



INSPECTORATE OF PROSECUTION IN SCOTLAND

Thematic Report on Crown Office and Procurator Fiscal Service's Response on Race Issues

EXECUTIVE SUMMARY

Background

This is the first report of the Inspectorate of Prosecution in Scotland. The creation of the Inspectorate was the first recommendation of Dr Raj Jandoo in his report to Ministers following the Chhokar murder in 1998.

His second recommendation was that there should be a report by the new Inspectorate on the response by the Crown Office and Procurator Fiscal Service (the Department) on race issues. This report is in implementation of that recommendation.

Dr Jandoo recommended that the report should not be limited to a paper exercise and should include external sources. To achieve that a number of groups throughout Scotland have been contacted, questionnaires have been issued and face-to-face interviews have taken place with victims, interpreters, specialists and others. A Reference Group was established to guide and assist the preparation of the report and consisted of those with an interest in and experience of the field of review.

The report centres on examining how the Department has reacted to Dr Jandoo's findings but has also looked at race crime itself and employment issues within the Department.

Race Crime

Following the passing of the Crime and Disorder Act 1998 and the creation of specific statutory offences and aggravations a tough policy was imposed on the Department and monitoring arrangements put in place. In addition the Police were given strict guidelines by the Lord Advocate as to the investigation and reporting of racist offences.

We found that the policy was well known in the Department and closely monitored, compliance was very high with few exceptions. Court action was taken in about 85% of cases as opposed to 60% in all cases where alternatives such as fiscal fines are allowed. Compliance by the Police has also been closely monitored and shows an improving picture. The policy was seen to send a clear signal that such offences would not be tolerated. We encountered some opposition from staff, defence agents and sheriffs because of the rigidity of the policy but in contact with victims it was held to be the correct approach.

The policy had uniquely been decided following consultation with the Commission for Racial Equality and we feel it would be premature to relax this approach.

We found the conviction rate in race offences very high at approximately 80% and the number of convictions had increased considerably year on year. We were disappointed and a little surprised to see that offenders came from both genders and across the age groups, these offences not being the exclusive preserve of young male offenders. Less surprisingly we found that offenders had a high proportion of previous offences (71%).

Overall, therefore, we found that the Department was using the statutory provisions and that policy was implemented and closely monitored. Indeed we know of no other policy which is so closely monitored.

Interpreters

Dr Jandoo had found the failure to provide interpreters and translation to be a major failing in the Chhokar case.

Very detailed guidance has been given by the Department on the use of interpreters and the Department has tried to push up standards by insisting where possible on interpreters having the Diploma in Public Service Interpreting and recent experience of both consecutive and simultaneous interpreting in court. A protocol for instructing interpreters was created.

The Department is not the sole player in using interpreters in the Criminal Justice System. The Police and Court Service (for accused persons) also do so and we found that the various partners were adopting a common approach in the form of the Working Group on Interpreters and Translation. We see this as the way forward in trying to push up standards and obtain consistency.

We contacted a considerable number of interpreters either face-to-face or in the form of a questionnaire. Experience was mixed, some felt that all court personnel including judges, prosecution and defence agents could benefit from training in how to use interpreters. The provision of adequate breaks was another problem as was the question of how interpreters are treated. We make several recommendations but without a doubt matters have improved considerably within the Department on the provision of interpreters for those for whom English is not their first language.

Equally on translation since 2000 the Department has been translating court and other documents into a number of languages. These include standard leaflets on topics such as "Being a Witness", complaints against the police, career information and others.

In addition all race cases are referred to the Victim Information and Advice initiative which provides information to victims, bereaved and next of kin.

In general the changes we found have gone a long way to meet the shortcomings in the Chhokar case.

Employment

The Department has tried to attract employees from the minority ethnic communities in Scotland. The 2001 Census shows the minority ethnic population of Scotland at 2% and recent figures show that approximately 2% of staff come from a minority ethnic background. The Department has therefore managed to mirror the national figures.

The percentages vary from area to area but we found they were roughly consistent with local minority ethnic population figures.

A number of initiatives and devices have been used to attract people including attendance at schools, career fairs, secondments to and from Racial Equality Councils and others. We found that law as a career was not a popular choice for minority ethnic students but the Department had recent success in attracting trainees from a minority ethnic background.

The 2000 Race Relations (Amendment) Act imposed various staff monitoring duties on public bodies and in a survey the Commission for Racial Equality found this was one area where compliance could be better. We found this true of the Department also but there were definite plans to publish (as required) the results of the monitoring, the information was available but needed to be collated, published and importantly analysed.

On the training front for all staff a 2-day diversity awareness programme had been designed and rolled out. This included considerable external input and close monitoring has taken place. The feedback is very good and the Department has attempted a subsequent impact assessment. A wealth of diversity material has been provided for staff on the Departmental intranet.

The Department has been successful in hitting Scottish Executive targets for minority ethnic staff and has provided a comprehensive awareness-raising programme for all staff. This has been a major investment for the Department.

Consultation

The Department's aim is to provide an independent modern prosecution service, pursuing cases fairly and consistently in the public interest and being responsive to public needs.

Dr Jandoo had found that the Department had for too long been perceived as a faceless organisation, arrogant, secretive and accountable to no one.

The Department in the immediate aftermath of the Chhokar case created the Race (now Diversity) Strategy Group chaired by the Solicitor General. Its function is to develop the Departmental strategy for race issues and to oversee the Strategic Plan.

This central policy body uniquely chaired by a Minister sends a strong signal to both staff and public alike of the commitment of the Department to delivery.

To obtain feedback from the public it seeks to serve a number of initiatives have been developed including the creation of the Equality Advisory Group whose remit includes providing independent advice on the impact of existing and future policies on equality issues. It provides a forum for feedback.

An internal Race Team was also created to develop and support the implementation of the Race Equality Action Plan (REAP) and give advice to the local Area Diversity Resource Teams. These local teams are a major plank for local implementation of policy and their duties include the monitoring of prosecution policy on racist crime, recruitment and other issues. These represent an effort on the ground by the Department to interact with the local population. The Race Team created an impact assessment tool for local managers and the Commission for Racial Equality has recently provided a website for such advice.

The various devices adopted by the Department are seen as a major investment in contacting and getting feedback from the minority ethnic communities in Scotland. Their existence has been favourably commented on and seen in some quarters as a model for others although the Department itself is reticent about others adopting their approach.

Race Equality Scheme

In the aftermath of the report by Dr Jandoo the Department created a Jandoo Action Plan which followed acceptance by the Lord Advocate of all his recommendations (40 in all).

This plan detailed the relevant 'Jandoo' recommendation and outlined what the Department would do and by when. This provided an immediate template against which progress could be measured and enabled the then recently formed Race Strategy Group with a means to measure and monitor progress. The key milestones of the plan have been achieved including the guidance to the police and the diversity awareness programme. This approach we found to be thorough and aims substantially achieved.

The 2000 Race Relations (Amendment) Act required public authorities to prepare and publish a Race Equality Scheme by 30 November 2002 setting out how they intended to meet their obligations to promote race equality. The Scottish Executive published an overarching Race Equality Scheme and the Department published a detailed Race Equality Action Plan (REAP) which to a large extent took over from the Jandoo Plan.

The REAP is closely monitored by the Race Strategy Group and has received favourable comment on its attention to detail and thoroughness. It has recently been reviewed. All major objectives were found to have been achieved and a number of new objectives identified for Year 4.

We found that the approach to strategy was very thorough and close monitoring was taking place. There was a clear willingness to learn from experience and adapt.

Concluding Comments

Overall we felt that the Department had in the 6 years since the Chhokar case moved very positively in a number of areas and on a number of fronts.

The signs are very encouraging and there is strong evidence of commitment to the task with a clear lead from the top both at Ministerial and Management level.

We put in a final warning against complacency but found no evidence of such. Although we have various recommendations and suggestions they relate to detail, no gap in policy/practice of any substance was found and the Department was in the van of new initiatives and partnership working.

Joseph T O'Donnell
Chief Inspector

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INTRODUCTION

This is the first report of the Inspectorate of Prosecution in Scotland. The creation of an independent inspectorate was the first recommendation of Dr Raj Jandoo in his report into the liaison arrangements between the Police, the Crown Office and Procurator Fiscal Service and the family of the deceased Surjit Singh Chhokar which was laid before the Scottish Parliament in October 2001. The Chhokar case had raised serious questions about how the Crown Office and Procurator Fiscal Service had handled the prosecution.

The Lord Advocate accepted this recommendation and the new Independent Inspectorate was launched in December 2003. It is an indication of how seriously Crown Office took the issues raised in the Chhokar case that the now Lord Advocate, Colin Boyd, QC commissioned a report in May 2000 by the then Regional Fiscal at Aberdeen, now Solicitor-General for Scotland Mrs Elish Angiolini, QC, into liaison with the family of the deceased and then on 29 November 2000 announced 2 independent inquiries - the inquiry by Dr Raj Jandoo into liaison arrangements in the case and Sir Anthony Campbell's report into prosecutorial decisions.

Prior to the creation of the independent Inspectorate the Crown Office had employed a number of different procedures to examine working practices across the Service. The then Management Services Group produced a number of office reviews, the focus of these reviews being to ensure the efficient deployment of resources. These reports were delivered to the Crown Agent.

There then followed a concern that the focus of such reviews should shift towards examining the quality of decision-making and consequently a Quality and Practice Review Unit was set up in 1999 and the remit of this unit included the inspection of the Crown Office and Procurator Fiscal Service and to report to the Crown Agent on

- the quality of professional practice including decision-making and processes;
- identifying and promoting good practice;
- making recommendations about improving practice; and
- the development of performance indicators with respect to quality.

This Unit conducted a number of office reviews and produced a number of thematic reports. It was not the practice to routinely publish these reports.

Dr Jandoo's first recommendation was

"An inspectorate of the Crown Office and Procurator Fiscal Service should be established, headed by an independent Inspector. The Crown Office Quality and Practice Review Unit should be reinforced and reconstituted as a support

unit to the Inspectorate. The Inspectorate's reports, like those of other Inspectorates, should be made public."

Dr Jandoo went on to say that the Crown Office had for too long been perceived as a faceless organisation, arrogant, secretive and accountable to no one. The Inspectorate would be a means to introduce a measure of accountability which is essential for public confidence.

The Lord Advocate accepted this (and Dr Jandoo's other recommendations) and a project team was created to establish the Inspectorate. A consultation document was prepared and published and following analysis of the feedback the Inspectorate was set up on 31 December 2003. The first Chief Inspector was appointed in August 2004.

Dr Jandoo's second recommendation was that "the Crown Office Inspectorate should conduct a thematic inspection of the Service's response on race matters. The inspection methodology should be thorough, it should not be limited to a paper exercise and should include input from external sources".

This thematic report is in implementation of that second recommendation. Being a thematic report the intention is to present a national picture about the Crown Office and Procurator Fiscal Service's response on race issues. It is particularly appropriate that this should be the first work of the new Inspectorate given that its origin lay in the Jandoo report into the tragic case of Surjit Singh Chhokar. This review reflects the high profile which race and equality issues have in the criminal justice system. Although race crime is an important part of that profile this report is not limited to race crime but includes employment practices and the efforts made to develop arrangements for community engagement. It therefore attempts to take a holistic view of the whole operation of the Crown Office and Procurator Fiscal Service including its strategic approach. Measuring the Department's compliance with the Race Relations (Amendment) Act 2000 is a feature of the review.

To honour the commitment that the methodology should be thorough and not limited to a paper exercise and include input from external sources a remit, methodology and work programme was devised and the advice of the Commission for Racial Equality taken.

A series of issues were identified including

1. The adequacy of service delivery to minority ethnic users, including
 - an evaluation of the effectiveness and degree of compliance with current prosecution policy in respect of crimes with a racial dimension;
 - an assessment of levels of compliance with the Lord Advocate's Guidelines to Chief Constables in relation to the investigation and reporting of racist crime, the assessment of language needs and

- cultural sensitivities and preparation of death reports and associated crime reports;
- an assessment of present arrangements for the provision of translation and interpreting services to all victims, next of kin and witnesses;
 - a review of the adequacy of the current arrangements for the provision of information, support, advice and assistance to all victims and witnesses from a minority ethnic background.
2. An assessment of recruitment and employment issues within the Crown Office and Procurator Fiscal Service, including
 - a review of current recruitment initiatives to raise the profile of the organisation within the minority ethnic community and an evaluation of their success in seeking to increase the proportion of staff within the Crown Office and Procurator Fiscal Service from a minority ethnic background;
 - an evaluation of training initiatives within the organisation and their success in raising awareness amongst staff of race and equality issues and in modifying current practice;
 - a study of current attitudes amongst staff towards equality issues and of staff perceptions in this area.
 3. An evaluation of the efforts made by the Crown Office and Procurator Fiscal Service to reach out to minority ethnic communities in Scotland and to reflect their concerns in forming prosecution policy.
 4. An evaluation of the steps taken by the Department to comply with the duties imposed upon it by the Race Relations (Amendment) Act 2000 and in particular the duty to promote good race relations.

Method of Working

To assist in the preparation of the report a Reference Group was created consisting of persons and organisations with expertise in the field. The membership list is contained in Appendix A.

I would like to record my gratitude to the members of the Reference Group for the unstinting support and advice they gave to the Inspectorate Team and without whose assistance this report would not have been possible. The conclusions, recommendations etc remain, however, that of the Inspectorate.

Information was gathered initially from the considerable volume of policy and other documents created by the Department.

Interviews were held on a frequent basis with members of the Crown Office Race (now Diversity) Team and again I would like to record my thanks to

those members of staff who dealt patiently and courteously with all our requests despite heavy demands on their time.

Although every effort was made to adopt scientific approaches to the work including the design of questionnaires inevitably there were limitations to the methodology. However, the approach always was that no conclusion or recommendation would be made without being based on evidence, this being in line with the philosophy of all inspectorates.

A large number of individual interviews took place with the Solicitor General, members of the Service and various outsiders.

A considerable number of meetings were held with groups including Racial Equality Councils, religious groups and other organisations with a strong interest in the subject matter. A list of these is contained in Appendix B.

Questionnaires were used to a considerable extent especially in relation to interpreters. Again my thanks go to the various firms who agreed to send out questionnaires to interpreters on our behalf.

Questionnaires were also used in an effort to reach users of the services of the West of Scotland Racial Equality Council (WSREC) and my thanks go to the management of WSREC for facilitating this contact.

The philosophy was to target people who had by definition sought assistance with problems in the race arena.

Other Racial Equality Councils throughout the country also gave us their time and arranged focus meetings for us. A sub-group of the Inspectorate and Reference Group travelled to Aberdeen, Dundee, Edinburgh and Ayrshire to try to obtain a nationwide picture of the issues involved. The Inspectorate Team was conscious that the problems in rural areas might be quite different from urban areas.

Of particular importance was interviews held in courts in different parts of the country where a witness or victim who required the services of an interpreter was cited. This gave invaluable first hand insight into the experiences of individual victims and witnesses and also the experience of the interpreters involved. Many of the problems encountered can only be resolved by a joined up, cross cutting approach and such an approach was already being adopted by various agencies in the criminal justice system and is referred to in the Chapter on Interpreters.

In an attempt to meet as wide an audience as possible a radio interview was given by the Chief Inspector and a member of the Reference Group in Glasgow in the form of a phone in programme on a minority ethnic radio station.

On the staff front minority ethnic staff were invited to contact the Inspectorate with their views. Questionnaires were prepared for this purpose, advertised on the Departmental Intranet and sent to minority ethnic staff.

Dr Jandoo's criticisms were taken as a starting point and an assessment made of the extent to which the Department had responded and these are contained in the various chapters of the report.

Dr Jandoo's 8th recommendation was that the Crown Office Inspectorate should conduct a thematic inspection of the Service's response on victim and witness issues (including the operation of the Victim Information and Advice Division). This will be the second work of the Inspectorate to be published next year.

Some of Dr Jandoo's recommendations fall more easily to be examined in the wider context of victims and witnesses generally including the treatment of next of kin and although we have touched on some of these in this report, including a particular Fatal Accident Inquiry and a particular murder, they will be dealt with in more detail in our second report.

Finally an overview was attempted in relation to the Department's compliance with the Race Relations (Amendment) Act 2000 and the creation of the Race Equality Scheme and Race Equality Action Plan and also performance against the Jandoo Action Plan created by the Department following Dr Jandoo's report.

The Inspectorate is committed in line with current thinking on inspection to seek to achieve improvements, to identify good practice and to take a consumer's perspective on service delivery.

Joseph T O'Donnell
Chief Inspector

November 2004

CHAPTER 1

BACKGROUND

Crown Office and Procurator Fiscal Service (COPFS) is the sole prosecuting authority in Scotland and also investigates sudden deaths and complaints against the police which are of a criminal nature.

Additionally the Crown is *ultimus haeres*, or the "ultimate heir" and the following property falls to the Crown and its administration to COPFS, through the office of the Queen's and Lord Treasurer's Remembrancer -

- the estate of persons dying without leaving a will and with no traceable blood relatives;
- the net assets of dissolved companies and other organisations which are no longer operating;
- treasure trove - essentially portable antiquities which have been taken out of the ground.

The area of COPFS work that is most well known by the public is in the investigation and prosecution of crime.

Even here however the role of the Crown Office and Procurator Fiscal Service is one which is probably not well understood by the public. It would appear that the different responsibilities of the component parts of the justice system are not widely and publicly understood.

Crown Office and Procurator Fiscal Service (COPFS)

COPFS is a Department of the Scottish Executive, the ministerial head is the Lord Advocate whose position is protected by the Scotland Act 1998 Sections 48 and 29. Although the Lord Advocate's appointment is political decisions taken by him in respect of prosecutions and deaths are taken independently and he is not subject in that regard to the normal rule of collective ministerial decisions. At ministerial level the Solicitor General for Scotland assists him.

The Civil Service head of the Department is the Chief Executive who is the accountable officer and whose principal role is the corporate leadership of the Department. The Crown Agent is the principal advisor on prosecution policy and is head of the profession and assists him. (At the time of writing the two posts have been conjoined.)

The Department was restructured in 2002 following a review of its management and organisation (the Price/Dyer review) and now consists of 11 Areas (previously six Regions) each headed by an Area Procurator Fiscal who reports to the Chief Executive. The Area Procurator Fiscal is responsible for

the quality and timeliness of legal decision-making in their area and this is especially true in the case of race crime. The Areas are divided into District Offices headed up by a District Procurator Fiscal and legal and administrative staff. The 11 Areas match the main police areas replicating similar changes in England to the Crown Prosecution Service.

Procurators Fiscal receive reports in relation to crimes (approximately 300,000 per year) and sudden deaths (approximately 14,000) from the police and a range of other reporting agencies including the Health and Safety Executive, Inland Revenue and local authorities. The Department is responsible for making decisions about and bringing prosecutions for almost all criminal offences both under statute and at common law. Private prosecutions are rare.

In general terms Procurators Fiscal have responsibility for the investigation of any crime within their jurisdiction.

While the Procurator Fiscal has authority to direct and control investigations carried out by the police there is no related power to direct and control the investigation and reporting of crimes by the non-police reporting agencies.

The modern, practical reality of the relationship between the police and COPFS is such that the vast majority of criminal offences are initially detected, investigated and reported by the police without any initial involvement from COPFS.

It is the duty of COPFS to ensure that all evidence relevant to a crime investigated is secured, including evidence favourable to an accused person.

Serious cases are further investigated through a process undertaken by the Fiscal or a member of legal or precognition staff called "precognition" and the final decision on prosecution is made at Crown Office.

When representing the Department in court the Fiscal represents the public interest, he or she does not exclusively represent the interests say of a victim or the relative of the deceased but the whole of the public interest and that includes the interests of the accused.

Sentence is a matter for the court and not for the Fiscal and the Fiscal would not generally make any comment to the court on this with limited exceptions.

Traditionally the Crown was generally not concerned with sentence at all and it is only in relatively recent times that the Crown has obtained the ability to appeal against a sentence that is *unduly* lenient (and not just lenient) or inappropriate. That right is used sparingly and only after Crown Counsel's instructions obtained. Crown Counsel are appointed by the Lord Advocate to assist him. Traditionally Crown Counsel have been recruited from the ranks of the Scottish Bar but some solicitors (with a right of audience to appear in

the High Court) have recently been appointed, including Departmental personnel. They are also referred to as Advocate Deputes.

The Appeal Court recognises that sentence is essentially a matter for the sentencing judge or sheriff. A sentence will be held by the court to be unduly lenient only if it falls outside the range of sentences which a sentencing judge, applying his mind to all the relevant factors, could reasonably have considered to be appropriate.

When a trial judge has heard evidence he is, in general held to be in a better position than the Appeal Court to determine the appropriate sentence.

The decision on whether or not to prosecute and in what form is of course an important one and taken by the Procurator Fiscal and not by the police or other reporting agency. In serious cases the Procurator Fiscal is obliged to report the case to Crown Office, which is the Departmental headquarters where Crown Counsel consider such cases.

In deciding whether or not to prosecute the Procurator Fiscal must first assess whether there is sufficient evidence to justify proceedings. In Scotland generally corroboration or evidence from two sources is required before a case can proceed. A single uncorroborated complainer, no matter how credible, is insufficient. If there is sufficient evidence the Procurator Fiscal must then consider what action should be taken having regard to the perceived public interest. This is especially the case in relation to race crime and we will return to that in more detail in Chapter Two.

Prosecution in court is not the only option where there is sufficient evidence; recent years have seen a considerable growth in alternatives to prosecution including fiscal fines, conditional offers, diversion and warnings. There is no Scottish equivalent of the English test of the probability of conviction but the Department has produced a prosecution code that sets out the criteria for decision-making.

The current practice is not to give reasons for decisions not to proceed with a case. Historically this was based on a number of considerations including the fact that statements to the Fiscal are confidential and it would not be fair to the accused to have a form of trial outwith the court process. However, the Department is currently reviewing policy in this area and a change of approach is possible.

The Historical Perspective

As far back as 1989 it had been agreed that liaison between Community Relations Councils (as Race Equality Councils were then called) and the Procurator Fiscal was appropriate. The then Lord Advocate, keen to foster good working relationships with the Community Relations Councils, welcomed

approaches to and discussions with the Procurators Fiscal by representatives of Community Relations Councils and similar bodies.

The Department's first training on racial and cultural awareness took place in the autumn of 1995. This was organised internally with the co-operation of the Commission for Racial Equality (CRE). Attendance was voluntary and designed for all levels of staff. There was no cascading of the training. The seminar was launched by the then Lord Advocate, Andrew Hardie and addressed by the Head of Community Involvement of Lothian and Borders Police, by Dr Jogee of the Commission for Racial Equality in Scotland, by Dr Robert Shiels at that time attached to Crown Office Policy Group and representatives of the then existing Racial Equality Councils. Delegates from the Commission for Racial Equality and Racial Equality Councils attended and participated in syndicate discussions which were based around case studies.

Additionally in 1995 the Judicial Studies Board paper on body language and cross-cultural communication was issued to all legal and precognition staff. The paper sets out key areas where cultural differences can lead to miscommunication and misunderstandings in court.

This was followed by a course for interpreters in early 1996 and since then members of Crown Office Policy Group have been regularly involved in providing training for interpreters.

At this time, however, the Crown Office did not have a developed policy on racial awareness although commitment to one was beginning to emerge. When Lord Hardie became Lord Advocate in 1997 he signed up to the leadership challenge, an initiative developed by the Commission for Racial Equality which invited those in positions of influence and authority in all areas of Scottish society to take an individual and personal lead in promoting the principles of racial equality, creating a climate for change and effecting change with the goal of eradicating racial discrimination. This was a significant move supported by the ministerial head of the Department.

In January 1998 Crown Office and Scottish Court Service published a joint statement on Crown witnesses. It committed both Departments to treating witnesses with courtesy in giving a prompt response to their inquiries including requests for information about case progress and disposal. It also required both organisations to treat all witnesses fairly and give consideration to their interests whatever their race, sex, religion, age or any special need.

Crown Office practice and policy guidance to the Service is by way of a Book of Regulations, which is regularly updated, and by the issue of Crown Office Circulars. In May 1998 Chapters 12 and 13 of this book, which deal with deaths and public inquiries, were revised and an annexe was included which contained information on religious and cultural requirements for various ethnic groups, which needed to be borne in mind by Fiscals when investigating deaths. During the summer of 1998 awareness raising seminars

dealing with these chapters were held in Glasgow and Edinburgh for members of the Senior Civil Service.

As a result of a review and consolidation of existing policy guidance by Crown Office Policy Group in 1997/8 the Judicial Studies Board paper on body language and cross-cultural communication was re-issued to all legal and precognition staff in COPFS in August 1998. It sets out key areas where cultural differences can lead to miscommunication and misunderstandings in court.

In the meantime Parliament created new significant statutory provisions in the Crime and Disorder Act 1998. This created the statutory offences of racially aggravated harassment and racially aggravated behaviour. These came into force on 30 September 1998 by inserting Section 50(A) into the Criminal Law (Consolidation) (Scotland) Act 1995. We will return to this later.

By the late 1980s concern had been expressed by the Commission for Racial Equality about the little, if any, resort made to legislative provisions in cases where racial prejudice was apparently a factor.

Traditionally the general view in Crown Office was that such incidents could be better dealt with by the common law and that care would always be taken to bring to the attention of the court circumstances tending to suggest that racial prejudice, or indeed religious bigotry or similar prejudice, was a factor in the particular case.

Until 29 September 1998 there was no stated policy specifically on the subject of cases involving racial prejudice.

Prior to the enactment of the 1998 Act the Department consulted with the Commission for Racial Equality on what guidance should be issued to Fiscals. At that time the Lord Advocate Lord Hardie sent a draft of his intended guidelines to the CRE. This was the first time that a Lord Advocate had gone out to consultation in this manner. The guidelines took into account the comments of the Commission.

This guidance to Fiscals was issued on 29 September 1998 and again this will be dealt with later in more detail in our report, but a firm policy was adopted in the prosecution of these new offences. Lord Hardie repeatedly made the nature of the guidance public in speeches.

The Report of the Stephen Lawrence Inquiry

Following the Stephen Lawrence murder in England, Sir William MacPherson reported to the Home Secretary in February 1999 with a large number of recommendations. Recommendations 33 and 34 which were respectively a presumption in favour of prosecution and also that care should be taken to preserve any evidence of racial motivation when pleas were agreed, were

accepted by Lord Hardie. Appropriate guidance was issued to Fiscals following that on 6 April 1999.

The MacPherson Report was discussed at a Senior Civil Service Seminar (consisting of all the Senior Civil Servant Fiscals in Scotland and Crown Office staff) in April 1999.

The definition of "institutional racism" is a difficult one for most organisations to understand and take on board but Lord Hardie's position, stated publicly, was that criminal justice agencies must assume that institutional racism exists or risk complacency.

Lord Hardie commissioned an action plan on race matters from Crown Office Policy Group which was completed in June 1999. This pre-dated the first of the Chhokar trials. The plan covered prosecution and also investigations of deaths, training, recruitment and retention and external relations.

There then followed a rollout of racial and cultural awareness training which started in September 1999. Training was to be cascaded through the then six Regions and all Regions were invited to seek input from Racial Equality Councils and other local community groups and this training was rolled out to the whole of the Service between September 1999 and May 2000. It included a cultural awareness guide. This guide gives a description of cultural aspects relating to Buddhists, Chinese, Hindus, Jews, Muslims, and Sikhs including details of religious beliefs, diet, naming systems and customs following death. It also contains contact details for the Commission for Racial Equality and Racial Equality Councils as well as local community and religious groups.

Internal debriefing indicated that the training had received a mixed reaction. It was felt by some that certain stereotypes were being reinforced. Evaluation forms were completed and then analysed by Crown Office staff. The results of that analysis indicated that some staff felt the training was helpful and they could benefit from more training. Some commented that they wished the training more focussed on their jobs and how it should impact on the individual. This initial training tried to cover all staff in one session which was fine for an introductory training session but needed to be reviewed.

The Department accepted that lessons had to be learned from this initial training and that there had been criticism that there was no consistency in the training across the Service and questions had been raised about how much of the training should be cascaded on a local basis and how much be delivered by a dedicated team visiting offices around the country. The training which had been delivered involved local offices contacting local Racial Equality Councils to assist in providing the training. This had the benefit in reflecting local differences in ethnic populations eg in Aberdeen there was a large Chinese community whereas other areas of the country had considerable Asian populations.

Crown Office staff were also included in this rollout of training and a number of Advocate Deputes also attended. The book prepared by the Judicial Studies Board in England was circulated to Advocate Deputes.

