offence type	Racially aggravated offences	Basic offences	All offences
Assaults	4,552	1,957	6,509
Harassment	6,620	719	7,339
Criminal damage	2,646	1,274	3,920
Other	–	1,707	1,707
Total	13,818	5,657	19,475

Source: MPS Racist incident monitoring data; see Appendix D, Table D1 for a more detailed analysis.

Who investigates racist incidents?

The main distinctions to be made in the way racist incidents are investigated lie in the differing roles of specialist units in relation to locally based police. In the Metropolitan Police there is a two-tiered system for dealing with all so-called ‘hate crime’, a term which in this case embraces domestic violence as well as race crime and homophobic crime (the latter being a small proportion). Local sergeants are required to apply a higher than normal level of supervision to the initial stages of every hate crime response. In addition, each borough has a Community Safety Unit (CSU) responsible for following up all hate crime incidents whether reported direct from community sources or from response officers. The bulk of the workload is domestic violence, usually accounting for nearly twice as many incidents as the racist group. Across the divisions CSUs are similarly structured and have both a supporting and investigative role. They work within guidelines formulated by the Racial and Violent Crimes Task Force at Scotland Yard but are answerable to their borough managers.

At the time of the fieldwork the CSUs were under strain from the need to investigate any racist incident, even passing remarks from strangers or one-off altercations between motorists. The system was criticised for turning ground-level policemen into mere ‘box-tickers’

– having entered a racist incident on the crime computer they might feel no further ‘ownership’ of the case. This model is likely to affect the quality of information obtained by the response officer from whom the report originates. The less his or her future involvement is likely to be, the smaller the incentive to collect crucial details of the immediate scene and secure witnesses (the so-called ‘golden hour’ of a crime investigation).

This type of system overburdened the CSU investigators. The minimum standards of investigation for race crime operated by the Metropolitan Police are very resource-intensive. The steps that are supposed to be taken cover several pages of print (MPS, 1999). Even crimes where there is little hope of tracing a suspect are to be looked into, and the victims contacted again by the CSUs. In practice it is simply not possible to give every incident the same level of attention, and supervisors said that they had to devise their own ways of prioritising cases.

In order to reduce these pressures, in July 2000 a revised policy (MPS, 2000) was introduced to alter the balance between CSUs and local uniformed officers. More incidents would remain the full responsibility of uniformed officers, with their sergeants and inspectors in the supervisory role. The CSUs would only deal with incidents where the *primary* motivation appeared to be racist (an important distinction); incidents of repeat victimisation; and other incidents giving rise to concern about particularly vulnerable victims or the community impact. This was intended to make better use of the specialist CSU expertise and experience and to heighten the standard of practice of local police. The fieldwork finished too soon to ascertain whether the new system would satisfy the problems of CSU staff at being required to treat every case with equal seriousness, and whether there would be an improvement to the quality of investigations, and a better service in the neighbourhoods.

The police in the London case study areas (Loc-4 and Loc-5) were clearly the most oriented towards the *investigation/prosecution* model, and showed the greatest degree of specialisation. The other three study areas, with far smaller numbers of racist incidents being recorded, had limited specialisation and no ‘positive arrest policy’ as adopted by the MPS.

Loc-1 and Loc-2 were highly *victim-oriented*, but the former, as already described, had more sophisticated methods of disseminating information about racist incidents and mechanisms for immediate response at sector level. Investigation remained at this level except for a few more serious incidents, while the victims received support from a specialist unit, led by an inspector with a strong remit of working with minority ethnic representatives and monitoring racist incidents. Sector supervisors were responsible for investigations from start to finish. They were expected to visit racist incident victims in person at the conclusion of the investigation to explain the outcome and get feedback.

Loc-2 had a thinly resourced response to racist incidents. The Minorities team, which was the channel for reports of all racist incidents and (primarily) provision of support to the victims, had recently lost an inspector and at the time of the research consisted of two police constables (an Asian male officer and a white female) covering an entire division of nearly 250,000 population. Investigations were carried out by local patrol officers (only seldom, if serious or prolonged, by CID officers). There was no active involvement of the specialist team other than a liaison and progress-chasing role. The lead member of the team was assiduous in his main role of victim support and liaison and combined many other roles – community link worker, interpreter, police race relations trainer etc. But he clearly had far too great a workload, pending the recruitment of an enhanced team. This was in progress at the time of the fieldwork.

While the Minorities team kept well-documented records of racist incidents and subsequent action, the system was not well geared to transmitting the concern and activity surrounding victims into action directed at perpetrators. This too was being examined and a new policy for the whole force was being drafted.

Loc-3 also transferred racist incidents directly to sector inspectors or sergeants to take responsibility for the investigation, with divisional investigators being involved only in very serious cases. At senior level there was a very strong commitment to the multi-agency approach through the crime and disorder partnership, resulting in greater emphasis for racist incidents to be seen in the context of *problem-oriented policing*, whereby arrest and prosecution are only one strand in a multi-strand strategy.

Investigations of racist incidents were supported and monitored at divisional level by a specialist inspector. Specialist bureaux were being set up in all divisions of the force to provide advice and information to officers dealing with crimes against 'vulnerable groups' – minority ethnic victims being classed with the disabled, elderly, homosexual, and domestic violence victims. These units were intended to have an overall monitoring role and also to disseminate information on 'hot-spots'.

The case studies therefore provide a range of models for investigating racist crime – from the highly specialised (Loc-4 and Loc-5) to a system in Loc-2 which had almost no specialisation apart from an over-stretched victim support unit. Administrative procedures for handling racist incidents also ranged from minimal to extremely elaborate.

it was concluded that the systems themselves were less fundamental to the process than the priorities which drove them – the three that have been defined as victim-oriented, investigation/prosecution oriented, and problem-oriented. A victim-oriented system that is not

integrated with the investigation process stands less chance of dealing with perpetrators. An investigation-oriented approach needs to be able to prioritise cases appropriate for specialist treatment and allow some others to be dealt with by appropriate non-criminal or informal means. A problem-oriented approach aims to eliminate racist behaviour by a variety of means, but needs to incorporate the views of victims in the decision as to whether or not to take the prosecution route, and the mechanisms need to be in place to achieve all these linkages.

Police reactions

The systems described above served one other significant purpose. They provided police officers with a protective mantle against criticism that they were not paying due attention to racist incidents. Referring to the Metropolitan police protocol for dealing with hate crime, known as the 'Protect and Respect Strategy' (MPS, 1999), a borough commander explained that it protected officers by telling them how to do things properly: 'if we follow the policy we are making it safer for our officers'.

The impact of the inquiry into the death of Stephen Lawrence, with its devastating criticism of the way that the investigation was conducted and its conclusion that the MPS was institutionally racist, sent shock waves through English police forces. The sense that this was an issue on which no individual officer could be seen to fail was found everywhere, and especially of course in the MPS, with its highly developed policies and units devoted to hate crime.

The police divisions in the study displayed the effects to different degrees, almost literally reflecting their geographical proximity to that event. In comparison with this, any influence on police practices engendered by the racially aggravated offences in the Crime and Disorder Act 1998 were barely discernible, although the partnership aspects of the Act were probably more important with regard to new methods of resolving racist incidents. Even prior to the Lawrence report, there were considerable differences in the extent to which police and local authorities had responded to the need to deal with racist behaviour, so that some of the study areas were further down the road than others.

Junior police officers in Loc-2, the most northerly of the study areas, were unlikely to feel that the Lawrence inquiry or the legislation had affected them. A local constable was asked:

Q. Do you think you or your colleagues feel under any extra pressure to identify racially aggravated offences or racist incidents?

A. *No. I don't feel under any extra pressure. It's not the sort of thing you talk about [with colleagues].*

Q. *What do you think the Macpherson Report and the Lawrence Inquiry has done? Has it had a reaching effect into [this area].*

A. *No I don't think it's had any impact, to be honest.*

Uniformed officers tended to say that dealing with a racist incident was just like any other crime, with no special inputs, or difficulties with evidence. But evidence of racial motive had been missed in one Loc-2 case where Asian youths had apparently been singled out and attacked with broken glass at a party. It was the CPS who identified this as a racist incident.

More senior officers, conscious of the extra resources and supervision put into racist crime, were aware of the importance attached to the investigation. A Detective Inspector said:

In view of what happened and in view of the [Lawrence] report I would say there's pressure – the pressure being that everything has to be done properly. There's many an eye watching how the investigation is carried out...You've got to say that politically there is more pressure.

In contrast to 'grassroots' police officers, the lessons of the Lawrence report seemed to be taken on board at strategic/management level. The new anti-racist strategy being prepared for the whole force was based on the report's recommendations. The Chief Inspector in charge of operational support in Loc-2 was taking steps to improve the local response to racist incidents and develop self-reporting systems, in addition to setting up a greatly enhanced victim support team.

In Loc-3 it was also acknowledged that (as in the force as a whole) recognition of racist incidents by response officers had hitherto not been satisfactory: hence the change introduced throughout the force in the manner of recording incidents. Instead of RIs being recorded separately and faxed through the headquarters for monitoring purposes, they were now being recorded directly on the crime report form and marked as such in the *modus operandi*. The new method had been introduced early in 2000 and at the time of the investigation was credited with the noticeable increase in records of racist crime. In 2000-2001 recording RIs became a performance indicator, and figures started to climb steeply. However, as a sector inspector admitted, it was still going to take a while for everyone to realise that all racist incidents should be processed as 'crimes', whether or not classified as offences.

For some officers, there was no problem anyway:

If you look at the type of offences charged, you will find very, very few have any racist connotations to them. I think the problem has been blown out of proportion. I think most police officers will tell you that. (Uniformed constable, Loc-3)

An experienced custody sergeant thought that there were deeper reasons for an apparent reluctance to report racist crimes as such – especially those committed by minority ethnic perpetrators. He saw it as something that people were ‘very politically minded’ about and that they did not want to get involved in ‘the racial quagmire’:

I think officers are still almost frightened to mention the word racial. I don't have a problem with it. You know I'm there to make a judgmental decision one way or the other. But I think a lot of younger officers...I have to say some senior officers still find it, appear to find...fight a bit shy of it...

Q. *Do you think there's also the case that they don't recognise it, or they don't want to?*

I think they recognise it. I think we've always recognised it. But I think what we...We've become paranoid about it now...We don't, we don't know what's expected of us...With racial incidents...now police officers, they are not using their common sense on how to deal with it, they're straight away on their guard. What's going to happen with this? Where's it going to lead to? Who am I going to see? What am I going to have to prepare? And I don't think they really want to be involved in it. They are frightened what the consequences might be. (Loc-3)

A more positive view from a long-serving constable:

It [the Lawrence case] has had an impact, very persuasive. In as much as the police are keen to make sure that they are seen to be doing something in respect of any racial incident or homophobic incident. There are improvements. (Loc-3)

One theme often found in the course of interviewing police officers in all the study areas was the concept of the ‘race card’ – a phrase used to describe the perception that some people would claim that an incident was racially aggravated in order to obtain prompt and more thorough police attention.

This was also said to be a ploy sometimes used to gain preferential treatment in rehousing. A check was made with one housing department in a London borough where this had been

mentioned by police. The view from the council official concerned was that this had never been more than an 'insignificant' element in the demand for housing transfers. A senior officer in Loc-3 thought that the 'race card' idea had some foundation but cases were not numerous, though some officers might take a prejudiced view.

Commitment and concerns

It was not possible to assess the commitment of the whole range of police officers to the handling of race crime. Supervisors and senior officers were found that were clearly committed not only in terms of extra resources and systems but also in willingness to use them to tackle significant or ongoing incidents. An obvious example was an incident of racist graffiti on a Sikh temple. Photographs were taken, cameras were installed, extra patrols set up, even though it was the type of crime where there was little prospect of identifying a perpetrator. The sector inspector said:

I think that's a perfect demonstration of how we deal with things differently when there is racial motivation. Because if that had been graffiti daubed on the outside of shop or a post office...and there hadn't been an indication of racial motivation, then the chances are that the details would be taken over the phone. And that would have been it. A crime number would have been issued and there would be no further action taken. (Loc-3)

The multi-agency commitment was strong and acknowledged as such for example by the local Race Equality Council. A detective constable described the work involved in collating evidence and identifying perpetrators in a long-running situation where a neighbour's teenage children were harassing a Pakistani family. Successful prosecutions were brought in the Youth Court for racially aggravated harassment. At the same time the housing department sent pre- eviction letters to the parents warning them that they were in breach of their tenancy. The inspector explained:

The thing for us with this inter-agency approach we have now is that racist incidents are much easier to deal with when police collate evidence and deal hand in hand with other agencies...You sit down with the [housing] department and very often you will be referred to another family suffering from the very same group of people. (Loc-3)

In Loc-1, with a much smaller minority ethnic population, awareness of racist incidents had been raised with agency managers since 1995 through the establishment of a county-wide multi-agency forum and in 1998 the appointment of a Racial Harassment Officer. Third party reporting centres had been introduced even before being recommended by the Lawrence Inquiry report (see Chapter 3) and police structures, as already described, set up

to prioritise action on racist incidents. A detailed force anti-racist strategy was being implemented. The result was a relatively large volume of racist incidents to be processed.

Yet it was acknowledged by the divisional commander that there was some way to go before police officers really understood the implications of the Lawrence report and why they were expected to adopt a distinct approach to victims of racist crime. One officer had been disciplined for mishandling a case and others were nervous:

It's almost an over-reaction or...people losing their confidence...[one] officer was recording to the nth degree what he was doing, so much so that he must have spent more time recording what he was doing than actually investigating it. And to me that is a sign of a workforce losing its confidence. (Loc-1)

The commander himself adopted a defensive approach to prosecution of racially aggravated offences. He decided that rather than officers exercising discretion, they should leave any possibly controversial decisions to the CPS:

It's always been my approach, ...if it is racially, anything racial connotations at all, then we should get an independence to the decision making process. You should try and put it to CPS who should recognise the sensitivity of it and make an independent decision. Mainly, if somebody else has looked at it and said look, there's not enough evidence...Now what that couldn't stop is an officer deciding at random, involves his discretion to say well I'm not going to even submit files, I'm not going to submit the forms and all that. I doubt that would happen too many times, but it could happen. But once the file's in those are the instructions which are issued. (Loc-1)

In other interviews, both the support team inspector and the detective inspector with responsibility for overseeing racially aggravated investigations insisted that the policy was always to seek CPS advice before deciding not to charge a case because of insufficient evidence:

If in doubt I can make the decision, but I certainly would not, on a racially motivated crime, make that decision independently myself, because of the immense problems, the concerns expressed by victims, not wanting to show that the police are taking a negative attitude to the evidence and seek a second opinion of the experts. (DI, Loc-1)

Evidently, not many cases in practice were affected by this policy, since the CPS had received relatively few advice files on racially aggravated offences, but the language conveys the anxiety engendered in the minds of the police.

The inspector from the support team said that when he had come to the division two years previously 'the confidence in the police from victims of race crime was very low'. It was clear that he had put in a great deal of personal effort to turn round the situation, establishing close links with different Asian groups (to the extent of making his home number available). His main role was support to victims, especially where an investigation or prosecution had failed. The role of sector police could be equally intense in any particular case, and it was remarkable that every incident had to be finalised with a visit to the victim by the sector inspector.

Uniformed officers in Loc-1 were asked how they viewed the extra effort and extra supervision put into responding to racist incidents, however small, compared with 'ordinary' crime. They said that they didn't always like being overlooked so much, having to supply a mere crime number to a victim of, say, a burglary while putting in hours investigating why an Asian family's car aerial had been bent. Interviews with uniformed officers confirmed this slant:

My perception is that most officers feel a great deal of pressure...The fear of being caught out if you like, the fear of not dealing with it the right way, is quite prevalent in my opinion. (Beat constable Loc-1)

They're not very serious crimes. If I said that officers are treating them as seriously as armed robbery I'd be lying. It's only human nature that officers are saying "I've got a whole load of work on I don't need this as well!" But I think that sort of attitude is stamped on by supervisors. It's certainly stamped on by me...Those officers are very quickly made aware of the fact that it might be minor but racially aggravated offences are serious, they will be dealt with seriously. (Sector sergeant Loc-1)

The detective inspector, however, was less of a convert:

I've got no problem whatsoever that all racial incidents are recorded on the crime information system whether they're crime or not...They receive an excessive amount of supervision and management...and every avenue is explored to the detriment of a lot of other routine problem areas. But I mean that's not a criticism. (Loc-1)

The tensions surrounding the processing of racist incidents were naturally to be found in London as well. Many of the MPS officers interviewed were clearly genuinely committed to the race crime issue, taking it very seriously, putting in long hours, coming in on days off, some even giving victims 24-hour access to their mobile phones. Cynics were met too, and also those for whom the lack of differentiation between large and small cases was very

irksome. But above all the sheer volume of cases to be investigated and the pressures that produced were the salient features of Metropolitan police experience, quite outside anything encountered elsewhere. The London CSUs were clearly understaffed for their workload, even though extra officers had been brought in. The result of this in the Loc-5 CSU was 15 people working in one grossly overcrowded room dedicated to investigation of hate crime – mainly domestic violence but including about 60-80 racially aggravated cases per month.

At senior management level officers were clear that professionalism was what counts in the investigation of racist incidents. 'We deliver by taking allegations seriously, not by thinking about racism' was how the detective inspector in charge of the Loc-5 CSU put it. He was clear about the importance of documenting an investigation carefully and logging progress.

In this division the police saw themselves as emerging from the shock of the Lawrence report and beginning to act upon the lessons. 'It hurts but it's fair' said the borough commander. He felt that failings could be overcome by professionalism: 'People talk about a positive charge and prosecution policy but it's got to be about us using good investigation and technical competence'.

At the same time he thought that 'Technically investigators can be really competent but can leave people issues to one side and that can lead police into awful trouble and pretty nasty newspaper articles about our insensitivity'. Hence the need for continual liaison and dialogue with community organisations (Chapter 3). In Loc-5 there was an active partnership with the local authority over neighbour harassment and anti-social behaviour, and the future development of community-based reporting centres as recommended in the Lawrence Inquiry report.

Senior officers thought that, after a difficult post-Lawrence period, people now knew what to do and were getting on with it. It was 'a measure of our success' that no officer in the borough has been sacked for not doing their job properly on race crime 'although a few have had shortcomings pointed out'.

A senior Loc-5 detective pointed out that 'in selection and promotion people need this area (crime against vulnerable people) to get on' – a change from it being a backwater. His counterpart in Loc-4, closely involved with MPS policy development in this area, was surely a case in point. Also received were some extremely cynical and unrepeatable comments on the 'use' of race crime in career building.

At middle-management level and below the anxieties concerning race crime and racism were much more evident, expressed either openly or through a very guarded approach or

sometimes in what one woman PC described as a 'seen the light' attitude to policing cultural diversity (Chapter 2). There were tales of officers terrified of being accused of racism because of the assumed effect on career prospects. (The remark cited about sackings for race crime failure, even though none had occurred in the division, shows that the possibility existed). A detective inspector in Loc-4 spoke forcefully of how, as he saw it, this was hampering proper investigation, as conducted by less skilled officers:

They have a robotic response. They are so afraid of using the wrong words or being accused of neglecting a racial incident...or being accused of racism that they are producing an inflexible interpretation of the evidence. They are not chatting – when dealing with minority ethnic people they are either interviewing or interrogating – and this isn't just from white officers...If they were more human they might develop the complaint.

He added:

Supervisors are running scared at the mention of race. Some behave like headless chickens. There is a supervision issue in among all this.

But he also said:

the uniformed cops in [this division] would be regarded as amazing elsewhere. Some have done stunning work on the crime scene. I see their work on the crime report and when they feel more relaxed they can get a better statement. On the whole they do very well. We get letters from victims of race crime thanking us. (Loc-4)

One common effect of the lack of confidence (or a perceived need to 'cover one's back') among the uniformed officers interviewed – was the tendency to play safe by reporting every incident involving diverse ethnic groups as 'racist'. But some commentators from other agencies thought that, while this had happened a lot initially, it was now less prevalent. There was actually a sense of relief conveyed by some response officers that the existence of the CSU meant that their own responsibility in racist incidents was fairly limited (an attitude that the new guidelines activated in July 2000 were designed to change).

Discussing low morale among officers, several supervisors in the MPS locations mentioned the stresses arising from short-staffing, low pay, lack of resources and lack of the power to see things through, plus the need to observe more and more procedural rules. All these things feed into the unease affecting the approach to racist offences, although the complaints were not limited to one kind of crime.

Discussion

The professionalism and dedication of many of the officers spoken to in connection with racist incidents was impressive. Senior officers, in particular, were very aware of the priority accorded to the issue on a national as well as force level. The systems they had developed or were developing were a reflection of this. Right down to ground level, individuals were encountered who were determined to provide a better service for ethnic minority communities.

There were also those for whom the high level of supervision and attention expected for what were sometimes relatively minor incidents was clearly felt to be burdensome and unnecessary, as well as seeming to be a disproportionate use of resources. And the tension surrounding the handling of racist incidents made itself felt throughout the service.

Whatever the strategy adopted for handling racist incidents – victim-oriented, prosecution-oriented, or problem-oriented – it is clear from the examples of the study areas that an essential tool is the ability to record and track all incidents through every level of police involvement, and, whatever the outcome, to retain details for intelligence purposes in the event of repetition. This should apply whatever the level of RIs reported.