Mainstreaming

Crown Office and Procurator Fiscal Service also recognised the need to mainstream anti-racist training and this was taken forward by including appropriate content within existing training courses notably the core course for new legal staff and the precognition core course.

The in-house view was that this initial training was successful in achieving the overall aim of raising awareness of the issues.

Additionally, to meet the recognised need for mainstreaming anti-racist training the Race Strategy Group, chaired by the Solicitor General, commissioned work by Rowena Arshad of Edinburgh University to assist in determining the appropriate content of mainstreamed anti-racist training. This was recognised as a first step and that the commitment required to be ongoing.

A follow up report was submitted to COPFS in August 2002 and the current Diversity Awareness Programme was created.

We will return to the question of training later in our Chapter on Employment.

A number of strategic devices were used to take matters forward including the creation of the Race Team, Race Strategy Group, Equality Advisory Group and Area Race Resource Teams. These will be discussed in subsequent chapters.

CHAPTER TWO

RACE CRIME

Background

Our remit is to report on the Department's response on race issues. This is not restricted to race crime but how race crime is handled by the Department is a crucial part of its response on race issues generally.

Assessing the level of race crime is notoriously difficult. Available research and statistics on the subject certainly indicate an increase in the incidence of racial crime being reported to police in recent years. However, there is also evidence to suggest that many incidents go unreported and changing definitions make comparing statistics potentially misleading. What is clear is that it is not a new phenomenon; there were attacks on black people in Glasgow and other cities in 1919. While it is beyond the scope of this report to analyse the reasons for racism and racist offences suffice to say that the problem is deep rooted in society and unlikely to go away of its own accord.

"In Aberdeen the ethnic minority community is not aware of what it is entitled to in respect of racist incidents, eg an Asian guy is assaulted, do you report it? No, the police won't do anything. How do we educate the ethnic minorities and build trust?"

(Minority ethnic focus group member, Aberdeen, 31 August 2004)

Although there were criminal provisions in the law directed at racism particularly in the Race Relations Act of 1976 and the Public Order Act of 1986 there was reliance by Fiscals on the common law. Fiscals were, however, encouraged by Crown Office policy to consider racial motivation in deciding whether a prosecution was in the public interest.

It was understood that Fiscals would use their discretion and exercise their legal judgement in considering any racially motivated case as they would in every case reported to them. There was, however, no stated policy specifically on the subject of cases involving racial prejudice.

"I think it (race crime policy) is a good thing. I think it is very helpful to people who are being abused."

(Witness 1, Court Survey, May 2004)

One interesting use of the Public Order Act 1986 was the 2002 Glasgow Sheriff Court case of David Wilson who was prosecuted for a Contravention of Section 19 1(a) of the 1986 Act in that he did in Pollokshields, Glasgow distribute written material which was threatening, abusive or insulting and did

thereby intend to stir up racial hatred. The Sheriff had to decide first whether the material (in a leaflet distributed in Pollokshields in 2001) was threatening etc and second whether Mr Wilson delivered them with intent to stir up racial hatred. The Sheriff in finding Mr Wilson guilty held that the information contained in the leaflet was substantially inaccurate as it referred to a deteriorating situation in Pollokshields between the white and Muslim members of the community. This was contradicted by evidence from various sources including the West of Scotland Council for Racial Equality. The Sheriff went on to hold that the accused must have been aware that a high percentage of the community were black Muslims of Pakistani origin and held the leaflet was aimed at provoking ill feeling towards the Pakistani community and she therefore held the accused had distributed the leaflets with the intention of stirring up racial hatred as defined by the Act. This case is currently under appeal.

After the General Election in 1997 the incoming Labour Government in furtherance of a manifesto promise to create new offences of racially motivated violence and racial harassment passed the Crime and Disorder Act 1998 (hereinafter referred to as the 1998 Act).

"Years ago there was a bru ha-ha about domestic violence. At that time people were scared to report it. Now we've come to a point where it's not tolerated. We have to have that same bru ha-ha about racial abuse then people will report."

(Minority ethnic focus group member, Glasgow, 4 October 2004)

This created in Scotland the statutory offences of racially aggravated harassment and behaviour and also provided for racial aggravation in any offence to be taken into account by the court in determining the appropriate sentence.

Given its importance we quote the new offences in full. (The 1998 Act amended the 1995 Criminal Law (Consolidation) (Scotland) Act 1995.)

- 50(A) – (1) A person is guilty of an offence under this section if he –
- (a) pursues a racially aggravated course of conduct which amounts to harassment of a person and -
 - (i) is intended to amount to harassment of that person; or
 - (ii) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person; or
 - (b) acts in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.

In respect of Section 50A (1)(a) a course of conduct must involve conduct on at least 2 occasions (racially aggravated harassment).

Section 50A (1)(b), however, is obviously intended for use where there has been only one incident (racially aggravated conduct).

Subsection 2 defines that "a course of conduct or an action is racially aggravated if -

- (a) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces towards the person affected malice and ill-will based on that person's membership (or presumed membership) of a racial group; or
- (b) the course of conduct or action is motivated (wholly or partly) by malice and ill will towards members of a racial group based on their membership of that group".

To prosecute these new offences there must be "corroborated evidence".

"Corroboration" is in itself a complex legal concept which is not part of the remit of this review but put in simple terms it means that a crime can only be prosecuted if there is evidence from more than one source

- that the crime was committed and
- that the accused was the perpetrator.

"Is there any way we can change the law on corroboration?"
(Minority ethnic focus group member, Glasgow, 9 September 2004)

To try to overcome this difficulty the Grampian Racial Equality Council run courses for "volunteer witnesses" who will be an extra pair of ears and eyes at places such as homes and restaurants where there have been repeated instances of racist abuse. Local Fiscals have assisted in their training. We await with interest the use of such witnesses in court.

The 1998 Act however also introduced in Section 96 a statutory racially motivated aggravation that could be added on to any offence. The definitions of "racially aggravated", "membership" and "presumed" are identical to those contained in Section 50.

The aggravation only requires one source for proof. Because it is an aggravation rather than a separate offence Section 96 does not provide any specific penalty but provides that in sentencing the court shall take the aggravation into account in deciding the appropriate sentence (Section 96(5)). (In England there is Court of Appeal guidance providing for increased levels of sentencing in cases shown to be racially aggravated.)

Another important distinction between the two provisions is that on conviction for an offence involving racial harassment (contrary to Section

50A (1)(a) Procurators Fiscal may exercise discretion in seeking a non-harassment order under Section 234A of the Criminal Procedure (Scotland) Act 1995 and indeed a non-harassment order would be particularly appropriate in these circumstances. Breach of such an order would again be a criminal offence.

"People have to see it (race crime) as a major crime."
(Minority ethnic focus group member, Glasgow, 4 October 2004)

Crown Office took the unprecedented step of taking advice from the Commission for Racial Equality before issuing policy guidance to COPFS staff on implementation of these new provisions.

"Yes, it (race crime policy) is a good thing. It will help reduce racist crime."
(Witness 10, Court survey, September 2004)

The policy guidance (issued September 1998) indicated that the Lord Advocate as ministerial head of the prosecution service was committed to ensuring that all racially motivated crimes were treated seriously.

Procurators Fiscal were instructed (repeating instructions given in 1989) that racial motivation must always be taken into account when deciding whether a prosecution was in the public interest.

Fiscals were further directed

- that where the new statutory provisions applied in summary cases they should be used in preference to existing common law charges.
- Fiscal fines were not to be issued for any offence which was racially aggravated. (The Procurator Fiscal can offer to an accused person, in appropriate cases suitable for prosecution in the District Court, a conditional offer of a fixed penalty. If the penalty is paid then the accused is not prosecuted for the offence.)
- Proceedings were not to be taken in the District Court for any offence which was racially aggravated (the legislation did not debar this).
- To bear in mind a court's sentencing powers in deciding the appropriate forum in Section 96(1) cases to allow the court headroom to take into account the aggravation in determining the appropriate sentence.
- Warning letters were not to be used.

Fiscals were also reminded that if the facts proved did not amount to a contravention of the statutory provisions it might still be open to the court to convict of an appropriate common law offence. Styles of specimen charges were given to the Service to assist with drafting charges.

"Racist crime is a priority matter for prosecutors. The Lord Advocate has directed Procurators Fiscal that warnings and fiscal fines should never be issued in cases of racist crime.....we are taking such a robust stance because we are aware of the fears which exist in some communities in Scotland about reporting racist crime."

(Mrs Elish Angiolini, QC, Solicitor General, 26 February 2002)

The 1998 Act was followed by the publication of the MacPherson Report into the murder of Stephen Lawrence in February 1999. The then Lord Advocate Lord Hardie accepted recommendations 33 and 34 which were a presumption in favour of prosecution in race cases and that care should be taken to preserve any evidence of racial motivation if pleas were agreed.

Recommendation 12 of that report states that a racist incident is any incident that is perceived to be racist by the victim or any other person. The Scottish Executive has accepted this definition for the purposes of reporting and recording of racist crime.

"It is crucial that we are aware of the fact that an incident has been recorded as racist and of the perception of the individuals involved. This is to ensure that we communicate in an appropriate way with victims of crime."

(Solicitor General supra)

Further formal guidance was issued to COPFS staff in April 1999 which referred to the Lawrence Inquiry. Although the recommendations of the Inquiry related to England and Wales the Lord Advocate had given detailed consideration to the recommendations and instructed

- that there should be a rebuttable presumption that the public interest should be in favour of prosecution where evidence of racial motivation exists;
- that racial motivation was an aggravating factor which had bearing on the gravity of an offence and particular care should be taken at all stages of the prosecution to recognise and include reference to such evidence and to bring it to the attention of the court
and
- that pleas of guilty should not be accepted which excluded available and admissible evidence of racial motivation.

A very strong line was therefore taken at Crown Office as to how such cases should be prosecuted. One area of concern we came across in speaking to victims and defence solicitors was the counter allegation situation when on reporting a racist incident the suspect tells the police that he has been the victim of assault etc. Where there is sufficient evidence to support this, the police have little option but to charge the original complainers as well and report both to the Fiscal.

At all bar one of the focus groups held by the Inspectorate the race policy was considered a good thing. The exception being a focus group in Glasgow - "Fairness and equality we are looking for, not preferential treatment".

(Minority ethnic focus group member, Glasgow, 7 September 2004)

We feel that in the circumstances the police report should make very clear the likely true sequence of events and Fiscals should be alerted to the use of this as a tactic. Of course each case has to be looked at separately but awareness of this should enable informed decisions to be made.

In the main we found in the focus groups and interviews with witnesses at court that people did not know of the policy but most of them considered it to be a good thing.

"I think that this is a good thing, justice should be done and it is part of justice."

(Witness 1, Court survey, May 2004)

There were a few reservations –

"If someone commits a crime and he is sorry for that he should be given another chance. It is good that he pleads guilty and for the first time he should be forgiven. You ask again about how I feel about the plea of guilty with the racial motivation taken out and I think the best thing is to forgive."

(Witness 2, Court survey, June 2004)

"Equality for all sexes and races" was what was required and not preferential treatment.

(Minority ethnic focus group member, Glasgow, 7 September 2004)

It was suggested at a focus group for COPFS staff that the strict policy was a bit of a mixed blessing in court.

"We don't want special treatment, we want fair treatment."
(Minority ethnic focus group member, Glasgow, 7 September 2004)

On the one hand:-

- As it was such a strict policy solicitors in court understood that and this prevented fruitless discussion and argument.
- It sends out the message that race cases are taken seriously.
- It is seen as an attempt to change perceptions about how the Department deals with such issues.

But on the other hand: -

- Some COPFS legal staff are not keen on the rigidity of the policy which results in the rejection of reasonable pleas.
- They feel it can bring the Depute in court into ridicule.
- That it takes away from their professional status in the eyes of other professionals and the public.

"They can trust us with terrorism, murder and sexual abuse but not with a racist breach of the peace - what does that say about us?"

(COPFS staff focus group member, August 2004)

- The hard line policy annoys some sheriffs and defence agents who feel it is too rigid.
- The hard line on plea acceptance/rejection can cause difficulties for witnesses who are regularly subjected to racist abuse and who have to attend court regularly.

"One couple were not keen on the policy, they were forced into court, people won't plead."

(COPFS staff focus group member, August 2004)

A recent monitoring exercise carried out by COPFS which looked at all race offences reported by the police to Procurators Fiscal throughout Scotland revealed that a total of 439 cases were reported in a seven month period (1 October 2002–31 March 2003 and 1–31 October 2003).

We thought it would also be useful, therefore, to look at what actually happens to the charges reported to Fiscals by the police.

COPFS has a single corporate database which connects all Procurator Fiscal Offices and Crown Office units and facilitates the transfer of legal casework. In order to look at the take-up rate of charges reported to Fiscals we

obtained an extract from the database, spanning the last 2 financial years, containing details of any charge with a racial element (hence all Section 50 charges and charges with a racial aggravation recorded against them, under Section 96). The following two tables present the findings.

Table 1 – Section 50 racial charges: number and percentage marked by Fiscal for proceedings, 2002-03 and 2003-04

	2002-03	2003-04
Section 50 racial charges	2,012 ¹	2,112 ¹
Charges marked by Fiscal for proceedings	1,714	1,871
<i>Charges marked by Fiscal for proceedings</i>	<i>85%</i>	<i>89%</i>

Table 2 – Charges with a racial aggravation recorded (under Section 96): number and percentage marked by Fiscal for proceedings, 2002-03 and 2003-04

	2002-03	2003-04
Charges with a racial aggravation (under Section 96)	765 ¹	877 ¹
Charges marked by Fiscal for proceedings	646	737
<i>Charges marked by Fiscal for proceedings</i>	<i>84%</i>	<i>84%</i>

These take-up rates would appear to indicate that the robust prosecution policy is being strictly applied. They compare with a proceedings rate of about 60% for all cases reported to the Fiscal where alternatives such as fiscal fines are allowed.

We also obtained data in relation to racial offences from the Scottish Executive Justice Department. This is presented separately in Annexe A.

Instructions and Monitoring

"In our core work of prosecution we take a vigorous anti-racist stance. We are committed to prosecuting cases of racist crime wherever there is sufficient evidence to do so....We have an extremely robust prosecution policy which seeks to implement the recommendations in the Lawrence Report and to reflect the expectations of Scottish society."
 (Mrs Elish Angiolini, QC, Solicitor General, February 2002)

¹ Total number of charges excludes those recorded as duplicates, those recorded as unmarked (as at date of extraction) and those recorded as referred to the Children's Reporter

In furtherance of this robust approach the Lord Advocate issued guidelines to the police on reporting of racist crime and also issued instructions to Procurators Fiscal on how such cases were to be prosecuted. In addition monitoring arrangements were put in place to measure and ensure compliance with these guidelines.

The police instruction included reference to the Lawrence definition of a racist incident as being any incident perceived to be racist by the victim or any other person and the police were instructed to advise the prosecutor whether the victim or any other person perceived the incident to be racist. The police were advised that victims might be reluctant to express their fears or beliefs and that every effort should be made to ascertain the true perception of the victim. The Fiscal was to be provided with a copy of the Racial Incident Monitoring Form.

"I hope it (race policy) makes it easier for people to come forward."
(Minority ethnic focus group member, Glasgow, 9 August 2004)

A second set of guidelines was issued by the Lord Advocate to the police in April 2002. These are reproduced in full at Annexe C. There was a recognition that the prosecutor needed good quality police reports to take sensible informed decisions and the second set of guidelines emphasised the need to tell the prosecutor of the perception of the victim or other person (although there had to be evidence not just the subjective opinion of the victim).

"We, the community can be confident that something is being done and we are not being ignored."
(Minority ethnic focus group member, Glasgow, 9 August 2004)

The Racial Incident Monitoring Form included details on ethnicity and the language needs of the victim (arrangements were made between the Department and the police to standardise this form). Failure to lodge the form with the Fiscal was brought to the attention of Police Divisional Commanders and to Chief Constables by (then) Regional Fiscals.

The method of reporting cases to the Fiscal was also included in these guidelines. The accused was to be reported either in custody (ie arrested and kept in police custody pending appearance in court on the first lawful day after arrest) or liberated on an 'undertaking' to appear in court on a specific date (the accused is freed on his agreement to appear on that date).

Only in exceptional cases was such an accused to be charged and liberated on report to the Fiscal (where no court date is initially set). The whole point of this instruction was to ensure that cases of racist crime were fast tracked. After appearing in court Fiscals were instructed to request early trial diets in the event of a plea of not guilty (similar instructions had been given to fast track drink/driving offences).

The report was to cover the impact of the crime on the victim including financial loss.

Especially important (post Chhokar) the guidelines required the police to include an assessment of language needs of the victim, witness or accused and asked to state their 'first' or preferred language and include details of whether correspondence would need to be translated. The report was to include dialect required as well as language and state explicitly when an interpreter would not be required.

"The police get an interpreter for the offender but not for the victim. They are very careful in observing procedure with the offender."
(Minority ethnic focus group member, Glasgow, 7 September 2004)

Detailed instructions were given in relation to death cases. These will be examined in our next report.

Monitoring was rightly seen as a vital point of this process and the instructions required the Regional Fiscals (now Area Fiscals) to include the monitoring of the guidelines as part of their existing regional monitoring duties.

A slight relaxation of the policy took place in June 2004 when warning letters were allowed in "very exceptional" circumstances and under the personal instruction of the Area Fiscal. Again a monitoring exercise is in place for the first 6 months.

A centralised Crown Office monitoring exercise was also undertaken which examined all relevant police reports submitted by the police between 1 July and 31 October 2000. This showed Fiscal compliance with the then guidelines at 94.8% of the cases examined.

A second Crown Office monitoring exercise took place, as mentioned earlier in the chapter, covering the period 1 October 2002 to 31 March 2003 and 1-31 October 2003. This looked at police performance against the Lord Advocate's Guidelines and showed an improving picture eg 93% of cases were correctly identified by the police as having a racist element. Fiscals were found to have complied with the guidelines in 97% of cases. These results were published. Close co-operation continues between COPFS and the police regarding police compliance with the Lord Advocate's Guidelines.

We decided to look at the extract we obtained from the COPFS database as an additional check on Fiscal compliance since it would indicate any obvious breach of the policy. The data recorded on the system tended to confirm the Departmental analysis of compliance with policy.

As part of the future work of the Inspectorate regular audits of offices will take place. As the first of these, this year we audited the Hamilton office to check for compliance with the race policy.

We found that they had a particularly sophisticated system for monitoring race cases which could be used as an example for other offices.

The Department has also been working closely with the police to 'automate' the information required to be submitted to the Fiscal in the standard police report. This means that the Reporting Officer will have to address the relevant issues before the report can be sent.

Monitoring of compliance with these directives is placed firmly on the shoulders of the Area Fiscal who is personally responsible for compliance.

A member of legal staff 'marks' (ie decides what action to take) every report of a racist incident and the District Fiscal checks each case for compliance with the policy. The form is then forwarded to the Area Fiscal with a copy of the police report. The Area Fiscal then reports to Crown Office and the Race Strategy Group. (New arrangements are in place which we discuss later.)

The change in the reporting arrangements seems like a good time to clarify what is expected. The monitoring is effective; our only concern was that there was some sign of inconsistency between Areas as to who did what. The results of the central monitoring show that the policy is well understood and implemented to a high degree. It underlines the commitment of the Department (and frontline staff) to deliver.

At one focus group in Glasgow in August 2004 members of the minority ethnic community indicated that they were impressed by such vigilance.

A number of witnesses were seen at court as part of a survey exercise and although the number was small, 10 in all, the analysis of their comments was interesting.

We found that:

- 90% of witnesses had a positive impression of the treatment they received at court.
- 88% had a positive impression of the investigation and, where appropriate, precognition of the case.

- In 63% of the cases the motive for the offence was perceived as a racial one. The remaining 37% concerned instances of domestic abuse.
- In 80% of the cases the witnesses did not know Crown Office policy on the prosecution of crimes with a racial element.
- 100% of witnesses were happy with the language match with the interpreter at court.

Conclusion

A robust prosecution policy has therefore been put in place and effective monitoring arrangements exist to ensure compliance. This is very important in our view, despite some staff misgivings, as it should enhance confidence in minority ethnic communities that the Department takes race crime very seriously. We know of no other policy which is so closely monitored. The detailed instructions given by the Lord Advocate to the police and Fiscals underline that this is a central plank of Crown Office Policy.

CHAPTER 3

INTERPRETERS

The findings in this chapter were at times unexpected and it is an area in which people of many different backgrounds held very strong opinions on what was happening currently and on methods of improvement.

It is an area in which the Department has taken a leading role in driving up standards. However, future improvements have to be driven, not just by Crown Office and the Procurator Fiscal Service, but also by all criminal justice partners, the interpreting agencies and by public authorities more widely.

Research for this chapter consisted of: -

- Reviewing the written guidance for COPFS staff, guidance from the Lord Advocate to the police and the protocol between the Scottish Court Service and COPFS.
- Research into what actually happens in our courts with the information coming directly from witnesses and interpreters (where the interpreter was requested by the Crown) interviewed at courts during their attendance for trials and other court diets. A total of 16 interpreters were interviewed.
- 50 postal questionnaires returned by interpreters. This included interpreters requested by the Scottish Court Service and the police. A summary of the results is contained at Annexe B.
- 13 focus groups with members of the minority ethnic communities and COPFS staff around the country.
- Contact with all local authorities.
- Contact with the Scottish Association of Sign Language Interpreters (SASLI).
- Contact with the National Register of Public Service Interpreters in London.
- Consultation took place countrywide with approaches in various forms also being made to areas outwith the central belt.

Background

To put the situation into context reference has to be made to the past and the changes that have happened in the years since the tragic case of Surjit Singh Chhokar.

A significant finding from all of our research was how little understood was the role of the Department, its operational responsibilities and its place in the partnership of criminal justice agencies.

"People need to know what the Fiscal does."
(Minority ethnic focus group member, Glasgow, 14 October 2004)

A Historical Perspective

Until the new measures were introduced interpreters were cited for court and precognition as though they were witnesses.

Citation was done by COPFS for court whether the interpreter was required for a witness or an accused.

Later consideration of this practice concluded that it did not properly reflect the role of the interpreter in providing expert assistance nor did it reflect that the interpreter could properly choose to refuse the assignment.

"It is a much better system (nowadays). You used to get a citation and the people issuing the citation did not have a clue about language match. You used to get requests for 'Pakistani' interpreter!"
(Interpreter 18, court study, September 2004)

Interpreters were not used routinely to assist witnesses or family members follow proceedings at court, which was of course, one of the difficulties manifested at the first Chhokar trial.

Documents for witnesses or next of kin who could not speak English were not routinely translated.

Current Policy and Practice

In 2001 COPFS Race Strategy Group reviewed the arrangements and policy for the instruction of interpreters in the criminal courts and updated policy and guidance was issued to staff on 6 July 2001.

Bodies consulted on the new arrangements and policy had included:-

- The Scottish Translation, Interpreting and Communication Forum;
- Racial Equality Councils;
- The Scottish Association of Sign Language Interpreters (SASLI) and
- Private interpreting agencies that supplied interpreters to the Crown.

The Department is obliged to instruct a suitably qualified and experienced interpreter for witnesses in court and how this is achieved is outlined later in this chapter.

In October 2002 the practice was extended to cover consideration of such a service to bereaved and other relatives who wished to view court proceedings.

As of 1 April 2002 the responsibility for instructing an interpreter for an accused person, as opposed to a witness, passed to the Scottish Court Service for Sheriff and High Court cases. The exception to this is where an accused appears from custody when the police, on behalf of the Scottish Court Service, arrange the interpreter to assist the accused at his or her first court appearance.

We found the majority of interpreters instructed for court are to assist accused persons.

This highlights the need for the Department to work with the Scottish Court Service as it is currently doing in the Working Group for Interpreting and Translation Provision in the Criminal Justice System in Scotland (WGIT).

Improvement of the current position cannot happen without the involvement of all criminal justice partners.

"We need to bring everyone together to share what everyone needs out of interpreting and translation services. Other people such as the police and the solicitors should be included. They can discuss each other's role and what is expected of that party by the others."
(Interpreter 15, court study, July 2004)

The Practicalities

As common sense dictates, the current position is that the police Reporting Officer has responsibility for advising the Fiscal as to whether interpreting services are required or not. The quality of the work of the Procurator Fiscal depends entirely on the quality of information provided by the police which again emphasises the need for joint working in this important area.

"I missed court. There should be some arrangement for it (citation) to be translated so we can read it and understand."
(Witness 7, court study, June 2004)

(Witness 7 was a complainer in a domestic abuse case in June 2004 for whom a warrant was granted after her failure to appear due to her inability to understand the citation. The police report made no mention that the complainer required an interpreter.)

As part of the review of reports of racially motivated crime in 2000 (July – October 2000) it had been found that Reporting Officers generally did not assess the language need of individuals from minority ethnic communities and simply assumed that the Fiscal would know whether an interpreter was required.

A companion of one witness cited for June 2004 (witness number 2, court study) advised that the wife of the witness had phoned the Procurator Fiscal's Office to advise that he would require an interpreter for trial. The police report made no mention that the witness required an interpreter.

The current position where the police have responsibility for passing on information on interpreting and translation needs is contained in the second set of guidelines (dated February 2002 which succeeded an earlier set dated May 2001) from the Lord Advocate to Chief Constables on the investigation and reporting of racist crime (see Annexe C). The guidelines outline the current responsibilities of the police to assess the language needs and cultural sensitivities of accused persons, victims and witnesses from an ethnic minority.

- The accused, victim or witness should be asked to state their first or preferred language.
- The accused, victim or witness should be asked whether correspondence and documentation to be sent to them will require translation.
- These preferences should be included in the police report.
- The language and dialect required should be specified both in the police report and the statement of the witness.
- If the Reporting Officer is in any doubt as to whether an interpreter is required then the police should provide one and the Fiscal should be advised of the view of the Reporting Officer.
- If the Reporting Officer concludes that an interpreter is not required then that should be specifically stated in the police report.
- The police should also advise the Fiscal of the ethnic and religious background of any individual who requires interpreting services.
- The name and contact details of the interpreter used by the police should be contained in the police report.

A further review of police compliance with the Lord Advocate's Guidelines on the reporting of racially motivated crime (October 2002 - March 2003 and October 2003 - findings reported June 2004) found that in 59% of cases the report included an assessment as to whether the accused or witness required an interpreter. However, in 93% of the 59% of cases the assessment was an adequate one. This is subject to constant joint working between COPFS and the police.

Where there is no assessment of the language needs of the witness or accused in the police report Procurators Fiscal will proactively and robustly seek clarification from the Reporting Officer as to whether such an assessment took place and the result. Guidance on this was issued to Fiscals in July 2001.

"... the police did not bring an interpreter, it could've been better, I'd have preferred an interpreter. It was difficult to give a statement without one. I would've been positive if the police brought someone who spoke the language."

(Witness 10, court study, September 2004)

(In this case it was not highlighted in the police report that the witness required an interpreter.)

Language Line

After a pilot in the Procurator Fiscal's Office in Glasgow all COPFS offices have had Language Line telephone interpreting service available since January 2001.

Language Line accesses more than 100 different languages in a matter of seconds. This is an extremely useful resource for instances when people simply come in without an appointment, off the street, with a query. The importance of being able to communicate cannot be overemphasised.

Crown Office do not currently analyse what use is made of the service. This may be a lost opportunity to assess developing language needs.

Recommendation 1

That Crown Office begins to monitor and evaluate use of Language Line as a tool to anticipate changes in language needs.

Instruction of Interpreters for Precognition and Court

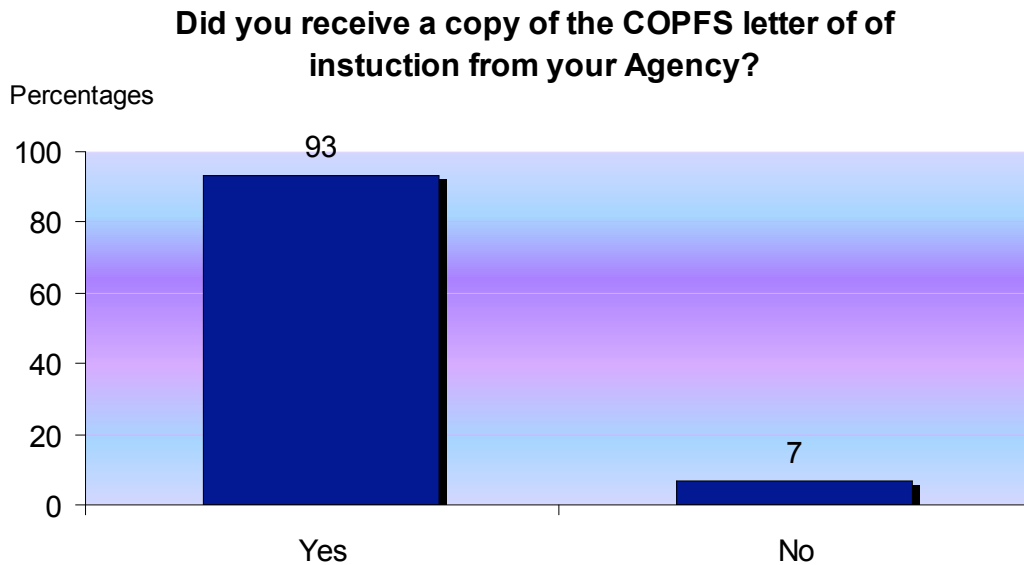
It is the responsibility of the interpreting agency to ensure the interpreter is suitable for the assignment in accordance with minimum requirements specified by the Crown in a letter of instruction.