The case studies also show the importance of motivating uniformed officers to take responsibility for the racist incidents that they encounter on a day to day basis. The system operated in Loc-1 was well-designed to do this. The MPS were going over to a procedure intended to have the same effect. The lack of it in Loc-2 and Loc-3 was apparent in low reporting rates and lack of follow-up. The existence of specialist units, whether for investigative or victim-support purposes, tends to encourage an attitude that disassociates race issues from normal policing.

Yet the experience of Loc-1, with a small minority ethnic population, and the experience of the extremely multi-racial Loc-4 and Loc-5 show that to encourage reporting and then to treat every incident as equally important for purposes of criminal investigation is self-defeating. Either the system is overwhelmed, as in London, or cases are pursued without sufficient evidence to sustain a prosecution. The investigation stage should allow a *prima facie* crime report to be prioritised on *evidential* grounds: i.e. where there is valid evidence that a crime has taken place²². This needs to apply to every case, not only those earmarked for specialist investigation (as in the new MPS policy of allocating only the cases where the primary motive seems to be racist to the CSUs). A more realistic matching of demands to resources ought to encourage the proper pursuit of racist crimes that offer a real prospect of prosecution.

22 The Home Office proposes this approach for all criminal reports and investigations (Home Office, 2000c).

This chapter will examine the processing of racially aggravated offences by the police once they have entered the crime record. Not all incidents logged as 'racist incidents' are deemed to have the necessary elements of a notifiable offence. The more that the police rely on their own assessment of the validity of a complaint (the 'evidential' approach) the less likely is any type of reported incident to be 'crimed'. However police are now encouraged to adopt a *prima facie* approach which should result in more incidents being accepted as crimes²³. The considerable differences in the recording of RAOs compared with RIs which were found in the study areas are likely to be the result of variations in underlying practice.

Crimes recorded by the police are 'cleared up' or 'detected' (terms used interchangeably) when they have been finalised in one of a number of ways approved for purposes of Home Office counting. The offence may result in a charge, summons or caution, or it may be 'taken into consideration' at court for sentencing purposes. These are sometimes called 'judicial clear-ups'. But there are many offences where there is enough evidence to charge but which are not charged, and these count as detections if they meet certain criteria. These include: a victim or other essential witness who does not want to give evidence; an offence committed by a child under the age of criminal responsibility; the six month time limit for a summary offence to be prosecuted has elapsed. There is also a broad category 'no useful purpose served by prosecuting' – offence committed long ago, the police consider that it is not in the public interest to prosecute, or that it would not be appropriate for the victim or key witness to attend court. In this latter group there is clearly room for a good deal of discretion on the part of the officer (inspector or above) who authorises the clear-up.

When racist offences are recorded on the *prima facie* model it is unlikely that the ratio of charges to offences will be high. Where the evidential approach is adopted, greater 'success' in clear-ups is likely. The different patterns revealed in the study areas seem to fit this explanation. For example:

The fact that we have an increased number of racially aggravated arrests and then a low number of racially aggravated charges will obviously result because we're effectively applying a much lower standard of evidence to justify arrest than is necessary to subsequently justify a charge. (Sergeant, Loc-4)

23 Burrows *et al.* (2000), HMIC (2000).

RAOs generally have lower detection rates than the substantive offences, with the exception of criminal damage (Table 5.1)²⁴. In comparing these figures, it must be borne in mind that in the statistics for recorded crimes and clear-ups the offences grouped under ‘harassment’ include some public order offences as well as Protection from Harassment Act type of offences – a confusing statistical conflation²⁵.

Table 5.1: Detection rates for racially aggravated offences and comparable basic offences, 1999/2000

	Harassment	ABH and GBH	Common assault	Criminal damage
Racially aggravated offences	38.9%	43.2%	32.9%	18.8%
Basic Offences	78.3%	62.9%	54.6%	15.7%

Source: Data from Povey *et al.* Table 6. Harassment includes public order offences.

The Metropolitan Police is one of the forces with low overall detection rates (16%, compared with a national figure of 25%) so the force target of 20 per cent judicial clear-ups for racially aggravated offences is not unreasonable in this context. The study areas varied greatly in the proportions of racist incidents and offences cleared up by means of charge, caution or summons. Low rates of recording RAOs, as in Loc-2 and Loc-3, result in higher detection rates. This makes ‘detection’ a poor method of comparing performance between different areas.

Table 5.2: Racist incidents, RAOs and detection, 1999-2000: five case-study sites

	RIs recorded	RAOs recorded**	RAOs detected: charges, cautions and summons	RAOs per 100 RIs	Detected as a % of recorded RAOs
Loc-1	145	140	60	97	43%
Loc-2	197	74	39	38	53%
Loc-3	68	20	16	29	80%
Loc-4	764	578	82 *	76	14%
Loc-5	888	678	155 *	76	23%

Notes:

* No of detected cautions estimated, as not included in data files supplied.

** Excludes offences potentially falling under s82.

24 As the first quote suggests, minor non-racist criminal damage has a low likelihood of investigation.

25 In the Home Office statistics on court proceedings offences of harassment and public order are separated – a preferred solution for statistical monitoring.

These figures do not of course identify offences recorded as RAOs which end up being charged as something else. In the survey of custody sergeants, only half had charged one or more RAOs in the 15 months since the legislation was introduced, and only 16 per cent had charged other offences containing a racially aggravated element (and which could therefore lead to a sentence under s82). Even in London, the custody officers spoken to could not recall charging more than a very few RAOs.

There were no data available to the authors on a force-by-force basis comparing RAOs and basic offences for recorded and detected offences. However, when the number of RAOs prosecuted and cautioned is compared with the figure for basic offences (Table 5.3), the rate is six times higher in London (4.2%) than in the rest of England and Wales (0.7%). Other forces with substantial minority ethnic populations (such as West Midlands and Manchester) do not stand out in the same way. Outside London the percentage of offences dealt with as racially aggravated is one per cent or below for all police force groups.

Table 5.3: Racially aggravated offences and comparable basic offences: prosecutions and cautions, by police force groups, 1999

Police force group	Racially aggravated	Basic offences	Total offences prosecuted and cautioned	RAOs as a percentage of the total
London (MPS and City)	1,680	38,199	39,879	4.2%
Greater Manchester, West Midlands and West Yorkshire	653	71,612	72,265	0.9%
South Yorkshire, Merseyside and Northumberland	182	31,180	31,362	0.6%
Five counties with ethnic population above 4%	348	34,540	34,888	1.0%
Nine counties with ethnic population between 2% & 4%	649	61,779	62,428	1.0%
21 counties with ethnic population below 2%	666	138,079	138,745	0.5%
England and Wales total	4,178	375,389	379,567	1.1%

Source: data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1).

It seems that police force policies and practices operate in this field independently of ethnic population factors, as Table 5.4 confirms. Although the incidence of racially aggravated offences broadly follows the distribution of ethnic minority population among police force groups, there are many 'anomalies'. For example, Greater Manchester, West Midlands and West Yorkshire with 28 per cent of the total ethnic minority population report only eight per cent of recorded RAOs and 16 per cent of RAOs prosecuted and cautioned. Taking groups 5 and 6 together, 30 county forces with 16 per cent of the total ethnic population account for over 30 per cent of all RAOs cautioned and prosecuted.

The problem of following through the processing of RAOs, which is to some extent evident in Table 5.4, is illustrated by the figures for the division with the smallest minority ethnic population, Loc-1. Here, recording of RIs has increased dramatically through local initiatives. But there has to be some question in interpreting the figure of 60 RAOs detected (only three of which were cautions), which bears no relation to the very much smaller number of RAO police charges recorded by the CPS in the same period (it cannot be stated precisely how many, as CPS figures relate to the whole county). It is suggested that this supports the view that even if an incident is recorded as a racially aggravated offence, at the end of the day there may often not be enough evidence to support an RAO charge. In Loc-1 most of the offences recorded were 'harassment' RAOs, likely to be neighbour disputes where counter-allegations are common and 'words' may not be provable beyond reasonable doubt, or prosecution is not desired by the victim.

Table 5.4: Ethnic minority population, and racially aggravated offences recorded, detected and prosecuted: percentage distribution by police force groups

Police force group	Ethnic minority population* %	Racially aggravated offences		
		Recorded %	Detected %	Prosecuted and cautioned %
London (MPS and City)	43.7%	63.9%	44.9%	40.2%
Greater Manchester, West Midlands and West Yorkshire	27.6%	8.3%	12.7%	15.6%
South Yorkshire, Merseyside and Northumberland	2.8%	2.8%	4.9%	4.4%
Five counties with ethnic population above 4%	10.4%	4.6%	6.2%	8.3%
Nine counties with ethnic population between 2% & 4%	7.4%	10.1%	15.9%	15.5%
21 counties with ethnic population below 2%	8.3%	10.3%	15.3%	15.9%
England and Wales total%	100%	100%	100%	100%
No.	2,724,600	21,750	7,506	4,178

Sources: Home Office (2000a); Povey *et al.* (2000); data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1).

Notes:

* Estimated population (aged ten and over) classified as Black, Asian and Other (including Chinese); mid-1999 data, from the Appendix A of the 'Section 95' publication (Home Office, 2000a).

In Loc-2, on the other hand, where the record showed 31 charges arising from racially aggravated offences, this corresponds very closely to the number received from police by the CPS in the same period (this was the only study area where police and CPS boundaries co-incident). Different charging and recording practices once more make comparisons between a small number of police divisions very uncertain.

Cautioning of RAOs

Cautions account for only a small proportion of RAO clear-ups. In Loc-5 it was explained to the authors that cautions were only likely where the victim did not want to go to court or, occasionally, for someone of previous good character or perhaps for a drunk shouting racist abuse in the street. Table 5.5 shows that cautions are used substantially less for RAOs than for the equivalent basic offences. The reluctance of suspects to admit racial aggravation (see

Chapter 7) is another factor in the low cautioning rate. Nationally the ‘cautioning rate’ is nine per cent for RAOs and 21 per cent for basic offences, and (unusually) there is little difference between London and forces outside London.

Table 5.5: Racially aggravated offences and comparable basic offences: the percentage of cases cautioned, by police force groups, 1999

Police force group	Racially aggravated offences		Basic offences	
	Cases prosecuted	Percentage	Cases prosecuted	Percentage
London (MPS and City)	1,680	9.3%	38,199	22.8%
Greater Manchester, West Midlands and West Yorkshire	653	7.7%	71,612	21.4%
South Yorkshire, Merseyside and Northumberland	182	8.8%	31,180	21.6%
Five counties with ethnic population above 4%	348	6.9%	34,540	17.3%
Nine counties with ethnic population between 2% & 4%	649	10.0%	61,779	20.6%
21 counties with ethnic population below 2%	666	7.7%	138,079	20.9%
England and Wales total	4,178	8.7%	375,389	20.9%

Source: data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1).

Varieties of clear-up

In London, as part of the ‘positive prosecution’ policy applied to RAOs, only the Detective Inspectors in charge of the Community Safety Units (CSUs) were allowed to authorise a clear-up (detection) other than a charge. Even the ‘judicial clear-up’ was open to different interpretations: one local inspector in Loc-5 said that it meant that ‘someone is brought in and put through the books prior to investigation and charge’.

Neither the CSUs or the Metropolitan Police as a whole could supply a record of outcomes for ‘secondary clear-ups’, i.e. where cases had been resolved by a non-judicial route, such as tenancy agreement enforcement by a social landlord, mediation, or informal warning.

The ambiguity of a 'clear-up' was implied in some interviews:

Often to get a clear-up you have to have spoken to the suspect – usually he has to admit. (PC, Loc-4)

This contrasted with the approach in Loc-3:

If it's undetected on the file it doesn't mean we haven't interviewed anybody, it just means we haven't charged anybody. (Inspector)

Even charges may not be all they seem. At one of the CSUs a PC explained that because of the pressure to achieve targets, you sometimes charged someone with an RAO knowing full well that the victim was going to withdraw their statement.

Police in the London CSUs complained that the majority of their racially aggravated offences were common assault or s5 public order for which arrest is not available unless certain criteria are met. They felt that this was seriously hampering their pursuit of these crimes. Figures for the whole MPS show that 22 per cent of the force RAOs are for common assault²⁶ and these are somewhat less likely to reach prosecution stage than more serious assaults. Proportionately, the arrest problem may not in fact be a barrier in very many cases, but it does seem to cause extra work and frustration.

For s5 RAOs, as set out in s31(3) CDA 1998, arrest can take place if a constable has witnessed the behaviour and warned the subject, who subsequently repeats the behaviour. The arresting officer does not have to be the same as the one who gave the warning. The most common use of the non-aggravated s5 is in the context of abuse or violence directed at police officers rather than members of the public (Brown and Ellis, 1994). In a case of racially aggravated common assault, the rules in s24 of the Police and Criminal Evidence Act 1984 (PACE) apply. Arrest for an offence carrying a maximum sentence of under five years is limited to particular circumstances, such as preventing further harm to a victim.

It is therefore official procedure to arrest somebody for the more serious 'actual bodily harm', where the slightest visible evidence exists, and then reduce the charge to common assault. But in racially aggravated common assault the main significance lies often in words more than physical contact. If the suspect denies the words and refuses to make a statement the choice is between dropping the case or issuing a summons. Summonses take six months to come to court and the case commonly has only brief facts attached which are readily deniable.

²⁶ Separate figures for s5 RAOs are not available, as they recorded under a more general heading of 'harassment' (see also previous footnote).

Not surprisingly few RAO are prosecuted as summonses, but an exception was found in one London police division, Loc-5, where the local magistrates court noticed that the majority of s5 RAOs, and a few common assault RAOs, were being sent in as summonses. Summonses count as 'judicial clear-ups' but the Metropolitan Police were unable to give a breakdown as they do not distinguish between charges and summonses in their statistical monitoring.

The CSU in Loc-5 judged its own success in terms of the 'judicial clear-up' figures (although, as just indicated, those due to summonses were unlikely to succeed in court). This was seen to be in contrast to old-style CSUs where care of domestic violence victims was the main focus.

We're having great success because we're doing what we should be doing and what we do best and that's solving crime. (DS, Loc-5)

The Chief Superintendent said:

In this borough we don't isolate race crime as different from other crime. The impact on victims is clearly different and the social context may be different but the general tactics in this borough for hate crime as for burglary and robbery are 1) thorough investigation, 2) disruption, 3) targeting.

The step-by-step guidance to investigating hate crime issued from Scotland Yard (MPS, 1999, 2000) was seen as providing officers with a clear framework which would prevent the mistakes of the past.

The three provincial police divisions were better informed on the range of outcomes classified as 'detections'. There is a mixture of formal and informal data so exact comparisons are not possible. Outcomes are also related to the type of offences and charges. For example in Loc-3 the practice was to avoid charging s5 public order simply because of the conditions attached. No charges were brought for the three public order RAOs, although ten people were informally warned for racially aggravated 'harassment', which may have included some potential s5 incidents. The preference for multi-agency working is probably reflected in eight charges under the Protection from Harassment Act, involving lengthy and detailed preparation from different sources.

The fullest breakdown of detection categories was supplied by Loc-1. Here significant proportions of racist incidents were recorded as s32 RAOs (protection from harassment), which in this context usually indicate neighbour trouble. Over half (56%) of recorded RAOs came into this category, probably stimulated by the active recording systems in the area

(and these would include repeat victimisation). Of these offences, nearly a quarter resulted in charges – though not necessarily racially aggravated charges. In another 54 per cent of the harassment cases it was decided that ‘no useful purpose’ would be served by prosecuting – suggesting that they were either too trivial, or better dealt with by informal warning or possibly landlord action. A variety of other categories – cautions, victim refusal, under-age perpetrator, ‘reported for consideration’ – accounted for the rest.

Taken in isolation, this group of results cannot do more than point to the variety of ways in which reported racist incidents categorised as racially aggravated offences are ‘cleared up’.

Cases that succeed, fail or ‘serve no useful purpose’

This section will use cases culled from the research sources to illustrate the many different ways in which racist offences may or may not end up as racially aggravated charges. In investigating racist incidents and offences, the nature of the incident and the quality of the investigation and evidence are paramount. Collecting sufficient evidence for a charge requires much the same approach as comparable crimes against the person, with the difference that proof is required at two levels: the substantive offence and the evidence of racial aggravation. The same key factors will appear time and again: the identification of perpetrators; the need for independent witnesses; the willingness of victims and others to give evidence; the existence of counter allegations; limitations on police powers (see also Bowling, 1999: Ch. 9). In addition a racist motive, or a demonstration of hostility based on race or ethnic considerations, has to be established. The legal issues have already been discussed. This section will look at the practical aspects, illustrated by some of the cases that emerged during the research.

Some racist incidents – as many as 25 per cent in London – turn out to have no substantive crime behind them. Markedly fewer of these were found in Loc-1 where almost every incident was recorded as an RAO. An example of a ‘no crime’ could be if somebody’s car has been scraped in a car park and they report it as a perceived racist incident but there is no evidence that it was anything more than an accident. Many other cases are technically racist offences but do not get charged for a number of reasons, the most important of which are illustrated below.

1. Cases unsuitable for prosecution

Interviews suggest that informal warnings were a common way of dealing with cases thought unsuitable for prosecution, as in the following example:

An African-Caribbean 13-year old boy punched a white boy in the head three times, with verbal racial abuse. He was informally warned in conjunction with his parents. (Loc-1)

Cases of a minor nature between neighbours, and cases involving children or younger teenagers, were said to be the types most commonly dealt with by way of informal warning.

2. Unsafe evidence

Minor cases with evidence of a substantive offence but where the racial element turns out to be unsure are often not pursued. This happened in a mirror-version of the case above.

An African-Caribbean schoolboy was punched in the head by two fellow pupils. His mother reported it as a racist incident because there had been a racial element in a previous incident with one of the perpetrators. But when the boy was interviewed with his parents he said that the punching was just something which had arisen out of an argument at school and he did not think there was anything racial in it. (Loc-1)

3. Under-age perpetrator

Very young children sometimes display racist aggression (Sibbitt, 1997) when prosecution would be both impossible and unsuitable.

A divorced lady of Arab origin moved into a flat with her six year-old son. He became a target for the nine-year old boy next door, who kicked him between the legs and called him a fucking Paki. The boy also regularly verbally abused the mother. His own mother was a single parent with a drug problem. This became a social services case, with action by the housing association to move the problem family. (Loc-4)

4. Cases resolved by other agencies

In the above case, the agencies involved were social services and the social landlord. In most of the study areas the many sanctions against racist behaviour available to social landlords – such as injunctions, evictions or warnings of the same – were used against

tenants who had racially abused their neighbours. The only place where there were no cases mentioned of this kind (apart from one involving environmental health action against a noise nuisance) was Loc-2, where the Asian groups who made up the vast majority of the minorities population lived in highly segregated, mainly private, housing.

Landlord sanctions were often seen as more effective than prosecution as well as a good way of dealing with situations unlikely to be successfully prosecuted:

Certainly one of the problems with racial aggravated offences is quite often there is no other corroboration other than what the person abused or assaulted or whatever can give. And that means that in trying to get sufficient evidence to charge that we might fall short on that. So what I was interested in was OK if we are not able to do something, if this is council accommodation...is there some way they might be breaching their tenancy? Because certainly we found that when you threaten people with eviction in terms of behaviour modification they tend to take a bit more notice of that. They go to court fining them £20 when they haven't got £20 anyway...OK I have gone to court what are you going to do now?" And so it was focused on getting the people together, housing managers etc., social services, who could actually impact upon that. Saying OK if we do have an incident of that is there something that – not instead of, but certainly as well as the criminal – that can be done to address what is basically racist behaviour. (DCI, Loc-3)

Schools can also use their own methods of discipline and dispute resolution to tackle racism, often in the context of anti-bullying strategies. In Loc-5 a large group attack outside the school on some recently arrived Kosovan children was taken seriously by the police, but in the end the school was left to resolve the problem with the help of youth workers.

Civil sanctions might occur in conjunction with, as well as instead of, an RAO prosecution. In Loc-3 civil sanctions were regarded by police as a sensible problem-solving approach, as the above quotation shows. In the more prosecution-minded Loc-5, occasional signs of tension were noted between police and local authority over the role of civil and informal sanctions, although there was an active anti-social behaviour partnership in one part of the borough.

Anti-social behaviour orders were listed by several interviewees as another available alternative to RAO prosecution, but nobody mentioned actually using one against racist behaviour, reasons sometimes given being that courts were wary of granting them, or the police of handling them, because of the weak evidential standard required.

5. Victims are unwilling to proceed

This was very often mentioned as the reason for charges not being pursued or cases being dropped. It was the reason found by Maynard and Read (1997) in 20 cases out of 37 where a suspect was known but not charged or cautioned. In all these cases the victims wanted the police to warn the perpetrator informally rather than prosecute, especially where juveniles were concerned. In the other 17 cases, the police did not proceed either for lack of evidence or because of counter-allegations.

In this study it was found that victims often preferred racist conduct to be halted by informal means, rather than by a prosecution which would heighten and prolong tension to no obvious advantage. Sometimes, however, the prospect of appearing in court was just too much, as in the first of the following two examples. The second example is also typical: a shopkeeper who did not want to lose business through pursuing a case.