"It is a very delicate subject. Many people have done interpreting in court which was not right and there was no action against them."
(Interpreter 6, court study, June 2004)

The letter of instruction should be passed to the interpreter by the interpreting agency. The letter and enclosures contain important information which the interpreter will require for proper preparation for the assignment.

Interpreters interviewed in the court survey (a total of 16) appear to receive the necessary information from COPFS in the vast majority of cases. Interpreters were asked if they received the various documents from their Agency in respect of the case for which they were presently at court. Charts 1-4 illustrate the questions asked and responses given (in percentage terms).

Chart 1



"I go to the copy complaint or indictment and read about the crime so that I can familiarise myself with names and words."
(Interpreter 9, court study, June 2004)

The guidance issued to COPFS staff directs that requests to interpreting agencies should always be in writing and that written records should be kept of discussions. Even if the interpreter is required at short notice and the initial contact made by telephone the standard letters of instruction and enclosures should be used and passed expeditiously to the interpreting agency.

The letter of instruction should have enclosed with it the following:-

- A copy of the Code of Conduct for Interpreters;
- A copy of the complaint or indictment;
- A general briefing note containing a glossary of terms commonly used in the Scottish Criminal Court context;
- Copies of documentary productions where it is clear that the production contains unusual or technical language, which will require to be interpreted in court.

This is to enable the interpreter to be in a position to more effectively assist the court.

Chart 2

Did you receive a copy of the COPFS code of conduct from your Agency?

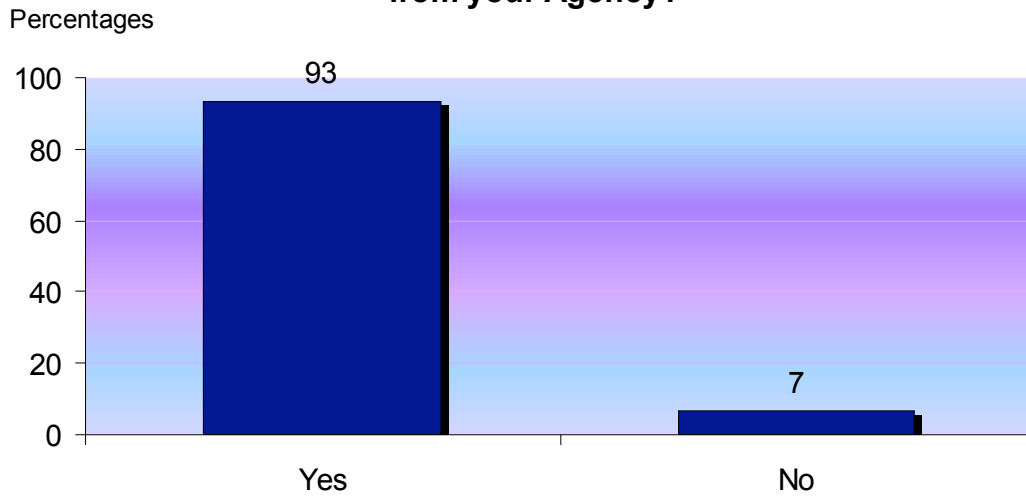


Chart 3

Did you receive a copy of the the complaint from your Agency?

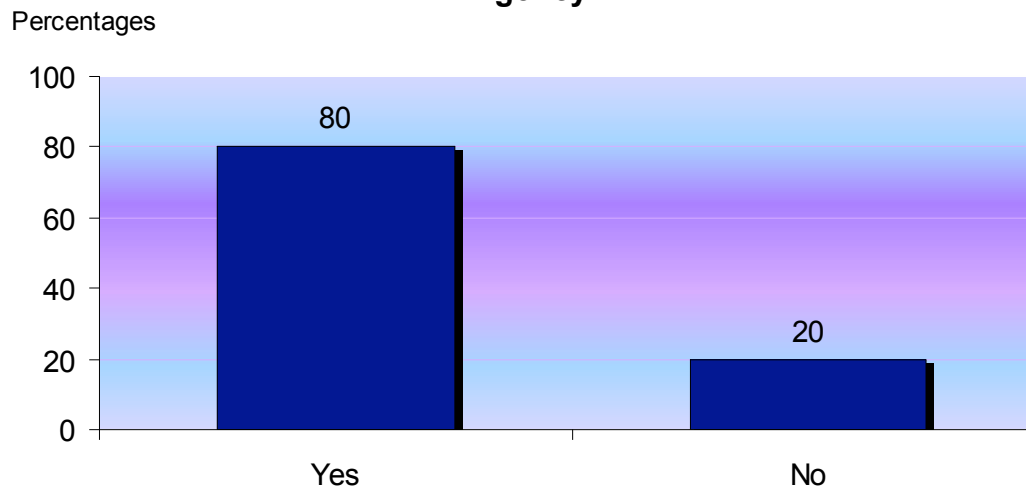
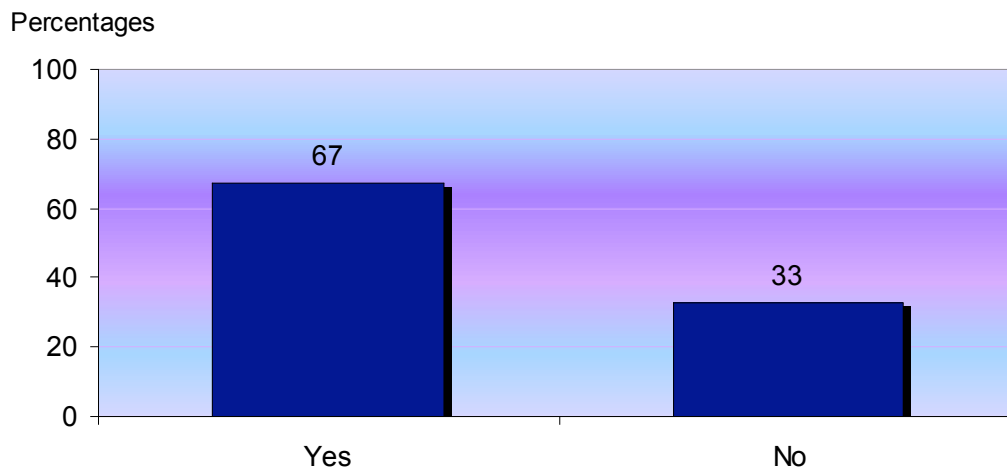


Chart 4

Did you receive a copy of the COPFS briefing note?



In our survey of cases we found that on some occasions witnesses are precognosed (interviewed by a member of COPFS staff) without the use of an interpreter.

"I went to and gave a statement. There was no interpreter."
(Witness 8, court survey, July 2004)

Not surprisingly such precognitions are of little use to the Depute in court.

"We asked for an interpreter at precognition and did not get one. It is a little bit strange. It was difficult because we were worried and could not say what had happened exactly."
(Witness 3, court survey, June 2004)

Recommendation 2

All precognition staff should receive training on working with interpreters.

Interpreters for bereaved relatives wishing to view proceedings

The question of the provision of interpreting facilities for bereaved relatives who wished to view proceedings was the subject of consideration as part of the COPFS response to Dr Jandoo's report.

New guidance was issued to COPFS staff in October 2002. The guidance also covers those cases which do not involve a death and in which the Procurator Fiscal takes the view that an interpreter should be provided to relatives of victims who wish to view proceedings.

In cases involving a death where the police have advised that interpreting and translation services will be required by the deceased's bereaved relatives the Procurator Fiscal should inquire whether the relatives wish to attend court to view proceedings.

This applies to criminal cases and Fatal Accident Inquiries.

Liaison with the relatives will be required to ascertain their requirements and consideration should be given as to the most appropriate way to meet their interpreting needs.

Further guidance for staff is contained in the revised Chapter 22 of the COPFS Book of Regulations of May 2004 on Victims, Next of Kin and Witnesses, which is referred to in more detail later.

In reporting the case to Crown Office Crown Counsel's instructions should be sought as to whether one or more interpreters should be instructed to assist the bereaved relatives.

In cases where an interpreter is being provided by COPFS a meeting between the relatives and the interpreter is required prior to court to ensure the language/dialect match.

“Bereaved relatives” in this context is taken to mean parents, husband/wife/partner, brother and sister.

In cases where the deceased has no close relative the Fiscal will have to consider whether interpreting services should be provided to more remote family members who may be thought to have a legitimate interest. Such cases are to be discussed by Fiscals with Crown Office Policy Group in advance to ensure consistency of approach countrywide.

In any other case, prior to provision of interpreting service instruction should be sought from Crown Office Policy Group.

Further consideration of these provisions will take place during the course of our next report on victim and witness issues including the operation of the Victim Information and Advice service (VIA).

However, we did observe a particular fatal accident inquiry involving a Chinese man who committed suicide in Barlinnie Prison whose family were resident in China. The liaison arrangements with the family were well conducted and the Fiscal had an extra member of staff available at the hearing to attend to the needs of a minority ethnic friend who was representing the family. The Fiscal’s Office also made arrangements for the Sheriff’s determination to be translated for the family.

Qualifications and Experience of Interpreters

“Bad interpreting is a waste of a case and is bad for everybody. It is a waste of money.”
(Interpreter 15, court survey, July 2004)

The Fiscal will always instruct interpreters for court or precognition by going through a recognised interpreting agency.

“The situation needs monitoring; some interpreters are not up to the job. I recently met a jury member from the High Court who could not understand the interpreter. How do you make a judgement?”
(Interpreter 3, court survey, May 2004)

The interpreter is expected to have the Diploma in Public Service Interpreting (Scottish Legal Option) and recent experience of both consecutive and simultaneous interpreting in the court context.

Interpreters surveyed in court were asked if:-

- They had the necessary qualification;
- They had the necessary experience.

The questions and responses (in percentage terms) are shown in Charts 5 and 6 below.

Chart 5

Do you have the Diploma in Public Service Interpreting (Scottish Legal Option)?

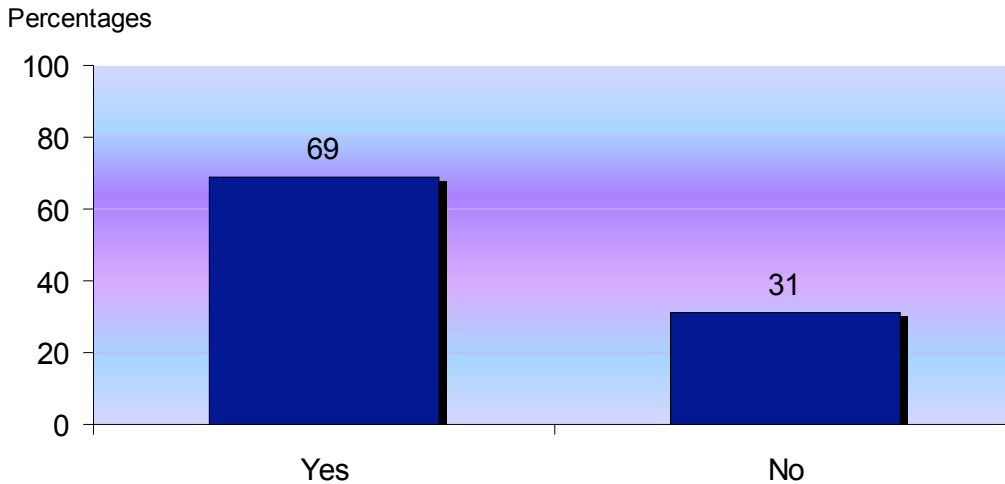
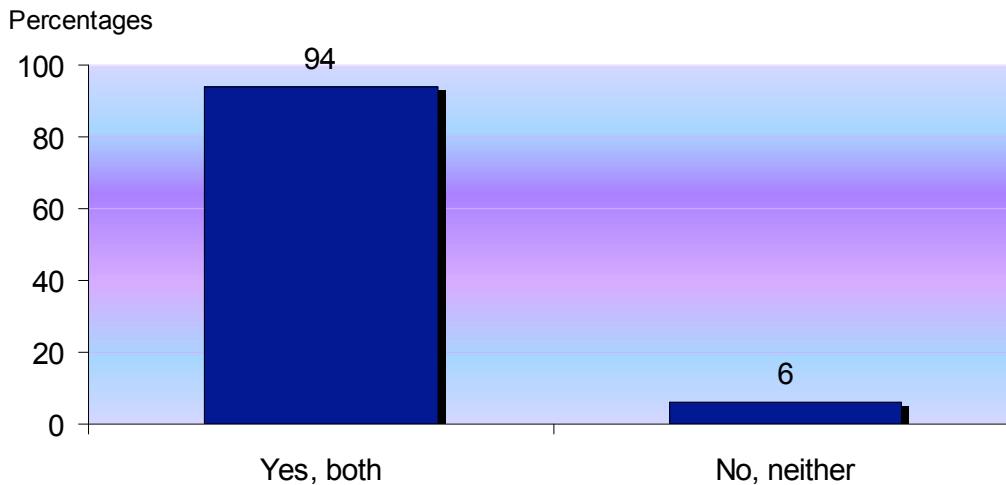


Chart 6

Do you have experience of both consecutive and simultaneous interpreting?



It is accepted that there is a shortage of qualified interpreters in some languages and on occasion the interpreting agency approached cannot provide an interpreter who meets the standards required by the Crown. This has been found in our surveys to be quite unpopular with people who see themselves as properly qualified interpreters who as a matter of professional pride would prefer that only fully qualified interpreters be used.

*"Some interpreters are a disaster."
(Interpreter, court survey, July 2004)*

The Scottish Translation, Interpreting and Communication Forum have assured COPFS that when this happens interpreting agencies share relevant information in relation to available interpreters. If the interpreting agency approached initially is not able to provide an interpreter with the qualifications and experience required the manager of the interpreting agency will go back to the Fiscal who will ask him/her to liaise with the other interpreting agencies to ascertain if a suitably qualified interpreter is available elsewhere.

This can mean that interpreters have to be brought in from other Areas or indeed other parts of the United Kingdom.

If after making appropriate efforts the interpreting agency cannot supply a suitably qualified and experienced interpreter the Fiscal should ensure that the interpreting agency outlines the basis of their assessment of the recommended interpreter and that a record is kept of the information given to the Fiscal.

Where there is no alternative but to engage an interpreter who does not have a formal qualification or has little or no court experience it will be extremely important to ascertain the basis of the interpreting agency's assessment and a record must be kept of the efforts made to obtain a suitably qualified interpreter and explaining the reasons for engaging the interpreter who was provided by the agency.

*"Jobs are going to low quality interpreters because they are paid less... We raise issues as interpreters but if you raise an issue you get less jobs and less income."
(Interpreter 14, court survey, July 2004)*

Some interpreters are concerned that some agencies do not properly assess interpreters and so unsuitable people can be sent for assignments at court or other places. At least one interpreter advised that interpreters generally receive no feedback on their performance.

*"There is no one to specifically measure the quality of the interpreter. Can this be done? Are there issues involved in that? This would be with a view to interpreters being of a good professional standard."
(Interpreter 15, court survey, July 2004)*

In such circumstances there must be concerns over the potential for possible miscarriages of justice.

Crown Office with other Criminal Justice Agencies is addressing this issue in the Working Group for Interpreting and Translation Provision in the Criminal Justice

System in Scotland (WGIT). Partner agencies included are the Police, Scottish Court Service, the Scottish Legal Aid Board and the Law Society of Scotland.

Recommendation 3

That the performance of individual interpreters should be monitored regularly. It may make sense that this be carried out by the interpreting agencies themselves.

Best Practice Points

"The Fiscal and solicitor sometimes talk too quickly and it is hard for the interpreter to ask the judge to speak to them about it repeatedly."

(Interpreter 8, court survey, June 2004)

Points of best practice are highlighted in the guidance for COPFS staff:-

- A checklist for legal and precognition staff;
- Assisting the defence in communications between solicitor and client;
- Where possible the Fiscal meeting interpreters prior to the commencement of the court business to, amongst other things, advise of the likely order of business.

"Sometimes inside the court the lawyers and sheriff are not aware of our role and some of them don't seem to be aware that we need to interpret every word and we need time to do it."

(Interpreter 3, court survey, May 2004)

Recommendation 4

That Crown Office, through WGIT raises and takes forward with all criminal justice partners training on the use of interpreters with consideration being given to the development of a protocol on the use of interpreters in court.

Training on the Guidance on Arrangements for Instruction on Interpreters

"The whole crux is everyone needs to get together and feed information back."

(Interpreter 15, court survey, July 2004)

Training for COPFS legal and precognition staff took place from August 2001.

"The (written) guidance.... for (the use of) interpreters is good."

(Staff focus group member, Aberdeen, 31 August 2004)

Procurators Fiscal were encouraged to develop and maintain links with interpreting agencies where these were not already in place.

"It's much better than it was 3 years ago. People were not used to an interpreter and you were just sitting waiting and sometimes you knew better than they did what to do. People are more used to having an interpreter in court and know what to do."

(Interpreter 1, court survey, May 2004)

Present Monitoring Arrangements

At the conclusion of each interpreting assignment the interpreter has a monitoring form to complete as has the member of legal or precognition staff involved in the assignment. These forms are sent to Crown Office.

"The monitoring form is a good, positive step but we have to take it further."

(Interpreter 15, court survey, July 2004)

The value of the monitoring form is a little in question as COPFS staff are not in a position to comment on anything other than appearances on the professionalism of the interpreter and cannot in any way judge the appropriateness of the interpretation.

Interpreting in Court

Simultaneous (or whispering) interpreting is an immediate interpretation into the other language of *everything* being said. The interpreter usually sits close to the non-English speaker and in multi-accused cases microphones and headphones may be necessary. Interpreters interpreting for accused persons most commonly use this form. It is an extremely difficult and demanding process made more difficult with the distractions and noises that can happen in courts. It is such a demanding task that in other situations relays of interpreters are used.

"I had one experience. ...when the Sheriff was not all that aware of the interpreter's role and the defence lawyer directed the question to me and not the witness "Could you ask the witness....." They had not worked with interpreters and so you have to say, "I have to ask you..." and then put the question which makes the question longer and the brain has to think in a different way. I asked the lawyer nicely "Could you direct the question to the witness please" and was told "Well, the witness does not understand any English" in a cheeky way and the Sheriff did not do anything about it. It was annoying but I made my point but if the Head of the Court does not do anything about it..."

(Interpreter 3, court survey, May 2004)

"In order to have people try out life as a court interpreter I have devised the following: -

Place people working with interpreters in front of a radio or tape recorder - they should sit at a distance no closer than 6m - and the radio should be turned so the speakers are pointed away from them. The people should now listen to something like parliament proceedings and they should repeat all that is said for say 15 minutes."

(Interpreter 49, postal survey)

Consecutive interpreting is where the interpreter waits for the message then repeats it in the other language. Interpreters interpreting for witnesses most commonly use this form.

"The solicitors are not aware of interpreters and speak really fast."

(Interpreter 5, court survey, June 2004)

Sometimes the interpreter is at the mercy of the witness.

"During the examination-in-chief or the cross examination there are times when the witness does not understand the question even if it is correctly interpreted, the witness may not answer directly to the question and gives out irrelevant answers, sometimes the witness may avoid the question deliberately. Under these circumstances the interpreter has to interpret exactly what the witness has said and it may sound irrelevant to the question being asked. The ability of the interpreter can therefore be misinterpreted and this can be very frustrating."

(Interpreter 33, postal survey)

Only simultaneous or consecutive interpreting is ever likely to be appropriate for accused and witnesses. A form of summarising interpretation would not be appropriate.

"Practitioners don't speak loudly enough."

(Interpreter 7, court survey, June 2004)

Many interpreters in our surveys speak of having to ask for a break rather than the court providing this which is unfortunate as both simultaneous and consecutive interpreting are demanding labours and research suggests short breaks are appropriate after every 30 minutes approximately.

"I don't think we are given adequate breaks when interpreting in court and sometimes I have to say I need a break."

(Interpreter 6, court survey, June 2004)

It was noted in court that often the priority seemed to be progressing through the business. This is both desirable and commendable but the consequences of

tiredness are obvious as are the consequences of mistakes made by the interpreter raising the spectre of a possible miscarriage of justice.

In June 2004 during our court survey an interpreter (court survey, interpreter 12), who had been at court all day, started to interpret for a new witness at ten minutes to four in the afternoon. The interpreter concerned looked exhausted and was not asked if it was suitable that the case continue. The case continued for approximately another 40 minutes before being adjourned for the day.

Perhaps it would be best practice for the court to let the interpreter set the pace as the interpreter knows how often a break is needed in any particular situation.

"You lose concentration (without proper breaks) and we need concentration. You are listening and at the same time you are speaking (simultaneous interpretation). I don't think people realise how demanding it is."

(Interpreter 17, court survey, August 2004)

See Recommendation 4 above.

Code of Conduct for Interpreters

The code sets out the standards expected of interpreters by COPFS. Most interpreters in our court study seem to receive the code of conduct and know what to do with it.

The code sets down that the interpreter is expected to:-

- Have a written and spoken command of both languages including any specialist terminology, current idioms and dialect;
- Be familiar with any relevant cultural backgrounds;
- Understand police station and court procedures.

It lays down rules of procedure to be followed by the interpreter in court with reference to what is being interpreted, declaration of difficulties with dialect or technical terms, not giving advice to the witness, the delegation of work, and ethics and confidentiality.

Additionally the code advises the interpreter to have his/her own professional indemnity insurance cover, as COPFS will not be responsible for any claim made against the interpreter. Perhaps agencies should consider obtaining this.

A great deal is expected of interpreters who are carrying out a very difficult job in what can be very stressful conditions.

"Generally interpreting in the court is more difficult than interpreting in the other contexts such as hospitals, surgeries, in the sense that it is a more official context and the interpreter is really under a lot of pressure. There are some external elements which make the interpreter's job much more difficult such as the busy environment of courtroom, people constantly coming and going and the interpreter needs to ask either parties to speak really loud which sometimes they do and sometimes they do not...(On) some occasions the officers at the courtroom prevent the interpreters approaching the clerk as if the interpreter is a criminal."
(Interpreter 35, postal survey)

Additionally

"You are a bit like a machine; it is a support service for someone to speak to someone in their own language. You have to check that you can understand each other. You have to build up some kind of trust."
(Interpreter 4, court survey, June 2004)

Recommendation 5

Revision of the code of conduct for interpreters: at present the code instructs that an interpreter should not enter into discussion with the witness other than to confirm a language/dialect match, however, witnesses are in an alien environment and it would be helpful if that time spent confirming the match be extended in order to pass vital information on to the witness who may be at court for the best part of the day.

Translation Issues

In order to better inform minority ethnic witnesses on criminal procedure and the court process, COPFS has, since 2000, been translating documents into a number of languages.

In 2000 the "Being A Witness" leaflet issued with citations to attend court to witnesses was translated into Arabic, Bengali, Chinese, Hindi, Punjabi and Urdu.

At the present time a number of COPFS leaflets and booklets have been translated. These include information on complaints against the police (in Arabic, Bengali, Chinese, Hindi, Punjabi and Urdu), victim statements (in Arabic, Chinese, Farsi, Hindi, Punjabi, Sorani and Urdu), a guide to COPFS (in Arabic, Bengali, Chinese, Hindi, Punjabi and Urdu), the Chhokar reports (in Arabic, Bengali, Chinese, Hindi, and Urdu), the 2002 Lord Advocate's Guidelines to Chief Constables (in Arabic, Bengali, Chinese, Gujarati, Hindi, Punjabi and Urdu), career information (in Arabic, Bengali, Chinese, Hindi, Punjabi and Urdu), COPFS Race Equality Action Plan (in Arabic, Bengali, Chinese, Hindi, and Urdu) and COPFS Strategic Plan (in Arabic, Bengali, Chinese, Gaelic, Hindi, Punjabi and Urdu).

Citations for the witnesses in Sheriff and Jury and High Courts can be translated also into Arabic, Bengali, Chinese, Farsi, Hindi, Punjabi, Sorani and Urdu. The police serve the translated version on the witness with the citation in English.

Where, despite every effort to clarify the position, it is still unclear whether or not the intended recipient of correspondence requires translation services the Fiscal will send out the correspondence in English with a docquet attached which advises the recipient in 30 different languages **"If you require a translation of the attached documents please tick the appropriate box and return this letter to the Procurator Fiscal's Office at the address given. Please tick the box beside the language required "**.

COPFS does not monitor the use of this docquet and the languages required. It may assist assessment of future language needs if this were to be done.

Unfortunately some witnesses in our court survey did not receive the information they required in a language they could understand. Sometimes this was because the police did not highlight language needs. Again this emphasises the need for a joined up approach and joint working.

"We needed the documents in Albanian, the first letter was in Russian and we could not understand it."
(Witness 4, court survey, June 2004)

Changes in Attitude, Law, Practice and Policy

The Department both in policy and culture has made significant progress. The establishment of the Victim Information and Advice service (VIA) and changes in the instructions issued to COPFS staff have undoubtedly helped contribute to a culture change.

Chapter 22 of the Crown Office and Procurator Fiscal Service Book of Regulations dealing with victims, next of kin and witnesses was originally issued in July 2000. It outlined the relationship between such parties and the Fiscal, the duties of the Fiscal and guidance for the provision of case information and contact with victims, next of kin and witnesses amongst other issues.

The section on minority ethnic victims, next of kin and witnesses highlighted that such members of the community may be made vulnerable by reason of language and cultural barriers and that additionally they may already feel marginalized and isolated from the wider community.

Section 22.9 instructed **"If it is known that a victim or bereaved relative's first language is not English, Procurators Fiscal will require to arrange the translation of all the routine and case progress information which is normally issued in the course of an investigation and prosecution"**.

The guidance was updated, refined and issued to staff in June 2004. The revised chapter updates COPFS policy in light of recent legislative changes

including the Sexual Offences (Procedure and Evidence) (Scotland) Act of 2002, the Criminal Justice (Scotland) Act of 2003 and the Vulnerable Witnesses (Scotland) Act 2004.

The chapter also takes cognisance of changes in modern thinking on who is a victim or co-victim.

In considering whether a witness is "vulnerable" for the purposes of the Vulnerable Witnesses (Scotland) Act 2004 and therefore eligible to be considered for some "special measure" eg the use of screens or CCTV, one of the criteria which will now be considered by the courts is the social and cultural background and ethnic origins of the witness.

"Prosecutors have a duty to recognise identified needs of victims and witnesses from minority ethnic groups." (Chapter 22.6.2.8.7)

All victims of racist crime, all asylum seeker witnesses and all minority ethnic victims or witnesses who may have difficulties communicating in spoken English are to be referred to the Victim Information and Advice Service - VIA.

A cultural awareness guide is also available to all staff on the Departmental intranet.

An example we found of good practice related to the tragic death of an infant from a family where the parents were from an ethnic minority and the mother did not speak English. The family wished for certain religious observances to be followed in respect of the infant's funeral.

The legal position was explained to the family by a Family Liaison Officer who could communicate with the family and who was able to translate the COPFS "Advice for Bereaved Relatives" leaflet into the required language.

A two doctor post mortem was arranged for the day the death was reported, the cause of death established and the family were able to meet the timescale required for their religious observances.

We were impressed by the level of awareness of cultural differences demonstrated by the member of COPFS staff who dealt with the death. The lawyer concerned accessed the cultural awareness information on the Departmental intranet to be reminded of the issues involved.

Victim Information and Advice (VIA)

As previously indicated another positive change in COPFS for the victims of serious crime and others adversely affected by it is the setting up of the victim and witness service - Victim Information and Advice (VIA) as it is now known - within COPFS.

The principal aims of VIA as set down in the COPFS Book of Regulations are:-

- To provide information to victims, bereaved next of kin and certain witnesses about the criminal justice process in general;
- To keep victims and bereaved next of kin informed about case progress;
- To advise on and facilitate referral to other agencies for specialist support and counselling.