A single man had moved into a house next door to an Asian couple. Whenever the wife appeared in the garden he abused her and encouraged his large dog to jump up at the fence, calling her 'Paki dog meat'. She became too terrified to go outside. A charge of racially aggravated harassment was brought. But just before the case was due to be heard the lady was too nervous to go to court and proceedings had to be discontinued. (Loc-3)

An Asian shopkeeper barred a black woman from his shop. She retaliated with racial insults. Afterwards she slashed the tyres of his van and came back in with another racist comment. He did not report the damage as a racist incident but from his statement the police took it to be so. The shopkeeper did not want to pursue a charge of racially aggravated criminal damage for fear of alienating other customers. (Loc-3)

The above cases all have identified suspects, but it is very common in recorded RAOs for this not to be the case.

6. Perpetrator cannot be identified

If the perpetrator is a stranger, there is less chance of identifying a suspect and no case can be made out. In the following incident a charge of racially aggravated s4 or 4A POA would have been appropriate if the perpetrator had been traceable. In the words of the investigating officer:

There's this Turkish chip shop owner and some drunk skinhead walked into his shop and says 'Do you do English food? Do you have any English people working here? And I'm from the National Front'...something along those lines. And the guy says 'Yes I do English food and I have an English girl here' and served him. And then the chap walked out, swore a few times, and then came back and gave him a Nazi style salute walking past the shop. The shop owner didn't know what the National Front meant until his female worker explained to him what it all meant. When he saw the Nazi salute he recognised what it meant and feared this guy coming back and smashing his shop window or something. Especially as he was Turkish with the old football. The suspect was never seen again. He wasn't caught. The victim was just reporting it to let us know that it had happened. (Loc-4)

Sound evidence remains the most important element in obtaining convictions of RAOs, as in the next two examples.

7. An independent witness

This is often the strongest card, especially where proof of racial aggravation rested upon specific spoken words.

A man was charged with racially aggravated common assault on his neighbour. He denied the racial aggravation but admitted the assault, saying the man had assaulted his son. It was alleged that he said 'Come on you black bastard', pushed the complainant, pulled his turban and knocked off his glasses. He denied using racist language but a neighbour looking out of his window had heard him say 'you've got all our fucking jobs anyway'. He was convicted after a trial at the magistrates' court. (Loc-3)

8. No question case

Two female police officers, in plain clothes, were driving to work. One, the driver, was white, the other black. A man waiting behind them in a traffic queue hooted and when the black woman turned round she saw him making 'monkey' faces and gestures, pushing his fists into his armpits. Then he overtook and as he did so called out to the driver 'Does your mother know you play with niggers?' (Loc-4)

There was little difficulty in charging and convicting that man of a racially aggravated public order offence (presumably s4A). Not many cases are so straightforward.

Quality of investigation

Cases can fail through inadequate investigation. In Loc-1 an Asian takeaway received a series of hoax orders. Some racist terms were used but not recorded in the victim's statement, because the officer taking the statement had not asked the right questions. Although the police went to a lot of trouble to trace the mobile phone involved, they failed to provide a recording device for the victim's telephone. The owner of the mobile claimed that other people were making the calls and this could not be disproved.

A police constable in the same division had received an award for his dogged pursuit of a racist attack where the victim was at first not known. A witness reported seeing two white youths beating up a Pakistani man at the bus station. The scene was captured on CCTV and the two were arrested (initially for being drunk and disorderly) as they were travelling on another bus. Still the victim had not reported the incident. Somebody thought he worked in a chicken factory. The PC rang round all the chicken factories until after ten days he found one where somebody remembered an Asian employee turning up very battered and upset. He had not reported the attack through fear and family stress (his wife was about to give birth and his father was in the house on his deathbed).

Even in London, as one officer summed up, 'racism is rife but serious racial assaults are rare'. The worst case current in the research locations was a totally unprovoked attack outside a chip shop on a black youth who just happened to be staring across the road at a car out of interest in the model. The owner slashed him across the face with a knife causing him to lose an eye. This case was going through the Crown Court. The CPS lawyer involved in the case remarked how hard the police in Loc-5 had worked to arrest not just the immediate suspect but others believed to be associated with the crime.

A trawl through the computer crime records at a London CSU soon reveals the problems of investigation of street attacks with racist elements, sometimes in the context of late-night brawls. An Asian youth attacked on a crowded bus with a broken bottle received terrible cuts all over his face, head, neck and back, requiring 87 stitches. This turned out to be in the context of an episode of street violence involving two large groups of youths of different ethnicities. Racist comments were reported. Twenty-one witnesses had to be traced and interviewed, producing many conflicting stories. Glass fragments had to be tested for fingerprints and CCTV scrutinised. It was proving difficult to obtain a statement from the victim. The investigation was continuing.

Officers described their satisfaction when RAOs were successfully prosecuted. A woman PC in Loc-5 had taken a case of neighbour harassment. A young white woman had moved into a ground floor flat but when she was joined by her black boyfriend trouble started from the neighbour upstairs. He stamped on the floor, tipped rubbish in the garden and uttered gross racial abuse such as 'How does it feel to be going out with a monkey? Shouldn't we be feeding him bananas?' This went on for several weeks. The boyfriend did not speak English and it was difficult to find an interpreter for his rare African dialect. As in all harassment cases, diaries had to be kept and the statements were long and complicated. The defendant denied the charge. The case went to court for trial three times and was postponed each time for different reasons. On the fourth occasion the defendant was found guilty of racially aggravated harassment.

The authors came away from the CSUs impressed with the effort and determination put into investigations of racist crime. A cynic said that you could always write up an investigation to look as if a lot of work had been put in. Perhaps some results were not all they seemed. There were indications that racially aggravated charges were both over- and underused (see next page). But in many respects it was felt that investigators were doing a good job in difficult circumstances. Any more detailed assessment of the effectiveness of detection would have to be based on a close scrutiny of files and tracking cases from start to 'clear-up'.

A: Police-CPS relations

The translation of a police investigation of a racist incident into a live court case, and the subsequent progress of that case, is an area fraught with potential tension between the police and the Crown Prosecution Service. The main strains occur when racially aggravated cases are either discontinued or downgraded to the substantive offence. Police officers expressed bitterness about being obliged to shoulder the burden of a victim's disappointment. In only one area, Loc-3, was this not encountered. According to the area commander, good police-CPS relations were part and parcel of a culture of good inter-agency relationships. The division's conservative approach to using RAO charges (Chapter 5) could also have explained the apparent lack of tension on this score.

The survey and statistical evidence shows that in fact CPS and police see eye to eye on the majority of RAO charges, and that where there is disagreement it is just as likely to be because the CPS think that the police have undercharged rather than the reverse. The survey of CPS lawyers shows that where they think that the police have got it wrong they most commonly attribute this to ignorance or misunderstanding of the law; missing evidence of racial aggravation; or overcharging through over-sensitivity. Occasionally they think they are being used to shield the police.

The police overcharge in order to avoid criticism and then let the CPS sort out the proper charge. (CPS survey)

They will charge – and I'm reading between the lines here – because they would be criticised if they didn't charge. If it hadn't been for the political sensitivity maybe they would have taken a different course of action. (CPS lawyer, Loc- 4)

The over-kill impression is enhanced by the practice of over-charging 'because I know the CPS will knock it down' as officers will sometimes admit, and which is by no means confined to RAOs. Undercharging too may arise from sheer pressure – one custody sergeant admitted that when he was in too much hurry to check out the law, 'I just charge the basic [offence] and leave the CPS to sort it out'.

Inattention to the requirements of evidence and law was a police failing sometimes noted in court by justices' clerks and stipendiary magistrates (survey evidence), and also in CPS interviews. It has been referred in a previous chapter to the lack of relevant legal knowledge possessed by the police.

Police sometimes give insufficient consideration to the strict legal issues. CPS often leave it too late to reconsider the appropriate charge. Some 'basic' offences I have sentenced should have been charged as racially aggravated. (Stipendiary magistrates' survey)

At times the police look at what happened, not at what the defence is saying. (Example of a case where the alleged victim was seen as the aggressor) (CPS lawyer, Loc-5)

Unpopular decisions

How significant is the allegation that the police shift responsibility for unpopular decisions onto the CPS? A CPS Inspectorate report on advice cases (CPSI, 1998) found that in weak cases the police would send files to the CPS for advice 'if they consider that the complainant will feel particularly aggrieved by a decision not to prosecute'. Overt evidence was found of this practice with regard to RAOs in only one police division, Loc-1. The divisional commander had instituted a policy of passing on any RAO where the evidence was in doubt to the CPS rather than have the police exercise their own discretion. At the same time, officers expressed great disappointment when CPS lawyers found insufficient evidence to prosecute RAOs. Possibly the reviewing lawyers were over-cautious, but so were the police in not taking more responsibility themselves. There may have been other weaknesses. A CPS lawyer said that several files had been rejected because the basic offence had not been properly evidenced.

Usually the police have not dug around enough. It's frustrating. So the victim thinks that the CPS is not doing its job. (Loc-1)

The Chief Crown Prosecutor, who was very active in community outreach, took trouble to explain to the independent Racial Harassment Officer why individual cases had failed. But to a police officer involved in community liaison, the CPS appeared simultaneously to be user friendly and yet to be letting down the victims by 'not allowing cases go forward for the court to decide' – essentially making his own job more difficult, although he appeared to accept that the CPS had a legitimate filtering role.

[The Chief Crown prosecutor] is excellent. He sits on the multi-agency. He is aware of these [community issues]. But often I speak to him and I mean he's not aware of these cases. Because he wouldn't be, would he? Again, I understand from the CPS why often they don't take them to court. But I just think bloody hell. From my point of view it would be easier if they took them to court and let the court decide. Because I don't have any problem with the community if they're found not guilty at court. (Inspector, Loc-1)

The strong anti-harassment drive in this division had created expectations, which for a number of reasons were not being fulfilled in terms of prosecutions. Where expectations were lower, as in Loc-2, the CPS were more likely to be seen as constructive rather than obstructive:

Now if you've got good evidence then it doesn't matter, he'll be charged with it anyway, but if it's bad evidence and we do charge him with it then the CPS will drop it. Now the CPS will read all that and they will look for any evidence of racism in it...They will contact the police officer and say to him 'Why haven't you treated this as a racial incident? And where is the form RC1 [the racist incident record]? Why haven't you submitted that to my department?' (PC, Minorities Team, Loc-2)

This officer also saw the CPS as helpful to him because they passed information to him on victims of racist incidents overlooked by the police. However, on the available statistics, this does not seem to have translated into additional RAO charges.

It is not in fact usual for the CPS to receive copies of racist incident reports; this occurs in only 19 per cent of cases nationally, according to CPS monitoring data, although incidents will normally be flagged as racist by the police. The CPS complain that in general they do not get enough background information – for instance on whether there is an ongoing situation rather than an isolated incident. This may be due to rules about confidentiality, or the feeling that the information on the form is superfluous – or, in increasingly streamlined systems, there is no incident report apart from the crime record itself, as was found in two of the four police forces. It would certainly be desirable for a routine 'victim/incident background information' document to be available on the file of a racist incident.

Community Safety Units and the CPS

The prosecution-oriented practice of the London Community Safety Units was inherently more likely to produce criticism of the CPS over cases discontinued, downgraded to lesser charges, or apparently mishandled (many of these would, of course, relate to domestic violence rather than racist incidents). This was occasionally expressed with extreme bitterness:

I am grossly disappointed with the CPS...I have no instances when I felt warmed by the professionalism of the CPS. Some of their decisions in court, if taken by a police officer, would have resulted in disciplinary action...They are dropping charges to avoid trials. Afterwards they will refuse to enter into any debate with myself or my superiors...I have to pick up the pieces with my staff who have spent the day convincing a witness she should go to court. (Detective Inspector, Loc-4)

In the CSU in Loc-5 division, more measured criticism from a Detective Inspector ascribed CPS failings to its management structure. 'They don't have the controls and checks on decision-making that we do.' He felt too that the CPS failed to appreciate their own problems in obtaining statements, for instance from doctors with regard to injuries. He was hoping for a meeting with the Branch Prosecutor to push for an agreement that CSU cases should always go ahead except in exceptional circumstances.

If such an agreement were possible, it would address one of the main police grievances:

The biggest problem with the CPS is that we have to take the brunt of why they're not running with it or not pursuing it when we want to. They can wash their hands of it. They [the victims] don't blame the CPS they blame the police...We take the brunt of every failure and it's about time the CPS were more accountable. (DS, Loc-5)

The same officer showed some sympathy for a service under pressure:

We don't get memos from them quickly enough to get action on disclosure and we lose it on the disclosure issue. [At court] they don't understand the case before they speak to an officer. You think when they speak to you they're talking about a completely different case...That's probably not the individual lawyer's fault. It's the pressure and the workload. The resource issue again. (DS, Loc-5)

Delays, it was acknowledged, were not all one-sided: it was mentioned that the police Criminal Justice Unit, which handled the paperwork, could take a month to pass on CPS communications to the officer in the case.

The importance of CPS-police communication

From this catalogue of (mainly) grumbles, communication emerges as a key issue. A more positive picture was given by police officers with good working relationships with CPS lawyers.

It was a good CPS lady, she'd done her homework. (PC, Loc-5)

In all fairness you can discuss over the phone so I think it's a matter of how sensitive or how quickly you think an issue needs to be resolved. Certainly where people are put at risk you can get a decision back within minutes. (DC, Loc-5)

In London, investigators could communicate directly with CPS lawyers who held 'surgeries' at police stations. This was helpful for officers who were uncertain how to proceed on RAOs (when they could get near the over-busy lawyer). The CPS Inspectorate sees the presence of prosecuting lawyers in police stations and the ability to obtain telephone advice (provided it is backed up with documentation) as very helpful in improving relations between the two agencies. The most positive endorsement of the police station surgeries came from the additional CPS branch in the Metropolitan Police area which was visited (CPS-ex). Here the system was well established, and well used by the Community Safety Unit staff.

The CSU demands for CPS help in surgeries contrasts with apparent sparse use of the traditional 'advice file' method of obtaining pre-charge advice, in which the file is sent away for comment. Police interviewees said they seldom found this necessary in racially aggravated cases, except where there were counter-allegations. CPS branches had not noticed much in the way of racist incident advice files either. The contrast suggests that some of the poor evidential quality and legal misunderstanding complained of in race cases (for example in the survey evidence from justices' clerks and stipendiary magistrates) might be avoided if advice was sought more often, instead of the CPS being left to sort out the case at the last minute.

As is common with all systems, person to person contact was clearly appreciated. Written communication was either too slow or, from one side or the other, information was lacking. The police resented having to communicate to victims the closing or failure of their case, when in their eyes the responsibility lay with the CPS. The CPS is currently introducing new procedures for giving reasons direct to victims for decisions to discontinue cases or substantially alter charges.

The CPS is obliged to consult the police as far as possible when discontinuance is proposed, and the survey evidence shows that they conveyed information on discontinuances and cases dismissed far more often than other outcomes. This must contribute to the poor image of their work. There is no such duty to feed back all results, and courts do not do so either. Many uniformed officers who had initiated the investigation of a racist offence said that they never knew the final outcome and wished that they could. This is a wider question than CPS-police relations.

Discussion

This section of the report has focused on some uncomfortable issues for both police and CPS, although it has also shown up some successful examples of co-working. The research cannot investigate in any depth how far failings are due to systemic weaknesses, to specific procedural difficulties with RAOs, to poor understanding of the law on the part of the police, to over-caution on the part of the CPS, or to different perceptions of the nature of racially aggravated offences – although it is surmised that all these things have contributed. The following section looks in more detail at the pivotal CPS role.

B: The CPS role

An individual Crown prosecutor typically has only limited experience of dealing with racially aggravated cases. From the survey of CPS lawyers, even though these were selected by their branches on the basis of having had the most experience of RAOs, it is estimated that although the great majority had some experience of reviewing (90 %) or prosecuting (75%) such cases, only half had prosecuted more than three RAO cases in total over the 15 months since the Act came into force. Table 6.1 shows their experience of prosecuting cases of the two most frequent types. The survey also confirmed the finding from the qualitative study of greater experience of RAOs amongst CPS lawyers in Greater London compared with the regional study sites.

Table 6.1: CPS lawyers: Estimated number of prosecutions for the two most common RAOs: period since the introduction of the legislation (approximately 15 months)

	None	1	2 or 3	4 or 5	More than 5	Don't know	Total*
Public order offences	48 24.1%	52 26.1%	52 26.1%	16 8.0%	21 10.6%	10 5.0%	199 100%
Assault cases	71 36.7%	37 19.2%	45 23.3%	16 8.3%	14 7.2%	10 5.2%	193 100%

Source: BMRB survey (see Appendix C4).

Note:

* Excluding respondents who gave no answer to the stated question.

The other main source of information on the CPS process with regard to racist offences is the Service's own Racist Incident Monitoring System (RIMS)²⁷. Special forms are used to track all cases flagged by the police as 'racist incidents', and the CPS adds some of its own when files are examined. Not all of these, however, will reach court as racially aggravated offences if indeed they get that far (still less emerge as RAOs at the sentencing stage – see Chapter 7). In the 1999/2000 RIMS files, only 52 per cent of the offences were charged as RAOs, 40 per cent were charges of assault, criminal damage, public order or harassment (mostly, but not all, being this study's basic offences) and eight per cent were other charges (including theft). There is no way of telling how many of the 40 per cent are separate offences and how many are alternative charges to the RAOs – although it seems likely that a substantial proportion are the latter. Many of the remainder will be offences in which s82 would apply.

This section will look at different stages of the process, both through the CPS monitoring statistics where these are helpful, and through the survey and interview material. There are four key points where CPS decisions affect outcomes. First is the decision on whether the case should go forward at all, and the correct charge; secondly whether a dual charge or indictment should be entered, presenting the substantive offence as an alternative to the racially aggravated version; thirdly (not unrelated to this) whether to respond to defence pressure to accept a plea to the non-aggravated offence; and finally the preferred venue ('magistrates' or Crown Court).

The CPS has a prime duty to review cases initiated by the police and determine a) whether prosecution should proceed and b) the correct charge to be laid. If prosecution is abandoned or 'discontinued' before the court hearing, the CPS may do so for only two reasons – insufficient evidence to carry a realistic chance of conviction, or that it is not in the public interest to proceed. Cases can be terminated at any stage, but the initial review is meant to be the main filter. There are indications from national statistics and survey data that many RAOs get beyond this stage, only to be dropped later (see below).

Public interest can for example weigh against prosecution of cases where the penalty is likely to be very small or where a defendant is old or infirm or very young (youth does not outweigh seriousness, however). Given the seriousness with which racially aggravated offences are viewed, there is a presumption in favour of prosecution, specifically emphasised in the revised 2000 edition of the Code for Crown Prosecutors. Public interest terminations are not seen as a major option, which helps to explain the number of comparatively minor cases which come to court.

27 The case studies found that in London some CPS branches were 'too busy' to fill in their RIMS returns.

Evidential matters relate both to the sufficiency of the information on file and to the quality and steadfastness of key prosecution witnesses, including the victim. A small number of 'other' reasons for discontinuance refer to such things as the death of a defendant.

How many racially aggravated cases are discontinued or dropped?

A significant proportion of racially tagged cases are terminated early, either by discontinuance or otherwise. CPS monitoring shows nearly a quarter (24%) of defendants have all charges discontinued or dropped. Are racially aggravated offences more likely to be terminated early than comparable non-aggravated offences? The mixture of RAOs, basic and other offences contained in the CPS tagged files (accounting for 48% of all the charges in the files) makes comparisons difficult, especially as some of these will be entered as alternative charges. Interviews revealed that there is more pressure on the CPS to sustain RAO charges for minor offences, which in the basic form might be dropped on public interest grounds or even not charged at all. This may be especially true for the public order offences, which formed nearly half of police charges in 1999.

The summaries of the CPS data supplied for this research did not allow comparisons to be made among offence types, but an assessment is possible from court statistics on prosecutions (naturally, these figures omit any cases dropped by the CPS prior to prosecution). Table 6.2 deals with what happens in court – it shows that the rate of early termination for RAOs as a whole (41%) is only slightly higher than for comparable basic offences (37%)²⁸. There are variations between the four main offence types – with harassment showing higher rates of early termination than other offences – but no indication of consistent differences between RAOs and basic offences (for assaults and harassment, the termination rates for RAOs are in fact lower than for basic offences). Overall, Table 6.2 indicates higher rates of termination than are shown by CPS monitoring data. This is mainly because in the court statistics *all charges* are counted separately, whereas the CPS data is based on *defendants*, and a termination is recorded only when all charges are discontinued²⁹.

28 By comparison, the rate of early terminations for all offences in Magistrates and Youth courts was 29%.

29 Additionally, for court statistics 'early terminations' include cases where a charge is changed 'mid-term' or where a person is charged with two or more offences and one offence is dropped, even though the proceedings continue in relation to alternative or remaining charges. It is estimated that in a fifth to a quarter of cases recorded as terminated early for an indictable offence there was subsequently a conviction for an offence that was part of the same case. The Home Office also recognise the many differences between CPS data on early terminations and court statistics. (Home Office, 2000d: 132).