Among the types of cases referred to VIA are:-

- Deaths reported for consideration for criminal proceedings;
- Cases with a racial aggravation;
- Cases where it is known to the Procurator Fiscal that the victim perceives the offence to be racially motivated; and
- Cases with witnesses who are asylum seekers or have language difficulties.

VIA is involved in pilot testing the use of Victim Statements in the Lothian and Borders and Ayrshire areas.

By December 2004 all Procurator Fiscal Offices will have access to VIA.

It is sufficient merely to comment at this stage that if a case such as the tragic one of Surjit Singh Chhokar happened now a very different outcome in respect of family liaison could be expected from a dedicated Victim Information and Advice service. The separate Witness Service is also now available (run by Victim Support Scotland).

Miscellaneous Issues from the Interpreters Interviewed in our Surveys

When requested by the Clerk of Court the interpreter does not seem to receive a copy of the complaint.

Interpreters would like 5/10 minutes to speak to the witness/accused before interpreting in the course of a trial to ensure an appropriate language and dialect match. **See Recommendation 5.**

At least one interpreter suggested that the accused (and consequently witnesses) should be allowed to refuse an interpreter who is not a good language or dialect match.

Late cancellation is a big issue for interpreters who have kept the day available for what may be an all day assignment only to be cancelled on the day or shortly before. This means a loss of revenue for the interpreter who only receives a minimum payment.

One interpreter would like to be paid for the extra time spent in attending certain courts where all have to pass through security.

Some interpreters have found that they are a lifeline for non-English speaking people at court and provide them with basic, vital, information such as where to find the toilet or where to buy a cup of tea. **See Recommendation 5.**

Some interpreters are concerned about being asked to sit in witness areas. Some fear being drawn into inappropriate discussion with the witnesses or being drawn into being a witness in respect of possible contamination of evidence by being in a position to hear what witnesses say to one another. Some interpreters would like separate waiting areas for interpreters in order to prevent any difficulties arising.

One interpreter expressed concerns about the police when investigating cases not calling out interpreters appropriately. This was also a concern with one Glasgow focus group.

*"In this case (which is one in a series of incidents lasting about 2½ years) the police always use the child (initially he would have been 9 years of age now he is 12) rather than calling an interpreter for ***** (name of witness and mother of the child in question). This is not good practice: it is very bad practice for a child to be interpreting in this (case of long-term racist abuse)."*

(Interpreter 2, court study, May 2004)

Concerns must exist in such cases about the effect on the child and additionally the effect on the case. A court may possibly hold that the evidence of a child witness has been contaminated by him or her having performed this task.

Recommendation 6

That in any revision of the Lord Advocate's Guidelines on reporting racist crime consideration be given to suggesting that the use of child witnesses under 16 to interpret for parents is inappropriate in terms of both the interests of the child and in the interests of the case.

One interpreter expressed concern that some sheriffs did not know how to administer the oath to a witness properly through the interpreter and another spoke about having the interpreter's oath administered differently in different courts and on occasion having to remind the court that the interpreter needs to be sworn in too. **See Recommendation 4.**

Some interpreters find the court situation difficult in that they are not recognised as co-professional workers by other people in court. **See Recommendation 4.**

Acoustics can be a considerable problem in some courts.

Ongoing Developments

As can be seen in this chapter Crown Office and the Procurator Fiscal Service have gone a considerable way to provide the best service available in interpreting and translation terms and have played and continue to play a part in driving up standards.

However, COPFS are only part of the criminal justice system and the best possible service provision relies on all of the component parts of the criminal justice system planning and working together to continue to drive up standards.

COPFS, as previously indicated, has links to the Scottish Translation, Interpreting and Communication Forum and is a member of the Working Group for Interpreting and Translation Provision in the Criminal Justice System in Scotland (WGIT - established October 2003) and the Scottish Executive established Translation, Interpreting and Communication Support (TICS) Group.

As WGIT's members are drawn from some of the main criminal justice partners, namely Police, Scottish Court Service, COPFS, the Scottish Legal Aid Board and the Law Society of Scotland it is extremely well placed to take forward any change in practice in the provision of interpreting services in the criminal justice sector in Scotland.

One of the aims of WGIT is **"To consider, assess and offer recommendations on a coordinated approach towards the instruction of interpreters within the criminal justice system, including a joint protocol on monitoring and vetting; minimum standards; code of practice including conditions of employment"**.

WGIT is concerned with driving up standards across the whole system in a cooperative and holistic way and is presently considering proposals, which would tie in with the Inspectorate's **Recommendations 3 and 7**, which concern the monitoring and vetting of interpreters.

If WGIT did not exist we would have recommended that it be established.

Vetting has to be an active consideration considering the sensitivity of information to which interpreters have access and the fact that interpreters are dealing with potentially vulnerable witnesses and accused persons.

At the present time the level of vetting undertaken by the Interpreting Agencies varies from no regular vetting to Disclosure Scotland checks.

The Police Act of 1997 provides for vetting and the issue of certificates by Disclosure Scotland, which was established by the Scottish Criminal Record Office (SCRO) for this purpose. There are 3 types of disclosure - basic, standard and enhanced.

Basic disclosure shows details of any and all "unspent" convictions in terms of the Rehabilitation of Offenders Act of 1974.

Standard disclosure is available for certain categories of occupations eligible for disclosure and contains details of all convictions on record, spent or unspent.

Enhanced disclosure is similar to the standard disclosure but additionally may also contain information that does not relate to a conviction.

WGIT are in agreement that the minimum standard of disclosure which should apply to interpreters engaged by any of the criminal justice partners should be to the level of standard disclosure. This would require a change in the law and it is understood that approaches have been made to the Scottish Executive.

As interpreters are, generally speaking, instructed through agencies the onus for vetting would logically fall to the agencies. This would require the agencies registering with Disclosure Scotland.

Monitoring and vetting are crucial areas and active consideration is being given by WGIT at the moment to how best to take these issues forward. In respect of monitoring there are a number of options available.

Given WGIT's work in this area it would not be appropriate for us to make more than the general recommendations we have in **Recommendations 3 and 7**.

However, we found some good examples of work in the local authorities with one authority expecting high academic qualifications from interpreters, initial testing of written and spoken language skills, vetting with a Disclosure Scotland check and thereafter occasional monitoring of translations and interpreting appointments.

Another system, which is universally respected, is that of the sign language interpreters who are regulated by the Scottish Association of Sign Language Interpreters (SASLI). SASLI maintains the register of sign language interpreters and handles the complaints and disciplinary procedure.

The sign language interpreters and trainees have gone through Disclosure Scotland checks and this will be repeated every 3 years.

A monitoring pilot carried out by SASLI in 2004 proved to be too expensive and time consuming and SASLI are now working towards a system of compulsory Continuing Professional Development for all sign language interpreters.

The numbers are, however, relatively small with 44 interpreters and 8 trainees interpreters.

In England the Crown Prosecution Service uses interpreters registered with the National Register of Public Service Interpreters (NRPSI). These interpreters have to have certain qualifications and experience, must provide references, which are taken up and be vetted.

Recommendation 7

That all interpreters involved in the criminal justice process be vetted to the level of standard disclosure.

Conclusions

We are pleased to report that the translation and interpretation needs of the criminal justice system in Scotland are being better served than in the past.

It would be useful to have data trends on language needs. The issue is dynamic as language needs are constantly changing and demand difficult to predict. A central record of all languages available through interpreters would be helpful. WGIT could be a useful forum for analysing the languages being used and the possible language needs of the future.

There has been a complete change of policy and culture in COPFS in relation to racial and other victim and witness issues evidenced in the policy documents on racial crime, translation, interpretation and a new and since revised chapter in the Crown Office Book of Regulations on victims, next of kin and witnesses.

The protocol for the instruction of interpreters goes a very long way to pushing standards up and while COPFS has made considerable efforts in terms of its own responsibility doubts have been raised about the quality of some interpreters and that is an issue that we have recommended must be addressed.

A vital element in the provision of improved service to witnesses is the establishment of VIA, a service dedicated to the provision of information and advice to witnesses.

These changes go a long way to meet the criticisms made of the Service by Dr Jandoo in his report and will go a long way to prevent the flaws in the liaison with the bereaved family of Surjit Singh Chhokar being repeated in another case.

While we have found some gaps between policy and the provision of the actual service, in general terms the benefits of the provision of an improved service can be seen in the courts. We have seen some good examples of COPFS staff going out of their way to put the fears of anxious minority ethnic witnesses to rest, for example:-

- By having a brief word with witnesses through the interpreter to keep witnesses updated on case progress during the court day;
- By checking the pronunciation of a witness's name with the interpreter prior to the court commencing;
- Ensuring the safe passage of vulnerable and traumatised minority ethnic witnesses from the court building by the police.

CHAPTER 4

EMPLOYMENT

It is Crown Office policy to attract employees from the minority ethnic communities in Scotland. This is seen as an important confidence building initiative.

To carry out the policy effectively it is important to know more about the size, distribution etc of the various minority ethnic communities in Scotland. This knowledge is important to enable effective targeting of initiatives.

Latest published statistics show that around 2 per cent of a total of 1,450¹ staff employed by COPFS, are from an ethnic minority. Staffing figures are discussed in more detail in a later section.

Information contained in the following section, which provides background material with regards the ethnic population in Scotland, is extracted from 'Analysis of Ethnicity in the 2001 Census – Summary Report'².

Background - Scotland's Ethnicity

Information on ethnic group was collected as part of the 2001 Census in Scotland, representing the first large-scale collection of data on ethnicity in Scotland for a decade. The results show that in 2001 the size of the minority ethnic population was just over 100,000 in Scotland, which represents 2 per cent of the total population.

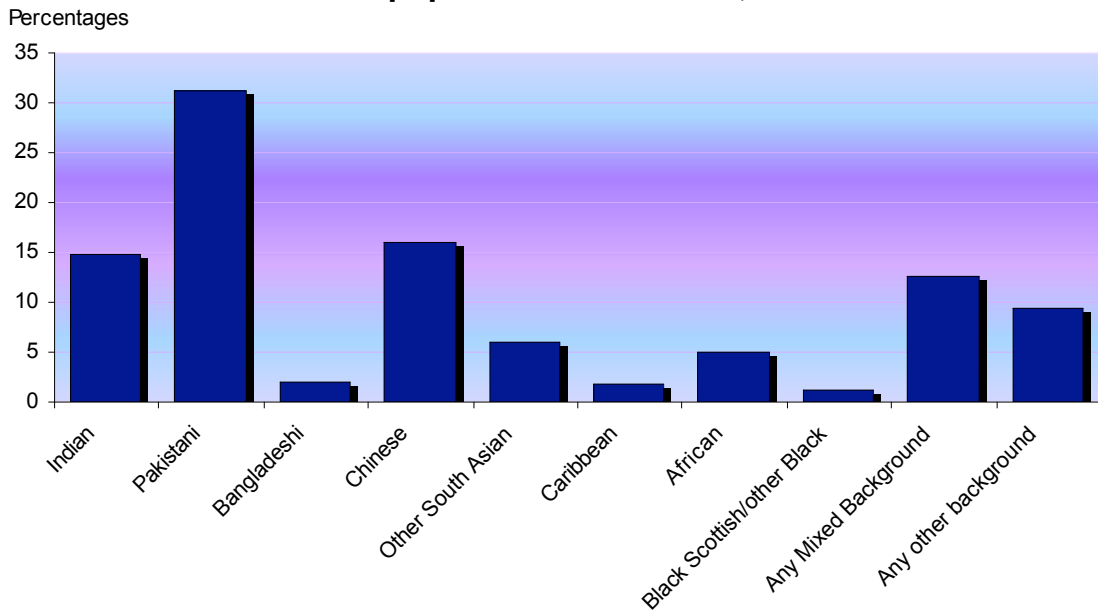
Pakistanis were the largest minority ethnic group, followed by Chinese, Indians and those of mixed ethnic backgrounds. Over 70% of the total ethnic minority population was Asian - Indian, Pakistani, Bangladeshi, Chinese or other South Asian (Chart 1 overleaf).

¹ Rounded to the nearest 10

² 'Analysis of Ethnicity in the 2001 Census – Summary Report', Office of the Chief Statistician, Scottish Executive: February 2004

Chart 1

Percentage of each ethnic group within the minority ethnic population in Scotland, 2001



Interestingly, over 12% of the minority ethnic population described their ethnic group as mixed.

The size of the minority ethnic population has increased since the 1991 Census. While the total population increase between 1991 and 2001 was 1.3 per cent, the minority ethnic population increased by 62.3 per cent.

A much higher percentage of people from minority ethnic backgrounds live in large urban areas (settlements of over 125,000 people), compared to White people. Only 39% of White Scottish people live in large urban areas but for Indians the percentage is 74%, Pakistanis 80%, Bangladeshi people 76%, Other South Asians 75%, and Africans 74%.

Glasgow has the highest percentage of minority ethnic people with 31% of Scotland's total minority ethnic population living in the city. Edinburgh follows Glasgow with 18% of the total minority ethnic population residing there.

Economic Activity and Ethnicity

Some interesting findings emerge from the Census in terms of ethnicity and economic activity. This information is relevant in relation to COPFS staff profiles.

The 'economically active population' includes all people of working age who were working in the week before the Census (those in employment), those people who were not working but were looking for work and were

available to start within 2 weeks (the unemployed) and full-time students who are economically active (they are identified separately). The economic activity rate is the ratio of the economically active population to the working age population (16-59 years for women and 16-64 years for men).

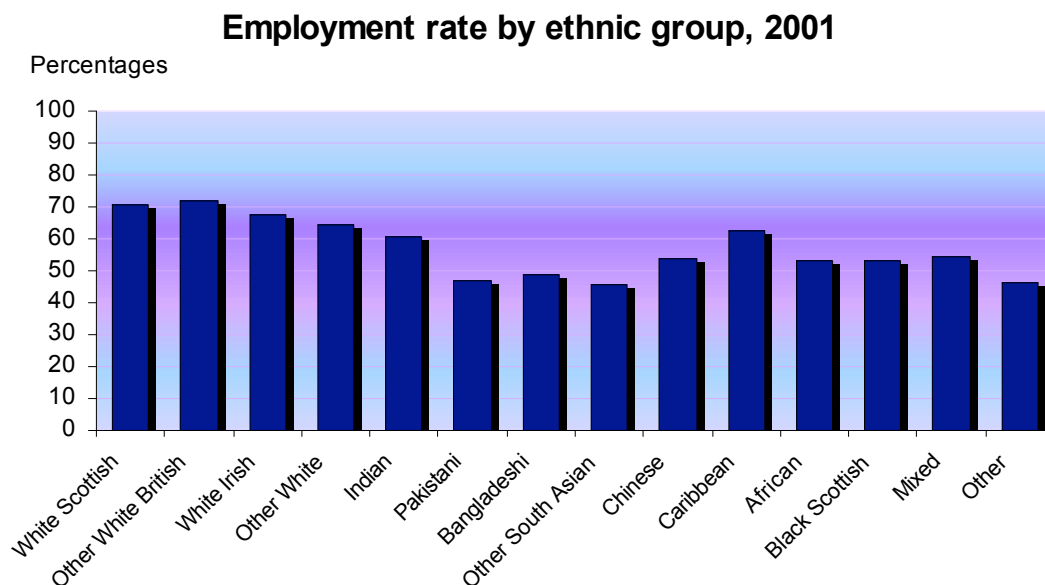
The Other White British and White Scottish groups have the highest rate of economically active people (76% for both groups). In contrast, Pakistanis and Other South Asians have the lowest rate of economically active people (53% for both groups).

In fact, all minority ethnic groups, excluding the Caribbean, have a lower percentage of people who are economically active compared to the White population. The economically active rate for Caribbeans (71%), however, is similar to that of the White population.

Employment Rate

Chart 2 shows the percentage of the working age population who were actually in employment.

Chart 2

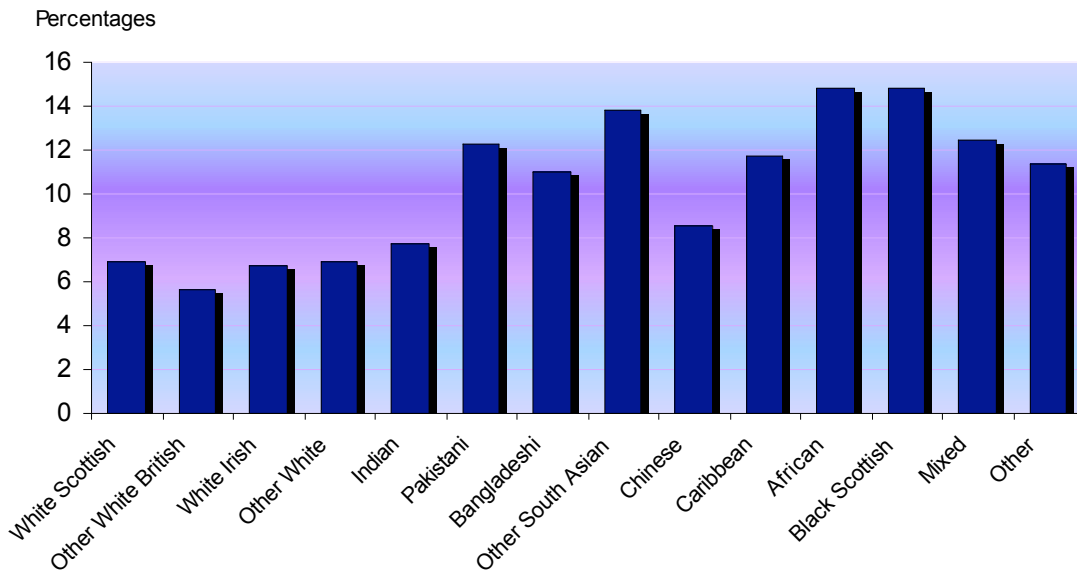


The employment rates of the minority ethnic groups are also generally lower than the employment rates of the White population with the exception again being the Caribbean group who have similar employment rates to those of the White groups.

The lowest employment rates are among Other South Asians and people from the Other Ethnic group with only 46% of the working age population in these groups being employed. Pakistanis and Bangladeshis follow this closely with employment rates of 47% and 49% respectively.

Chart 3

Percentage of economically active people who are unemployed, 2001

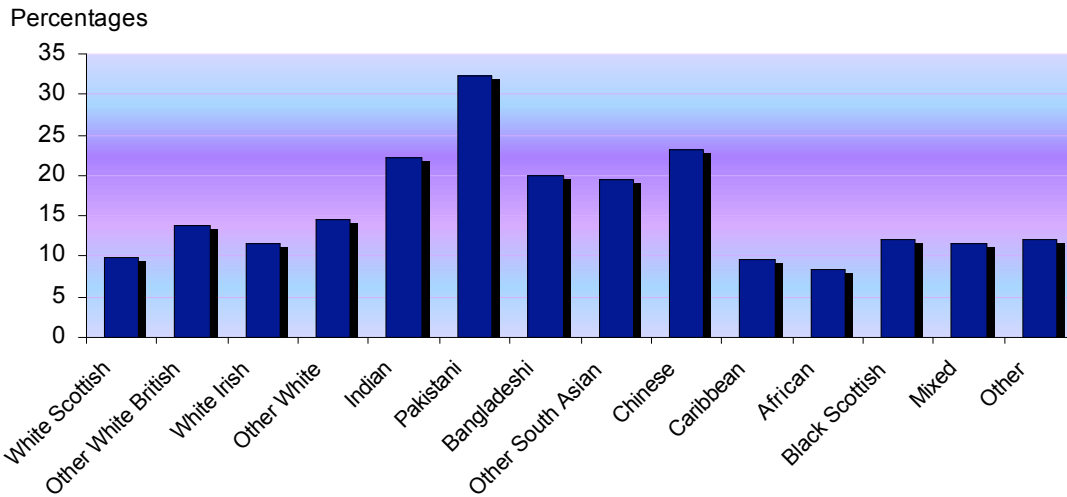


Minority ethnic groups have higher unemployment rates compared to all four White groups as illustrated in Chart 3. Those groups experiencing the highest rates of unemployment are the Africans (15%), Black Scottish (15%) and Other South Asians (14%).

The groups with the highest levels of self-employment are the Pakistani (32%), Chinese (23%) and Indian (22%) ethnic groups (Chart 4). Bangladeshi and Other South Asian also have high rates of self-employment (19.9% and 19.5% respectively). Africans have the lowest rate of self-employment (8.4%).

Chart 4

Percentage of those in employment who are self employed, 2001



"People are not given a job trial if they speak with an accent."
(Minority ethnic focus group member, Aberdeen, 31 August 2004)

Industry of Employment (where people work)

There are some striking differences between ethnic groups in terms of the type of industry in which people are employed.

- 45% of Pakistanis and 22% of Indians aged 16-74 who are currently in employment work in the Wholesale and Retail trade.
- 51% of Chinese and 45% of Bangladeshis aged 16-74 who are currently in employment work in Hotels and Restaurants.
- 23% of Africans, 19% of Indians and 19% of Other South Asians aged 16-74 years who are currently in employment work in Health and Social Work.

The proportion of minority ethnic people currently employed and aged 16-74, in the Public Administration and Defence industry grouping (which includes justice, judicial and law and order activities among others) is generally low (at most 9 per cent of the Caribbean group and only 3 and 2 per cent of Pakistanis and Chinese respectively).

These statistics in relation to sector of employment raise interesting issues which a whole range of employers, not only COPFS, should perhaps consider particularly in the context of the high educational attainment levels of some minority ethnic groups. The factors which influence career choice for minority ethnic groups are varied and complex, and may in some cases not even be particularly conducive to change (for example, family influence) but the examination of these is essential if employers hope to attract increasing proportions of the said groups to their sectors.

"Go to the schools, the primary schools."
(Minority ethnic focus group member, Aberdeen, 31 August 2004)

In this context, and before considering the study of law, it is worth noting that latest statistics (2001-02) show that the subject groups with the highest proportions of minority ethnic graduates at first-degree level are:

- Medicine and Dentistry (16%)
- Mathematical Sciences (10%)
- Business Administration (9%)
- Engineering and Technology (9%)

The Study of Law

"I have not seen any Chinese faces working in courts. In England there are barristers, solicitors and court officials but none in Scotland."
(Minority ethnic focus group member, Glasgow, 7 September 2004)

In considering the legal staff which COPFS employ it is of relevance to look at the profile of the pool of graduates from which COPFS can recruit, specifically from a minority ethnic perspective.

Those wishing to qualify as a solicitor in Scotland study for a Bachelor of Laws Degree (LLB) at any one of a selected number of Scottish universities. After completion of the LLB Degree or professional examinations, all intending solicitors require to take the Diploma in Legal Practice.

Applicants and acceptances to law in Scottish Higher Education Institutions (HEIs)

Information on applicants and acceptances to undergraduate higher education courses in Scotland is available in respect of the Scottish HEIs, via the Universities & Colleges Admissions Service (UCAS). Note that the data to be considered here relates only to undergraduate degree courses, so excludes the population of applicants/acceptances to the postgraduate

Diploma in Legal Education. As such, the UCAS data presents only part of the profile of *all* those pursuing a career in law.

"Chinese parents want their kids to be lawyers, doctors, accountants."

(Minority ethnic focus group member, Glasgow, 7 September 2004)

On a cautionary note, ethnic origin is unknown for around 9 per cent of both applicants and accepted applicants, hence the data relates only to those for whom ethnic origin was known. Further, the category 'law' in this context will include a small number of degree courses other than the LLB.

Latest UCAS data shows that the ethnic profile of applicants and acceptances to law in Scottish HEIs has remained very similar over the past 5 years (1999/2000 to 2003/4). Around 93/94 per cent of applicants are generally white, with another 4/5 per cent of applicants being of Asian ethnic origin. Black groups account for less than 1 per cent, with the remainder of applicants (between 1 and 2 per cent) being of other/mixed ethnicity.

Proportions of acceptances to Scottish HEIs, in terms of ethnicity, are very similar to proportions of applicants but it is perhaps worthy of note that the percentage of white acceptances has been minimally greater, year on year, than the percentage of white applicants (for example, 95 per cent white acceptances, compared with 93 per cent white applicants, in 2003).

"People don't know about jobs (in COPFS), the minority ethnic papers are a good idea."

(Community focus group member, Glasgow, 9 August 2004)

In relation to all ethnicities, just over a fifth of applicants are accepted to study law, year on year, and allowing for fairly wide year-on-year variation due to small numbers, this pattern is broadly similar across all ethnic groups (although there appears to have been a slight decrease in the proportion of acceptances relative to applicants from Asian ethnicities over the period).

Law Graduates

As with the UCAS data, law graduate data will include a small number of courses other than the LLB. However, the data has been narrowed down to examine entrants to and graduates from law at first degree and postgraduate level in Scottish HEIs.³ This represents a best-fit for the population we seek to examine - as such, the percentage of students contained in this data who are on/graduate from courses other than the LLB and Diploma will most likely be very small.

³ Source: Higher Education Statistics Agency (HESA)

The percentage of cases where ethnic origin is unknown for first-degree graduates from law has decreased quite dramatically from 40 per cent in 1997/98, to a more respectable 9 per cent in 2001/02. The same proportion in relation to postgraduates has varied between 2 and 9 per cent over the period. While this represents a significant improvement in relation to first degrees, 9 per cent, as with the UCAS data, cautionary interpretation is warranted.

Nevertheless, latest data shows that the percentage of minority ethnic graduates from law has remained fairly constant at around 4 or 5 per cent over the period 1997/98 to 2001/02. When this is broken down by level of study, the percentage of minority ethnic postgraduates is slightly higher than the percentage of first-degree graduates (6 and 5 per cent respectively in 2001/02) and this is generally true over the period.

Comparisons with proportions of minority ethnic entrants to law reveal no particular issues around survival rates, in that similar proportions commence study, as complete it.

In conclusion, it appears that while proportions of ethnic minorities studying law have not particularly increased in recent years, neither have they decreased. Given the higher proportions of minority ethnic graduates from other subject disciplines as detailed, the challenge is an interesting one for all employers.

"A huge number of ethnic minority applicants did apply and a lot of them were up to the job and we need to look at that. You need to expand the number of trainees (trainee solicitors employed by Crown Office). If you want to broaden your base take on more trainees and it will help."

(Minority ethnic focus group member, Glasgow, 14 October 2004)

Research Findings

While the statistics represent the current position, they only tell part of the story. The other part is concerned with the reasons that lie behind the statistics - what influences minority ethnic perspectives in relation to law as a career choice?

Recent research commissioned jointly by the COPFS and Central Research Unit in the Scottish Executive examined factors influencing decisions to choose law (or not to, as the case may be) as a career in relation to students from diverse ethnic (and social) backgrounds⁴.

The report presents minority ethnic perspectives on law and the legal profession, while noting that the sample in this case was entirely Scottish

⁴ 'Minority and Social Diversity in Legal Education in Scotland', Scottish Executive Social Research, 2003

Asian. It raises an important point, as the following paragraph from the report notes:

'Education is clearly highly valued within Scottish Asian communities, with a particular emphasis on entry to the professions. The main focus, however, is on medicine and associated disciplines, rather than on law. Since many of the young Asians continued to defer to their parents in relation to such choices, it suggests a need to target not only school-leavers but also their parents, and the various ethnic minority communities generally.'

While their findings relate to the legal community more generally, the point is a pertinent one, which COPFS as part of the legal landscape equally should consider. The study revealed that legal education and the legal profession more generally were regarded by most Asian law students as being populated by predominantly white people – although experiences of overt and/or deliberate racism were rare.

When asked how more young people from minority ethnic groups might be encouraged to consider a career in law, interviewees emphasised the need for more (and more visible) black and Asian role models, and for efforts to be made to change the attitudes towards law within minority ethnic communities generally.

"It's good to see staff from an ethnic minority background."
(Minority ethnic focus group member, Glasgow, 9 August 2004)

"You need more outreach to Asian women about the work of the Department, advertise in the Temples etc."
(Minority ethnic focus group member, Glasgow, 9 August 2004)

Of all law students and trainees questioned only around a fifth had applied to COPFS (or for other traineeships in the public sector) although approximately another fifth had seriously considered applying but had not. It emerged that lack of interest in the type of work, timing of recruitment and lack of information about opportunities available were the main factors in dissuading people to apply. While these findings related to the law students/trainees of all ethnicities, not only minority ethnic, again the points made appear relevant for COPFS to consider.

"Look at how to keep the process going, expand the main numbers, it is confidence enhancing."
(Minority ethnic focus group member, Glasgow, 14 October 2004)

Requirements Placed on Employers

It is the policy of the Civil Service that all eligible persons shall have equal opportunity for employment and advancement in the Civil Service on the basis of their ability and qualifications and fitness for work. It states further that there must be no direct or indirect racial discrimination against any eligible person, whether in recruitment, training, promotion or in any other way.