Table 6.2: Magistrates and Youth courts, 1999: charges prosecuted and early termination

	Racially aggravated offences		Basic offences	
	No	% terminated early	No	% terminated early
Assaults	1,234	39.5%	129,587	42.3%
Public order offences	1,901	40.1%	69,203	34.0%
Harassment	295	47.1%	10,628	51.1%
Criminal damage	385	40.3%	87,660	28.1%
Offences of all types	3,815	40.5%	297,078	36.5%

Source: data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1).

Why cases are dropped or reduced

CPS monitoring data supply reasons for racially tagged cases³⁰ that are terminated. In 41 per cent there was insufficient evidence and in a further 35 per cent witness refusal or non-appearance caused the case to be dropped. Public interest was cited in 13 per cent of cases – compared with 31 per cent of terminations in a general sample of cases studied by Phillips and Brown (1998) and a similar estimate for public interest terminations from earlier CPS surveys. Therefore, when termination occurs in ‘racial’ cases, it is much more likely to be for evidential reasons, including witness failure.

Despite obvious problems with evidence and witnesses, in the great majority of cases CPS lawyers think that the police charge RAOs correctly. In the survey of CPS lawyers, two-thirds of respondents took this view, with the rest more or less evenly divided between those who thought the police over-charged and those who thought they under-charged. From CPS monitoring data it is estimated that police RAO charges are rejected by the CPS in up to 25 per cent of cases, but slightly more are added after files are examined, ending up with evidence of racial aggravation at the statutory level for almost 80 per cent of defendants in the RIMS files. Interviews showed a high level of agreement with police charges – 90 per cent was a frequent off-the-cuff estimate. As already indicated, those who criticised often thought that the police charged RAOs too readily, either not giving enough thought to the substantive offence, or assuming that ethnic differences alone were sufficient to support a charge being racially aggravated.

³⁰ Cases are ‘tagged’ if there is any racial element, whether or not they have been charged as RAOs. The figures are based on cases where all charges are dropped.

If a word is spoken, the police will bring it in as racially aggravated even if it [the basic offence] is not provable. (CPS, Loc-1)

We have found there are cases where there was obvious racial language used, which isn't appropriate, but it doesn't necessarily mean the offence is aggravated or motivated because of a racial reason. And it's very difficult to prosecute those type of cases because if you don't prosecute them as racially aggravated or motivated then you're not allowed to refer to any of the language used and if you do prosecute them as aggravated or motivated you can end up losing them. (CPS, Loc-5).

A reviewing lawyer (the only one encountered specialising in racially aggravated cases) said that this 'grey area', as it often referred to, posed the most difficult decisions. Clearly it is one to which the CPS gives a lot of consideration.

Even if the majority of cases carrying a race tag are not 'dropped', they may still fail to be prosecuted in the aggravated form. Chapter 2 has described the procedural reasons why this is likely to occur. This is more likely to apply in weak cases. The open-ended survey responses by CPS lawyers confirmed that their reasons for discontinuance or accepting an alternative charge were most frequently due to inadequate evidence of racial aggravation or the unwillingness or unreliability of witnesses. But 'victim unwilling' covers a number of eventualities, as in the following comment:

Not uncommonly trials 'crack' when a defence solicitor proposes a plea to 'non-aggravated' form of offence; prosecution witnesses are spoken to and confirm that a plea to a lesser offence is preferable to them having to give evidence and be subject to (hostile) cross-examination. This proposal often comes on the day of the trial. (CPS survey)

Witness failure is largely outside the control of the CPS, but as the above comment demonstrates, the prosecution does have a part in presenting a choice to witnesses in which non-appearance may be the most attractive option.

The surveys of justices' clerks and stipendiary magistrates cast a rather different light on the subject of downcharging. Over half – 58 per cent of each group – had experienced cases being reduced in court from RAOs to other offences after prosecution and defence had had discussions. (Records of the discussions are rarely kept – only eight per cent of justices' clerks said that this happened). In the perception of these observers, the CPS decision was more likely to be instrumental: to avoid a trial, to secure a conviction, to avoid Crown Court. On the part of the defence, this could be a tactic to avoid a custodial sentence.

Interviews with stipendiaries and court staff sometimes revealed similar views. One stipendiary was particularly indignant about a recent public order offence charged as racially aggravated s5 (summary only) when in his view the evidence was strong enough to warrant a s4 (in the aggravated form an either-way offence) and a committal to Crown Court. He saw this as part of a general CPS tendency to reduce charges, caused by a chronic state of underfunding which made it desirable to avoid a Crown Court case. This view was occasionally expressed in the survey responses from stipendiaries, as well as being voiced or implied by some other interviewees from outside the CPS.

The survey responses from justices' clerks and stipendiaries convey a confused picture on the question of whether police/CPS under- or over-charging has been observed in court. A third of justices' clerks could not say, but most of the rest (38%) thought that charging was too high, too low, or both. Out of the smaller number of stipendiaries, 31 respondents (41%) said that they had tried cases when s29-32 could have been charged but had not been. This suggests that the pre-court reviewing process was not working very well. One explanation, quoted earlier, suggested that the CPS had insufficient time to reconsider inappropriate police charges. Some interviewees said that the new 'fast-track' court procedures meant that at the initial stages more police evidence had to be taken on trust.

Several prosecutors mentioned the need to go back to the police for additional evidence where there seemed to be a history of harassment. An object lesson in what could happen when this was not done was the case (Chapter 3) where after years of harassment by local youths a chip-shop owner finally turned on his tormentors and was in court himself for assault. Only in the light of new awareness of repeat racist victimisation was this event recognised for what it was. Neighbour disputes involving racial harassment are obviously another category where detailed knowledge of past events has to form a large part of the case.

The prosecution should be alert to the presence of racial aggravation in s82-type cases – any offences not chargeable as the specific ss29-32 variety. Such evidence should be presented to the court so that sentencers can address the matter appropriately and openly, as s82 requires. In the survey, a quarter of CPS lawyers said that they either had had no such cases, or didn't know. Of the rest, those in Greater London were most likely (86%) to have handled s82 cases.

The question of alternative charges

The shape of the racially aggravated legislation, discussed earlier in this report, places an unusual degree of responsibility on the CPS over the issue of alternative charges (in the magistrates court) or alternatives on the Crown Court indictment. The choice in the magistrates court is between a single charge of a racially aggravated offence, which if lost takes the underlying substantive offence down with it, or a dual charge presenting the basic offence as an alternative if the element of racial aggravation is successfully disputed. If both charges are laid, the prosecution must not allow a plea to the non-aggravated charge to be taken before the RAO is run, or the latter will fail. In the Crown Court the rules are similar but more complicated, depending upon the particular type of charge. In most cases, however, the jury can choose to find an alternative without it being specified, and there is a strong body of opinion among stipendiary magistrates and justices' clerks that magistrates should have a similar power for RAOs, in order to reduce the problems of the dual system (Chapter 7).

The downside of specifying alternatives is that it weakens the case for the aggravated offence. It makes it harder to open the case in the Crown Court, and can place a lot of pressure on victims' credibility. It looks like an open invitation to the defence to press for the aggravated version to be dropped in exchange for a plea to the substantive offence. This leads to a further complication, referred to in one of the quotations above. If for this, or any other reason, an offence with an aggravated equivalent is prosecuted in the basic version, any evidence such as racist language cannot be referred to, because of the rule that if a racially aggravated charge is available, it must be brought, otherwise the racism cannot be taken into account in sentencing – the principle behind this being that nobody can be sentenced for a worse offence than he is convicted of (*O'Prey* [1999])³¹ The judge in *R v Williams and Bell* (unreported) made it plain that magistrates cannot rely on s82 in sentencing an offence which could have been prosecuted under ss29-31. An example of this principle in action was described in one of the study areas.

A man assaulted an Asian female neighbour after becoming annoyed at the way she parked her car. He kicked her to the ground, without serious injury, and at the same time he abused her in racist terms. It went to Crown Court as a racially aggravated common assault, but at court the prosecution discovered that the defendant had just received a five-year sentence for another offence. Because even a racially aggravated common assault would at most receive two years, and he had no previous for racial aggravation, the branch prosecutor agreed on public interest grounds to accept a plea to the common assault alternative (maximum six months).

31 1999 CLR 233.

But this meant that none of the racist language could be referred to, although it was that which conveyed the true nastiness of the incident. The defendant was sentenced to four months for the assault but afterwards the judge commented that he would have been able to sentence on the basis of the language before the legislation, but now he could not. (Loc-5)

A wide range of opinion was found among the different CPS branches as to whether it should be standard practice to provide alternative charges/indictments. There is no definitive CPS policy on the matter: the policy is to use alternative charges 'appropriately'. The judgment in the case of *Pal* [2000]³² advised that it should be normal practice in the magistrates' court. After this advice was disseminated, one branch among those visited had decided that from now on the policy would be always to provide magistrates with an alternative. A range of other approaches were encountered in interviews:

1. Standard practice to put the alternative in the magistrates' court but not in the Crown Court.
2. Standard practice to put alternative for juries but not for magistrates, unless going for trial there, and then not until the plea is entered.
3. Only put alternative in contested cases.
4. Never put alternative unless you know you have a weak case.
5. If you know that you have evidence of racial aggravation you should put that as the sole charge and stick with it.
6. Always put the alternative.
7. The alternative should be embedded in the legislation.

Prosecutors pointed out that Crown Court judges often insist on the alternative indictment, and judges say that it makes it easier for the jury to understand the summing up (though practice varies from court to court). The fullest explanation of the pro-alternative position was as follows:

The alternatives do appear on the indictment and should also appear in the charges in the magistrates' court...The reason why the basic is there is in case they don't find what we believe it to be. We say the offence has been racially aggravated but we put the other because that's the way it should be. ...We expect to succeed or fail completely on the evidence of the racially aggravated offence...The underlying offence is there for two reasons. In the magistrates' court because the magistrates can't find people guilty of the alternative unless it's charged and we don't want to

32 2000 CLR 756.

lose the case entirely over simply a dispute over whether certain words were used or not...In the Crown Court it is there because judges have said it is easier to sum up for the jury if they've got both counts on the indictment as opposed to just having the major one and then telling them if they don't find them guilty on the major one they can then go on to consider something else...We are not interested at all in any form of plea bargaining. (Lawyer, CPS-ex)

Across the board 'we are not interested in plea-bargaining' was echoed by all the CPS interviewees, but then that is perhaps a misnomer for the kind of negotiations or contingencies which do lead to prosecutors accepting a defence offer to a lesser plea. One Chief Branch Prosecutor explained that, although cases might be dropped down when the evidence was weakened, this was not plea bargaining although it might seem so.

It may be the particular need not to seem weak on racial aggravation that makes most CPS lawyers so adamant that, except in a narrow range of circumstances, they would not submit to defence pressure on this issue. In London, where the need for all agencies to show they are anti-racist emerged most strongly, the CPS stance was borne out by the observations of magistrates, court staff and even to some extent by defence solicitors – although according to one stipendiary there were differences to be observed in different branches within the London area. Outside London, the assumption that the CPS are easily persuaded down by the defence in RAOs was much more common, and defence solicitors had experience to prove it. Possibly the attitude expressed by one CPS lawyer is more usual than others admit: he said he would agree to downgrade a case if it was not too serious and the victim was happy.

One London solicitor saw this in more individual terms:

I don't want to be unfair. You get weak and idle prosecutors to be honest in court. And you get very difficult ones. You know who you are dealing with. When they've got a rock solid case and you're up against not a lazy person prosecuting...they don't just chuck their hand in willy nilly. I don't want to give that impression. Because I try it on all the time you know, I try it on. I just pour scorn on their case, or...I just critically approach it depending on who I'm dealing with...When they've got a rock solid case and you've got somebody who's not bone idle they're gonna run it. And they frequently do. (Defence solicitor, Loc-5)

In the Crown Court CPS lawyers are replaced by counsel and it is possible that the more flexible traditions of the Bar prevail. Certainly the impression from the sample of Crown Court judges was that frequently charges were downgraded to the basic offence just before

the trial, although some said they did what they could to discourage this, or advised at plea and directions stage whether or not they thought an RAO charge was merited. A telling example was from the Crown Court covering the study area Loc-1, where in 2000 there were six RAO prosecutions, three of which resulted in pleas being accepted for the basic offence, two more being found not guilty after the prosecution offered no evidence, and only one going to trial, resulting in an acquittal. Police ignorance of the law was blamed for over-charging in at least one of these cases – but the CPS has to share this blame.

Only two judges, both from large provincial cities, said that the CPS seldom abandoned RAOs, and they recognised the pressure on the Service to respond to the feelings of ethnic minorities.

National statistics point strongly in this direction; in the first full year of the legislation, 984 RAOs were committed for trial but only 494 came to trial (Table 2.2). A significant part of the difference is likely to be the effect of a normal time lag, as the first cases following the implementation of the legislation in September 1998 made their way towards the Crown Court. But the size of the difference is so large that attrition of the kind described is likely to have been an important factor. It will be important to track this element in future years, and perhaps the RIMS monitoring system run by the CPS can be extended to encompass this.

Mode of trial issues

The fourth CPS milestone is the choice of venue – whether to seek a magistrates' or Crown Court hearing. Although the decision on venue is made in the first instance by magistrates (before the defendant states any intention to elect jury trial), they are strongly influenced by the preference presented by the CPS. On this point significant regional differences were found, with London CPS branches far more likely to see the Crown Court as the appropriate venue for RAOs. Moreover, policy appeared to change as the impact of key Appeal Court decisions were felt within the CPS.

In the case of *Miller* [1999], a sentence of 18 months for a bad case of racially aggravated s4 POA was not considered excessive for somebody with a very bad record (despite a guilty plea) given that the Act allowed a fourfold increase in the maximum, from six months to two years, for the aggravated form. The case of *Saunders* [2000] suggested that maxima were not a very helpful guide but for racial aggravation 'generally speaking two years should be added to the term of imprisonment otherwise appropriate'.

These pronouncements were interpreted by London CPS branches as indicating that few RAOs were within the sentencing powers of magistrates. Outside London (where the research took place slightly earlier but after the publication of *Miller and Saunders*) no such effect was found. There were far fewer cases anyway, but almost no experience of RAOs being committed to Crown Court, either through magistrates declining jurisdiction or through defendant's election. However, two judges who gave opinions by letter thought that the Crown Court was the appropriate place for most RAOs.

The London CPS branches in the study areas saw the Crown Court as the natural RAO venue and also felt under more pressure to prosecute borderline cases:

Because guidelines tell us that up to two years is going to be added to the sentence almost everything you get is not going to be suitable for trial in the magistrates' court.
(CPS lawyer, Loc-5)

In borderline cases it is hard to drop on public interest grounds when there is a judgment which says that these cases are four times more serious for sentencing purposes so I take the view the public interest has to be four times stronger to drop it.
(CPS lawyer, Loc-4)

CPS practice changed following training on the implications of the key judgments, and now the only RAO to be dealt with in the magistrates' courts in this study area is the summary-only s31(c), racially aggravated POA s5. This is also due to strong insistence by magistrates that they decline jurisdiction (see Chapter 7).

There are a few other choices to be made by the CPS, one of which is whether to state in court which limb of the dual definition of racial aggravation in s28(a) and s28(b) of the 1998 Act is being relied upon. Advice from Treasury counsel to the CPS was that this is not necessary and it is seldom done in the magistrates' courts, to judge by responses from the survey of stipendiary magistrates (only 4% had ever required it). But increasingly, it was said, Crown Court judges are insisting upon it and this would certainly seem to be the better practice, since it clarifies the basis of the charge.

Resource implications

Prosecutors interviewed did not think that RAOs were especially time-consuming, given that the basic facts were normally simple and the cases straightforward. There was one universal headache, however – the very complicated indictments required, spelling out not only the

specific racially aggravated offence but also the exact basic offence to which it relates. If dual charges are required, that complicates things still further. Worst of all was the racially aggravated protection from harassment offence, since the underlying offence requires very careful reference to successive events and dates. One indictment of this kind was produced (not from any of the study areas) where after ten months the CPS had still not framed the charge satisfactorily in the eyes of the judge.

Discussion

The CPS is caught between the desire to be seen to be doing justice to the victims of racism, and a legal structure which increases the pressure to drop the racial aspect of the case when the substantive offence is admitted. In spite of perceptions that prosecutors climb down too easily, it may be that in fact the CPS holds on to weakly supported RAO charges for too long and therefore any climb-down comes at a late stage in the proceedings. Only detailed tracking of cases could verify this. It is very important that victims' views are taken into account as well as the intent of the defendant. The restorative option (see Conclusions) might sometimes be more satisfactory for victims and communities, and more effective with regard to the offender. In some cases mentioned which had been dropped, or which were described as 'thoughtless' rather than malicious, it was felt that, had the opportunity existed, a restorative procedure might have been useful.

As previous chapters suggest, the likelihood of a recorded RAO ending up as a racially aggravated conviction is very small. As with many other offences, attrition rates are high. Table 2.2 has clearly illustrated the reduction process whereby in 1999 there were just 1,205 RAO convictions and 363 cautions. The figures do not show convictions in which the offence fell under s82 of the Act, but evidence suggests there were few.

The relative insignificance of ss29-32 RAO prosecutions and convictions within total court workload is demonstrated by the comparison with the corresponding basic offences in Table 7.1. Nationally, only 1.3 per cent of all substantive offences are prosecuted as racially aggravated; the proportion is very much higher in London at nearly five per cent, compared with elsewhere, where it is less than one per cent.

Table 7.1: Racially aggravated offences and equivalent basic offences prosecuted, 1999

	RAOs prosecuted	Basic offences prosecuted	Total offences prosecuted	RAOs as percent of total offences prosecuted
London	1,510	29,483	30,993	4.9%
Outside London	2,305	267,595	269,900	0.9%
England and Wales	3,815	297,078	300,893	1.3%

Source: data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1).

Magistrates' courts and RAOs

It follows that most courts had little experience of RAOs. The survey of justices' clerks, carried out in mid-2000, asked what experience their courts had had of RAOs tried or committed to Crown Court. The results were in line with the uneven distribution of RAOs illustrated in Chapter 3. Just over a quarter of respondents (26%) knew of none, or could not make an estimate, while at the other end of the scale 27 per cent knew of ten or more public order RAOs tried in their court and 20 per cent reported ten or more RAO assaults.

Table 7.2: Justices’ clerks and stipendiary magistrates: estimated number of the two most common RAOs in their courts: period since the introduction of the legislation (approximately 18 months)

	None	1 to 5	6 to 10	More than 10	Don't know	Total
Justices’ clerks						
Public order offences	8 8.6%	30 32.3%	9 9.7%	25 26.9%	21 22.6%	93 100%
Assault cases	10 10.8%	35 37.6%	8 8.6%	19 20.4%	21 22.6%	93 100%
Stipendiary magistrates						
Public order offences	8 12.9%	30 48.4%	6 9.7%	9 14.5%	9 14.5%	62 100%
Assault cases	14 23.0%	30 49.2%	4 6.6%	2 3.3%	11 18.0%	61 100%

Source: BMRB surveys (see Appendix C4).

Note: Excludes respondents in their current post for less than a year.

In the study areas the experience of magistrates, both lay and stipendiary, varied greatly according to where they were. London courts were easily the most active in this respect but again experience of RAOs could vary considerably from court to court and individual to individual. Some magistrates had most experience of RAOs in the youth court.

Lay justices were interviewed alone in Loc-1, Loc-2 and Loc-3, and in a court group meeting in Loc-5. The work of most London courts is dominated by stipendiaries (now district judges), and their role is discussed later. Some provincial lay justices were found to be very well aware of the ethnic structure and points of friction in their neighbourhoods, others less so and occasionally complacent. But all seemed keen to stamp on racism when it came to their notice and court staff confirmed this. But their knowledge of the legislation, as indicated in Chapter 2, was sparse. The new Magistrates’ Courts Sentencing Guidelines issued by the Magistrates’ Association in September 2000 give greater prominence to racial aggravation.

Need for the legislation

Several CPS and court staff said that, although before the legislation magistrates had been supposed to take racial aggravation into account in sentencing, there was little evidence that they did so:

I don't think the magistrates turned their mind to it to any great extent before the legislation. Although we would say if the facts of any case clearly involved racial aggravation, and we would say to the magistrates that is clearly an aggravating factor, I'm not so sure that they really did take that on board. I mean they listen to you and they hear what you say but I didn't notice that they were minding that by increasing the sentence. (Court clerk, Loc-2)

Some magistrates strongly denied that they had neglected racial aggravation in the past. This went with the view that special legislation was unnecessary.

Always with these offences racial motivation has been a very strong aggravating factor. We've now got this raft of new racially aggravated offences which actually doesn't really take us any further forward. Because it seems to us, if you compare the guidelines, they're pretty much the same...I think we magistrates slightly resent the suggestion that we are so gormless that we hadn't taken into account the racial motivation. (Chairman of Justices, Loc-1)

In interviews stipendiary magistrates were divided on this point. Most said they had sufficient powers before. Some welcomed the higher sentences and the creation of either-way offences, but felt that downcharging limited their usefulness. Some saw the creation of specific statutory offences with heavier sentences as sending an important 'message'.

The survey did not question stipendiaries on the desirability of the legislation, but justices' clerks were asked if they had thought, prior to the legislation, that it was necessary and, if not, whether they had changed their minds. Two-thirds said they had wanted the legislation. However, of the dissenters, only 18 per cent had altered their opinion subsequently. Many people interviewed, from all agencies, noted that the main effect on the court of the Act was that it 'concentrates the mind'.