This policy pursues and builds on the statutory position in the United Kingdom, whereby it is unlawful to discriminate against someone on grounds of colour, race, nationality, ethnic or national origins, under the Race Relations Act 1976. The Race Relations Act gives employers a specific legal duty to make sure that no job applicant, worker or office holder suffers unlawful racial discrimination or harassment in the process of recruitment, selection and appointment, or in the course of their subsequent experience at work, or when their employment has ceased.

"Seconding staff (from RECs) is a good idea, it works both ways and is a good way of exchanging skills."
(COPFS staff member, 10 August 2004)

The Race Relations (Amendment) Act 2000

A number of significant amendments to the Race Relations Act 1976 have been made. The strengthened legislative framework will help public authorities across Britain provide their services to the public in a way that is fair and accessible to all, irrespective of their race or colour. It will also give members of the public greater protection from unlawful race discrimination. In particular, the changes:-

- widen and strengthen the anti-discrimination provisions within the Race Relations Act; and
- introduce a new and enforceable duty on key public bodies to promote race equality.

A general duty has been placed on public authorities to promote race equality. This requires them to take action to prevent acts of race discrimination before they occur. Those public authorities, in performing their public functions, must have due regard to the need to:

- eliminate unlawful discrimination;
- promote equal opportunities; and
- promote good relations between persons of different racial groups.

Key public authorities - including central and local government bodies, health service bodies and many more - are additionally subject to a number of specific duties. These are specific actions that they are required to take so as to help them meet the new duty to promote race equality. Scottish public bodies had

to comply with the new duties by 30 November 2002. One of the new duties is the employment duty.

The Role of the Commission for Racial Equality (CRE)

The Commission for Racial Equality (CRE) is a publicly funded, non-governmental body set up under the 1976 Act to tackle racial discrimination and promote racial equality.

The 1976 Act gives the CRE a statutory duty to:

- work towards the elimination of racial discrimination and harassment;
- promote equality of opportunity and good relations between persons of different racial groups;
- to monitor the way the Race Relations Act is working and recommend ways it can be improved.

One of the aims of the CRE is to help public authorities to promote race equality by advising them and identifying examples of good practice. The CRE's powers include a power to issue statutory codes of practice to help public authorities further by providing guidance on meeting their obligations. One such code relates to the field of employment.

"Does racism still exist? The (idea of) the superiority of the white over the black does still exist. People don't say it but they execute it."
(Minority ethnic focus group member, Glasgow, 9 September 2004)

The CRE recently carried out a three-month public consultation in respect of a revised Code of Practice on Racial Equality in Employment. The current statutory code was issued 20 years ago, and the revised version takes account of the important amendments to the Race Relations Act (the Race Relations (Amendment) Act, 2000). The code aims to give practical guidance to employers, recruitment agencies, trade unions and individual employees on how to meet their obligations under the Race Relations Act. Being statutory, any of its provisions can be referred to in an employment tribunal.

"Any group which is more active gets justice."
(Minority ethnic focus group member, Glasgow, 9 September 2004)

The code states that for employers the key to meeting their legal responsibilities and avoiding claims of unlawful racial discrimination or harassment is good employment practice. As such, employers should adopt the following framework for action:

- Introduce and implement a racial equality policy in employment;
- Provide racial equality training;
- Monitor the racial equality policy;
- Set targets and timetables within a racial equality strategy;
- Consider taking positive action, to train and encourage workers and others from any racial groups that are under-represented in particular work;
- Evaluate the strategy and policy.

"The police and the Procurator Fiscal need to be educated in matters of culture, faith, religion and in how to approach the public and their attitude."

(Minority ethnic focus group member, Glasgow, 9 August 2004)

The employment duty requires public authorities to have had in place (by 30 November 2002) arrangements for fulfilling, as soon as reasonably practicable, the monitoring duties listed below (and to go on to fulfil these duties):-

- Monitoring, by reference to racial group, numbers of staff in post, applicants for employment, training and promotion.
- For those with 150 or more full-time staff, additional monitoring of the numbers who:
 - Receive training
 - Benefit or suffer detriment as a result of performance assessment procedures
 - Are involved in grievance procedures
 - Are the subject of disciplinary procedures; and
 - Cease employment with the authority.
- Publish annually the results of this monitoring.

"When people leave the Procurator Fiscal Service there should be exit interviewing. We think that people are leaving quickly."
(Minority ethnic focus group member, Glasgow, 9 August 2004)

"Do people stay in the job?"
(Minority ethnic focus group member, Glasgow, 9 August 2004)

The CRE recently carried out an assessment of 77 Scottish public authorities' responses (although this assessment did not include Crown Office) regarding the duty to promote race equality as placed on them by the Race Relations (Amendment) Act 2000⁵. Part of this assessment considered the employment duty and as such asked authorities about action taken in respect of the various monitoring requirements, in the areas specified by the duty. The following excerpt is taken from the report.

"Fifteen (41%) of the authorities that responded said they monitored number of staff in post, compared to 14 (38%) that monitored applications for employment, and 13 (35%) that monitored staff leaving employment. Staff in post was the area where authorities were most likely to say that they analysed the information (nine authorities; 24%).

Only five (14%) of the authorities said they monitored applications for training, compared with eight (22%) that monitored staff receiving training. The same number of authorities (16; 43%) said they had made arrangements to monitor training applications, and training received by staff. In both areas, 10 authorities (27%) did not respond to this question.

Eleven (30%) of the authorities that responded said they monitored disciplinary action, compared with 10 (27%) that reported monitoring grievances, and nine (24%) that monitored performance assessment; 15 authorities (41%) did not answer the last question at all. The results showed that, in all areas, more authorities had made arrangements to monitor than were actually doing any monitoring.

Of those authorities that responded, 28 (76%) were planning to use their website to publish the results of employment monitoring and 26 (70%) were planning to use their annual report. The five authorities (14%) that ticked the 'other' box were going to send a report to a relevant committee or issue a special report instead. Two authorities (5%) said they had yet to reach a decision."

The report notes that although some authorities are making progress in this critical area they are concerned that many are not.

⁵ 'Towards Racial Equality in Scotland', Commission for Racial Equality, December 2003

"What about a minority ethnic social evening (in PF Offices)? Ordinary people don't know what the PF is."
(Minority ethnic focus group member, Aberdeen, 31 August 2004)

The following section of the report looks at the performance of COPFS in relation to the duties imposed by the employment legislation.

COPFS Performance in Relation to Employment Duties

"You have to pass information to black and minority ethnic organisations in every situation (job vacancy)."
(Minority ethnic focus group member, Glasgow, 4 October 2004)

Pre-November 2002 Position

A comprehensive paper was compiled by the COPFS Race Team (now Diversity Team) in collaboration with Policy Group in August 2002. The purpose of the paper was to provide a useful outline of a number of issues in relation to ethnic monitoring and the obligations placed on COPFS as a result of the legislation. It provided a summary of the then COPFS position in relation to all the relevant areas (data and information held, recruitment/promotion procedures, training, appraisal and so on). Crucially it was concluded that then current monitoring procedures (as with much of the wider SE) were not wholly sufficient to meet the legislative obligations nor was the Department ready to comply with publication requirements. The paper went on to specify what would constitute good practice with regards ethnic monitoring and listed areas that required further consideration by Personnel Division (in some cases, areas requiring further work), specifying details of the same. The broad areas highlighted were:

- Staff Information
- Monitoring (Personnel IT system)
- Recruitment/promotion
- Appointment of a Diversity Officer
- Appraisal forms
- Training
- Publication of monitoring data

The authors noted that the paper should be read in conjunction with the 'Ethnic Monitoring: A Guide for Public Authorities' publications, which was produced by the CRE in December 2001.

The Current Position

This section will look at current practice in some detail, particularly in relation to the various areas in which ethnic monitoring obligations apply. Further, it

will revisit the most important areas identified by the Race Team/Policy Group paper which were identified as requiring consideration.

Staff Information

The need to explain to staff the legal requirements in relation to collection of data was highlighted.

A re-survey of staff ethnicity is planned for 2005. COPFS plan to include additional explanatory material in the covering letter that will accompany the survey to clarify the reasons for and the importance of collection of information.

Monitoring

One of the main points highlighted was the need to consider whether the (then) current IT system utilised by Personnel Division could produce the relevant information in a user-friendly way.

The IT system has subsequently been enhanced to ensure recording requirements could fully be met such that the relevant information could be gathered and held by the system ready for extraction.

However, no alignment with the Scottish Executive's Personnel IT system has taken place, as was also highlighted for consideration.

Recruitment/Promotion

The need to equality proof Assessment Centres being used by COPFS was highlighted.

The contract for conducting Assessment Centres for COPFS is currently out to tender. COPFS should ensure that they equality proof the successful bid if this is not already part of the specification.

The paper also contained a review of current recruitment practice at Area level (as at August 2002). This review noted that, based on information gathered, it appeared that there appeared to be a considerable degree of inconsistency within the recruitment process at Area level. While it is not necessarily wrong to have procedures tailored to suit individual areas it is important that all recruitment practices are kept in line with diversity policies and legislative change.

"You have to involve people to encourage employment (in COPFS and other authorities)."

(Minority ethnic focus group member, Aberdeen, 31 August 2004)

Consequently, the paper included a practical guide to good practice in recruitment at Area level to be read in conjunction with the COPFS 'Recruitment Guide'. The COPFS 'Recruitment Guide' provides a step-by-step guide through the recruitment process at Area Level for non-legal staff up to and including Administrative Officer level. The guide is adhered to throughout the Service.

This practical guide was a commendable piece of work and provided clear easy to follow best practice guidelines for recruitment practice including guidance in respect of:

- Advertising
- Applications
- Sift and criteria
- Constitution of selection panel
- Special needs
- Interview procedures (including post-interview)
- Monitoring

Examples of Regional/Area Initiatives

In light of the efforts made to establish best practice guidelines we asked all 11 Fiscal Areas about how they advertised jobs and advertised the organisation generally, specifically with reference to ethnic minorities. The table overleaf is a summary of their responses.

Area	Advertising Locations/Contacts
Argyll and Clyde	WSREC (West of Scotland Racial Equality Council; attend school area days.
Ayrshire	Vacancies advertised using a contact list of organisations (25 in all compiled by Mohammad Razaq, Area Race Equality Liaison Officer). School career fairs attended and there is an Ayrshire Criminal Justice Open Day (run in conjunction with criminal justice partners) and minority ethnic groups are encouraged to attend. Also a "one off" event involving Ayrshire Black and Minority Ethnic Business Networking.
Central	Posts to be advertised in Central Scotland REC's newsletter. Court open days planned in conjunction with Scottish Court Service aimed at providing members of the minority ethnic groups with information on the criminal justice system and the parts played by the different members.
Dumfries and Galloway	Issue of jobs to be discussed with co-ordinator of new multicultural association. Joint event planned with Scottish Court Service to include recruitment. Past attendance at careers fairs.
Fife	Adverts sent to FRAE (Fife Race Awareness Equality) and to Police Race Unit. Recruitment discussed in conjunction with police at a minority ethnic consultation group.
Glasgow	Adverts to WSREC, the Ethnic Minority Enterprise Council and minority ethnic newspapers. School fairs attended especially those with a high proportion of minority ethnic pupils and pupils have attended at the Fiscal's Office as part of work experience programmes. A consultation event targeting young people is planned by the Area Resource Team.
Grampian	Grampian Racial Equality Council (GREC); Multi Ethnic Aberdeen Ltd (MEAL); International Centre; Women's Centre; Lesbian Gay Bisexual Transsexual Forum (LGBT); a stand at Ethnic Job and Business Fair.
Highlands and Islands	Adverts sent to GREC (which is a member of the Highland Alliance for Racial Equality (HARE)) and to BEMIS (Black and Ethnic Minority Infrastructure Scotland); also sent to Workers' Education Association in Inverness, to the Caithness Voluntary Group and to an individual with a special interest in minority ethnics in rural communities (based at the University of the Highlands and Islands).
Lanarkshire	WSREC; adverts sent to targeted individuals in minority ethnic communities; issue being further considered by consultation group for best practice and impact assessment.
Lothian and Borders	Edinburgh and Lothians Racial Equality Council (ELREC); recruitment event targeted at minority ethnics.
Tayside	Local REC now disbanded but contact made with police lay advisory group and with a multi agency group in Perth. Office represented at University Careers Fair and to be represented at a specifically legal recruitment fair.

Appointment of a Diversity Officer

It was noted that COPFS should further consider the appointment of a full-time Diversity Officer (this already being an ongoing consideration at the time).

A Diversity Officer has not yet been appointed – COPFS may wish to give this issue continuing consideration.

Appraisal Forms

The need to consider introduction of an equality objective on the appraisal form for all staff was highlighted.

A mandatory equality objective was subsequently introduced in all staff performance appraisal forms in 2003.

Training

The need to consider how best to take training forward from an anti-racist to a diversity focussed agenda was raised.

This has been taken forward and a diversity awareness programme has been in place since November 2003. This is discussed in some detail later in the chapter.

Publication of Monitoring Data

The need to consider a forum in which to publish staff monitoring data was highlighted. Specifically it was suggested that the COPFS Annual Report may have been appropriate with a separate section which could be devoted to equality.

The Annual Report has now been replaced by an Annual Review, the format of which does not lend itself to publication of detailed monitoring statistics. Consequently, COPFS intend to publish the required data on their website, with consideration being given to an additional forum (such as a specific report).

However, the failure to yet have published monitoring data is a matter which requires immediate attention. This issue is considered further in the following section.

COPFS performance in relation to specific monitoring duties

Given the steps taken in preparation for meeting the various obligations of the employment legislation we look now at COPFS performance against the specific monitoring duties.

The employment duty requires public authorities to have had in place (by 30 November 2002) arrangements for fulfilling, as soon as reasonably practicable, the monitoring duties listed below (and to go on to fulfil these duties):-

- **Monitoring, by reference to racial group, numbers of staff in post, applicants for employment, training and promotion.**

COPFS actively perform monthly in-house analysis of numbers of staff in post, with reference to racial group (among other factors). Monthly figures are provided to the Management Board and staffing figures are fed in on a quarterly basis to the Race Equality Action Plan. However, for the other 3 categories (applicants for employment, training and promotion), while the information is held in the IT system, it is not actively analysed at present.

Recommendation 8

We recommend that active analysis of applicants for employment, training and promotion should be put in place.

- **For those with 150 or more full-time staff, additional monitoring of the numbers who:**
 - **Receive training**
 - **Benefit or suffer detriment as a result of performance assessment procedures**
 - **Are involved in grievance procedures**
 - **Are the subject of disciplinary procedures; and**
 - **Cease employment with the authority.**

Details of training received by staff are recorded on individual staff records. However, no active analysis of the information held currently takes place.

COPFS do actively perform annual in-house analysis of performance appraisal markings to ensure general consistency of assessment (those involved in this consistency checking have also been on the Diversity Awareness course). As such, any issues in relation to ethnicity (and a number of other factors) would be highlighted as part of this process.

Annual in-house analysis is also undertaken in respect of grievances and disciplinary action. Again, ethnicity is one of a number of variables to which reference is made.

Similarly, numbers who cease employment with COPFS are examined in-house on an annual basis by ethnicity and other variables.

As a quality checking measure we obtained leaver records from Personnel Division covering the last 2 years (2002-03 and 2003-04). This included information on start and end date of contract, grade, office, basic category of leaver code (eg end of contract, resignation, dismissal etc) and ethnicity. No matters for concern were found in either of the years.

Exit interviews are planned for the near future to obtain additional information in relation to reasons for ceasing employment with COPFS.

Recommendation 9

We recommend that active analysis of training received by staff should be put in place.

- **Publish annually the results of this monitoring.**

Despite performing in-house analysis in a number of key areas (as specified), COPFS have not yet published any of the required monitoring data. We are informed that the data will be published for the first time early in 2005, with information covering the previous 2 years (2003-04 and 2004-05) being made available via the COPFS website.

The CRE report 'Towards Racial Equality in Scotland', as referred to earlier in this chapter, highlighted the fact that publication of monitoring data was an area requiring attention for many public bodies.

While we are encouraged by the fact that specific plans to publish are now in place for COPFS we must raise our concern that it has not yet actually been done.

Recommendation 10

We strongly recommend that publication of monitoring data be taken forward at the very earliest opportunity and we support the use of the COPFS website as a forum via which to publish.

There are 2 particular aspects of employment to which we now return to examine in some detail – recruitment and training.

Recruitment Practice

External recruitment is divided into three main categories – Fiscal Officers, Procurator Fiscal Deputes and Trainee Solicitors.

According to the COPFS Recruitment Guide, all vacancies must be notified to the local job centre and Racial Equality Councils – this is the minimum publicity

required to meet the open competition rules. Copying advertisements to RECs is one example of a very positive development over the last few years.

"It's not enough to pass the information on to the RECs - not everyone will hear about it."

(Minority ethnic focus group member, Glasgow, 4 October 2004)

"You have to involve people to encourage employment (in COPFS and other authorities)."

(Minority ethnic focus group member, Aberdeen, 31 August 2004)

Fiscal Officers

Responsibility for recruitment up to pre-employment checks and contract lies with Area Business Managers in liaison with local Procurator Fiscal Offices. The guidance contained in the COPFS Recruitment Guide applies, as noted. Posts are normally advertised locally and tend to be advertised as and when vacancies arise.

Local offices also arrange employment of casual Fiscal Officers as well as offering work placements to students/pupils.

"We are firm believers in equality. People should be treated fairly but not for special treatment because they are Chinese."

(Minority ethnic focus group member, Glasgow, 7 September 2004)

Procurator Fiscal Deputes

Recruitment is carried out on a national basis and is organized by Personnel Division. There are usually either 2 or 3 recruitment schemes per year. Posts are advertised in The Herald, Scotsman and The Firm Magazine.

Trainee Solicitors

Personnel Division undertakes recruitment once a year. Recruitment now takes place 2 years in advance of start date. Posts are advertised in law faculties at universities, The Herald and Scotsman and in the Firm Trainee Solicitor Guide. Recruitment guidance again applies.

The latest figures in respect of COPFS trainee intake reveal that in 2002, 10 per cent of trainees were from an ethnic minority. In both 2003 and 2004, the figure was 13 per cent. COPFS deserve praise for its success in this area.

Recruitment Fairs

Both centrally and locally COPFS attend recruitment fairs targeting those suitable for both general and legal work; for example, COPFS attend the Strathclyde University Law Fair which is attended by final year and diploma students from Strathclyde and Glasgow universities. Similar events take place in other areas. There have also been a number of events aimed at students from minority ethnic backgrounds.

"In Dundee we go to the Universities open days and the Law Society Open Day. We participate in a mini-trials project to engage with the schools."

(COPFS Manager, 1 September 2004)

Recent Developments

COPFS have recently received details of a minority ethnic jobs website and Crown Office intend to advertise vacancies via this channel in the near future. The website address is www.emjobsite.co.uk.

The guidance in the Recruitment Guide will also apply to advertisement of vacancies here.

"You need to go the extra mile, you need positive action."

(Minority ethnic focus group member, Glasgow, 7 September 2004)

Staffing figures

The Cabinet Office publishes six-monthly statistics profiling Civil Service staff across the UK (including breakdowns of gender, disability and ethnicity). Latest published figures reveal that between 1.8 and 2 per cent of all staff employed by COPFS were from an ethnic minority, over the last year (2 per cent as at October 2003, 1.8 per cent as at April 2004).

It is worth noting that relatively small fluctuations in numbers of minority ethnic staff can have a relatively large impact on percentages.

"Do you think 2% minority ethnic staff is enough?"
(Minority ethnic focus group member, Glasgow, 9 August 2004)

COPFS Staff in Detail

Staff in COPFS may be divided into legal and administrative for analysis here. Latest statistics obtained from COPFS show that 1,420 staff were employed as at May 2004 - 473 legal staff (33 per cent of the total) and 947 administrative staff (67 per cent of the total). With reference to legal staff firstly, 4 per cent of Fiscal Deputes (main entry level) were from a minority ethnic as were a further 1 per cent of those at Principal Depute level (promoted posts with management responsibility). There were no minority ethnic staff, however, at the most senior levels (Area Fiscals etc).

With reference to administrative staff, 2 per cent of Fiscal Officers, 1 per cent of Section Managers/Personal Assistants and 3 per cent of staff at Office Manager level were from an ethnic minority. However, again no minority ethnic representation was evident at the most senior levels of administrative staff.

We made several attempts to contact minority ethnic staff to seek their views on a number of issues relating to employment within COPFS. Unfortunately the response rate was too low to draw any general conclusions.

Area Breakdown

Due to small numbers at individual area level some figures are grouped for data protection:

Area	Number of minority ethnic staff
Glasgow	12
Crown Office (Edinburgh)	8
Fife Grampian Highlands & Islands Tayside	8
Ayrshire Lanarkshire Lothian & Borders	7
Argyll & Clyde Central Stirling	0

There are difficulties in considering whether the distribution of COPFS minority ethnic staff across Fiscal Areas mirrors the distribution of the minority ethnic population across Scotland. Census data is not conveniently grouped into Fiscal Areas; hence we use an approximate grouping of local authority areas for the purposes of comparison. There are also obvious limitations in looking for representativeness when comparing very small numbers (COPFS minority ethnic staff) with much larger numbers (Scotland's total minority ethnic population). The small fluctuations in COPFS staff numbers (for both staff in general *and* minority ethnic staff) also mean that profiles are never fixed for any length of time. It is also important to note in this particular context that coverage is not complete in terms of recorded ethnicity (latest published figures show that ethnic origin was unknown for almost 8 per cent of COPFS staff) and this potentially could have a relatively large impact when dealing with already small numbers.

Nevertheless, having considered the distributions, it seems fair to conclude that the proportion of minority ethnic staff in each Fiscal Area is very broadly comparable with the distribution of the total minority ethnic population across Scotland with the apparent exception of the Argyll and Clyde Fiscal Area.

As part of the 5-year Diversity Strategy and Action Plan drawn up by the Scottish Executive, the target (to which Crown Office have also committed) of 1.7 per cent of all staff to be of minority ethnic origin, by 2005, was set; Crown Office, therefore, has surpassed this target and again deserves praise for this.

The COPFS percentages of minority ethnic staff are comparable with the Scottish Executive (excluding Executive Agencies) totals of 1.7 and 2.1 per cent, as at October 2003 and April 2004, respectively.

The Scottish Executive has very recently revised their Diversity Strategy and the targets have been revised accordingly. The new targets take account of updated population information from the 2001 Census.

It is important to note that the minority ethnic staff percentages are calculated from data where ethnic origin was known (reported) – staff whose ethnic origin was unknown are excluded from the calculations. Information on ethnic origin is collected via voluntary, self-classification questionnaires. The statistics published by Cabinet Office show that the proportion of staff for whom ethnicity is unknown (for whatever reason) varies amongst departments and agencies.

"It is the government's responsibility to make us aware of our rights and no-one is doing it. There is nothing proactive, reactive only."
(Minority ethnic focus group member, Aberdeen, 31 August 2004)

The CRE Employment Code of Practice also emphasises the need for employers to have full information about their workforce and notes that having less than complete information can undermine effective interpretation of the data.

The code also highlights the importance, in terms of ensuring racial equality policy is effective, of providing basic racial equality training for all their workers, stipulating what is acceptable conduct and what is not in the workplace. The code states that the training should cover:

- The Race Relations Act, this code and the organisation's racial equality policy. The aim should be to make sure workers understand the scope for discrimination in employment, recognise the potential for it in their work and appreciate that they can be held personally liable for it.
- The ethnic diversity of Britain's population and how mutually agreed flexible working arrangements can help to accommodate religious festivals and customs without undue inconvenience or cost to the organisation.
- How conscious and unconscious prejudice can affect the way organisations function and the effects that unfounded generalisations about racial groups and inadvertent bias in day-to-day operations can have on people's chances of obtaining work, promotion, recognition and respect.
- What is acceptable conduct in the workplace and what will not be tolerated.

- Why the organisation has a racial equality policy and strategy and how they apply to its procedures for recruitment, promotion, transfer, training, performance assessment, grievances and disciplinary matters and to workers' individual duties and responsibilities.
- How workers should respond to incidents of racial discrimination or harassment at work.

The CRE acknowledge that this training may be delivered as part of a wider programme of courses but highlight the fact that if this is the case, employers should ensure that they address the differences, as well as similarities, between different kinds of prejudice.

COPFS Training

Racial awareness training was delivered regionally to all COPFS staff between September 1999 and June 2000. Feedback revealed that the training was generally considered as an interesting introduction to the subject. Although it does not come to light in the report on the training there is some evidence to suggest that some members of staff were offended by the training and what was felt as an underlying assumption that staff were racist.

"Chhokar (report) said we were institutionally racist. Crown Office says "We'll diversify you" and it caused resentment."
(COPFS staff member, August 2004)

The Centre for Education for Racial Equality in Scotland prepared 2 reports (in 2001 and 2002) for the Department and thereafter the 'diversity awareness' programme was born. The design of this programme took account of the negative staff feedback (largely undocumented though it was) and is consequently much less prescriptive and more about raising awareness of issues in discrimination in relation to a number of areas of which race is only one.

Two pilot courses were run at the end of October 2003 with the courses proper beginning in early November of that year and they have been rolled out at a rate of two courses per week since then.

The following section considers the course in some detail.

COPFS DIVERSITY AWARENESS PROGRAMME – 'SETTING THE STANDARDS'

"There was some reticence before the event about being branded as non-diverse by our employers who anticipate we are very right wing."
(COPFS staff member, August 2004)

The programme is mandatory for all staff and lasts two days. It was designed to meet the particular needs of the COPFS and is delivered by a combination of COPFS staff and outside speakers. The course covers a wide range of equality and diversity issues in addition to racism and institutional racism – disability, sexuality, asylum seekers and so on. It aims to allow participants to explore the ideas of diversity and discuss a wide range of topics. The confidentiality of participants is a key feature of the course to allow views to be expressed, and discussion to be encouraged – the introductory material goes as far as to state:

"The intention is most certainly not to preach at you nor to accuse you of discrimination."

Aims and objectives of the course

To enable staff to:

- Understand how discrimination can happen;
- Recognise discriminatory treatment and its consequences;
- Increase knowledge of COPFS personnel policies such as the Fair Treatment Policy;
- Appreciate one's responsibilities in implementing these policies both within the department and with members of the public;
- Increase knowledge and understanding of different cultures and manners of communication, and the ways in which misunderstanding can arise;
- Gain the knowledge and confidence about how to deal with prejudice and discrimination.

"We tried as a group to get away from race. It is important but other things are important as well."
(COPFS staff member, August 2004)

Feedback

Feedback forms are provided to staff at the end of the course and these are collated then analysed by Crown Office at regular intervals. We see this as an example of good practice.

"There is an extensive review of the course after each course."
(COPFS staff member, August 2004)

The feedback considered here considers courses which were held between October 2003 and June 2004. Closed questions (a tick box system) were used to evaluate the course content and organisation. All other questions were

open questions that invited the respondent to express their opinion freely. Due to the inclusion of open questions there is not a one to one relationship between number of respondents (staff who have been on the course) and number of responses, as individuals often gave more than one response to each question eg "Which sessions did you find most useful?" The response to this question invites more than one session to be named.

"The anti-racist seminar was very badly pitched, awareness training is much better."

(COPFS staff member, August 2004)

Generally, the feedback is very good. 88 per cent of respondents reported that the content of the course was either very good or excellent with an impressive 94 per cent rating the presenters of the course in the same two categories. In terms of course content and organisation, timing (of sessions and so on) was the aspect of the course that the highest proportion of respondents - just under a third - rated as only 'satisfactory'. The perception, however, is that the course definitely meets its stated aims and objectives (89 per cent of respondents were completely affirmative in this respect with a further 7 per cent being at least partially affirmative).

"I enjoyed the diversity course and learned a lot."

(COPFS staff member, August 2004)

In terms of which sessions were felt to be particularly useful, asylum seekers/refugees and disability issues were mentioned most frequently. Only 6 per cent of the total number of responses indicated that the session dealing with racism and institutional discrimination was particularly useful. However, the summary information provided by the Diversity Team does not include the *reasons* why these sessions were felt to be particularly useful - possibilities might include someone knowing least about and therefore learning most from a given session, the session being particularly relevant for the individual or perhaps principles of the session being easy to apply in the office. Without this information it is unfortunately difficult to interpret the significance of the responses given. The Diversity Team may wish to consider ways of analysing this supplementary information so as to better inform feedback.

Likewise the responses to the question asking which sessions were least useful – although it is worth mentioning that 55 per cent of responses given indicated that *none* of the sessions were least useful.

"The diversity awareness programme was really good, I enjoyed it."