Defence attitudes

The urgency with which defence lawyers tried to reduce the charges was a sign that they were well aware that their clients faced stiffer penalties, including a greater risk of custody, if convicted of an RAO.

Everyone involved in the process mentioned the vehemence with which racial aggravation is denied. This is confirmed by data from the Crown Court, where in 1999 not guilty pleas

were entered for 83 per cent of RAOs, compared with 47 per cent for substantive offences (Table 7.3). Well over half of all RAO cases tried in the Crown Court are heard in London, where 92 per cent of these charges are contested. From the interviews it seems that in London, guilty pleas are only likely if conviction is inevitable. One CPS lawyer with experience of both noted the difference in the general tendency of solicitors to contest more in London than in the provinces, a view confirmed by Table 7.3. Interviews with solicitors and court staff also suggested that where guilty pleas to RAOs occurred in the provincial courts, defendants would still protest against being branded as racists.

The ‘acquittal rate’ shown in Table 7.3 is a percentage of the charges where not guilty pleas are entered. The overall rate of acquittals is very similar (around 80% or just above) for RAOs and basic offences, whether in London or outside. However, RAOs are more likely to lead to acquittals because of a finding of guilt for a lesser offence, consistent with juries exercising an alternative option.

Table 7.3: Crown Court cases tried in 1999: charges tried, not guilty pleas, acquittals and conviction rates

	Number of charges tried	Ratio of RAOs to basic offences	% of charges with “not guilty” pleas*	Acquitted, as % of not guilty pleas	% of acquittals involving alternative or lesser offences**	Conviction rate (based on all charges tried)
England and Wales totals						
Racially aggravated offences	441	1:62	83%	84%	13%	30%
Basic offences	27,379		47%	82%	3%	62%
London (MPS and City)						
Racially aggravated offences	272	1:16	92%	84%	10%	22%
Basic offences	4,392		65%	79%	1%	49%
Outside London (all other forces)						
Racially aggravated offences	169	1:136	69%	84%	17%	42%
Basic offences	22,987		44%	82%	3%	64%

Source: data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1)

Notes:

* Cases are categorised on the basis of the final plea entered for that charge.

** “Guilty plea to lesser/alternative offence accepted by the court” or “Not guilty but guilty to lesser/alternative offence”.

The conviction rate for RAOs (30%) is, consequently, half that of the equivalent basic offences (62%); in London, for RAOs only 22 per cent of tried charges lead to convictions. It should again be emphasised, however, that these low conviction rates are attributable almost entirely to the very high rate of not guilty pleas, rather than to any differences in acquittal rates in contested cases.

Many observers were sure that defendants not only feared the heavier sentences that their solicitors had warned them of, but were genuinely upset and indignant at the prospect of a 'racist' tag. Whatever anyone's overt or subconscious feelings on the subject, it is clearly socially unacceptable (except in a few circles) to be branded as a racist – the impact of a racially aggravated conviction is seen as a shaming event in a different class to a conviction for the matching basic offence. Several courts had noticed the readiness of people to plead guilty to basic offences as alternatives to racially aggravated charges, when if they had faced the basic charge alone they would probably have contested it.

Nobody will plead to a racially aggravated variant of any offence. They just won't have it. (Defence solicitor, Loc-5)

People don't have any difficulty in admitting they've committed the substantive offence, but not the racially aggravated offence, it is of course becoming increasingly morally unacceptable to do so. You might think all crime is morally unacceptable...but they will fight very hard to show they haven't been racially motivated. (Lawyer, CPS-ex)

A gentleman was charged with a number of offences and one was racially aggravated s5, because he'd used abusive language to the police officer who had arrested him and the officer was black. He pleaded guilty to absolutely everything but that offence he was so upset about in court. 'I'm not a racist. You know I'm being labelled a racist because you charged that way. I'm not a racist. I was brought up by people who were black and you can't say I'm a racist.' And he had a real problem with that charge...And we had a problem because it was so specific towards this officer, who was black. We weren't going to drop it. (CPS lawyer, Loc-1)

Friends and relatives of different ethnicities are often brought to court as character witnesses for somebody denying racism. Solicitors routinely seek demonstrations of this kind, or produce photographs of the defendant with a black girlfriend or similar alibi – this was a tactic that was met in every court.

Nobody in the courts expressed any faith in the law as a means of specific deterrence. The typical offender was described as unlikely to change their ways because of a conviction for a racially aggravated offence. Most offences were perceived as being committed without forethought by people using language that came naturally to them.

A. You can put out as many messages as you like, but people continue to behave in the way they seem to assume that suits them. I think the idea that any of our clients actually think about these things in advance is pretty remote.

B. Yes it's all based on ignorance and suspicion isn't it? (Court clerks, Loc-2)

The almost routine denial of racist evidence means that magistrates' courts face a much larger than normal proportion of trials if the racially aggravated charge is pursued. Proving this element added to the magistrates' court workload. But the cases themselves were usually not complicated, and if they went to Crown Court apparently they normally took only one day. A tracking exercise would be required to establish just how much extra court time was used at each level.

RAO issues in court

The issues and problems encountered in racially aggravated cases in court are very similar to those already raised in connection with the CPS – the level of proof required to establish racial motivation or hostility; the identification of s82 cases; the difficulties associated with the presence or absence of an alternative charge; the mode of trial question; plus, of course, the final question of sentencing. This section looks at the views of sentencers interviewed and surveyed.

Evidence of racial aggravation

Nearly all the sentencers interviewed found difficulty in drawing the line demarcating racial aggravation under s28(1)(a). Where the substantive offence was merely the trigger for references to the victim's ethnicity, they asked when could the 'hostility' be said to be based on the victim's race? One judge, for example, mentioned a case where a racially aggravated assault charge had been dropped because everybody, including the victim, agreed that despite racial abuse, race was not the *basis* for the hostility. As to the words themselves, how nasty did they have to be in order to indicate hostility? Did mere 'vulgar abuse' count? People agreed that the context was all important, as well as the feelings of the victim.

There were different attitudes to what was and was not acceptable. Individual stipendiaries took different lines. Fairly typical was the remark: 'Black bastard is everyday language on the streets of London; it must be seen in context' (i.e taking it out of context could exaggerate the importance). But a colleague in the same court had a different attitude to the prevalence of racist language:

Words can hurt... This sort of language is so common that you should review the case very thoroughly before deciding to drop the charge. (Stipendiary, Loc-4)

More commonly it was thought that a stereotypical uneducated troublemaker would use racist words in the same way that he used swearwords, and that not too much meaning should be attributed to the words themselves, or at least not so much as from somebody who should know better.

There is an imprecise line between deliberate 'racist' language and the mindless but offensive use of racial epithets – sometimes offensive language causes a sense of proportion to be lost. (Stipendiary, postal survey)

If I get somebody very ignorant and who has been brought up in a very bad background I would regard one of his racist comments perhaps as less reprehensible than someone who is very well educated and middle class and has no business to be that way. (Stipendiary, Loc-4)

The same point was made consistently by the defence solicitors spoken to.

Lay magistrates are likely to be as varied as stipendiaries in their view of the seriousness of racist language:

Sometimes the magistrates are willing to accept that that's the sort of language people use without any deliberate attempt to be racially offensive. If magistrates will accept that, then well, they will accept it won't they?. Some will, some won't. (Court clerk, Loc-2)

Stipendiaries and judges were far more aware than any of the other groups of the importance of the distinction between demonstrating hostility and motivation as set out in s28(1)(a) and (b). Very few cases, they said, had evidence of a racist motive – people impelled by racism, such as a gang deliberately seeking out a black person to attack. 'Motive' in the more mundane context of neighbour harassment, for example, was not mentioned although cases such as that described at the end of Chapter 5 suggest that it must exist.

Does this mean that the prosecution sometimes failed to highlight evidence of ‘motive’? It is surprising that nine out of ten stipendiaries in the postal survey said that it had never been necessary for the CPS to specify which limb of s28 was being relied upon and only four per cent had ever required this. In contrast, Crown Court judges in Loc-5 insisted upon it. But while some judges would prefer ‘motive’ as the sole grounds for aggravation, the difficulty of finding admissible evidence of motivation was also acknowledged.

Most cases referred to were incidents where some other factor had triggered the substantive offence which was then aggravated by an additional racist element. This was why it was often necessary to address the ‘grey area’ of how much certain words had been spoken out of feelings of racial hostility or simply out of anger. One respondent to the stipendiaries’ postal survey mentioned a number of stumbling blocks:

Cases in which racial aggravation can be clearly established and recognised separately from other reasons for hostility are few. Inferential evidence can be countered by the defendant calling witnesses/friends from the same racial source. Animosity towards a particular individual or group may result in racial hostility being manifested not because of a more general attitude but because of feelings towards the individual or group on that occasion only. A racial insult may be linked with other insults e.g. “Black Bastards” in a way that makes consideration of the racial element difficult and somewhat unrealistic.

s82 cases

In contrast to ss29-32 of the Act, which create new offences with higher maxima, s82 addresses the sentencing of other cases where racial aggravation brings a heavier sentence within existing maxima. There was little experience of cases that fell under s82, and vagueness or confusion on the subject was conveyed in both surveys and interviews. Few judges or magistrates could recall cases where this section might have applied and some, while familiar with the general principle, did not even know of the existence of the section. The survey of justices’ clerks revealed some inconsistency in the recording of decisions made under s82. Six in ten only recorded the decision if the court agreed that s82 applied and ten per cent never recorded it at all.

Affray and shop-theft were the type of cases most commonly mentioned as being dealt with under this section. Metropolitan Police monitoring of racist incidents indicate that 13 per cent of related offences charged or summonsed fell outside the scope of ss28-32, and therefore had the potential to lead to a s82 case in court (Table 7.4)³⁴. One London stipendiary said he felt that the police failed to present racist evidence in some robbery cases, for example.

Table 7.4: MPS: Racist offences charged (or dealt with by summons) in 1999/2000*

	No	%
Racially aggravated offences (ss28-32)	2,364	87%
Offences in other categories (potential s82 cases)	367	13%
Total	2,731	100%

Source: MPS Racist incident monitoring data.

Note:

* The data do not allow charges and summonses to be separated, but summonses are very infrequent.

The coexistence of ss28-32 and s82 was a cause of frustration to those judges and stipendiaries who had found themselves unable to sentence more heavily when an offence with a racist element was not charged as an RAO, or the evidence for a s82 type case had not been correctly presented. About half the judges consulted would have preferred racial aggravation to remain as a matter for sentencing alone, i.e. s82 as the only statutory rule.

Survey evidence confirmed the limited experience of applying s82. Fifty-four per cent of stipendiaries surveyed had not tried any s82 cases and 20 per cent could not remember. Only 22 per cent of justices' clerks reported cases where the CPS had presented evidence under s82 and one in ten had held Newton hearings in connection with s82-type evidence. A fifth of clerks and one quarter of stipendiaries had noticed cases where the CPS had decided not to raise s82-relevant evidence after discussions with the defence, a practice condemned by the Stephen Lawrence report³⁵.

Although the established duty to treat racism as an aggravating feature was often referred to in court interviews, not everyone was aware that s82 had established a new procedural framework. One CPS branch noted in this connection:

34 These 367 offences were classified in MPS statistics as: other violence against the person, 99; sexual offences, 6; robbery, 56; burglary, 15; theft and handling, 46; fraud or forgery, 3; other, 142.

35 Recommendation 34.

Q. *And they are supposed to make an announcement under s82 if they've found the offence is aggravated by racial conduct?*

A. *Yes, and they don't remember to do that. So you have to remind the clerk and the clerk has to look it up. And the clerk has to remind the bench that they have to say whether or not they have found that to be so. But that's usually something that throws everybody for a little while. (Lawyer, CPS-ex)*

Alternative charges and verdicts

Easily the strongest view to come across from the magistrates' courts was that they too, like the Crown Court, should be able to pass alternative verdicts when the aggravated charge had failed. Ninety-two per cent of stipendiaries and 86 per cent of justices' clerks in the survey held this opinion. Almost all the stipendiaries spoken to agreed that they would like to be able to apply the 'blue pencil' – striking out those elements of the case that were not proven. Many had had experience of losing cases charged solely in the aggravated form, where there was clear evidence of guilt on the substantive charge. As one stipendiary in the survey put it:

It is not in the public interest for an accused to walk out of court with a smile on his face where the racial aggravation is not proven, but the basic offence is proven.

People who criticised the CPS for prosecuting racial aggravation too timidly thought that the possibility of an alternative verdict would help them to be bolder. A minority thought that it might lead to more reckless charging. An alternative charge was seen as poor second best, in that it made the CPS more vulnerable to defence pressure to accept the lesser charge. A CPS lawyer also remarked that 'If you give magistrates the middle ground they will go for it, won't they?' The same, of course, might be said of giving magistrates the power of finding the alternative verdict.

Mode of trial

In contrast to the strong majority demand for alternative verdicts in the magistrates' court, there was no consensus on the question of how far RAOs came within summary sentencing powers. The previous chapter described how the two London CPS branches in the study had been strongly influenced by appeal court guidance in *Miller* and *Saunders* to regard most RAOs (beyond the summary-only aggravated s5 public order) as being suitable for committal to Crown Court. Stipendiary magistrates were met who were convinced that the CPS charged RAO s5 rather than s4 in order to save the expense of a Crown Court trial.

The decision on venue lies with the magistrates' (before the defendant has the opportunity to elect jury trial). Here a great range of views were voiced, even within London. On this matter, however, as the statistics on committals show, there is once more a divide between London and provincial courts (Table 7.5; for further details see Appendix D). Racially aggravated assault cases are more likely to be committed for trial in London (52%) compared with outside London (41%); this difference is also evident for basic assault offences (32% in London compared with 21% outside).

The most important point made by Table 7.5, however, is that magistrates courts generally treat RAOs as more serious than the equivalent basic offences, since the percentage of "triable either way" (TEW) assaults committed to the Crown Court is about 20 per cent more (see also Appendix D). A difference was confirmed for two other TEW offences: s4 harassment (26% of RAOs committed compared with 18% of basic offences), and criminal damage (30% of RAOs committed compared with only 5% of basic offences). The latter contrast is especially sharp, given that the five per cent figure for the basic offence is for TEW cases, involving damage of £5,000 or more, whereas for the RAOs damage may be of any monetary value.

Table 7.5: Committal for trial, 1999: racially aggravated offences and basic offences (triable either-way assaults: GBH and ABH only)

	Racially aggravated assaults			Equivalent basic assaults		
	All cases prosecuted	Committed for trial	% committed for trial	All cases prosecuted	Committed for trial	% committed for trial
London	242	126	52.1%	6,779	2,192	32.3%
Outside London	281	114	40.6%	54,495	11,657	21.4%
England and Wales	523	240	45.9%	61,274	13,849	22.6%

Source: data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1).

None of the out-of-London lay magistrates or court clerks spoken to considered that they were likely to have many RAOs that they would be unable to deal with themselves (although this is clearly not the case for triable either way assaults). But 87 per cent of stipendiaries surveyed said that they were more likely to commit an RAO for trial than a basic offence. The Justices' Clerks' Society has also observed a divide between London and the provinces on this issue, as Table 7.5 confirms, with London stipendiaries being the most likely to opt

for committal³⁶. The new Magistrates' Association sentencing guidelines on RAOs, introduced in September 2000, gave more prominence to questions of whether the offence is within the court's powers, and this is likely to prompt more questions about the appropriate venue.

Even so, there were differences within London courts. One busy court had RAOs on its list almost every day, usually minor street encounters involving some racist language, often charged as aggravated s4 public order and therefore either-way offences. Court staff said that if language only was involved, the magistrates (lay or stipendiary) regarded these cases as within their powers. But in another court, which probably dealt with fewer but more serious cases, committals were becoming routine.

The pattern is not consistent. Several stipendiaries were spoken to in London who felt that most RAO charges were within their sentencing powers. One thought that lay magistrates were more easily convinced by the CPS to send RAOs to the Crown Court whereas a stipendiary might resist. The defence solicitor referred to above drew a distinction between stipendiaries of different backgrounds – the former justices' clerks tending to follow the mode of trial guidelines more closely and the former defence lawyers more inclined to take their own line.

One provincial stipendiary, too, was firmly on the side of committal:

It is very difficult to deal with racially aggravated offences here since Miller and Saunders. It's scurrilous to say so, but that's why we are only getting racially aggravated s5...If it's s4 it doesn't take much to persuade you that your six months are not enough.

Interpreters in court

Justices' clerks and stipendiaries were asked in the postal survey whether it had been necessary to use interpreters for racially aggravated cases and whether there had been any problems with the arrangements. Thirty-seven per cent of the clerks and 42 per cent of the magistrates had used interpreters and there was very little problem obtaining them. No question was asked about problems during trials. Some of the magistrates thought that the information passed to and fro by interpreters appeared to be minimal.

³⁶ Personal communication.

Sentencing of RAOs

In 1999 the number of RAOs sentenced by magistrates' courts was almost exactly equal to the number committed to the Crown Court (Table 3.1). This balance may tilt in future more towards the Crown Court for the reasons already discussed. The marked discrepancy in numbers committed to the Crown Court and numbers sentenced there has been examined in the previous chapter in the light of prosecution downcharging at trial stage. This section looks at actual sentencing practice in the main two types of court, and also distinguishes between magistrates' courts and youth courts.

The results show quite clearly that, in the lower courts, the relative seriousness of racially aggravated offences is reflected in heavier sentencing. The proportion of cases discharged is substantially lower, and the percentage sentenced to immediate custody is much higher (Table 7.6). For example, for magistrates and youth court cases as a whole, the rate at which defendants are sentenced to custody is 18 per cent for RAOs, double the nine per cent rate for equivalent basic offences (BOFs). The average length of a custodial sentence is, however, only marginally higher for RAOs (as Table 7.6 indicates, there may be a small difference for youths sentenced, but not for adults). Where the main sentence is a fine, the average amount is some £50 more for RAOs than for BOFs.

Table 7.6: Sentencing in youth courts, magistrates courts and the Crown Court, 1999: Racially aggravated offences and equivalent basic offences.

		Youth courts*		Magistrates courts		Crown Court	
Percent discharged	Racially aggravated	19.2%	(239)	13.3%	(769)	4.6%	(151)
	Basic offences	34.2%	(32,332)	26.3%	(119,881)	5.3%	(21,041)
Average fine	Racially aggravated	£106	(15)	£167	(294)	-	(4)
	Basic offences	£59	(2,823)	£112	(36,066)	£314	(816)
Percent immediate custody	Racially aggravated	17.2%	(239)	18.6%	(769)	51.7%	(151)
	Basic offences	6.0%	(32,332)	10.2%	(119,881)	52.4%	(21,041)
Average custody (months)	Racially aggravated	3.6	(41)	2.5	(143)	10.1	(78)
	Basic offences	2.8	(1,928)	2.4	(12,270)	9.6	(11,021)

Source: data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1).

Notes:

* The distinction between Youth Court and Magistrates Court cases was made on the basis of age, since within the Home Office court monitoring data it is difficult to separate the two types of court. The figures shown in brackets are the base numbers for each percentage or average.

However, for the 151 Crown Court cases there is no evidence of any differences in the weight of sentences for RAOs, compared with basic offences (Table 7.6). The percentages of RAO cases discharged, fined, given a community sentence, or a custodial sentence was in each case very close to the comparable figure for substantive offences. Even when the comparison is restricted to offences that are triable either way (GBH, ABH and s32(1)(b) Harrassment) there are no real differences – 59 per cent of the 34 RAOs attracted custodial sentences, compared with 57 per cent for basic offences. These similarities could of course be because more serious basic offences are tried in the Crown Court.

Nearly a third of people sentenced in magistrates' courts for RAOs receive community sentences. Community service was quite often mentioned by sentencers. Few outside the youth court mentioned probation, apart from one stipendiary who thought that this could provide the education and training required to combat racism.

Compensation orders are not shown in the sentencing data but they do form an important part of some magistrates' thinking in relation to the injury and insult of racist offences. For example the man who insulted the women police officers in the car was ordered to pay

compensation of around £150 to the black officer, who the magistrate had noted was very upset. This incidentally raises the question of whether compensation for distress caused by racism should only be given to those who show their feelings. This is an area where the introduction of Victim Impact Statements may prove useful.

A problem faced at times by magistrates is how to deal with a case where an assault has been charged but in mitigation the defendant alleges that racist words had provoked the action. One bench gave an absolute discharge and no compensation order to a 13 year-old girl charged with assaulting (kicking) a bus driver. An independent witness supported her claim that the driver had called her 'nigger' when he was annoyed by the actions of a group of children outside the bus, though she was not part of that group. Observers were surprised that she had been charged at all, and that he had not been. Even where a sentence is imposed for an assault, racist language by the plaintiff (if one-sided) would normally be regarded as mitigating circumstances.

At one court the issue of sentencing guilty pleas was raised. Should the increment for racial aggravation be added before or after the discount for a plea? The Sentencing Advisory Panel (2000) has recommended that the increment should be calculated after all other considerations have been taken into account, and then any discount be applied to the racially aggravated part of the sentence as well. At the court in question, stipendiaries said they would favour the opposite formula, and viewed the SAP logic generally as too rigid. However, more recently the Court of Appeal, in the case of *Kelly and Donnelly*³⁸ has endorsed the SAP recommendations (see next page).