(COPFS staff member, October 2004")

In summary, feedback is very positive indicating that the course is meeting its primary objective of raising awareness of diversity issues among staff. The only slightly negative comment we received was that the course was not prescriptive enough about the obligations imposed by the Race Relations (Amendment) Act 2000. Feedback suggests that perhaps the timing of the course could be improved on, if anything – this is reinforced by the fact that 11 per cent of responses given to the question asking what changes could be made to the course noted that a longer course would be preferable.

"There should be more training on diversity."
(Minority ethnic focus group member, Glasgow, 9 August 2004
- after COPFS training had been discussed)

Following on from the gathering of staff feedback in respect of the Diversity Awareness course Crown Office have also carried out an impact assessment exercise. This involved contacting staff approximately 4 to 6 months after they have been on the course and posing a number of questions regarding change (both personal and office-wide) which may or may not have taken place as a result of having been on the course. Has the diversity awareness programme actually had an impact on the way staff think and subsequently act?

"I learnt a lot and developed my views further."
(COPFS staff member, August 2004)

Staff feedback is split into two categories for analysis – legal and administrative and reveals some interesting findings.

88 per cent of legal staff reported that they are now more alert to the possibility that people who come into contact with COPFS may have different needs, since attending the course. This was also true for administrative staff with 73 per cent reporting the same. Encouragingly high percentages of staff said they were thinking more about how COPFS practices and policies might affect different people since attending the course, although the percentage was noticeably higher among legal than administrative staff (83 per cent as compared with 62 per cent respectively).

Staff were also asked if they thought the Diversity Awareness programme was having any positive effect on COPFS. While the responses are subjective (and not therefore necessarily a *measure* of positive change), certainly staff's perceptions are a crucial part of the process.

80 percent of legal staff and 66 per cent of administrative staff thought that the course was having a positive effect. Only 5 per cent of legal staff but almost a fifth of administrative staff, however, indicated that they did not think it was having a positive effect (15 per cent of legal and 18 per cent of administrative staff did not respond to the question at all). The summary feedback unfortunately provides no details of what the positive effects are perceived to be in relation to this question.

In respect of all questions that were posed, generally higher percentages of legal than administrative staff reported a greater degree of positive change resulting from having been on the course. A higher percentage of administrative than legal staff, however, (14 per cent as compared with 10 per cent) supplied positive comments in relation to an open-ended question requesting additional comments in relation to any aspect of the impact of the course.

Around a fifth of respondents overall (23 per cent of legal and 15 per cent of administrative staff) reported that they had consulted either the course literature or Diversity home page since attending the course.

"The diversity guidance on deaths is good."
(COPFS staff member, October 2004)

Overall, COPFS are to be commended for the content and implementation of their diversity awareness course. Feedback and, in particular, impact assessment are crucial elements in measuring the success of any programme in terms of meeting its aims. All indications suggest that the course is doing so and it may provide a useful model for other organisations seeking to develop such programmes.

Another major awareness raising initiative is the University of Paisley "Introduction to Professional Practice in Race Equality" organised jointly by the University and West of Scotland Racial Equality Council (WSREC). We estimate at least 50 COPFS staff have completed this very useful course.

Conclusions

COPFS has tried to attract employees from the minority ethnic communities in Scotland. The 2001 Census shows the minority ethnic population of Scotland at 2% and recent figures show that approximately 2% of staff come from a minority ethnic background. COPFS has therefore managed to mirror the national figures and meet the Scottish executive target for minority ethnic staff.

The percentages vary from area to area but we found they are roughly consistent with the local picture.

A number of initiatives and devices have been used to attract people including attendance at schools, career fairs, secondments to and from Racial Equality Councils and others. We found that law as a career was not a popular choice for minority ethnic students but COPFS has had recent success in attracting trainees from a minority ethnic background.

The 2000 Race Relations (Amendment) Act imposed various employment monitoring duties on public bodies and in a survey the Commission for Racial Equality found this was one area where compliance could be better. We found this to be true of COPFS also but there are definite plans to publish (as required) the results of the monitoring; the information is available but needs to be comprehensively collated, analysed and published.

On the training front for all staff a 2-day diversity awareness programme has been designed and rolled out. This included considerable external input and close monitoring has taken place. The feedback is very good and the Department has attempted a subsequent impact assessment. A wealth of material has been provided for staff on the Departmental intranet.

CHAPTER 5

CONSULTATION

The Crown Office and Procurator Fiscal Service is Scotland's sole national prosecution service. Its stated main aim is to provide an independent modern prosecution service for the 21st century – committed to professional excellence, pursuing cases fairly and consistently in the public interest and being responsive to public needs.

The Department stresses that it acts in "the public interest". One aspect of this is that the prosecutor may have to take a wider view than that purely of the victim or witness and can and must on occasions act against the wishes of victims and witnesses. Domestic abuse cases can for example fall into this category where the victim may wish to withdraw the complaint.

"If there is the will and genuine commitment to people it will bear results. Is there that commitment?"

(Minority ethnic focus group member, Aberdeen, 31 August 2004)

However, this begs the question of how the public interest can be gauged. The prosecution code contains a number of pointers which would indicate desirability of a prosecution in the public interest including obvious factors such as the seriousness of the offence and impact on the victim.

At the extremes the prosecution decision is relatively straightforward, clearly no one would suggest that it would not be in the public interest to prosecute murders, rapes etc. However the situation becomes more difficult at the margins.

This chapter will look at ways in which the Department tries to contact and engage with the public it serves.

As stated elsewhere a robust prosecution policy on racist crime was put in place following the commencement of the Crime and Disorder Act 1998. Uniquely this was after consultation with the Commission for Racial Equality.

We highlighted the views of a number of individual victims and witnesses in our Chapter on Race Crime and the support for the hard line taken by the Department.

A number of devices have been put in place to try and forge links with the community, these include -

The Race (now Diversity) Strategy Group

This Group was set up in July 2000 under the Chairmanship of the then Solicitor General Neil Davidson, QC with the following remit:-

"To develop the Departmental strategy for race issues and to ensure, oversee and monitor its implementation, including the commitments in the Strategic Plan for 2000-2003."

The Race Strategy Group also monitors the work of the Race Team. The Race Team (now Diversity Team) was set up to develop and support the implementation of the Race Equality Action Plan (REAP) as required by the Race Relations (Amendment) Act 2000. It forms part of the Crown Office Policy Unit. It also provides guidance and advice to the Area Diversity Resource Teams and acts as a link between them (in the field) and the Crown Office (at the centre). It is also responsible for delivering the Department's Diversity Awareness Programme and provides the secretariat for the Equality Advisory Group.

"You must give people a way to express their concerns."
(Minority ethnic focus group member, Glasgow, 9 August 2004)

The Race Relations (Amendment) Act 2000 came into force on 2 April 2001. The Act introduced a general duty on all public authorities to promote race equality. It requires all public authorities to take active steps to meet the new requirements. It gives the Commission for Racial Equality a central role in developing and monitoring equality standards and practices. The duty to promote race equality is imposed by Section 2 and states that "such bodies in carrying out its functions shall have due regard to the need –

- (a) to eliminate unlawful racial discrimination and
- (b) to promote equality of opportunity and good relations between persons of different racial groups".

This is the general duty imposed by the Act and it is incumbent on the Lord Advocate and Solicitor General as Law Officers. As a result of the operation of the Scotland Act 1998 this duty also extends to the office of Procurator Fiscal and Procurator Fiscal Depute.

The general duty requires public authorities to be pro-active in promoting racial equality. This duty was taken seriously by Crown Office and Procurator Fiscal Service (as it had to be) and is reflected in the work of the Race (now Diversity) Strategy Group and the establishment of first Regional and latterly Area Resource Teams.

"The challenge is engaging and being equal with every community."

(Crown Office and Procurator Fiscal Service Manager, September 2004)

The general duty was added to by the creation of specific duties to promote race equality to be imposed on all public bodies to which the general duty applied. These have been imposed by secondary legislation and set out in more detail the action public authorities are required to take in order to comply with the general duty to promote race equality.

The Race Relations (Specific Duties Order) Scotland 2002 imposes the following specific duties –

- that public authorities prepare and publish a Race Equality Scheme by 30 November 2002 setting out how they intend to meet their obligations under the general duty and any other proposed specific duties to promote race equality which are relevant to their work;
- that public authorities assess which of their functions and policies are relevant to the general duty with regular subsequent reviews (presently 3-yearly);
- that public authorities set out their arrangements for assessing and consulting on the impact on the promotion of race equality of policies it is proposing for adoption;
- that public authorities set out their arrangements for monitoring for any adverse impact on the promotion of race equality of policies it has adopted or is proposing for adoption;
- that public authorities set out their arrangements for publishing the results of assessments, consultation and monitoring;
- that public authorities set out their arrangements for ensuring that minorities have access to information and to services they provide;
- that public authorities set out their arrangements for training staff on issues relevant to the duty to promote race equality.

The obligation to produce the Race Equality Scheme rests on Scottish Ministers collectively. The Scottish Executive published an overarching Racial Equality Scheme. The Crown Office and Procurator Fiscal Service published a detailed Race Equality Action Plan to guide the work of the Department on race equality matters (covering the period November 2002 – November 2005).

The Commission for Racial Equality has produced a number of useful guidance documents and a Code of Practice.

As stated the Diversity Strategy Group has as one of its core functions the monitoring of the Race Equality Action Plan. The Group meets every quarter

and does not have a fixed agenda. Its membership includes in addition to the Solicitor General who chairs the meeting, the Crown Agent, Chief Executive, Deputy Crown Agent, Head of Policy, Area Procurator Fiscal (Glasgow) and representatives of the Race Team. Members of the Human Resources Department and Press Office also usually attend.

The Diversity Strategy Group in renaming itself was in line with developments elsewhere in aligning race, gender and disability issues contained in the Government's white paper "Fairness for All". A Diversity Action Plan 2004-2005 was prepared. This was a commitment within the Crown Office and Procurator Fiscal Service Race Equality Plan.

One of the principal tasks of the Diversity Strategy Group is to evaluate how well the Department has performed in meeting its public commitments in the Race Equality Action Plan and to consider the extent to which performance and experience has impacted on years 2 and 3 and to outline recommendations for year 4.

The Crown Office is part of the Scottish Executive-wide Race Equality Scheme Implementation Group (RESIG). This was set up to assist the Departments in producing valid Race Equality Schemes and to monitor progress. The Crown Office REAP has received favourable comment in this forum.

The first year of the Race Equality Action Plan was an opportunity to put in place competent mechanisms and systems that would ensure existing and developing policies build in an impact assessment tool to determine how successful or otherwise they have been. This is a difficult area and one which the Commission for Racial Equality has been working on. In conjunction with the Home Office Racial Equality Unit the Commission for Racial Equality has been developing a framework for carrying out a Race Equality Impact Assessment (REIA). The guidance on this was made available on a website commencing in August 2004. As well as the guidance the website includes important statistical data, links to relevant and other publications and a list of useful contacts.

One of the stated aims of the Commission for Racial Equality in creating the website is to help senior managers use it as a tool to improve their baseline performance and compliance with their duties under the Act. One reason for its creation was frequent requests to the Commission for Racial Equality from authorities about further support, advice and guidance on conducting impact assessments.

Given its importance as a central plank of the race equality strategy of Crown Office the Race Equality Action Plan is considered in a separate chapter.

As indicated elsewhere we have included in this report the specific areas of complaint in the Jandoo report to see how the Department reacted to these strictures and the action taken in the meantime to meet the criticism.

In addition to that we have devoted a whole Chapter to Race Crime which although not at the centre of the Jandoo report is clearly at the centre of the Crown Office's response on race issues.

The Diversity Strategy Group has an important function in monitoring centrally the operation of the Race Equality Action Plan. Much of the day-to-day work is done by the Race Team which is widely respected and dedicated to its task.

Impact assessment could be said to be at the heart of much of the thrust of the 2000 Act and was seen to be a difficult area.

Guidance from the Commission for Racial Equality indicated that all policies should be screened for relevance to the statutory general duty to promote race equality.

"We've had the Race Relations Act since 1976 and a lot of things did not happen."

(Minority ethnic focus group member, Glasgow, 9 September 2004)

This screening process should help to identify if the policy could lead to differential impact on different groups, whether groups may have particular needs, or if the policy could provide an opportunity to promote good race relations.

"They've taken away the temporary posts and that was one of the vehicles for getting ethnic minority people into the job. This disproportionately affects the ethnic minorities."

(Minority ethnic focus group member, Glasgow, 14 October 2004)

The Race Team in order to assist in this process produced a guide to diversity proofing of policy and practice.

In describing this the Department emphasises that it is important to remember that the commitment to race equality and to the wider diversity agenda is very much the long term and not to be viewed simply as a 3-year project plan.

"The guiding principle behind the "proofing" of existing and future policies is that they should be "proofed", not only for considerations of race but also for other aspects of diversity including sexual orientation, gender, age, disability, religious belief, mental impairment and any other minority group that may have an interest in the particular policy area under consideration."

(Crown Office Diversity Proofing Guidance)

Although this particular impetus stems from the Race Relations (Amendment) Act 2000 it sits well with a Department which is committed to prosecution and making decisions "in the public interest". These are specific ways of assessing, gauging and allowing perceived interest to frame policies. The stated aim is to ensure that the Department is taking into consideration and where reasonable meeting the needs of all individuals from all parts of society. It gives as an example in the case of people from the minority ethnic groups effective systems of provision of interpreting and translation services and also ensuring that staff are aware of Departmental racial and cultural awareness guidance material.

The Equality Advisory Group

In the Race Equality Action Plan in the section dealing with consultation and impact of policy in addition to the various consultations with the Commission for Racial Equality and Race Equality Councils mentioned therein there is also a commitment to establish an Equality Advisory Group. This is to provide advice and assistance to the Department in the development of policy and in particular to provide it with an assessment of the likely impact of its proposed policies on race equality. The plan was to establish this group initially as a pilot for one year to be created during the first year of the plan.

The formal remit of this group, which met for the first time in June 2003, was to provide independent expert advice to the Crown Office and Procurator Fiscal Service on

- the impact or likely impact of its existing and future policies on equality issues;
- any racial, religious and cultural issues which arise in criminal cases and in particular the likely liaison needs of bereaved relatives from a minority ethnic or religious community.

"Be aware of our cultural differences."
(Minority ethnic focus group member, Glasgow, 9 August 2004)

Its membership is drawn from a selection of people with an interest and experience of race equality matters including academics with an interest in this area and people working in race equality organisations.

The creation of the Equality Advisory Group has been an attempt to introduce another measure of public scrutiny into policy development and provide a forum for feedback on the likely impact of policies.

At the time of writing this report the Group had met 6 times commencing on 6 June 2003, it aims to meet quarterly. The first meeting was attended by

the Solicitor General (Elish Angiolini, QC). The secretariat is provided by the Crown Office Race Team (now Diversity Team).

It was the intention over the first 12 months for the group to concentrate on racial issues and then broaden its focus to include other diversity issues such as disability, age, gender, sexual orientation and religion. It was intended to review the work of the group annually and that membership would last for approximately 2 years. Initially there were 6 non-Crown Office members and 3 Crown Office members including the Head of Policy, an Area Fiscal and Head of the Diversity Team. A member of the Inspectorate Team was present at most of the meetings.

The creation of the Equality Advisory Group was issued to the press in May 2003 by way of a news release which emphasised that the views of members of Scotland's minority ethnic communities were vital to the development of race policy at the Crown Office.

In the press statement the Solicitor General, emphasising the importance of input from minority ethnic communities in developing race equality policy, said

"This is a long-term initiative for the Department and one that we are firmly committed to see through to fruition. There are no easy answers and no room for shortcuts. We are actively looking to engage with those who have a genuine interest in this area. We welcome comment and constructive feedback. Our development is dependant on taking note and responding to issues of public concern wherever possible."

Over the course of the past 18 months the group has considered a number of topics including

- Diversity training for staff;
- The provision of interpreters and translations;
- Racially motivated crime;
- Hate crime;
- Impact assessment;
- Diversity proofing;
- Crown Office internal staff Fair Treatment Policy;
- Video Identification Parades (VIPER);
- Driver Improvement Scheme (a new diversion scheme for dealing with "careless" drivers (S3 of the Road Traffic Act 1988);
- Recruitment;
- Deaths Manual (this is advice and instructions given to Crown Office staff centrally);

- Forensic Pathology (this was a leaflet for relatives of deceased persons);
- Figures on police compliance with the Lord Advocate's Guidelines on race crime.

In line with its commitment to review itself after one year a discussion paper was issued for the meeting on 14 May 2004 on the future direction of the group and inviting members to consider whether it would be appropriate and timely to look at its remit, structure and performance during its first year.

There was acknowledgement that there was a time implication in referring policy material to the group and heavy demands made on members' time. The Fair Treatment Policy was a good example of both of these problems being a somewhat complex and lengthy document. A greater steer as to what parts of new policy might usefully be considered was suggested as was expanding the group although too large a group was deemed to be unhelpful. Two new members agreed to join the group, one from the Equalities Network and one from a disability training background.

The group as stated is examining its own working practices and future direction. It has probably been most concerned with the Diversity Awareness rollout to staff and the effectiveness of that including feedback from the organisers and trainers and also has been active in the area of race and hate crime. Although its existence and minutes of its meetings are posted on the Crown Office Intranet it is probably fair to say that it has not as yet been used as extensively as hoped by Fiscals "in the field" as opposed to central policy staff. This is likely to develop and Fiscals are encouraged to refer policy issues to it. This may necessitate different working practices in the future and possible use of sub-groups to study issues and report back to the main group.

Its existence was commented favourably on in the first annual report of the Scottish Executive on its Race Equality Scheme. In its report it quotes the creation of the group as an example of good practice and states that the group brings independent views on policies from experts and explores how Departments can engage with them. The membership it states was deliberately chosen to include constructive critics and to be an independent body to provide constructive criticism.

It is clearly a worthwhile initiative and it is expected that it will continue to develop and assist the Department in formulating policies and assessing their impact on minority ethnic and other communities.

Area Resource Teams

Area Resource Teams (which replaced Regional Resource Teams) were established in 2002.

Their remit and role was

To implement the Departmental strategy on race issues wherever relevant within the Area context and in particular have regard to:-

- The monitoring of prosecution policy on racist crime (including the quality of police reports submitted in line with the Lord Advocate's Guidelines);
- Racial Equality Training at Area level (including Area induction training);
- Recruitment issues (including a programme of positive action in liaison with the Departmental Human Resources Division);
- Issues of translation and interpreting (including the implementation and monitoring of Departmental guidance);
- The need to establish and maintain positive relationships with minority ethnic communities and organisations (such as Racial Equality Councils) and
- The need to participate in local MARIM (Multi-Agency Racist Incident Monitoring) and community safety groups.

The previous Regional Resource Teams had fulfilled similar functions, the Department recognising that the people involved were committed to improving policy and practice in this area frequently in their own unpaid time.

"People are enthusiastic and volunteer in their own time."
(Crown Office and Procurator Fiscal Service Manager, September 2004)

The new Area Resource Teams came into being as a result of the restructuring of the Procurator Fiscal Service.

Instructions from Crown Office were issued in September 2002 requiring each Area Fiscal to establish an Area Resource Team. Adjoining areas were encouraged to join up for meetings to share good practice and ideas. The previous Regional Teams had consisted of staff at different levels both legal and administrative. The work of the Area Teams was seen as key to achieving the Department's diversity/equality objectives and an essential part of the overall restructuring exercise. Area Fiscals were encouraged to take stock of their inheritance and decide how to deliver the requirements of the Departmental race strategy in their area.

"You have to find a way of supporting community groups and outreach work."

(Minority ethnic focus group member, Aberdeen, August 2004)

The actual composition of the new teams was left to the discretion of the Area Fiscals and acknowledgement was made of the fact that the work could be time-consuming. A mix of both legal and administrative staff was encouraged and it was considered important to ask representatives of the relevant Racial Equality Council to form part of the team or at least to attend the meetings. The Area Fiscal and the Area Business Manager were encouraged to be part of the team. Crown Office would keep a central register of members.

Quarterly reports were to be submitted to the Race Strategy Group a week in advance of scheduled quarterly meetings chaired by the Solicitor General with a senior member of each team expected to be present to "speak" to the area report. A style of report was issued outlining the areas to be covered by the report, these included:-

➤ Prosecution Policy

This included the monitoring of race cases and the Law Officers made it clear they expected the Area Fiscals to take personal responsibility for this monitoring and to see police reports after the initial marking stage and at the conclusion of the case. This was to ensure that both the police had complied with the Lord Advocate's Guidelines and that prosecutors also complied with their instructions.

A style of monitoring form previously used by some Regional Fiscals was advocated as a useful tool.

Areas were reminded that there would be central monitoring of compliance in this area (referred to in our Chapter on Race Crime).

➤ Racial Equality Training

The quarterly reports were to include a return on recent and proposed training at Area level outlining the racial equality components.

➤ Recruitment

Area Teams were encouraged to continue "outreach" work eg attending careers fairs and visiting schools etc. This was described as a "key" role for Area Teams. This was seen as important not only for recruitment purposes but for regaining the trust of minority ethnic communities.

➤ Interpreting and Translating

Areas were encouraged to strengthen links with local interpreting services and use of Language Line (installed in all offices).

➤ External Relations

Areas were expected to report on relations with Racial Equality Councils and MARIM groups. The report was to cover other networking initiatives.

A guidance pack was prepared by the Crown Office Race Team which was a consolidation of ideas and included speeches, PowerPoint presentations and guidance on how to run induction programmes. This has been made available to all on the Crown Office Intranet.

Much good work was seen to be done by the Area Resource Teams including an array of sponsored events. For example the Glasgow office sponsored an event targeted at ladies from a minority ethnic background on 12 November 2003 which was well received.

With 11 Areas spread over the whole of Scotland it was not feasible to visit all and a questionnaire was sent out to all Area Fiscals asking for feedback on a number of areas. The responses indicate that:-

- All Areas used both legal and administrative staff for the Teams, minority ethnic staff were not specifically targeted;
- In 7 cases wider diversity issues were considered, only 4 Areas limiting themselves to race;
- Minutes were kept in all cases, usually sent to team members and in some cases put in common folders;
- 6 Areas had "specialist" race Deputes;
- 3 Areas had members particularly trained in the race arena eg by attending the University of Paisley course on Race Equality;
- The Area Fiscal accepted responsibility for collating the race crime statistics but only 2 said they read all the cases;
- Failures on the part of the police to comply with the Lord Advocate's Guidelines would be brought to their attention in 10 cases, curiously in one case no referral would be made although our question prompted a change of view;
- 7 Areas had sponsored specific events;
- 8 Areas had links to other ethnic minority groups in the local community.

Overall the Area Resource Teams were and are a major outreach initiative. In Strathclyde the 4 Area Fiscals had the benefit of secondees from the West of Scotland Racial Equality Council who assisted with the work of their groups.

This was the most "formal" arrangement but other more informal arrangements existed elsewhere.

"You have to have meetings in the ethnic minority communities and say what you do."

(Minority ethnic focus group member, Aberdeen, August 2004)

Our only concern was with maintaining the momentum. It was not always clear that Areas understood fully their obligations to monitor race cases and there was a danger of slippage. We would have made recommendations for maintaining the momentum but the Crown Office itself decided in October 2004 to make changes. The national (quarterly) team meetings would no longer take place. This function was to be taken over by the Legal and Policy Forum and the Management Board on a 3-monthly basis.

The Legal and Policy Forum consists of the Chief Executive, Crown Agent, all 11 Area Fiscals and other senior management figures. Its remit is to take the lead in the development of prosecution policy and consider legal and operational issues within COPFS. It meets monthly at different locations around the country.

The Management Board consists of the Chief Executive, Crown Agent, 3 of the principal Area Fiscals and other senior COPFS staff and deals with overall strategy. It also meets monthly.

Reports from these would be considered at 6-monthly meetings of the Diversity Strategy Group (formerly the Race Strategy Group). This will continue to be chaired by the Solicitor General. It cannot be over-emphasised that this steer from one of the Law Officers sends a signal to the Department of the continuing importance of this work. It was acknowledged that it was difficult for various reasons to maintain the quarterly national meetings.

The Legal and Policy Forum and the Management Board would assume this mantle. The Legal and Policy Forum would have reports from Areas as a standing agenda item. The emphasis at the Management Board would be on strategic diversity issues relating to the workforce, Human Resources policy, training and development, accommodation and estates issues. Both groups would have responsibility for monitoring the Race Equality Action Plan (REAP).

The proposed use of the Legal and Policy Forum and the Management Board as places for assessing diversity performance and testing policy and strategy is intended to allow reports from them to inform the Diversity Strategy Group in its higher strategic function. The Chief Executive and/or Crown Agent would report on a 6-monthly basis to the Diversity Strategy Group.

The Inspectorate is committed in terms of the Jandoo Action Plan to regularly "audit" Area and District Offices for compliance with policy and guidance and this will afford an opportunity to revisit this area of work and monitor progress on the new system.

Recommendation 11

We would, however, recommend that the guidance on the collection of race crime statistics be beefed up to make it clear who is expected to read reports and submit statistics.

Conclusion

As stated in the section on Area Resource Teams the Diversity Strategy Group is changing. It was the Jandoo Report which prompted the creation of the then Race Strategy Group. This could be seen as (quite properly) an emergency reaction to deal with a major problem and inevitably as time has gone by the focus has shifted. The Jandoo recommendations have been included in the Department's Race Equality Action Plan and compliance monitored. The Department feels it is time now for the Diversity Strategy Group to focus on the practical aspects of proving the Department's compliance with diversity matters. The emphasis generally has shifted from systems to results.

The Legal and Policy Forum and the Management Board will now be the places for assessing Departmental diversity performance and testing policy and strategy. The shift from systems to results means that the work of the Legal and Policy Forum and the Management Board will be essentially evidence gathering while the Diversity Strategy Group will concentrate on oversight and higher level consideration of strategy.

This change was taking place as we went "to press". The Inspectorate will be interested to see how this develops.

Overall so far as outreach initiatives are concerned the Department has in our view gone to considerable lengths to address the perception of a remote organisation detached from the public it serves and not accountable for its actions.

The importance of leadership from the top both at senior management and ministerial level cannot be over-emphasised and has been frequently commented on to us in the course of preparing this report. The Department has been in the van of new initiatives in creating Area Resource Teams and the Equality Advisory Group. Although we have some detailed comments on the operation of these they represent a considerable investment by the Department in trying to re-establish itself in the minds of the public. It is clear to us that there is a considerable appetite for more information about what the Department does and how it operates (this of course is not limited

to the minority ethnic communities) and the more it can raise its profile the better the overall perception will be.

"It is an important commitment to speak to the community."
(Minority ethnic focus group member, Glasgow, 9 August 2004)

Recommendation 12

That the Department heightens its public profile, nationally and at local level.

Our main concern is that so much of the current work is down to the willingness of a cross-section of staff to give of their time to do this. It would, we feel, be helpful if instead of an "add on" that this contact function including attending schools, local events etc could become the work of a group of individuals who could in this way augment the work of the Area Resource Teams. This would lead to better integration of this work.

Our overall view is that while inevitably much of this is work in progress nevertheless the Department has made significant strides in improving itself and keeping in touch with the diverse public it serves.

CHAPTER 6

RACE EQUALITY SCHEME

Dr Jandoo's report was published in October 2001 and the Scottish Parliament debated it on 7 November 2001.

As stated Dr Jandoo's main findings were that the Crown Office and Procurator Fiscal Service had failed to liaise appropriately with the bereaved relatives and partner of Surjit Singh Chhokar. He found evidence of institutional racism in the handling of liaison arrangements with the bereaved relatives and partner in particular the failure to translate correspondence to the parents together with a failure to have adequate cultural awareness material available to Fiscals. There was also a failure to recognise the need for interpreting services for the parents at the first trial in 1998.

Following publication of Dr Jandoo's report, the Lord Advocate and Minister for Justice accepted all recommendations in the report and a commitment was made to learn from the mistakes. This report has as one of its principal aims an analysis of how far the Department has moved in the past 6 years and learned from the mistakes made. Public confidence in the prosecution system was at stake.

"People feel that in the Chhokar case that people did not feel the death of an Asian was important enough and there was not the commitment to take cases like this."

(Minority ethnic focus group member, Glasgow, 9 September 2004)

Dr Jandoo in his report made 40 recommendations, some aimed at the Crown Office singly, some at the Crown Office and Police jointly, some at the Police singly, one at the Scottish Executive Justice Department and one at the Law Society of Scotland (on the guidance on the selection, vetting and training of Precognition Agents and a code of practice for them).

Having accepted all of Dr Jandoo's recommendations the Department lost no time in devising an implementation strategy. A 'Jandoo' Action Plan was devised dealing with his recommendations, which were specific to the Department or joint with the police.