Crown court issues

It has been shown how rarely RAO cases reach the sentencing stage at the Crown Court trials (only 102 in 1999), largely because the exceptionally high rate of not guilty pleas, combined with the availability of alternative charges, leads either to acceptance of guilty pleas to lesser charges, or to jury acquittals. Although it has been argued that there is a likelihood of more cases being committed (and preliminary proceedings are said to be building up in some courts) these factors make it unlikely that a higher proportion will be convicted.

38 EWCA Crim 170 (6th February, 2001).

Judges from a range of Crown Courts were consulted about their views and experience of the legislation (see Introduction, p.10). Once more the London/provincial divide was noticeable with regard to experience of RAOs and, to a lesser extent, in attitudes to the legislation.

Three judges with experience of RAO trials in London Crown Courts were spoken to and also a group of judges from another London court who had dealt with cases in plea and directions hearings. All said that juries did not like convicting racially aggravated offences, especially where the basic offence was minor. A point made strongly by London judges was that if the jury did not accept that the evidence was enough to prove racial aggravation, they tended to throw out the basic offence as well. 'Juries do not like the prosecution over-egging the pudding' was a phrase used on more than one occasion and it was clear that the judges did not like it either. These judges would have preferred to see motivation alone as proof of aggravation (s28[1][b] CDA 1998) with 'hostility' merely as supporting evidence. But when asked whether more could be done to provide evidence of motivation³⁹, some of the judges who answered by letter were wary of inadmissible evidence, or thought that seeking motivation was no business of the criminal courts. But one wrote 'I tend to agree that a little more digging should be done in cases which bear clear overtones, but little overt evidence of motivation'.

As the statistics suggest, judges outside London had less experience of RAOs – in some courts, none, or only in the form of abandoned charges. Larger courts serving diverse populations had relatively more. These had all had some of the 'marginal' charges so often complained of in London courts, but only some saw this as a problem reflecting on the validity of the legislation. Attitudes to the legislation were much more varied than in London, ranging from 'it's got to work', 'it works well' to 'it isn't working/cannot work well'. It would be interesting to explore how far judges' views were influenced by local charging practices.

Crown Court sentencing

As the figures in Table 7.6 suggest, cases of this kind do not attract significantly enhanced sentences in the Crown Court, although the seven judges consulted who had direct experience of RAO trials all said that they would sentence more heavily in these cases. One judge said that if he had to sentence a racially aggravated ABH arising from a road rage incident, he would pass a short custodial sentence on the basic offence to reflect the prevalence of that type of incident but only add on a small amount for the racist element. Most judges did not mention percentages, but among those that did there seemed to be a

³⁹ By postal questions, used to obtain the views of a small number of judges outside the case study areas (see Introduction).

general view that 50 per cent was about the highest level of enhancement for the kind of cases they dealt with and that the 'normal' enhancement of 40-70 per cent recommended by the Sentencing Advisory Panel was too great. (The SAP also criticised the *Miller* judgment – 200 per cent above the basic maximum – as 'disproportionate'.) Some judges thought nobody was likely to get anywhere near the maximum sentence for a racially aggravated offence and the maxima were anyway criticised for being 'all over the place'.

There was some resistance to the measured approach of the Panel to RAO sentencing. Familiar arguments – 'each case is different', 'sentencing is an art not a science' – were deployed. More importantly, some judges pointed out that it was not so much a matter of percentages but, more likely, that the element of racial aggravation would cause an offence to cross the 'serious enough for custody' threshold.

Subsequently, the case of *Kelly and Donnelly*⁴⁰ has upheld the approach of the SAP by confirming that a) there should be a two-stage sentencing process, whereby the judge decides the length of sentence for the underlying offence, taking into account all aggravating and mitigating factors, and then adds on an appropriate amount for the degree of racial aggravation in the particular case and b) the judge should announce the sentence by stating each of these two elements separately. The Court of Appeal moreover confirmed its agreement with SAP's list of elements which would make racial aggravation more or less serious, although it did not agree with expressing these in terms of a percentage add-on. This judgment should do much in future to clarify judicial practice on RAOs.

The more serious the basic offence, clearly the smaller the enhancement attributable to racism, unless the motivation is very deliberate. This is one reason why one would expect to see a smaller average enhancement on Crown Court than on magistrates' court sentencing, as indeed is proven by the figures. One does not know how much this is affected by judicial preferences or simply by the fact that the Crown Court is nearly always dealing with more serious offences than the magistrates' courts, so that their 'baseline' basic offences are not comparable. Moreover, sentencers pointed out that minor RAOs are sometimes tacked on as 'tail-end' offences in an indictment for other, more serious, offences, so may receive only token sentences.

Some racially aggravated cases before the Crown Court are far from minor, especially s18 assaults (wounding with intent) which fall outside the statutory RAOs and are therefore not distinguishable in the statistics. They have to be sentenced under the s82 criteria, without the

⁴⁰ In this case sentences for racially aggravated assaults on two Asians were reduced from three years to 27 months. It was thought that the original judge had set too high sentences for the underlying assaults. The appeal judges decided on 18 months for the violence and nine months for the racial aggravation.

possibility of automatic recourse to an alternative of a racially aggravated s20 if the intent to wound is not proven. A difficulty was anticipated (Thomas, 1998) that if an alternative count of racially aggravated s20 was present, the defence would apply for severance on the grounds that the racially aggravated indictment was prejudicial to the defence against the charge of wounding with intent. In practice this particular problem had not been encountered in the courts visited.

Instead, in at least one court, indictments were being presented with not one but two alternative charges: s18, racially aggravated s20, and the basic s20. The same thing was happening with racist affrays: the three alternative counts being affray, racially aggravated s4, and the basic s4. Only by this tortuous method could the route to a conviction be secured in the event of either the level of basic offence seriousness, or the element of racism, being successfully challenged.

Youth court issues

Much racist behaviour is committed by children and young people (Sibbitt, 1997). Although informal police warnings and interventions by other agencies have been used in many cases, youth courts do see a number of RAO charges, and as Table 7.7 indicates, between 20 per cent and 25 per cent of the RAO caseload of the lower courts involves defendants aged 10-17.

Table 7.7: Racially aggravated offences: youth cases (age 10-17) cautioned, prosecuted and sentenced, as a proportion of all cases

	RAOs cautioned	RAOs prosecuted	RAOs sentenced (lower courts)
Youth cases	177 (49%)	783 (21%)	239 (24%)
Total cases	363	3,815	1,008

Source: data supplied by the Home Office, RDS, Crime and Criminal Justice Unit (see also Appendix C1).

Many examples of racist cases involving children and teenagers were given, some as young as eleven. In Loc-1 it was thought that the majority of RAOs were youth court cases. But one London youth court was receiving fewer cases than had been expected, and cases had been known where evidence of racial harassment by youngsters had been ignored in the charge. It was suggested that victims and witnesses (especially shopkeepers) were reluctant to take part. The more optimistic feeling from both magistrates and YOT workers was that racism among young people was less common than it used to be.

The introduction of reprimands and final warnings in place of cautions for young people allows fewer chances before the first court appearance. It is increasingly likely that young people appearing in court on a third offence will be facing an RAO charge. Youth courts have much stronger sentencing powers and deal with more serious offences than adult magistrates' courts. The law falls particularly strongly on young people convicted of racially aggravated criminal damage. Because the maximum adult sentence is 14 years the offence falls into the category of 'grave crimes', liable in law to an indefinite sentence from the Crown Court – detention 'at Her Majesty's pleasure' (s91 Powers of Criminal Courts [Sentencing] Act 2000). It is anomalous that this power, however theoretical, should exist for what is often the least serious type of youth race crime.

One London solicitor specialising in youth court work said she was very concerned at the severity with which the lower end of RAOs were being treated and the readiness of magistrates to convict for thoughtless words (such as a teenager who shouted 'turbanator' at a Sikh police inspector). She pointed out that a racist record is a very serious matter for a young person.

The authors met the youth offending team from Loc-5, who were working out what to do with racist behaviour by young offenders. They could provide a training package within a supervision order – needed to deliver the right length of programme – but this could not be used for lesser offenders. There was doubt that much could be done at the final warning stage because attendance at a remedial programme would not be compulsory.

The training relied upon challenging assumptions about people of different ethnicities, but it was very hard to combat the home influence which created the racism. The YOT also wanted to be clear about different degrees of seriousness. They were concerned that too much 'anti-racism' for young people who were only superficially racist (for example using racist words in the course of a quarrel) would be counter-productive:

We don't want to make a person more angry by giving them a racist label. We have to think: did he say those words thoughtlessly or does it come from deep down racist feelings? (YOT worker, Loc-5)

There was general agreement that for most young people education was a better route than prosecution to discourage racist behaviour.

An example of a sentence aimed at behaviour – changing was given in Loc-3. Two 15-year old girls had racially insulted and assaulted an 14-year-old black boy in a shop, calling him

a 'little nigger' and talking about 'spongers' and 'they ought to go home'. This went on for quite a while until the shopkeeper (also black) intervened. They then turned the racist abuse on to him and damaged goods in the shop. They pleaded guilty to the criminal damage and were convicted after a trial of racially aggravated common assault. They were ordered to pay £50 in compensation to the boy for his distress (but not to the shopkeeper as the families were on low incomes). Each received a twelve month probation order with a condition of attending 'human awareness' classes.

There is a long way to go before the unacceptability of racism prevents behaviour like this from children who, it must be assumed, are copying adult attitudes. If nothing else, the law as enforced in the courts demonstrates a readiness to confront if it cannot prevent. The 'shame' of a racist conviction can power resentment, but it also demonstrates that opinion is not, perhaps, so far behind the legislation as is sometimes proposed.

Racist incidents recorded by the police have trebled in two years, almost certainly through more reporting and recording rather than greater incidence. But the numbers of racially aggravated offences sentenced by the courts is tiny by comparison (1,150 in 1999, compared with nearly 48,000 incidents reported in 1999-2000). Does this mean that the racially aggravated offences legislation, introduced at end-September 1998, is not working?

The whole process was looked at, from police recording of racist incidents (RIs) to convictions for statutory racially aggravated offences (RAOs). Then, sentencing data on RAOs was looked at to see whether the courts were, as intended, passing heavier sentences on these crimes. In the magistrates' courts the answer was plainly yes. In the Crown Court, on the available statistics, there was no real difference, although it has to be borne in mind that the average 'basic' offences dealt with by the Crown Court were likely to be more serious and therefore more heavily sentenced than in the magistrates' court.

One of the most striking features is the extent to which London differs from the rest of England and Wales. Nearly half of RIs, and over 60 per cent of RAOs, are recorded by the Metropolitan Police, and London courts process proportionately six times as many RAOs. Nearly two-thirds of Crown Court trials are in London, where an astonishing 92 per cent of defendants plead not guilty. The local impact of the Stephen Lawrence Inquiry seems to be behind the vastly different level of activity on racist crime, since it is not reflected in other areas with large ethnic minority populations. But the police everywhere are under pressure to respond to racist incidents and they have set up an array of special systems and policies in order to do so.

The benefits of the legislation

People who gave reasons for welcoming the legislation saw it as having both expressive and instrumental effects – upholding values and at the same time providing tools and incentives for the agencies of justice. The very existence of the legislation has a declaratory effect which may serve some educational purpose and (once they get to know of it) provide reassurance to potential victims. It is already apparent, from the vehemence with which racist intent is denied by defendants, that a racist conviction is felt as a shaming label and this in itself suggests that public opinion is broadly in tune with the legislation.

The legislation is acknowledged by practitioners in all agencies to 'concentrate the mind' on the issue. Magistrates, in particular, are seen to act upon the principle of more heavy sentencing for racially aggravated offences in a way that they did not before the specific offences were created, and sentencing statistics bear this out. The police find that the structure based upon familiar existing offences provides a workable charging formula, which covers the most frequent types of racist crime.

At the prosecution stage, the very existence of special legislation acts as a reminder to the Crown Prosecution Service and the courts to recognise evidence of racial aggravation and to make sure that sentencers have the information to act upon it.

Difficulties with the legislation

This report has outlined various ways in which the law presents difficulties, or is not being used effectively. A general underlying problem concerns the capacity of police and courts to deal with, in the first place, racist incidents, and – at the end of the process – trials, of racially aggravated offences. At the recording stage, RIs are defined as such if anyone perceives them to be racist, and are intended to be recorded unselectively. They therefore contain a wider range of incidents than those that enter the ordinary crime record, but have to be looked at in the same way, with consequent demands on investigative resources needed for RAOs. At the prosecution stage, the outstanding feature is the very high rate of not guilty pleas. Both these features impose strains on the systems that are dealing with them, and at certain crucial points within those systems. The manner in which the legislation is constructed adds to these strains.

1. Policing difficulties

Qualitative research in five police divisions revealed important differences at significant stages of the process. The effort to overcome under-reporting of RIs seemed to be working best where it was longest established and actively promoted. But the crucial next stage was the translation of incident reports into police action. The racist element was properly recognised only where every RI – whether or not classifiable as an 'offence' – was entered directly on to the crime record. This was also essential if police were to recognise repeat patterns.

The statistics show that that recorded RAOs are less than half the number of recorded RIs. It was found in one study area that police classified virtually every incident under one or other of the nine statutory RAOs. Elsewhere, lower recording rates might have been attributable to:

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- no substantive offence identified
 - failure to transfer evidence of racial aggravation on to the crime record
 - use of different recording standards, e.g. a more 'evidential' approach to defining a 'crime'.

In a small number of cases racial aggravation occurs in offences which fall outside the statutory list, and unless these too retain a 'racist tag' they may not be recognised as such for sentencing purposes under s82 of the Act. A standard form/crime screen for all police forces would help to overcome variations in practice which underlie recording differences.

There were differences in awareness of racist crime among (and within) different police divisions. In rural or semi-rural neighbourhoods with few minority ethnic inhabitants police were less likely to recognise racial harassment or to think that there was anything that they could do about it. But force practices were not related to the size of the ethnic minority population. The division in the study with the smallest minority ethnic population had the most comprehensive reporting and support systems, while another division, with a much larger minority ethnic presence, had the least effective provision for reporting racist incidents and translating them into criminal investigation. The two London divisions, in contrast, followed the extensive Metropolitan Police Service (MPS) procedures for dealing with racist incidents. They were overwhelmed with reports of RIs, some of them said to be very marginal but reported by police officers conscious of the need to react to any racist language.

It was found that most police officers were well aware of the special status attached to racist incidents and offences by virtue of the extra procedures and levels of supervision attached, although these could be irksome. As the result of the Stephen Lawrence inquiry, and especially in the MPS, this was an area in which it was felt that as a police officer, at any level, you must be seen not to fail.

The degree of specialisation within police divisions varied when it came to investigating racist incidents. The MPS has Community Safety Units (CSUs) in each borough whose job is to investigate 'hate crime' and support victims ('hate crime' includes domestic violence and homophobic crimes as well RIs). At the time of the research the CSUs retained responsibility for nearly all racist incidents logged by uniformed patrols. Together with the 100 per cent target for investigating any racist incident, however small or one-off, this was felt to be an impossible burden and inevitably supervisors were making their own priorities in resource allocation. Another disadvantage was that, for uniformed officers, passing over racist incidents to a special unit relieved them of responsibility and was likely to affect the thoroughness of their own initial investigation.

A new system which came into force in July 2000 allocates to London CSUs only those racist incidents where racism appears to be the *primary* element in the offence – an important distinction which also has relevance for the way such offences are prosecuted. It is probable that this graded system is likely to be more effective. Also in question is whether the target of ‘100 per cent investigation’, now adopted by many forces for racist incidents, is a helpful one when it fails take into account a) the very different contexts in which reported incidents take place, and b) the fact that some are not events that in the normal way would be treated as crimes, although c) for intelligence purposes they need to be recorded, and often followed up for purposes of non-criminal action.

The MPS makes prosecution its prime objective in race cases. In the three provincial divisions different priorities were found, reflected in the systems adopted for dealing with RIs. Two divisions laid the main emphasis on support to victims, while the third regarded racist incidents, especially harassment, primarily in the context of problem-solving within a multi-agency partnership, so that alternatives to prosecution, such as landlord or school action or informal warnings were not regarded as second best. Provided that there are safeguards to ensure prosecution is vigorously pursued when appropriate and desired by the victim, this seems to be an approach which is likely to be a more effective preventive strategy than one-off prosecutions, particularly if problems are addressed at an early stage.

Charging of RAOs are subject to all the usual evidential difficulties – such as no identifiable suspect, no corroborative evidence from an independent witness, or a victim unwilling to be party to a prosecution. The latter may be due to fear of consequences, or simply a wish for the conduct to be halted by other means.

When charges are brought, they may not be in the form of a racially aggravated offence, even when evidence exists, or they may be wrongly brought. Some mistakes are due to the fact that police officers know very little about the detail of the racially aggravated legislation and are not trained in it. Better awareness of the statutory definition of racial aggravation might also reduce the number of marginal charges (e.g. where there is only ambiguous evidence of racial hostility) which the CPS sometimes seems to feel obliged to carry forward, even if they are abandoned at a later stage.

2. Prosecution difficulties

The CPS is frequently blamed, by both police and sentencers, for failing to uphold RAO charges in the face of defence pressure. Table 2.2 (Chapter 2) shows the sharp dwindling of the aggravated offences as they make their way through the courts. CPS decisions do

explain a great deal of this, but so does the construction of the legislation, which invites pleas of not guilty to the aggravated version of offences, and the offer of a guilty plea to the underlying substantive offence. Prosecutors are blamed for accepting these offers too easily, but in the face of the extent to which racial aggravation is denied it is hardly surprising if they sometimes prefer an easy conviction to a difficult trial.

The prosecutors interviewed denied that they would discontinue a racially aggravated charge, or downcharge at a later stage, unless the evidence was weak, or the victim declined to be a witness. Some branches, and some individual prosecutors, were more ready to stand firm, especially in London.

The form of the legislation means that, in the magistrates' court, if the racially aggravated element of the case is lost, so is the substantive element, even if the violence etc is amply proven. To avoid this the alternative basic offence must be presented as an additional charge, with the obvious effect of encouraging a guilty plea to this lesser offence. In the Crown Court, the jury in most cases (except racially aggravated common assault) can find the alternative proven without it being entered on the indictment, although judges usually prefer the alternative to be specified because it makes summing up easier.

A large range of opinion and practice was found amongst CPS branches as to whether, or when, it was advisable to present the alternative charge in court. Stipendiary magistrates and justices' clerks were strongly of the view that the lower courts should have the same power as the Crown Court to find alternative verdicts for RAOs. It is agreed that this would clarify the issue and reduce the pressure on the CPS to reach behind-scenes agreements with the defence.

In the Crown Court, similar deals are seemingly often struck just before the trial. One court was mentioned where the presiding judge had objected strongly to a case of blatant downcharging despite strong evidence of racial aggravation, and as a result of his intervention a protocol on accepting pleas to basic offences had been agreed between the local CPS and bar. It is felt that some judges could do more to influence the way RAOs are handled.

In all courts, no evidence of racial aggravation can be referred to or used in sentencing unless the charge is either an RAO or, if the offence falls outside that group, the prosecution presents the evidence of racial aggravation after the finding of guilt. If an RAO is capable of being charged it must be – the court cannot fall back on s82 for any of the substantive offences. Many sentencers complain that this restriction did not exist before the 1998 Act – they could incorporate disapproval of racist behaviour in their sentence without it having to

be proven as a separate element. But, given the extent to which RAO sentences have been maximised, it is suggested that it is right that what is sometimes the worst part of an otherwise minor charge should be fully proven.

3. Sentencing issues

The seriousness of racial aggravation was emphasised early on in two key Court of Appeal judgments: *Miller* [1999] and *Saunders* [2000]. These gave a substantial uplift given to sentences for public order and assault (ABH) and a statement was made in *Saunders* (later corrected in *Kelly* and *Donnelly*) that because of the statutory maximum increase of two years for RAO assault this should be the amount added to the basic sentence. Because of this it was found that CPS branches, and some stipendiaries, were increasingly regarding any either-way RAO (that is, anything except disorderly behaviour) as more appropriate for Crown Court than magistrates' trial. This was especially apparent in London. It is thought that this line of argument can be taken too far, given that the aggravation in most RAO charges is ancillary to the basic offence rather than the driving force. The recommendations of the Sentencing Advisory Panel on offence seriousness, endorsed in *Kelly*, may help to correct this tendency. This judgment should do much to clarify sentencing practice by the ruling that the addition for racial aggravation should be stated separately.

Most RAOs are still sentenced by magistrates and they take this duty seriously, to judge by the statistics (Table 7.5, Chapter 7). Adults are 85 per cent more likely to receive a custodial sentence than for the equivalent basic offences; the average fine is 50 per cent higher, and the likelihood of a discharge is halved. Youth court sentences are even more severe *pro rata*, with the likelihood of custody for RAOs almost trebled by comparison with basic offences.

In contrast Crown Court statistics show sentencing patterns very similar to those of the equivalent basic offences. However, the numbers are few – only 151 RAO offenders were sentenced in the Crown Court in 1999 – and comparisons with basic offences less clear because of the likelihood that these will be more serious than at magistrates' court level. The picture is consistent with the complaints by some judges that too many 'over-egged puddings, consisting of one or two racial words tacked on to other offences, are coming before them. But magistrates, too, sometimes make this complaint.

It will be important when more data are available to look at the whole range of sentences for RAOs in the Crown Court. Arguably what matters is not minor cases getting small sentences but that serious cases should get appropriate treatment. The Sentencing Advisory Panel has said that there should be clear differentiation between cases according to the

degree of intent and harm done. For s82 cases they suggested as a norm a 40-70 per cent enhancement where the basic offence would by itself attract a custodial sentence. Judges who were consulted seldom mentioned percentages but some said 40-50 per cent was about the top end for the cases they were dealing with. Just what degree of racism makes an offence cross the custody threshold has yet to be resolved.

How to make the law work better

Clearly there are considerable procedural difficulties caused by the creation of racially aggravated offences out of existing substantive offences. It is often argued that it would have been quite sufficient, and much less cumbersome, to have limited the law to s82, *i.e.* treating racial aggravation as making any offence more serious and saying so in open court. Against this is the evidence from surveys and interviews that magistrates take much more notice of specific RAOs, and that having these offences on the statute book is thought to send a clearer message of the condemnation of racist crime. A third option, sometimes mooted, would be to limit the definition of aggravation to racial *motivation* only, which would reduce prosecutions but also place more emphasis on seeking evidence of motivation in all offences where it might apply. But this almost certainly poses too many difficulties. Evidence suggests that the question of *mens rea* required for racial aggravation in s28(1)(a) is problematic, but leaving s28(1)(b) to stand alone would be likely to place too many obstacles in the way of deserving cases.

It would be wrong to start changing the law at what is still its 'bedding down' stage, especially as anything which appeared to diminish its power would not be acceptable to potential victims. But it is recommended that magistrates be given the power of finding alternative verdicts on RAOs, which would reduce procedural problems and the pressure on the CPS to accept alternative pleas.

At present some prosecutors are failing to stick with racially aggravated charges when there is good evidence that the crime occurred. Offers of pleas to the basic offence often occur at a late stage in proceedings, but it is unfair on victims to lay the burden of dropping the charge on them when such an offer is made at the point of their appearance in the witness box. This is a matter for the prosecution alone.

But prosecutors can only work with what the police give them, and ample indications were found of poor recognition of racially aggravated offences within the processes of some police forces, or the practices of some officers. There are lessons here for police training, and

dissemination of best practice in exposing and recording racially aggravated offences. Tracking exercises are required to pinpoint weaknesses more fully than this study was able to do.

There are still two questions of general importance which it is considered need further discussion and clarification – one concerning the interpretation of racial hostility, and the other concerning the response to such crimes. These are both matters which touch fundamental assumptions and upon which opinion is divided.

In interpreting s28(1)(a) which refers to ‘demonstrat[ing] hostility towards the victim...based on the victim’s membership...of a racial group’, the Home Office advises that the dictionary definition of ‘hostility’ should be relied upon. Evidence is almost always verbal, and some people who apply the law find no difficulty. Almost any reference to the victim’s ethnicity in connection with an offence is seen as supplying the necessary element of racial aggravation, and it is believed that anything less condones racism. Other people take a more nuanced approach, and believe that in some cases the whole context of the incident has to be considered before it is clear that words used are ‘hostile’ as opposed to descriptive, flippant, ignorant etc. Many people were troubled by what was described as the ‘grey area’.

It is felt that these concerns have to be addressed. Something more than the dictionary is required to clarify the question of *mens rea* in racial aggravation. If the courts do not supply the answer the Home Office could issue more practical guidance on how to deal with these ambiguous cases, especially as words alone are the reason for prosecuting many racially aggravated offences. There should be scope for distinguishing between a) ‘hostility’ and other states of mind, and b) ‘hostility based on race’ and hostility with a different basis. These distinctions would not undermine the principle of opposing racist aggression. ‘Hate crime’ seems the wrong label for many minor incidents involving ethnic references, and where ethnicity has clearly not been the trigger for the hostility.

This leads on to the second, broader, area of concern: what is the appropriate response to racially aggravated offences of different levels of seriousness? The Sentencing Advisory Panel has supplied accepted guidelines for those that are convicted, and the ruling that sentencers should state the specific enhancement applied to these crimes should in future reveal exactly how these guidelines are being applied. That does not, however, answer the questions: should the response to racially aggravated offending always be prosecution? Is it for the courts alone to distinguish very minor cases with minimal sentences? Should the CPS be allowed to use the public interest criterion more often to weed out such cases? This would involve modifying present guidance which points the opposite way.

Again, there are many people who believe that the symbolic importance of the law is such that it must be applied in every case where valid evidence of a racially aggravated offence exists. Others – including several of the community representatives spoken to – consider that education, rather than prosecution, is the appropriate answer to racism, especially among young people. At ground level it seemed that informal action was often preferred by victims and police, and that in a neighbourhood context effective prevention could often be achieved through the warnings and sanctions applied by social landlords (see Lemos, 2000 for good practice). A great deal of work in this field is being done in the context of local crime and disorder partnerships, within which the merits of prosecution versus civil action can be weighed in individual cases.

The view of the authors, reached after considering the research evidence, is that racist offending should always be responded to, but that the unacceptability of the behaviour can be signalled by a range of responses which may fall short of prosecution. Warnings from the police, mediation, and/or action by schools and landlords, may be just as effective with many perpetrators. Brief racist comments ancillary to a minor offence might more often be appropriately dealt with by means of a caution, if the offender admits the words.

In contrast, some minor basic crimes, as in the case of *Miller*, can become altogether worse through a lengthy deluge of gross racist abuse. In another vein, minor racist remarks and deliberate hostile actions, if constantly repeated, as in many cases of racist harassment by neighbours, mount up to a serious total offence. The law as it stands is flexible enough to deal with these cases in the manner they deserve, without being used in other cases which only feed the argument that it is intrusive and unnecessary.

It was highlighted by evidence that most people accused of a racially aggravated offence vehemently deny the accusation not merely because they fear a heavier penalty but because they recognise the shame of a racist label. This surely demonstrates that the law is on the side of public opinion, not against it. But if it is misused, or too much attention paid to very minor incidents simply in order to get a 'result', public opinion may change.

It was felt that more consideration could be given to restorative justice solutions at the lower level of racist offending. Restorative cautioning has already been used by Thames Valley Police against racial harassment (Lemos, 2000). Someone who, in anger over some other matter, has used a racist epithet could – if the victim finds the idea acceptable – be given the chance of an apology in place of prosecution. This would be particularly appropriate for young people. It is suggested that this practice could be developed, perhaps initially in place of or as part of a reprimand.

Prior to the legislation, there were two main types of racist crime that were the cause of concern. One, in the wake of the Stephen Lawrence murder, was the serious, potentially fatal attack. The other, highlighted by a series of research studies and surveys, was the persistent racist harassment endemic in some communities. Fortunately, the former type of crime is extremely rare, as is planned violence motivated by ideological race hatred. The second, however, remains the worst blot on race relations in this country. It is now much more widely recognised and many different strategies are being used by local authorities, police and other agencies to combat it, although preventive work with perpetrators is still rare. Criminal prosecution is only one method of dealing with this aspect, and other intervention at an early stage may render it unnecessary. It is considered that it should mainly be reserved for the more serious or recalcitrant cases. These require much more investigation and preparation than most racially aggravated cases, but are a better use of police resources than a larger number of one-off public order RAOs.

A large volume of reported racist incidents (albeit with many vulnerable victims still not reporting) have to be squeezed into a crime processing system that is not well adapted to accommodate them. Those that translate most readily into prosecutions are offences of public order or minor assault where an elastic legal definition of 'racial aggravation' rests on one or two words. At court, the two-tier structure of statutory RAOs facilitates the loss of the racist element through the process of charge reduction. But by the same process evidence of more harmful racism can become suppressed, and thence unpunished. This is the danger created in the first place by indiscriminate charging and in the second place by procedural convenience.

The law is now widely accepted in principle, and a great deal of effort is being expended upon it. For it to work effectively it needs to be used both with greater finesse and more firmly. What matters is not the quantity of prosecutions, but their quality, and it is concluded that victims would agree.

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ARRANGEMENT OF SECTIONS

Part II

Criminal law

Racially-aggravated offences: England and Wales

28.

- (1) An offence is racially aggravated for the purposes of sections 29 to 32 below if:
 - (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial group; or
 - (b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.
- (2) In subsection (1) (a) above:

"membership", in relation to a racial group, includes association with members of that group;

"presumed" means presumed by the offender.
- (3) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above whether or not the offender's hostility is also based, to any extent, on:
 - (a) the fact or presumption that any person or group of persons belongs to any religious group; or
 - (b) any other factor not mentioned in that paragraph.
- (4) In this section "racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

Racially-aggravated assaults

29.

- (1) A person is guilty of an offence under this section if he commits:
 - (a) an offence under section 20 of the Offences Against the [1861 c. 100.] Person Act 1861 (malicious wounding or grievous bodily harm);
 - (b) an offence under section 47 of that Act (actual bodily harm); or
 - (c) common assault,which is racially aggravated for the purposes of this section.

- (2) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable:
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.
- (3) A person guilty of an offence falling within subsection (1)(c) above shall be liable:
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Racially-aggravated criminal damage

30.

- (1) A person is guilty of an offence under this section if he commits an offence under section 1(1) of the [1971 c. 48.] Criminal Damage Act 1971 (destroying or damaging property belonging to another) which is racially aggravated for the purposes of this section.
- (2) A person guilty of an offence under this section shall be liable:
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or to both.
- (3) For the purposes of this section, section 28(1)(a) above shall have effect as if the person to whom the property belongs or is treated as belonging for the purposes of that Act were the victim of the offence.

Racially-aggravated public order offences

31.

- (1) A person is guilty of an offence under this section if he commits:
- (a) an offence under section 4 of the [1986 c. 64.] Public Order Act 1986 (fear or provocation of violence);
 - (b) an offence under section 4A of that Act (intentional harassment, alarm or distress); or
 - (c) an offence under section 5 of that Act (harassment, alarm or distress),
- which is racially aggravated for the purposes of this section.
- (2) A constable may arrest without warrant anyone whom he reasonably suspects to be committing an offence falling within subsection (1)(a) or (b) above.
- (3) A constable may arrest a person without warrant if:
- (a) he engages in conduct which a constable reasonably suspects to constitute an offence falling within subsection (1)(c) above;
 - (b) he is warned by that constable to stop; and
 - (c) he engages in further such conduct immediately or shortly after the warning.
- The conduct mentioned in paragraph (a) above and the further conduct need not be of the same nature.

- (4) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable:
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (5) A person guilty of an offence falling within subsection (1)(c) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) or (b) above, the jury find him not guilty of the offence charged, they may find him guilty of the basic offence mentioned in that provision.
- (7) For the purposes of subsection (1)(c) above, section 28(1)(a) above shall have effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.

Racially-aggravated harassment etc.

32.

- (1) A person is guilty of an offence under this section if he commits:
 - (a) an offence under section 2 of the [1997 c. 40.] Protection from Harassment Act 1997 (offence of harassment); or
 - (b) an offence under section 4 of that Act (putting people in fear of violence), which is racially aggravated for the purposes of this section.
- (2) In section 24(2) of the 1984 Act (arrestable offences), after paragraph (o) there shall be inserted:

"(p) an offence falling within section 32(1)(a) of the Crime and Disorder Act 1998 (racially-aggravated harassment);".
- (3) A person guilty of an offence falling within subsection (1)(a) above shall be liable:
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (4) A person guilty of an offence falling within subsection (1)(b) above shall be liable:
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.
- (5) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) above, the jury find him not guilty of the offence charged, they may find him guilty of the basic offence mentioned in that provision.
- (6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(b) above, the jury find him not guilty of the offence charged, they may find him guilty of an offence falling within subsection (1)(a) above.

- (7) Section 5 of the [1997 c. 40.] Protection from Harassment Act 1997 (restraining orders) shall have effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 2 or 4 included a reference to an offence under this section.

82.

- (1) This section applies where a court is considering the seriousness of an offence other than one under sections 29 to 32 above.
- (2) If the offence was racially aggravated, the court:
- (a) shall treat that fact as an aggravating factor (that is to say, a factor that increases the seriousness of the offence); and
 - (b) shall state in open court that the offence was so aggravated.
- (3) Section 28 above applies for the purposes of this section as it applies for the purposes of sections 29 to 32 above.

Appedix B: Tables of offences, showing offence classifications

Table B1: Racially aggravated offences and comparable basic offences: showing Home Office codes for court statistics				
Basic offence		Section of Crime and Disorder Act 1998 defining the RAO		Acts defining basic offences
Description	HO code	Section	HO code	
Assaults	GBH (Malicious wounding)	s29(1)(a)	8-33	Offences Against Person Act, 1861 s20
	ABH	s29(1)(b)	8-34	(Common Law and) Offences Against Person Act, 1861 s47
	Common assault	s29(1)(c)	8-35	(Common Law and) Criminal Justice Act 1988 s39
Criminal damage	Criminal damage	s30	58-01	Criminal Damage Act, 1971 s1.1
	Fear or provocation of violence (Threatening behaviour)	s31(a)	66-09	Public Order Act, 1986 s4
Public order offences	Intentional harassment alarm or distress	s31(b)	8-36	Public Order Act, 1986 s4A
	Public order (Disorderly behaviour)	s31(c)	125-58	Public Order Act, 1986 s5
Harassment	Putting in fear of violence	s32(1)(b)	8-38	Protection from Harassment Act, 1997 s4
	Harassment	s32(1)(a)	8-37	Protection from Harassment Act, 1997 s2
Other	Other offences	s82	-	Provides the test for the court to apply when considering an increase in sentence for racial aggravation for offence other than those under ss29:32

Table B2: Racially aggravated offences : comparison of coding for court statistics and recorded crime statistics

Description of RAO		CDA 1998	HO code:	Maximum	HO code: Recorded Crime
		Section	Court stats	penalty	
Assaults	GBH (Malicious wounding)	s29(1)(a)	8-33	7 years	8D
	ABH	s29(1)(b)	8-34	7 years	
	Common assault	s29(1)(c)	8-35	2 years/fine unlimited	105B
Criminal damage	Criminal damage	s30	58-01	14 years	58E '...to a dwelling' 58F '...building other than a dwelling' 58G '...to a vehicle' 58H '...other criminal damage'
Public Order Offences	Fear or provocation of violence (Threatening behaviour)	s31(a)	66-09	2 years/fine unlimited	
	Intentional harassment alarm or distress	s31(b)	8-36	2 years/fine unlimited	
	Public order (Disorderly behaviour)	s31(c)	125-58	Level 4 fine	8E 'Racially aggravated harassment'
Harassment	Putting in fear of violence	s32(1)(b)	8-38	7 years/fine unlimited	
	Harassment	s32(1)(a)	8-37	2 years/fine unlimited	

Appendix C: Statistical data – sources and details

C1: Data supplied by the Home Office

Detailed Excel data sets for the year 1999 were extracted by the Home Office (Research Development and Statistics) from information held by the Court Monitoring Unit, in order to investigate four major areas: sentencing, cautions, prosecutions and outcomes in magistrates' courts, and cases for trial in Crown Courts. The purpose was to compare the treatment of racially aggravated offences (RAOs) and corresponding basic offences (see Chapter 2 and Appendix B).

The data were based on the total number of *charges* dealt with (whether or not the charge was the 'principal offence' at a given court appearance). Since the numbers for some categories of RAO were low, it was considered to be important to include all charges. Clearly, the counts of offences and the statistical patterns shown by these data will differ from analyses based on principal offence only (the approach generally used in *Criminal Statistics*).

Each data set was broken down by individual police force areas, type of court (where applicable), and by each Home Office court offence code (see Appendix B). The files were supplied as counts of cases (or average figures) as follows:

Sentencing: Total for sentence, discharged, fined, average fine, community sentences, immediate custody, average custody length, otherwise dealt with.

Cautions and prosecutions in lower courts: Cautioned, prosecuted, terminated early, acquitted, convicted, committed for trial, committed for sentence.

Crown Court trials: Total for trial, not tried, convicted (guilty plea), tried, not guilty pleas, convicted (not guilty plea), convicted (other plea), total acquitted (broken down by six separate acquittal categories).

The Home Office RDS also provided 1999/2000 data on Racist Incidents, and RAOs recorded (and cleared up) by each police force, as well as up to date estimates of population and ethnicity. Most of these data are available in annual publications (Povey *et al.*, 2000; Home Office, 2000a), but the authors were provided with the information in advance of publication, and with some additional breakdowns of RAOs recorded and cleared up by each police force.

C2: Data from the Metropolitan Police

Data for the year 1999/2000 were made available by the force's Performance Information Bureau, whose responsibilities include monitoring action on 'hate crime', including racist crime. The data sets were in Excel format, and dealt with racist incidents, the recording and clear-up of RAOs, charges and cautions, the ethnicity of victims, suspects and accused persons, and other aspects of racist offending. Data was supplied for the whole of the Metropolitan Police area, and also for the two case study divisions.

C3: Data from the Crown Prosecution Service

The CPS Racist Incident monitoring system (RIMS) tracks the progress of cases identified as racist, mainly focused on s28 RAOs. Data from 1999/2000 RIMS cases were supplied through a series of summary tables, dealing with factors such as: police or CPS identification of the case, supply to CPS of police racist incident report, establishment of evidence under s28 CDA, defendants prosecuted and not prosecuted, types of offence charged, CPS actions, charges dropped (and reasons), outcomes, and s82 cases.

These summary tables have been helpful in providing a broad overview of how cases are dealt with within the CPS (see Chapter 6) but it has not been possible to pursue more detailed analysis without access to the original data set. In addition, it is clear that some CPS areas substantially underreport cases.

C4: Survey data

A year after the implementation of the Act, the Home Office commissioned BMRB International (Social Research division) to conduct surveys of practitioners in the criminal justice system to help assess the impact of the Act. The data were collected by postal self-completed questionnaire, with four groups of respondents. The questionnaires were designed by a Home Office research team, in consultation with the Lord Chancellor's Department and BMRB Social Research. Each questionnaire covered a core range of issues – including estimates of the numbers of s28 RAO cases (and s82 cases) handled, liaison with other services, training and guidance, and views of the legislation – although some issues and questions were specific to each group.

Police officers. The target sample was custody sergeants in all PACE stations across England and Wales (some 2,500). The number of usable questionnaires received was 1,605 (66% response), and the data were collected in November/December, 1999. Custody sergeants were considered to be the group of officers most likely to have experience of the RAO legislation, although the survey showed that in most cases knowledge and experience were in fact quite limited.

CPS lawyers. The Chief Crown Prosecutor in each CPS branch was asked to distribute questionnaires to the five branch lawyers with the most experience of racially aggravated offences. The target sample numbered some 250, and 207 questionnaires were returned (86% response). The survey was undertaken in November/December, 1999. The sampling method guarantees that those with most experience of the RAO legislation are included, but naturally the responses are not characteristic of all CPS lawyers.

Stipendiary magistrates. Questionnaires were sent to all 97 stipendiary magistrates in June 2000, and 76 were received (78% response). Exactly half the 76 were in the Greater London area.

Justices' clerks. All 159 justices' clerks were sent questionnaires in June, and 108 were returned, a response of 68 per cent. There were no regional variations in the response rate.

For each survey, the initial findings by BMRB were produced as reports to the Home Office. The authors were granted access to these reports and to supporting tabulations produced by BMRB, but they were also provided with copies of the original data sets, to enable further analysis of the data. BMRB also made available respondents' answers to the 'open-ended' questions included in each survey, which were very useful in providing additional perspectives on the operation of the Act.

C5: Police force groups

In *Criminal Statistics* the Home Office distinguishes seven forces as 'metropolitan'. For the current research, a simple six-fold classification of forces was developed based on (a) metropolitan versus other 'county' forces, and (b) the percentage of non-white population (mid-1999 estimates, see Home Office, 2000a). This classification allows variations in key indicators (such as the percentage of cases committed for trial) to be analysed in relation to ethnic concentration without undue reliance on data for an individual force; the number of racially aggravated offences dealt with in some forces is very small. Further details of the statistics used for the grouping, and for Racist Incidents and RAOs recorded, can be found in the 'Section 95' publication (Home Office, 2000a: Appendix A1).

Police force group	Overall percent non-white population (mid 1999)	Notes
7. London (MPS and City)	17.6%	MPS and City of London. London is distinctive in two respects – a high percentage of all ethnic groups, and distinctive systems set up to deal with hate crime (including racist crime).
8. Three conurbations with ethnic population above 6%	11.9%	Greater Manchester, West Midlands and West Yorkshire. Concentration of ethnic groups between 6% and 18%. Ethnic population is predominantly Asian.
9. Three conurbations with ethnic population below 6%	2.1%	South Yorkshire, Merseyside and Northumbria. Concentration of ethnic groups between 1% and 4%.
10. Five counties with ethnic population above 4%	5.5%	Five county forces with more than 4% ethnic population. Bedfordshire and Leicestershire between 8 and 9% (mainly Asian). Hertfordshire, Lancashire and Thames Valley between 4 and 5%.
11. Nine counties with ethnic population between 2% & 4%	2.8%	9 county forces with 2% to 4% ethnic population (see below*).
12. 21 counties with ethnic population below 2%	1.3%	21 county forces with below 2% ethnic population (see below**).
England and Wales total	5.9%	

Notes:

* Group 5: Cambridgeshire, Derbyshire, Kent, Northamptonshire, Nottinghamshire, Suffolk, Surrey, Warwickshire and South Wales.