The Plan detailed the relevant 'Jandoo' recommendations and outlined what the Department would do and by when. In our view this was a sensible and logical approach to the recommendations and provided an immediate template against which progress could be measured. It enabled the then recently formed Race Strategy Group to have a means to measure and monitor progress. The Department has continued to review the plan (as recently as June 2004) and itself highlights the following as key milestones:-

- Lord Advocate's Guidelines to Chief Constables in June 2001 (revised February 2002) in which the language and cultural needs of bereaved relatives are required to be addressed in police reports;
- Systems to facilitate translation of correspondence established;
- Race Strategy Group and Area Teams established to lead on development of Race Strategy (now Diversity);
- A joint working group on race issues established with Association of Chief Police Officers in Scotland (ACPOS);
- The creation of the departmental Race (now Diversity) Team to deliver implementation of the Jandoo recommendations and requirements of the Race Relations (Amendment) Act 2000;
- Departmental membership of the Scottish Executive Race Equality Scheme Implementation Group (RESIG);
- Establishment of the Victim Information and Advice office to cover inter alia victims in all cases of racist crime;
- The rollout of a 2-day Diversity Awareness course for every member of the Department;
- The creation of a working group on the provision of interpreting and translation services involving the Department, ACPOS, the Scottish Court Service and the Law Society of Scotland;
- The creation of an Equality Advisory Group to provide guidance and assistance on the development of policy within the Department and in particular to help assess the impact of departmental policies on race equality.

The Jandoo Plan was published in 2001 with a commitment to deliver on its terms.

Many of the recommendations have been reviewed elsewhere in this report particularly those relating to interpreters (Jandoo recommendation 10), the Race Strategy Group (Jandoo recommendation 12), the establishment of Area Race Teams (Jandoo recommendation 14), the gathering of information of the ethnic origin of service users (Jandoo recommendation 15), the creation of a Cultural Awareness Guide (Jandoo recommendation 16), the translation of documents (Jandoo recommendation 17), the requirements of the Standard Police Report in relation to the language needs of witnesses/next of kin (Jandoo recommendation 24), the respecting of funeral arrangements (Jandoo recommendation 36).

Some of the other recommendations will be considered in our next report on victims and witnesses generally.

The approach to the implementation of Dr Jandoo's recommendations has been thorough and largely achieved. Our comments elsewhere relate to detail, overall the commitment to deliver on its terms has been extensively met.

The Chhokar case started in 1998. For comparison purposes we have looked at the way a more recent murder involving a Kurdish Asylum Seeker was handled. Firsat Dag was fatally stabbed in Sighthill, Glasgow on 5 August 2001. On 18 August 2001 the police arrested Scott Burrell and charged him with the murder. On 7 December 2001 his trial and that of a co-accused started in Glasgow. On 13 December 2001 the jury were told that Mr Dag's murder was no longer being treated as a racial killing. The indictment (ie the charge) had initially alleged that there was a racial aspect to the killing. The jury then convicted Burrell of the murder and on 14 December 2001 he was sentenced to life imprisonment.

As part of the lead up to the case two uncles of the deceased came across from Turkey and with the aid of an interpreter were seen by a member of the Fiscal's staff and the process explained to them. The family back in Turkey were also kept up-to-date using a local interpreter.

Prior to the trial it was decided to cite the two uncles and also arrange for the deceased's father to travel from Turkey. The Glasgow Fiscal's Office arranged this.

The two uncles and the father were met by police at the airport, taken to a hotel and a member of the Fiscal's staff preparing the case kept in contact with them. He met with them and through an interpreter the procedure was explained to them.

During the trial they sat in the public gallery with the aid of an interpreter and at the lunch break and at the end of each court day they were seen by a member of the Fiscal's staff and any questions answered. Arrangements were always at hand to have them escorted to and from the court by Police Family Liaison Officers.

The main witness was also a young Asylum Seeker friend of the deceased and arrangements were made for him to meet with the interpreter to be used in court prior to him giving evidence. The indictment was also translated into Turkish and a copy provided for the family.

At the conclusion of the trial the Advocate Depute (the prosecutor) spoke to the family who thanked him and the Fiscal's staff for their efforts.

This in our opinion shows that the lessons of the Chhokar case had been learned and put into practice and hopefully will be closer to the norm from now on.

The Race Equality Scheme and Race Equality Action Plan

The 2000 Race Relations (Amendment) Act required public authorities to prepare and publish a Race Equality Scheme by 30 November 2002 setting out how they intended to meet the obligations under the general duty and

any other proposed specific duties to promote race equality which were relevant to their work. This included the requirement to assess which of their functions and policies were relevant to the general duty with regular subsequent reviews (3 years was proposed). It also required authorities to set out their arrangements for assessing and consulting on the impact on the promotion of race equality of policies proposed to be adopted. It also required that arrangements for monitoring for any adverse impact on the promotion of race equality or policies adopted or proposed be set out. Arrangements for publishing the results of assessments, consultation and monitoring were also to be set out as also arrangements for ensuring minorities had access to information and to services provided and that arrangements for training staff on issues relevant to the duty to promote race equality be also set out.

As previously stated, in Scotland the requirement to publish the Race Equality Scheme rested on Scottish Ministers collectively and the Scottish Executive published an overarching Race Equality Scheme. The Crown Office and Procurator Fiscal Service published a detailed Race Equality Action Plan (REAP) to guide the work of the Department on race equality matters during the life of the Executive's Race Equality Scheme (this was November 2002 – November 2005). The REAP was published on the Departmental website on 30 November 2002 (www.crownoffice.gov.uk).

The Jandoo Action Plan was the immediate action taken after the Chhokar case but has been itself to a large extent superseded by the REAP.

The 'in house' monitoring of the REAP is a core function of the Race (now Diversity) Strategy Group. The creation of the 11 Area Resource Teams with the aim of implementing strategy at local and Area levels with their obligation originally to report to the Race Strategy Group and now as discussed elsewhere the Legal and Policy Forum and Management Board were the main vehicles for delivery of the overall strategy.

The REAP analyses the work of the Crown Office and Procurator Fiscal Service by dividing it into various columns headed 'Function', 'Relevance to the General Duty', a column headed 'What we have done already', a column headed 'What we will do' and a final column headed 'By when'.

Each facet of the work of the Department is looked at under each of these headings.

Not surprisingly given its central role in the criminal justice system the Crown Office and Procurator Fiscal Service in relation to analysing its functions has decided that most if not all of these have a high relevance to the general duty. Indeed only the work in relation to the supervision of charities (now going elsewhere) and the collection of property falling to the Crown are described as either medium or low.

The REAP was carefully prepared to meet the obligations imposed by the Race Relations (Amendment) Act 2000. Again this has provided a very useful template (similar to the Jandoo Action Plan) to set out what is to be done and allow for monitoring of performance.

The Department as part of the work of the Diversity Strategy Group reviewed the REAP after the first year. A number of milestones in the first year were achieved including:-

- The prosecution of racist crime;
- Interpreting/translation;
- Diversity awareness. The rollout of these courses commenced in November 2003;
- The Equality Advisory Group.

Slippage had occurred in the monitoring exercise for death and related criminal cases and it was decided to extend this for 4 months. At the time of writing this has still not taken place but is due to commence shortly.

It was also recognised that more work had to be done on monitoring and impact assessment of policy.

A slight softening on the policy of prosecution of race crime was highlighted to allow warning letters in exceptional circumstances.

The findings of the CRE survey in December 2003 referred to previously were discussed at a meeting of RESIG and members of COPFS Diversity Team were in attendance. COPFS had not been one of the bodies looked at. Strengths were found to be in the area of publishing and training but the main problem area was seen to be the thinking behind impact assessment.

We have commented elsewhere on the race-proofing tool devised by COPFS and the CRE website. The worst feature in terms of compliance was monitoring of the employment duty (only 7% of schemes looked at had made arrangements for this). We have commented on COPFS monitoring in our Chapter on Employment.

The CRE had 3 generic recommendations for public authorities:-

- Keeping the legislation under review;
- Providing practical guidelines;
- Supporting strategic partners.

In particular in relation to the Scottish Executive the CRE called for it to ensure that all Departments take responsibility for the promotion of equality and that responsibility for the implementation of the Race Relations (Amendment) Act 2000 rested at a senior level within each Department. The Crown Office and Procurator Fiscal Service score highly here in having both

top management and ministerial input as discussed elsewhere. In addition the CRE recommended that the Scottish Executive both at ministerial and administrative levels took a strategic approach to promoting and implementing the 2000 Act and that Departments should include racial equality objectives in their programmes for managing change and modernisation and that the Race Equality Schemes should be linked with the business planning and budget process.

From the Crown Office and Procurator Fiscal Service perspective the issues of impact assessment and what would constitute good practice were seen as especially relevant and also the issue of "mainstreaming". The Department continued to look at ways to build on the numerous publications, guidance tools and diversity awareness programme to ensure this mainstreaming took place.

Continuing review includes:-

- Policy on racist crime;
- Diversity awareness courses;
- The performance of the police in relation to race cases;
- The REAP being amended by adding additional objectives for year 4 including the review of the role and responsibilities of the Area Resource Teams (as discussed elsewhere) and the Diversity Team;
- A Diversity Action Plan being published as an Annexe to the REAP and the Area Resource Teams are seen as the main vehicle for implementation of this;
- The Race (now Diversity) Proofing Tool being updated to include practical examples;
- The Cultural Awareness Guide (available on the Departmental Intranet) being re-packaged and sent out as part of pre-course reading material to participants in the Diversity Awareness Programme;

"The Diversity Awareness Programme is really good. I really enjoyed it."

(Crown Office and Procurator Fiscal Service staff member, October 2004)

- The translation of material and sensibly through the working of WGIT a criminal justice wide policy is being attempted on the translation of documents and the categories of languages required;
- The performance of the Equality Advisory Group (discussed elsewhere);
- A review of recruitment policy, practice and outreach work. This will review diversity generally including disability, gender and age;
- The development and piloting of a Diversity Action Plan (now published).

Individual units of Crown Office were not reviewed and this has been carried forward.

The Department commissioned a study to look at the monitoring of ethnicity of accused, victims and witnesses (the Reid Howie Report) which is being considered by RESIG to enable a system-wide approach to be taken which will make for more meaningful cross agency monitoring.

These examples show a Department willing to adapt and build on experience both internally and externally. The COPFS membership of RESIG is particularly useful. The REAP is seen as a possible model for others although sensibly the Department itself advises caution in that regard. One example of the benefit of COPFS membership of RESIG is the commissioning of the Reid Howie Report referred to above and its likely use across the criminal justice system. The COPFS structure of the Diversity Strategy Group at the centre with its ministerial input and Area Resource Teams "in the field" is seen at RESIG as a particularly useful way of translating policy into practice together with the existence of the Diversity Team itself to act as a catalyst and driver.

COPFS has been able to share with other RESIG members the benefit of its experience in assessing the likely impact of proposed policies on the minority communities and for reviewing the actual impact once policy becomes practice.

Overall we found no signs of complacency in developing policies and practices in this field and the approach to the overall strategy appears to be well founded and in tune with the published strategic aim of COPFS -

"We aim to play a pivotal role in the achievement of the purpose of the Criminal Justice System of maintaining the security and confidence of the people of Scotland by providing just and effective means by which crimes may be investigated and offenders brought to justice."

CONCLUSIONS

There can be little doubt that the Chhokar case represented probably the lowest point and biggest shock for the prosecution service in Scotland in many years. To put that in context the Lord Advocate, Colin Boyd, QC, who was appointed in February 2000 and who was Lord Advocate at the time of the Lockerbie trial, itself the biggest crime in Scotland in the 20th century said -

"I believed that the Chhokar case would cause more difficulties than the Lockerbie case."
(Jandoo report, page 158)

and again

"I think we have to re-establish ourselves and achieve a place in the minds of the public."
(Jandoo report, page 200)

This report attempts to analyse the way in which the Department responded to the criticisms in the Jandoo report and the current effectiveness of the measures taken.

Ironically before the Chhokar murder the then Lord Advocate, Lord Hardie, had in 1997 signed up to the Leadership Challenge, an initiative by the Commission for Racial Equality, which invited those in positions of influence and authority in all areas of Scottish society to take an individual and personal lead in promoting the principle of racial equality, to create a climate for change and to effect change with the goal of eradicating racial discrimination altogether.

In his report Dr Jandoo levels the charge of institutional racism against the Department which developing the theme of the MacPherson Report (into the Stephen Lawrence murder in England) he defines as appearing in 4 possible ways:-

- the official policies or procedures of an organisation may be deliberately and overtly discriminatory
- the official policies may be free of discrimination but the informal culture – the canteen culture – of the organisation may be prejudiced and hostile to such groups
- official policies may be "colour blind" and unintentionally discriminatory or

- the informal culture may similarly be unintentionally discriminatory (Jandoo report, page 203).

He defines institutional racism as:-

"Whenever the service provided by an organisation fails – whether deliberately or not – to meet equally the needs of all the people whom it serves, having regard to their racial, ethnic or cultural backgrounds."

Using his own definition he held that the liaison arrangements with the Chhokar family did show evidence of institutional racism. In particular (in relation to Crown Office and Procurator Fiscal Service) he found the Procurator Fiscal's Office was not well informed about Sikh custom in relation to cremation after death causing the family unnecessary (and unintended) distress.

Secondly, letters sent from the Procurator Fiscal's Office to Mr Chhokar Snr in English presupposed his knowledge of English.

Thirdly, the Procurator Fiscal's Office was slow to discover that interpreters would be needed.

In this report we have attempted to demonstrate the ways in which the Department reacted and continues to react to these charges.

Even before Dr Jandoo published his report the Department had begun to act:

"I have stressed that institutional racism is a disorder in an organisation which is likely to occur from time to time in greater or less degree and has to be tackled whenever it occurs or recurs..... What is more, not only are the faults remediable but there are encouraging signs that steps are being taken to cure them. If this report were concerned only with events up to the spring of 1999 it would have presented a sorry picture indeed..... However, much has been done in the time since then..... Nevertheless there is still a great deal of ground to be covered before the public can be satisfied that the Police and prosecution authorities are clear of institutional racism, they still have a long way to go."

We have looked at the ways in which the Department has built on their early work and our recommendations are intended to highlight improvements we consider will enable the Department to continue to improve.

The signs are encouraging and there is evidence of commitment to the task. What has become crystal clear to us is that confidence of the ethnic minority community is at best fragile and could be easily lost – the price of success is constant vigilance. The areas of race crime and associated policy, the use of

interpreters and translation, employment practices and outreach initiatives have been examined in some detail and input sought from as many system users and others as was possible. Although we have made suggestions and recommendations in relation to various practice points the overall conclusion is a positive one.

"The Chhokar case highlighted a number of issues in respect of communication and support for victims, witnesses and their families. It is difficult to be too specific about which changes have taken place since then as at the time of the Chhokar case the witness service wasn't fully developed. Staff currently working within the court setting confirm, however, that there is now a clear commitment to providing an effective service to victims and witnesses and that working relationships between all the agencies at court are constructive."

(Neil Paterson, Acting Chief Executive, Victim Support, Scotland)

In the preparation of its Race Equality Scheme and its Race Equality Action Plan the Department received wide praise for the meticulous attention to detail and close monitoring of progress. The Ministerial lead given by the Solicitor General as head of the Race (now Diversity) Strategy Group continues to send a clear signal to staff and others of the commitment of the Department at the highest level to pursue the race equality agenda. The momentum must be maintained.

As a final marker against complacency we quote the words of the former Lord Advocate, Lord Hardie –

"If you are trying to rebut the allegation that institutional racism exists in any organisation then a good starting point is to assume that it exists and then look at the systems in place to ascertain whether in fact it does exist."

We would echo that sentiment.

RECOMMENDATIONS

Recommendation 1

That Crown Office begins to monitor and evaluate use of Language Line as a tool to anticipate changes in language needs.

Recommendation 2

All precognition staff should receive training on working with interpreters.

Recommendation 3

That the performance of individual interpreters should be monitored regularly. It may make sense that this be carried out by the interpreting agencies themselves.

Recommendation 4

That Crown Office, through WGIT raises and takes forward with all criminal justice partners training on the use of interpreters with consideration being given to the development of a protocol on the use of interpreters in court.

Recommendation 5

Revision of the code of conduct for interpreters: at present the code instructs that an interpreter should not enter into discussion with the witness other than to confirm a language/dialect match, however, witnesses are in an alien environment and it would be helpful if that time spent confirming the match be extended in order to pass vital information on to the witness who may be at court for the best part of the day.

Recommendation 6

That in any revision of the Lord Advocate's Guidelines on reporting racist crime consideration be given to suggesting that the use of child witnesses under 16 to interpret for parents is inappropriate in terms of both the interests of the child and in the interests of the case.

Recommendation 7

That all interpreters involved in the criminal justice process be vetted to the level of standard disclosure.

Recommendation 8

We recommend that active analysis of applicants for employment, training and promotion should be put in place.

Recommendation 9

We recommend that active analysis of training received by staff should be put in place.

Recommendation 10

We strongly recommend that publication of monitoring data be taken forward at the very earliest opportunity and we support the use of the COPFS website as a forum via which to publish.

Recommendation 11

We would, however, recommend that the guidance on the collection of race crime statistics be beefed up to make it clear who is expected to read reports and submit statistics.

Recommendation 12

That the Department heightens its public profile, nationally and at local level.

CHRONOLOGY

- 1995** Research into the information needs of victims and issue of Judicial Studies Board paper on Body Language and Cross-cultural Communication to all legal staff and precognition officers.
- 1995** Working Group on Child Witness Support set up by the then Lord Advocate.
- Autumn 1995** Racial and Cultural Awareness Training centrally with the assistance of the Commission for Racial Equality.
- Early 1996** Training on the use of interpreters centrally. Members of Crown Office Policy Group and other members of the Service have since been involved in providing training for interpreters.
- January 1998** Publication of the Joint Statement on Crown Witnesses which had been the work of a joint Crown Office/Scottish Court Service working group. It committed both the Department and the SCS to "treat all witnesses fairly and give consideration to their interests whatever their race, sex, religion, age or any special need".
- April 1998** Crown Office Victim and Witness Steering Group formed to:-
- Keep under review COPFS policies and practices in relation to victims and witnesses and to identify areas where service delivery could be improved.
 - Monitor and co-ordinate the Department's involvement with other agencies in the development and implementation of co-ordinated strategy for initiatives on victim and witnesses.
 - Report by June 1998 on options for the provision of case progress information to victims and to outline a victim information strategy.
 - Oversee the development of a programme of victim awareness training that commenced with a 2-day event in October 2000.
- May 1998** Issue of revised Chapters 12 and 13 of the COPFS Book of Regulations dealing with Deaths and Public Inquiries.
- Summer 1998** Awareness raising seminars on Chapters 12 and 13 of the COPFS Book of Regulations.

- 1 Aug 1998** Re-issue of Judicial Studies Board paper on Body Language and Cross-cultural Communication to all legal and precognition staff as part of a review and consolidation of existing policy guidance, which took place within Crown Office Policy Group in 1997/8.
- 29 Sep 1998** Crown Office Circular (COC) on new policy on racially aggravated crime contained in the Crime and Disorder Act 1998:-
- To use statute instead of common law in summary cases.
 - In solemn cases to have regard to the statutory penalties in making recommendations on appropriate charge and forum.
 - Fiscal Fines inappropriate.
 - District Court inappropriate.
 - When using the Section 96 aggravation the Procurator Fiscal in selecting the forum must have regard to the maximum sentencing power of the court to allow the court to take the aggravation into account in determining the appropriate sentence.
- The Department took the unprecedented step of consulting with the Commission for Racial Equality on this guidance. The nature of the guidance has repeatedly been made public by Lord Advocates at the Scottish Grand Committee, for example in early 1999 and in speeches to conferences organised by Race Equality Councils in June 1999 and March 2000.
- 30 Sep 1998** Crime and Disorder Act 1998 creating the new statutory racially aggravated offences came into force.
- 4 Nov 1998** The murder of Surjit Singh Chhokar.
- 6/9/10 Nov 1998** The 3 accused appear at court.
- 13 Nov 1998** Crown Counsel instructions issued that only Ronnie Coulter should be fully committed and that David Montgomery and Andrew Coulter be liberated meantime.
- 17 Nov 1998** Ronnie Coulter was fully committed and remanded in custody. The 110-day time limit in the case was 6 March 1999.
- 19 Jan 1999** The precognition was reported to Crown Office and Crown Counsel instruct that Ronnie Coulter be indicted in the High Court on a charge of murder. The position with

David Montgomery and Andrew Coulter was to be reviewed after the trial of Ronnie Coulter.

13 Feb 1999 Sir William MacPherson reported on the Stephen Lawrence Inquiry.

1 Mar 1999 Ronnie Coulter was indicted to the sitting to commence on 1 March and the trial took place on 2, 3, 4, 5, 7 and 9 March 1999. He was convicted of simple assault and the Advocate Depute did not move for sentence. The trial judge openly criticised the Crown's decision to prosecute Ronnie Coulter alone.

11 Mar 1999 The then Lord Advocate's reply to the trial judge was widely reported in the media.

15 Mar 1999 The Chhokar Family Justice campaign was established.

6 Apr 1999 Following the Stephen Lawrence Inquiry report the Lord Advocate issued further directions to COPFS in relation to the prosecution of racially motivated crimes, which are in line with Sir William MacPherson's recommendations in respect of the Crown Prosecution Service:-

- Rebuttable presumption in favour of prosecution where evidence of racial motivation existed.
- Particular care should be taken at all stages of the prosecution to recognise and include reference to racial motivation which is an aggravating factor which has bearing on the offence and bring it to the attention of the court.
- Pleas of guilty should not be accepted which exclude available and admissible evidence of racial motivation.

Although the report did not specifically relate to Scotland the recommendations in the report were considered by the Department and immediately accepted where relevant. The above guidance was issued within 6 weeks of the publication of the Stephen Lawrence inquiry report.

April 1999 The impact of the MacPherson recommendations on the Department was discussed at the Senior Civil Service seminar.

30 Apr 1999 Victim Steering Group sub-group on Information to Victims formed to develop a pilot scheme for the provision of case progress information to victims.

- Jun 1999** The then Lord Advocate addressed a conference arranged by Grampian Racial Equality Council and stated in response to questions from the media that criminal justice agencies must assume that institutional racism exists or risk complacency which could itself constitute evidence of the existence of institutional racism.
- Jun 1999** The Lord Advocate had previously commissioned Crown Office Policy Group to draft an action plan dealing with race matters, this was completed in June 1999.
- 21 Jun 1999** The case against David Montgomery and Andrew Coulter was reported to the Law Officers.
- 28 Jun 1999** Indictment of David Montgomery and Andrew Coulter instructed.
- Jul 1999** A pilot workshop on customer awareness was held at Glasgow Sheriff Court. Crown Office and the Scottish Court Service in collaboration with Victim Support Scotland had developed it.
- After a favourable evaluation a team of trainers from each Department was trained in the delivery of the programme in September 1999 and thereafter the training was rolled out to frontline staff.
- 16 Aug 1999** The first sitting into which the case against David Montgomery and Andrew Coulter was indicted.
- Sep 1999** Feasibility study commissioned on the Lord Advocate's proposal for a new service for victims attached to COPFS.
- 13 Sep 1999** The date of the adjourned indictment - 2nd sitting.
- Sep 99-Jun 00** Racial awareness training delivered regionally to all staff.
- 22 Nov 1999** The date of the adjourned indictment – 3rd sitting.
- 1999** Lord Advocate's Working Group on the support of child witnesses reported with 16 sets of recommendations.
- 2000/2001** Two members of staff were seconded from Grampian Racial Equality Council to the Aberdeen Office where they worked as Precognition Officers.
- 10 Jan 2000** The date of the adjourned indictment - 4th sitting.

- 13 Jan 2000** "Being a Witness" leaflet translated into Punjabi, Urdu, Bengali, Chinese, Arabic and Hindi.
- Feb 00 onwards** The Department contributed to the drafting of the Executive's Action Plan for Scotland which contained a number of commitments made by COPFS. The Deputy Crown Agent represented the Department on the Stephen Lawrence Inquiry Steering Group.
- 14 Feb 2000** The date of the adjourned indictment - 5th sitting.
- 10 Apr 2000** The date of the adjourned indictment - 6th sitting.
- Apr 2000** The Department intimated in the 2000-2003 Strategic Plan:-
- An intention to establish a pilot at the Aberdeen Office to provide information, support and assistance to the victims of serious crime and next of kin.
 - A commitment to pursuing a policy of positive action to improve recruitment of minority ethnic and disabled staff.
- 5 Jun 2000** The date of the adjourned indictment - 7th sitting.
- 31 Jul 2000** The date of the adjourned indictment - 8th sitting. The adjournments were as a result of the devolution issues raised and appeals ultimately to the Judicial Committee of the Privy Council.
- Jul 2000** Lord Advocate established the Race Strategy Group (later to become the Diversity Strategy Group) and asked the Solicitor General to chair this and take special responsibility for race matters within the Department.
- Jul 2000** Issue of a new Chapter of the COPFS Book of Regulations - Chapter 22 Victims, Next of Kin and Witnesses - including a section of minority ethnic victims, next of kin and witnesses.
- 10 Aug 2000** Introduction of practice of requesting interpreters to attend at the Procurator Fiscal's Office to facilitate the witness in claiming expenses.
- 28 Sep 2000** Training for trainers on Chapter 22 with particular reference to domestic abuse, later cascaded at Regional level.

- July-31 Oct 00** Review of all reports received by Procurator Fiscals during this period of racially motivated crime. (Results reported in Crown Office Circular (COC) dated 14 June 2001:-
- Vast majority of Fiscals adhering to the policy.
 - Policy clarified in light of detailed findings of review and further guidance issued).
- Sep 2000** Results of feasibility study commissioned in September 1999 endorse the Lord Advocate's proposal for a new service for victims attached to COPFS - Victim Liaison Office (now Victim Information and Advice - VIA).
- 9 Oct 2000** The date of the adjourned indictment - 9th sitting.
- 23 Oct 2000** The date of the adjourned indictment - 10th sitting. The case was then adjourned on Crown motion.
- Oct 00 & Mar 01** Anti-racist training input to training days for Advocate Deputes (ADs). Judicial Studies Board Bench book also circulated to all ADs.
- Oct 2000** Training for trainers on Victim Awareness for legal and precognition staff held with input from Victim Support Scotland and Rape Crisis, later cascaded at Regional level.
- 6 Nov 2000** The final trial sitting - 11th sitting. The trial took place during November 2000 after the second anniversary of the death of Surjit Singh Chhokar. At the conclusion of the trial David Montgomery was acquitted and Andrew Coulter found guilty of housebreaking and uttering a stolen giro cheque but in respect of the murder he was convicted of assault only.
- On 29 November 2000 the Lord Advocate took the unprecedented step of announcing 2 inquiries into the prosecution handling of the case. Sir Anthony Campbell looked at the way prosecution decisions were made and Dr Raj Jandoo reviewed and reported on the liaison arrangements in the case and whether liaison arrangements were affected in any way by institutional racism.
- Jan 2001** After a pilot in Glasgow Language Line telephone interpreting service has been available in all offices since January 2001.

- Early 2001** Review of Departmental arrangements and policy in relation to the instructions of criminal court interpreters and followed by guidance on policy and best practice on 6 July 2001.
- Mar 2001** Department assisted the Central Research Unit in relation to research into racist crime in Scotland.
- 2 Apr 2001** Race Relations (Amendment) Act 2000 came into force.
- 11 May 2001** COC on RRAA 2000:-
- Detailed the specific duties proposed by the Department in response to the Act.
 - Advertised the establishment of the Race Strategy Group to develop Departmental strategy on race issues and the Regional Resource Teams (now Area Teams) to co-ordinate race strategy regionally.
- 11 May 2001** Review of arrangements for instruction of criminal court interpreters announced in COC - further guidance to come (issued 6 July 2001).
- May 2001** The issue of the Lord Advocate's Guidelines to Chief Constables on the investigation and reporting of racist crime in light of the recommendations of the Lawrence Inquiry Report and the Crown Office review on racist crime. The perception of the victim as to motive should be ascertained and reported to the Fiscal.
- May 2001** Training for interpreters.
- Jun 2001** Secondment of a second year trainee solicitor to the Commission for Racial Equality and secondments from the West of Scotland Community Relations Council to the Procurator Fiscal's Office at Glasgow started and continue to the present time.
- 14 Jun 2001** COC on results of review of racially motivated crime (July - 31 Oct 2000). The vast majority of Procurator Fiscals were found to be adhering to Crown Policy. Policy was refined:-
- No change to the rebuttable presumption.
 - Warning letters were never to be issued.
 - Diversion/mediation and reparation was considered appropriate in a very few cases and this course could only be followed after the matter was reported to Crown Office Policy Group.