** Group 6: Avon and Somerset, Cheshire, Cleveland, Cumbria, Devon & Cornwall, Dorset, Durham, Essex, Gloucestershire, Hampshire, Humberside, Lincolnshire, Norfolk, North Yorkshire, Staffordshire, Sussex, West Mercia, Wiltshire, Dyfed Powys, Gwent and North Wales.

Appendix D:

Further tables of results

Table D1: Metropolitan Police: Racist incident monitoring data, 1999/2000: offences recorded, by category*

Major offence category	Minor offence category	Racially aggravated offences	Basic Offences	Total
Violence Against the Person	Murder		5	5
	GBH	148	189	337
	ABH	1,333	720	2,053
	Common Assault	3,071	1,048	4,119
	Harassment	6,620	719	7,339
	Offensive Weapon		52	52
	Other Violence		285	285
<i>Violence Against the Person Total</i>		<i>11,172</i>	<i>3,018</i>	<i>14,190</i>
Sexual Offences	Rape		6	6
	Other Sexual		32	32
<i>Sexual Offences Total</i>			<i>38</i>	<i>38</i>
Robbery	Business Property		25	25
	Personal Property		416	416
<i>Robbery Total</i>			<i>441</i>	<i>441</i>
Burglary	Burglary in a Dwelling		108	108
	Burglary in Other Buildings		44	44
<i>Burglary Total</i>			<i>152</i>	<i>152</i>
Theft and Handling	Snatches		29	29
	Picking Pockets, etc		9	9
	Theft From Shops		139	139
	Theft/Taking of M/V		18	18
	Theft From M/V		74	74
	M/V Interference & Tampering		4	4
	Theft/Taking of Pedal Cycles		13	13
	Other Theft		92	92
<i>Theft and Handling Total</i>			<i>378</i>	<i>378</i>
Fraud or Forgery	Other Fraud & Forgery		1	1
<i>Fraud or Forgery Total</i>			<i>1</i>	<i>1</i>
Criminal Damage	Criminal Damage To a Dwelling	1,043	437	1,480
	Criminal Damage To Other Bldg	450	142	592
	Criminal Damage To M/V	774	509	1,283
	Other Criminal Damage	379	186	565
<i>Criminal Damage Total</i>		<i>2,646</i>	<i>1,274</i>	<i>3,920</i>
Other Notifiable Offences	Other Notifiable		355	355
<i>Other Notifiable Offences Total</i>			<i>355</i>	<i>355</i>
Grand Total		13,818	5,657	19,475

Source: MPS Racist incident monitoring data.

Note:

* Racially aggravated offences under s28 CDA 1998 are shown in the first column of figures. Of the 19,475 offences recorded, 13,818 (71%) were s28 racially aggravated offences and 3,950 (20%) were equivalent basic offences. The remaining 1707 (9%) fell in other offence categories, and could potentially be dealt with under s92 CDA 1998 where a prosecution resulted.

Table D2: The flow of cases through the Criminal Justice system 1999/2000: by police force*

Force	Racist incidents 1998/99**	Racist incidents 1999/2000	RAOs recorded 1999/2000	Recorded RAOs per 100 Racist Incidents	RAOs detected 1999/2000	RAO Detection rate (%)	RAO Prosecutions and cautions, 1999***	Prosecutions and cautions per 100 detected RAOs
(col)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1 Avon and Somerset	626	887	240	27	93	38.8%	73	78
2 Bedfordshire	134	300	42	14	17	40.5%	21	124
3 Cambridgeshire	205	519	222	43	124	55.9%	63	51
4 Cheshire	158	421	98	23	63	64.3%	46	73
5 Cleveland	147	204	29	14	11	37.9%	20	182
6 Cumbria	45	85	27	32	11	40.7%	9	82
7 Derbyshire	208	383	263	69	147	55.9%	45	31
8 Devon and Cornwall	116	538	120	22	80	66.7%	30	38
9 Dorset	145	185	83	45	34	41.0%	17	50
10 Durham	75	178	30	17	25	83.3%	24	96
11 Essex	229	431	87	20	49	56.3%	61	124
12 Gloucester	83	258	147	57	70	47.6%	21	30
13 Greater Manchester	1,197	2,324	693	30	358	51.7%	261	73
14 Hampshire	271	654	273	42	177	64.8%	86	49
15 Herefordshire	325	703	148	21	89	60.1%	49	55
16 Humberside	111	215	70	33	27	38.6%	24	89
17 Kent	273	914	339	37	157	46.3%	47	30
18 Lancashire	450	917	232	25	121	52.2%	92	76
19 Leicestershire	367	878	169	19	95	56.2%	100	105
20 Lincolnshire	14	19	12	63	10	83.3%	12	120
21 City of London	28	55	40	73	16	40.0%	13	81
22 Merseyside	324	822	234	28	116	49.6%	59	51
23 Metropolitan Police	11,050	23,346	13,850	59	3,357	24.2%	1,667	50
24 Norfolk	94	253	76	30	53	69.7%	35	66

25	Northamptonshire	282	597	191	32	147	77.0%	42	29
26	Northumbria	623	1,159	273	24	187	68.5%	76	41
27	North Yorkshire	64	96	6	6	4	66.7%	7	175
28	Nottinghamshire	475	714	425	60	189	44.5%	170	90
29	South Yorkshire	293	557	98	18	67	68.4%	47	70
30	Staffordshire	220	202	176	87	59	33.5%	29	49
31	Suffolk	150	234	125	53	89	71.2%	46	52
32	Surrey	126	338	168	50	76	45.2%	18	24
33	Sussex	399	934	246	26	80	32.5%	44	55
34	Thames Valley	486	999	420	42	143	34.0%	86	60
35	Warwickshire	111	150	66	44	31	47.0%	10	32
36	West Mercia	83	464	228	49	93	40.8%	26	28
37	West Midlands	988	1,548	883	57	422	47.8%	229	54
38	West Yorkshire	1,068	2,118	234	11	173	73.9%	163	94
39	Wiltshire	101	221	77	35	44	57.1%	25	57
40	Dyfed Powys	37	99	76	77	66	86.8%	21	32
41	Gwent	98	213	97	46	85	87.6%	45	53
42	North Wales	36	80	35	44	17	48.6%	11	65
43	South Wales	734	1,602	402	25	234	58.2%	208	89
	England And Wales	23,049	47,814	21,750	45	7,506	34.5%	4,178	56

Sources: Home Office (2000a); Povey et. al. (2000); data supplied by the Home Office (RDS) Crime and Criminal Justice Unit (see also Appendix C1)

Notes:

* The 'attrition' of cases through the system (see Chapter 2) shows a steady reduction for the England and Wales totals and for most forces. There are also considerable differences in the number of RAOs per 100 incidents (col 5), which may in part be due to variability in recording practices between forces.

** Racist incidents in the preceding year (col 2) are given as a comparison.

*** It is recognised that a single detected offence can lead to several persons charged or cautioned (col 7) and also that RAO charges may be added by the CPS (see Chapter 6). These factors are most likely to be evident for forces who dealt with a small number of cases (see especially the figures exceeding 100 in col 9).

Table D3: Cautions and prosecutions in the lower courts: Racially aggravated offences and equivalent basic offences: England & Wales, 1999*

Offence description	HO Offence code	All cases: prosecuted & cautioned	Cautioned	Prosecuted	Terminated early	Acquitted	Convicted	Committed for trial	Committed for sentence
RAO common assault	8/35	790	79	711	264	42	133	272	15
RAO ABH	8/34	503	73	430	188	18	30	194	5
RAO GBH	8/33	95	2	93	36	1	10	46	2
RAO crim damage	58/01	404	19	385	155	18	95	117	7
RAO public order	125/58	607	66	541	209	49	269	14	6
RAO (PO) Intentl Harass	8/36	765	40	725	292	42	275	116	10
RAO (PO) Fear/prov viol	66/09	664	29	635	262	22	180	171	11
RAO Harassment (Har Act)	8/37	227	40	187	88	11	56	32	8
RAO (Har Act) put in fear violence	8/38	123	15	108	51	4	25	28	1
All RAOs		4,178	363	3,815	1,545	207	1,073	990	65
Common assault	105/01	84,383	16,070	68,313	26,875	4,304	35,163	1,971	612
ABH	8/06	65,294	13,700	51,594	24,127	2,251	15,263	9,953	1,255
GBH	8/01	10,059	379	9,680	3,869	355	1,560	3,896	366
Crim damage (£5,000 or more)	58/00	26,503	1,797	24,706	7,430	825	15,319	1,132	449
Crim damage (less than £5,000)	149/00	92,802	29,848	62,954	17,163	2,185	42,682	924	649
Public order	125/12	45,696	10,603	35,093	10,826	1,286	22,947	34	66
Public Order: Intentl Harass	125/09	2,916	261	2,655	1,313	153	1,157	32	19
Public Order: Fear/prov viol	125/11	35,616	4,161	31,455	11,364	1,840	17,976	275	255
Harassment (HarAct)	195/94	9,184	1,205	7,979	3,888	584	3,410	97	56
Har Act put in fear violence	8/30	2,936	287	2,649	1,542	144	499	464	36
All basic equivalent offences		375,389	78,311	297,078	108,397	13,927	155,976	18,778	3,763

	Cautioned as % of all cases	Terminated early as % of prosecuted	Acquitted as % of prosecuted	Convicted as % of prosecuted	Committed for trial as % of prosecuted**	Committed for sentence as % of convicted
All RAOs	8.7%	40.5%	5.4%	28.1%	26.0%	6.1%
All basic equivalent offences	20.9%	36.5%	4.7%	52.5%	6.3%	2.4%

Source: data supplied by the Home Office (RDS) Crime and Criminal Justice Unit (see also Appendix C1).

Notes:

* The table is based on all offences prosecuted or cautioned. All cases are counted equally, whether a principal offence or a 'secondary' offence at a given court appearance.

** The figures for 'committed for trial as % of prosecuted' refer to all offences. Since many basic offences are summary only, the two figures are not directly comparable. In Chapter 7 (Table 7.5 and associated text) more specific comparisons are based on 'triable either way' offences. For full details of offences, Home Office codes and Acts, see Table B1.

Table D4: Sentencing in the lower courts (magistrates courts and youth courts): Racially aggravated offences and equivalent basic offences: England & Wales, 1999*

Offence description	H0 Offence code	Total For Sentence	Discharged	Fined	Average fine	Community Sentence	Immediate custody	Average custody (months)	Otherwise dealt with
RAO common assault	8/35	118	9	12	£213	56	39	2.9	0
RAO ABH	8/34	25	1	1	£100	16	6	4.2	0
RAO GBH	8/33	8	0	0		6	2	3.5	0
RAO crim damage	58/01	88	13	24	£161	27	17	2.4	7
RAO public order	125/58	263	48	163	£161	24	0		28
RAO (PO) IntenHl Harass	8/36	265	38	62	£159	88	68	2.8	7
RAO (PO) Fear/prov viol	66/09	169	28	42	£168	58	35	2.5	6
RAO Harassment (Har Act)	8/37	48	8	2	£325	22	12	2.4	4
RAO (Har Act) put in fear violence	8/38	24	3	3	£138	11	5	2.8	2
All RAOs		1,008	148	309	£164	308	184	2.7	54
Common assault	105/01	34,551	9,822	5,714	£138	12,276	4,755	2.6	1,879
ABH	8/06	14,008	2,511	1,617	£191	6,954	2,304	3.4	560
GBH	8/01	1,194	129	87	£227	726	194	3.9	48
Crim damage (£5,000 or more)	58/00	14,870	3,395	2,649	£89	4,661	1,744	1.8	2,403
Crim damage (less than £5,000)	149/00	42,033	13,623	9,791	£90	9,280	2,708	1.6	6,594
Public order	125/12	22,881	7,334	12,045	£85	1,304	11	2.4	2,187
Public Order: IntenHl Harass	125/09	1,138	291	340	£132	314	140	2.4	51
Public Order: Fear/prov viol	125/11	17,721	4,298	5,943	£131	4,896	1,850	2.3	701
Harassment (HarAct)	195/94	3,354	1,121	620	£156	999	415	2.9	186
Har Act put in fear violence	8/30	463	83	83	£141	198	77	3.3	21
All basic equivalent offences		152,213	42,607	38,889	£108	41,608	14,198	2.4	14,630

Discharged	Fined as %	Community as % of total	Immediate of total	Otherwise Sentence as % of total	custody as % of total	dealt with as % of total
All RAOs		14.7%	30.7%	30.6%	18.3%	5.4%
All basic equivalent offences		28.0%	25.5%	27.3%	9.3%	9.6%

Source: data supplied by the Home Office (RDS) Crime and Criminal Justice Unit (see also Appendix C1).

Notes:

* The table is based on all offences sentenced. All cases are counted equally, whether a principal offence or a 'secondary' offence at a given court appearance.
For full details of offences, Home Office codes and Acts, see Table B1.

Table D5: Sentencing in the Crown Court: Racially aggravated offences and equivalent basic offences: England & Wales, 1999*

Offence description	HO Offence code	Total For Sentence	Discharged	Fined	Average fine	Community Sentence	Immediate custody	Average custody (months)	Otherwise dealt with
RAO common assault	8/35	28	1	1	£600	10	16	7.3	0
RAO ABH	8/34	20	0	1	£200	7	10	13.0	1
RAO GBH	8/33	6	0	0		0	6	20.5	0
RAO crim damage	58/01	11	0	0		5	6	13.5	0
RAO public order	125/58	1	0	0		0	0		1
RAO (PO) Intenti Haras	8/36	30	1	0		11	13	7.2	5
RAO (PO) Fear/prov viol	66/09	30	3	0		12	11	7.3	4
RAO Harassment (Har Act)	8/37	17	1	1	£500	2	12	10.6	1
RAO (Har Act) put in fear violence	8/38	8	1	1	£501	2	4	9.0	0
All RAOs		151	7	4	£450	49	78	10.1	12
Common assault	105/01	2,968	326	162	£226	723	1,416	3.1	266
ABH	8/06	7,987	311	246	£371	2,555	4,395	10.9	237
GBH	8/01	4,299	64	51	£535	1,208	2,624	16.3	100
Crim damage (£5,000 or more)	58/00	3,048	141	98	£313	724	1,551	4.0	433
Crim damage (less than £5,000)	149/00	411	11	6	£308	77	230	2.5	77
Public order	125/12	92	11	14	£197	12	0		55
Public Order: Intenti Harass	125/09	12	0	2	£100	4	2	3.0	3
Public Order: Fear/prov viol	125/11	1,763	216	224	£275	559	596	2.9	140
Harassment (HarAct)	195/94	228	23	8	£228	87	87	3.2	13
Har Act put in fear violence	8/30	233	13	5	£370	76	120	10.6	7
All basic equivalent offences		21,041	1,116	816	£314	6,025	11,021	9.6	1,331

	Discharged as % of total	Fined as % of total	Community Sentence as % of total	Immediate custody as % of total	Otherwise dealt with as % of total
All RAOs	4.6%	2.6%	32.5%	51.7%	7.9%
All basic equivalent offences	5.3%	3.9%	28.6%	52.4%	6.3%

Source: data supplied by the Home Office (RDS) Crime and Criminal Justice Unit (see also Appendix C1).

Notes:

* The table is based on all offences sentenced. All cases are counted equally, whether a principal offence or a 'secondary' offence at a given court appearance. For full details of offences, Home Office codes and Acts, see Table B1.

Table D6: Crown Court trials: Racially aggravated offences and equivalent basic offences: England & Wales, 1999*

Offence description	HO Offence code	Total for trial	Not Tried	Tried	Tried: convicted on guilty plea	Tried: plea of not guilty	Acquitted	Convicted on not guilty plea
RAO common assault	8/35	127	11	116	8	108	90	18
RAO ABH	8/34	99	15	84	7	77	67	10
RAO GBH	8/33	14	0	14	4	10	10	0
RAO crim. damage	58/01	36	2	34	8	26	24	2
RAO public order	125/58	1	0	1	0	1	0	1
RAO (PO) Intenti Harasst	8/36	72	3	69	15	54	44	10
RAO (PO) Fear/prov. viol.	66/09	94	15	79	17	62	53	9
RAO Harassment (Har Act)	8/37	24	3	21	8	13	6	7
RAO (Har Act) put in fear violence	8/38	27	4	23	8	15	15	0
All RAOs		494	53	441	75	366	309	57
Common assault	105/01	4232	599	3633	2106	1527	1306	221
ABH	8/06	13528	1447	12081	5274	6807	5532	1275
GBH	8/01	6768	392	6376	3261	3115	2470	645
Crim. damage (£5,000 or more)	58/00	3130	384	2746	1846	900	739	161
Crim. damage (less than £5,000)	149/00	299	26	273	198	75	65	10
Public order	125/12	55	0	55	48	7	5	0
Public Order: Intenti. Harass	125/09	7	0	7	5	2	2	0
Public Order: Fear/prov. viol	125/11	1566	9	1557	1400	157	112	44
Harassment (HarAct)	195/94	224	8	216	163	53	44	9
Har Act put in fear violence	8/30	496	61	435	162	273	251	22
All basic equivalent offences		30305	2926	27379	14463	12916	10526	2387

	% of total cases not tried	convicted on a guilty plea as % of tried cases	not guilty pleas as % of tried cases	Acquitted as % of tried cases	Acquitted as % of not guilty pleas	% of acquittals that involved lesser or alternative offences**
All RAOs	10.7%	15.2%	83.0%	62.6%	84.4%	12.6%
All basic equivalent offences	9.7%	47.7%	47.2%	34.7%	81.5%	3.0%

Source: data supplied by the Home Office (RDS) Crime and Criminal Justice Unit (see also Appendix C1).

* The table is based on all offences sentenced. All cases are counted equally, whether a principal offence or a 'secondary' offence at a given court appearance.

** Cases where a guilty plea to a lesser or alternative offence is accepted (home office codes 812 or 814).

For full details of offences, Home Office codes and Acts, see Table B1

Table D7: Lower court prosecutions, cautions and lower court sentences: England & Wales, 1999: Key indicators by police force groups⁽¹⁾⁽²⁾⁽³⁾

Police Force group	Cautions as percentage of all cases (prosecutions and cautions)		Percentage of prosecutions terminated early		Percentage of prosecutions acquitted		Percentage of either-way assaults committed for trial		Percentage of convicted cases committed to Crown Court for sentence		Percentage of sentenced cases discharged		Percentage of sentenced cases given immediate custody	
	RAOs	Basic Offs	RAOs	Basic Offs	RAOs	Basic Offs	RAOs	Basic Offs	RAOs	Basic Offs	RAOs	Basic Offs	RAOs	Basic Offs
England and Wales	8.7%	20.9%	40.5%	36.5%	5.4%	4.7%	45.9%	22.6%	6.1%	2.4%	14.7%	28.0%	18.3%	9.3%
London (MPS and City)	9.3%	22.8%	38.5%	39.9%	3.1%	4.2%	52.1%	32.3%	5.8%	2.2%	12.8%	23.4%	23.3%	14.2%
All forces outside London ⁽⁴⁾	8.3%	20.6%	41.8%	36.1%	7.0%	4.7%	40.6%	21.4%	6.2%	2.4%	15.7%	28.4%	15.7%	8.9%
Gtr. Manchester, W. Midlands and W. Yorks	7.7%	21.4%	49.8%	41.1%	8.5%	5.1%	26.9%	21.6%	3.1%	2.5%	19.1%	30.1%	11.5%	9.0%
S. Yorkshire, Merseyside and Northumberland	8.8%	23.5%	32.5%	35.8%	12.7%	5.0%	27.6%	20.5%	1.9%	1.8%	26.9%	34.2%	19.2%	8.6%
Five counties with ethnic population above 4%	6.9%	17.3%	38.3%	32.7%	6.8%	7.5%	42.6%	24.8%	5.7%	2.5%	16.0%	29.3%	12.0%	8.4%
Nine counties with ethnic population 2% to 4%	10.0%	20.6%	45.9%	37.2%	7.0%	4.0%	39.1%	21.9%	10.6%	3.3%	11.9%	26.2%	18.1%	9.4%
21 counties with ethnic population below 2%	7.7%	20.5%	34.5%	34.0%	5.4%	4.2%	59.4%	20.3%	6.3%	2.1%	12.8%	27.2%	17.9%	8.8%

Source: data supplied by the Home Office (RDS) Crime and Criminal Justice Unit (see also Appendix C1).

Notes

1. The table is based on all offences prosecuted, cautioned or sentenced. All cases are counted equally, whether a principal offence or a 'secondary' offence (for example, at a given court appearance).
2. See Appendix C (section 5) for an explanation of the six groups of police forces.
3. Percentages with a base of less than 100 cases are underlined and shaded.
4. Figures for 'all forces outside London' are given since for some indicators the clearest contrast is between London and all other forces. The total number of RAOs dealt with in the Crown Court in 1999 was too small to allow a reliable analysis by police force groups.



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