- Where police officers were called "black bastards" and there was sufficient evidence to institute proceedings under the statutory provisions Procurator Fiscals should proceed with the statutory provision where police officers were of an obvious minority ethnic background.
- Anti-English racism was caught by the statutory provisions and if there was sufficient evidence the statutory provisions should be libelled.
- Care was required in the consideration of offences against travelling people as Romany gypsies are a distinct ethnic group but there had been no judicial consideration of Scottish travellers from a non-Roma background.

6 Jul 2001

COC on review by the Race Strategy Group of arrangements for instruction of interpreters by Procurator Fiscals. Introduced:-

- Guidance on instruction of interpreters, on the briefing of interpreters and using interpreters in court.
- Minimum requirements on the qualifications and experience of interpreters.
- Interpreters' code of conduct.

20 Jul 2001

COC on docquet to be attached to correspondence and other documentation where despite attempts made to clarify the position with the police it remains unclear as to whether the intended recipient requires translation services. This was intended as part of an incremental approach which the Department was taking to the issue of translation of correspondence and documentation. The original docquet was in 7 languages; as of 10 May 2004 this is now 30.

19 Sep 2001

The Lord Advocate announced the setting up of an internal management review to start in October 2001 and Jonathan Pryce, a senior Civil Servant from the Scottish Executive and Catherine Dyer, Procurator Fiscal, Linlithgow appointed (this reported in February 2002 and led to the reorganisation of the service from 6 Regions into 11 Areas).

24 Oct 2001

The Lord Advocate announced to Parliament the findings of the inquiries by Sir Anthony Campbell and Dr Raj Jandoo into the handling of the tragic case of Surjit Singh Chhokar.

2001

Report by the Centre for Education for Racial Equality in Scotland (CERES) at Edinburgh University re an

audit/review of COPFS training (results of further review submitted 9 August 2002).

- 28 Feb 2002** Report on the planning, allocation and management of resources in COPFS - the Pryce Dyer Report that led to the reorganisation of the COPFS.
- 28 Mar 2002** COC detailing:-
- The second set of Lord Advocate's Guidelines to Chief Constables, which took effect on 1 April 2002 with the aim of improving the quality of the investigation and reporting of racist crime. Although the guidelines were in preparation prior to the publication of Dr Jandoo's report into the tragic case of Surjit Singh Chhokar they also attempted to take into account many of the recommendations in the report. They supersede and consolidate the first set of guidelines.
 - The transfer of responsibility for interpreters for the accused from COPFS to the Scottish Court Service from 1 April 2002. This arrangement does not cover the District Courts and the Procurator Fiscal continues to instruct interpreters for accused in some District Courts.
- 9 Aug 2002** Follow up report from CERES at Edinburgh University on the mainstreaming of race training. The Diversity Awareness Programme being rolled out throughout COPFS for all staff being the result.
- Oct 02-Mar 03 & Oct 03** Review of quality of police reporting in light of the terms of the second set of guidelines from the Lord Advocate to Chief Constables (follow up exercise in October 2003).
- 8 Oct 2002** COC on the provision of interpreters for bereaved relatives and relatives of victims who wish to view proceedings.
- 6 Jun 2003** Establishment of the Equality Advisory Group to provide independent and expert advice to COPFS on the impact or likely impact of its existing and future policies on equality issues and any racial, religious and cultural issues which arise in criminal cases and in particular the likely liaison needs of bereaved relatives from a minority ethnic or religious community.
- 27 Jun 2003** The Criminal Justice (Scotland) Act 2003 came into force and Section 74 of the Act provided an aggravation of religious prejudice in relation to any offence. Evidence

from a single source is sufficient to prove the aggravation. Directions to Procurator Fiscals were also given on such cases:-

- There should be a rebuttable presumption in favour of prosecution where evidence of religious prejudice exists.
- The attention of the court should be brought to evidence of the religious prejudice aggravation at all relevant stages of prosecution.
- Any reduced or partial plea will require to be fully justified and the reasons for taking such a plea should be recorded. There is a strong presumption against acceptance of a plea that excludes available and admissible evidence of the religious prejudice aggravation. Reduced or partial pleas are not acceptable where the complainer is a member of a particularly vulnerable group or where such religious aggravation may be associated with other forms of prejudice and, in particular, racist behaviour.
- Proceedings will normally be appropriate in the Sheriff Court or above but there may be some cases where District Court proceedings will be sufficient and where a fiscal fine may be considered. The reasons for taking proceedings or issuing a fiscal fine should be recorded.
- Where religious prejudice in terms of Section 74 is libelled in a charge Procurator Fiscals, in selecting the appropriate forum, must have regard to the maximum sentencing power of the court to allow the court to take the aggravation into account in determining the appropriate sentence.
- Warning letters may be considered in exceptional cases but only on the personal instruction of the District Fiscal.
- Diversion/Mediation and Reparation. Some offenders may benefit from such schemes and the Procurator Fiscal should check that a suitable course is available for such cases before following this course. Such cases should be passed to District Fiscals to assess and take the final decision on whether or not to instruct either of these disposals.
- Guidelines were also issued by the Lord Advocate to Chief Constables on the investigation and reporting of offences aggravated by religious prejudice.

Sep-Oct 2003

Training of in-house trainers for Diversity Awareness Programme prior to rollout commencing. This training followed on from attendance at a police run course. This programme is being rolled out to every member of the COPFS.

- Oct 2003** Review of quality of police reporting in light of the terms of the second set of guidelines from the Lord Advocate to Chief Constables (following on from exercise October 2002 - March 2003).
- Oct 2003** Establishment of WGIT - Working Group for Interpreting and Translation Provision in the Criminal Justice System in Scotland in partnership with the Scottish Court Service, Scottish Legal Aid Board, the Police and the Law Society of Scotland. The aim of the group is to drive up standards in interpretation and translation.
- 2003** Publication by the Scottish Executive of guidance on the investigative interviewing of children and questioning of children in court in response to the Lord Advocate's Working Group on Child Witness Support.
- 17 Feb 2004** Diversity Proofing Tool guidance published on Departmental intranet - race proofing has now been widened to include the entire diversity agenda.
- 31 Mar 2004** COC providing guidance to staff in respect of "failed asylum seekers" and the extent to which the apparent withdrawal of all financial support could lead to some degree of criminality.
- Apr 2004** A survey of members of the public leaving Procurator Fiscal Offices in April 2004 by an independent survey company found satisfaction ratings high with 87% of users "very" or "fairly" satisfied with the service received.
- 23 Jun 2004** COC permitting the issue of warning letters in race cases as an alternative to prosecution in exceptional circumstances.
- 24 Jun 2004** Crown Office results of 2003 review of compliance with the Lord Advocate's Guidelines on the investigation and reporting of racist crime by the police.
- Sep 2004** Review of COPFS structure on diversity with the topics becoming regular agenda items at the Management Board and the Legal and Policy Forum meetings replacing the National Area Diversity Team meetings. Reports will then be made to the Diversity Strategy Group which will continue to be chaired by the Solicitor General.

ANNEXE A

Having been introduced in 1998, annual information with regards the Section 50 charges is available from 1999 onwards. The figures presented here (tables 1 and 2 and charts 1-9) are derived from the Scottish Executive Justice Department (SEJD) court proceedings database¹. They relate to convictions where the main offence involved - generally categorised as such by severity of sentence recorded on that database - was a charge of racially aggravated harassment or racially aggravated conduct. The racially aggravated harassment charge, since it involves the pursuance of a course of conduct – that is, must involve conduct on at least two occasions - may be regarded as the more 'serious' of the two racial charges, for purposes of interpretation.

Information on convictions where the racial offence is 'secondary' to another offence (again, generally categorised as such by severity of sentence recorded on the SEJD court proceedings database) is available only for years 2001 and 2002, and is presented in Table 3.

Information with regards offences with a racial aggravation recorded against them (under Section 96 of the 1998 Act) is presented separately, in table 4, following the analysis of the Section 50 charges. Data on instances where non-harassment orders were obtained in relation to the Section 50 racial harassment charges is then presented.

Please note that the following analysis is based on a relatively small number of cases, and so care should be taken when interpreting the results.

In Scotland in 2002, some 512 individuals were responsible for a total of 533 convictions where the main offence involved one of the statutory racial offences. This represents a pronounced increase since 1999 when there were just 53 such convictions (Table 1, Chart 1). However, at least some of the rise is likely to be due to an increase in public confidence and reporting factors.

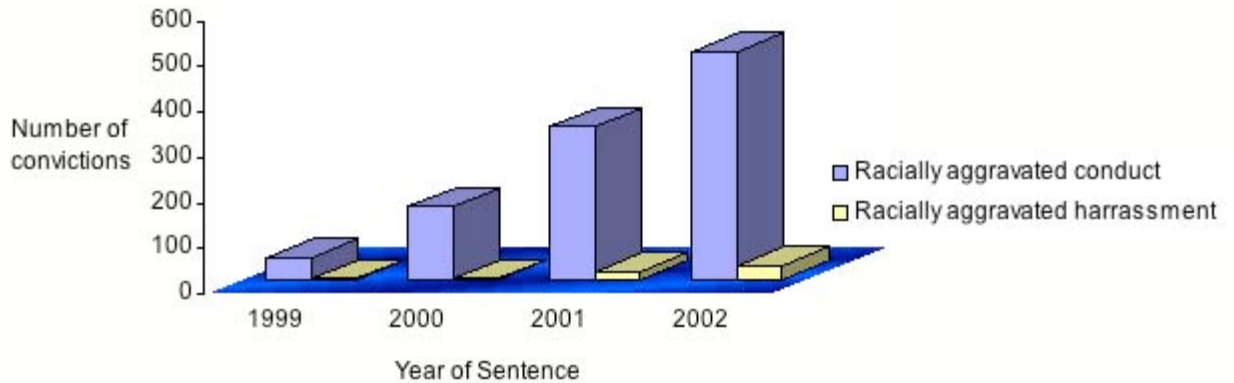
Table 1 – Convictions for Section 50 Racial Offences (where race offence was the main offence), 1999-2002

	Year of sentence			
	1999	2000	2001	2002
Total	53	166	356	533
Racially aggravated conduct	49	162	338	502
Racially aggravated harassment	4	4	18	31

¹ Information held on the Scottish Executive Justice Department (SEJD) court proceedings database is derived from records extracted from the Scottish Criminal Record Office (SCRO) criminal history system

Chart 1

Convictions for Section 50 Racial Offences, 1999-2002

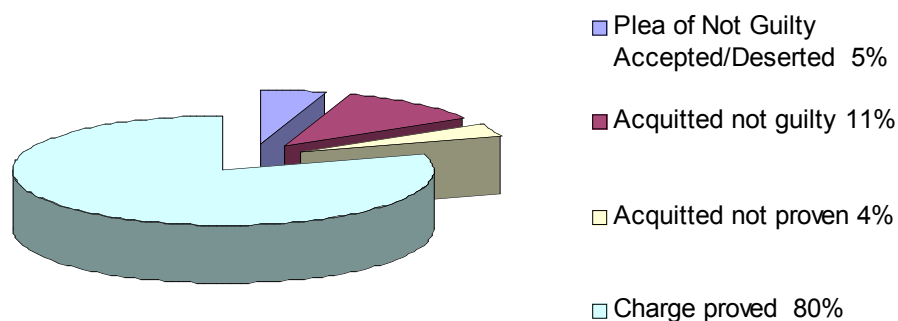


Of the total number of convictions in 2002, 502 (94 per cent) were for racially aggravated conduct and 31 (6 per cent) were for racially aggravated harassment. A similar ratio in the number of convictions for each of the two categories of offence was observed in each year since 1999. Persons convicted of these racial offences form a relatively small proportion (0.4 per cent in 2002) of all convictions in Scottish Courts. However, this proportion has increased marginally year-on-year since 1999.

An estimated 80 per cent of persons proceeded against in court in 2002 for such racial offences had at least one charge proved against them or a plea of guilty accepted (Chart 2 overleaf).

Chart 2

Persons proceeded against for racial offences, by % outcome², 2002



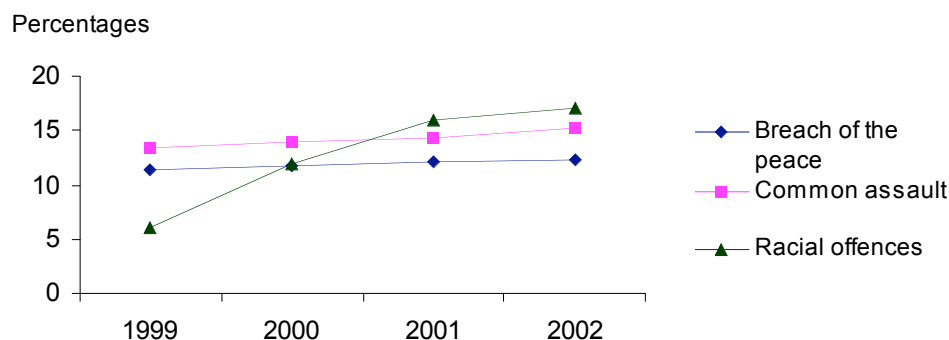
This compares, for example, with 85 per cent and 78 per cent in respect of breach of the peace or assault.

Gender and age profiles for those convicted of the racial offences make interesting reading. While the number of female offenders convicted of racial offences is small, females have accounted for an increasing proportion of all those convicted for these offences – 6 per cent in 1999 rising to 17 per cent in 2002. Over the same period, by comparison, the proportion of females convicted of common assault charges has increased slightly from 13 per cent in 1999, to 15 per cent in 2002. The proportion of females convicted of breach of the peace charges has only marginally increased; 11 per cent in 1999, remaining stable at 12 per cent from 2000-2002. (Chart 3 overleaf)

² Estimated figures

Chart 3

Percentage female convictions, by category of offence, 1999-2002



Convictions for racially aggravated harassment were exclusively male in 1999 and 2000, and were almost exclusively so in 2001 and 2002. The relatively small numbers convicted of this offence tended to be in the younger age groups – for example, 39 per cent were aged under 21 in 2002 (Table 2). However, in relation to racial convictions overall, offenders aged over 30 comprised the largest group in 2002. This was true for both males (38 per cent) and females (45 per cent) (Charts 4 and 5).

Table 2 – Convictions for Section 50 racial offences, by age and gender, 2002

		Total	Racially aggravated conduct	Racially aggravated harassment
All	Total	533	502	31
	Under 21	168	156	12
	21-30	156	146	10
	Over 30	209	200	9
Female	Total	88	86	2
	Under 21	27	25	2
	21-30	21	21	0
	Over 30	40	40	0
Male	Total	445	416	29
	Under 21	141	131	10
	21-30	135	125	10
	Over 30	169	160	9

Chart 4

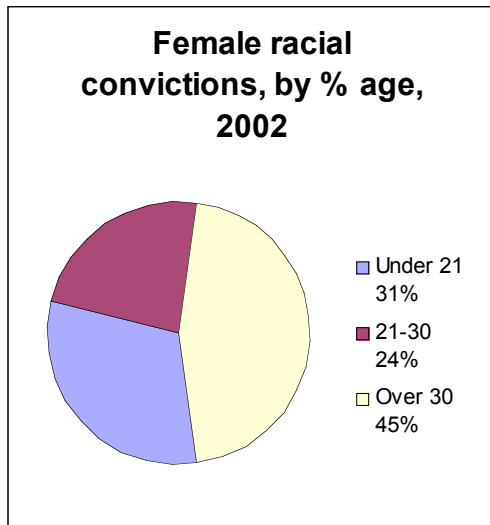
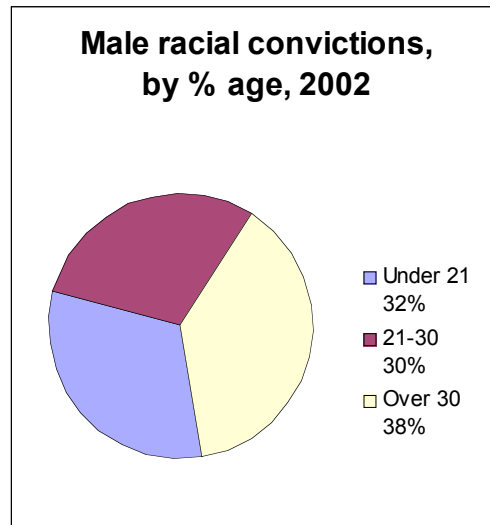


Chart 5

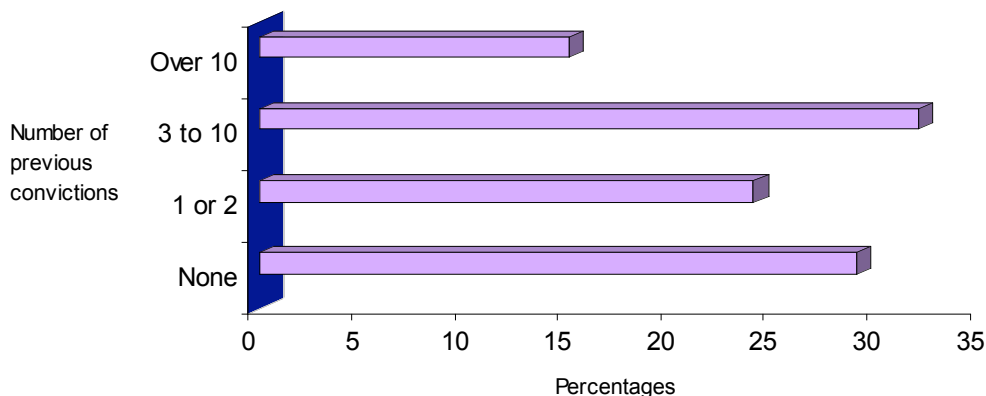


There were broadly similar gender and age profiles for those convicted of racial offences in previous years though there tended to be slightly higher proportions of offenders in younger age groups, in respect of both males and females.

Interestingly, a good proportion of those convicted of racial offences have also been involved in criminal activity previously. Of the 512 individuals convicted on at least one occasion in 2002 for one of these racial offences, 71 per cent had at least one previous conviction in the period 1993-2002. 15 per cent of offenders had over 10 previous convictions (Chart 6).

Chart 6

Percentage of individuals convicted of Section 50 racial offences, with previous convictions, 2002



The vast majority (98%) of convictions were made in Sheriff Summary Courts in 2002. Nearly all of the small number of convictions which were made in a Sheriff and Jury Court over the period 1999-2002 related to racially aggravated conduct.

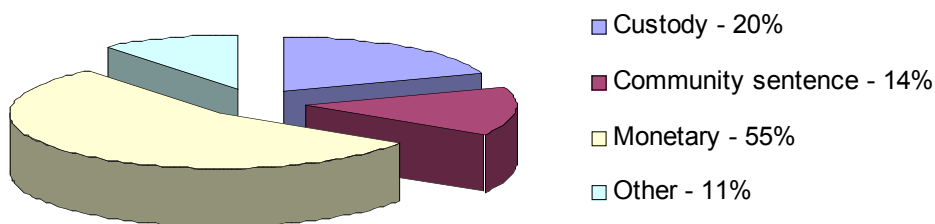
The 1998 Act provides for fines and maximum prison penalties for racially aggravated conduct and harassment charges of:-

- on summary conviction – six months imprisonment;
- on indictment – seven years imprisonment.

In terms of penalties actually imposed for the statutory racial offences the statistics show that over half (55 per cent) of all convictions in 2002 resulted in a fine. One fifth (20 per cent) of convictions resulted in a custodial sentence being imposed as the main penalty with another 14 per cent having a community sentence imposed. The remaining 11 per cent of convictions in 2002 were accounted for by other types of sentence, mainly admonitions (Chart 7).

Chart 7

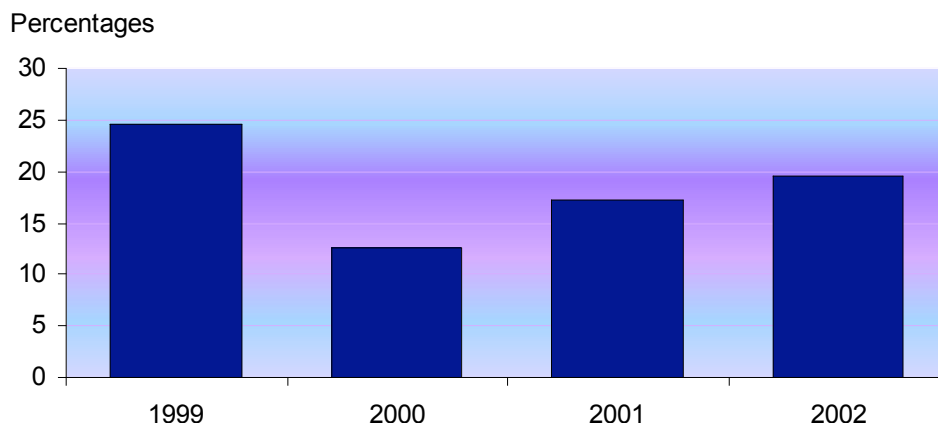
**Convictions for Section 50 racial offences by
% main penalty, 2002**



The percentage of convictions resulting in a custodial sentence has been increasing over the period 2000-2002 after a dip between 1999 and 2000. While around 20 per cent of convictions resulted in a custodial sentence in 2002, this proportion was 25 per cent in 1999, 13 per cent in 2000 and 17 per cent in 2001 (Chart 8 overleaf).

Chart 8

Percentage of convictions for Section 50 racial offences resulting in custodial sentences, 1999-2002



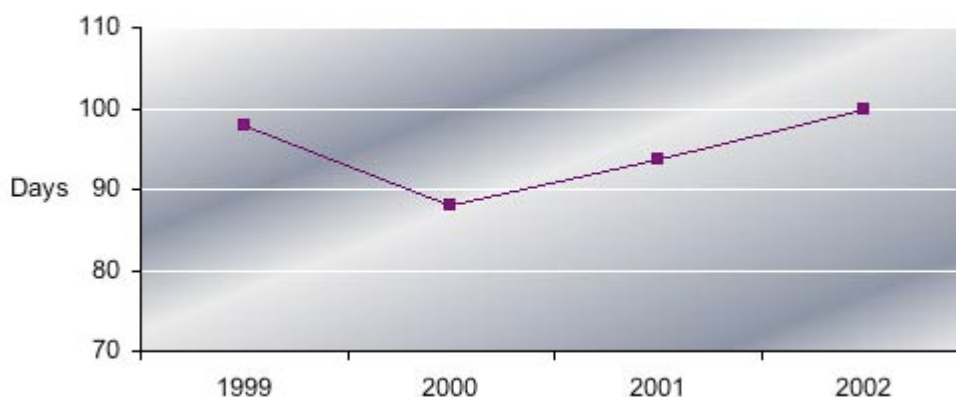
Custodial sentences were more likely to be imposed in convictions for racially aggravated harassment convictions (29 per cent in 2002) than for racially aggravated conduct (19 per cent in 2002), reflecting the more serious nature of the former offence. By way of comparison, in 2002 custodial sentences were imposed in 26 per cent of convictions for all offences classified as “crimes” (generally the more serious type of offence), in 9 per cent of convictions for breach of the peace and in 13 per cent of convictions for common assault.

Nearly all persons given a custodial sentence on conviction for the racial offences were male (for example, 96 per cent in 2002).

Apart from a dip between 1999 (when the number of custodial sentences imposed was small – 13 in total) and 2000, the average length of sentence imposed for these two racial offences has generally increased over time (Chart 9 overleaf). Although broadly similar, the average length of custodial sentence for convictions for racially aggravated harassment (98 days in 2002) is generally slightly less than for racially aggravated conduct (100 days in 2002).

Chart 9

**Average length of custodial sentence (days)
imposed for Section 50 racial offences, 1999-2002**



For the purposes of comparison, the average length of custodial sentence for breach of the peace was 87 days in 2002, increasing from 76 days in 2000. Common assault custodial convictions generally attracted a slightly longer average sentence (145 days in 2002).

In addition to the preceding analysis a further 239 racial convictions were obtained where some other offence was designated as the main offence in the SEJD court proceedings database (generally because of the severity of sentence imposed on each individual offence). A summary of these "secondary" racial offences broken down by the main offence involved in the conviction, for 2001 and 2002, is given in Table 3. Figures are not available for earlier years.

Table 3 – Convictions where the race offence was 'secondary' to another main offence, 2001 and 2002

Main offence in conviction	2001			2002		
	Total	RAC ²	RAH ³	Total	RAC ²	RAH ³
All	143	135	8	239	220	19
Crimes of violence	3	2	1	3	3	0
Crimes of dishonesty	11	11	0	24	22	2
Criminal damage	34	31	3	27	25	2
Breach of the peace	18	17	1	41	36	5
Common assault	58	56	2	109	100	9
Other crimes and offences	19	18	1	35	34	1

² Racially aggravated conduct

³ Racially aggravated harassment

Racially Aggravated Offences

As noted in Chapter 2 of the report, the 1998 Act introduced in Section 96 a statutory racially motivated aggravation that could be added on to any offence.

Since mid-1999, information prescribed by the ISCJIS (Integration of Scottish Criminal Justice Information Systems) data standards has been recorded for an increasing proportion of convictions. This includes the recording of information on any offence aggravators such as a racial aggravation associated with an offence.

The rollout of ISCJIS is not yet complete across all courts and so the coverage of the information on offence aggravators for convictions will not yet be complete. The robustness of such data that does exist has still to be fully evaluated. These points should be taken into consideration in interpretation of the following data.

Table 4 below presents the data currently available (for 2001 and 2002).

Table 4 – Charges proved with a racial aggravation recorded against the offence (under Section 96), 2001-2002

Offence which racial aggravation is recorded against	2001	2002
Total	29	176
Crimes of violence	0	2
Crimes of dishonesty	0	8
Criminal damage	1	13
Breach of the peace	18	88
Common assault	9	59
Other crimes and offences	1	6

It can be seen that racial aggravations are most frequently recorded against charges proved in respect of breach of the peace and common assault.

Although information over time is limited, age and gender profiles are broadly similar to those obtained in relation to the Section 50 racial charges. Females account for a relatively small but increasing proportion of the totals and the proportion of offenders aged over 30 is generally at least a third for both males and females. While data for 2003 is not yet publicly available, early indications reinforce the emerging trends.

Non-Harassment Orders

As also noted earlier in the chapter it may be appropriate (at Fiscal discretion) for a non-harassment order to be sought in relation to Section 50 racial harassment charges. Latest data shows that in 2002, two such

non-harassment orders were obtained in relation to racial harassment charges proved (of a total of 31 racial harassment charges proved in that year).

Future statistical information in relation to racist incidents

The collection of statistics on racist incidents was formally approved by ACPOS on 19 April 2002. Following a period of time necessary to allow police forces to develop the technical infrastructure necessary to collect statistics on racist incidents in the required format and to ensure uniformity of collation and submission the collection was implemented from 1 January 2003.

The collection covers all racist incidents across Scotland using the definition supplied from the Lawrence enquiry: *"That a racist incident is any incident which is perceived to be racist by the victim or any other person"*.

Importantly, the collection will gather information on, among other things, ethnicity of both victim and perpetrator. This is the first time this information has been collected. It is anticipated that results of the collection will be published by the Scottish Executive for the first time in 2005 and thereafter on an annual basis.

INTERPRETERS POSTAL SURVEY

The main interpreting agencies used by the Fiscal Service were contacted initially and asked for their co-operation in sending out a questionnaire to their members. Questionnaires were then sent directly to those agencies that responded and were distributed to individual interpreters from there. Subsequently, a total of 50 questionnaires were returned to the Inspectorate. Hence it is not possible to say with absolute accuracy what this represents in terms of response rate; to give an indication, the total number of questionnaires sent to agencies was 105.

Information on ethnic background was not collected as was not required in this context. Given that the survey was intended for completion by all interpreters employed by the various agencies, including some requested by services other than COPFS (for example, the court or by the police), information relating to Fiscal performance exclusively is unfortunately very limited. Many interpreters made references indicating that they were referring to, and commenting on assignments organised by the Scottish Court Service or by the Police.

However, a number of interesting findings emerged, relating to the experience of interpreting at court and indeed to interpreting generally. The main findings are presented here.

Summary Results

Interpreters were asked in which language(s) they interpreted. There were a wide variety of languages indicated and many respondents interpreted in more than one language. While there were 26 distinct languages indicated, some of the most often mentioned were Cantonese (10 per cent), Kurdish Sorani (8 per cent), Dutch (8 per cent), Albanian, Spanish, Turkish and Urdu (all 6 per cent).

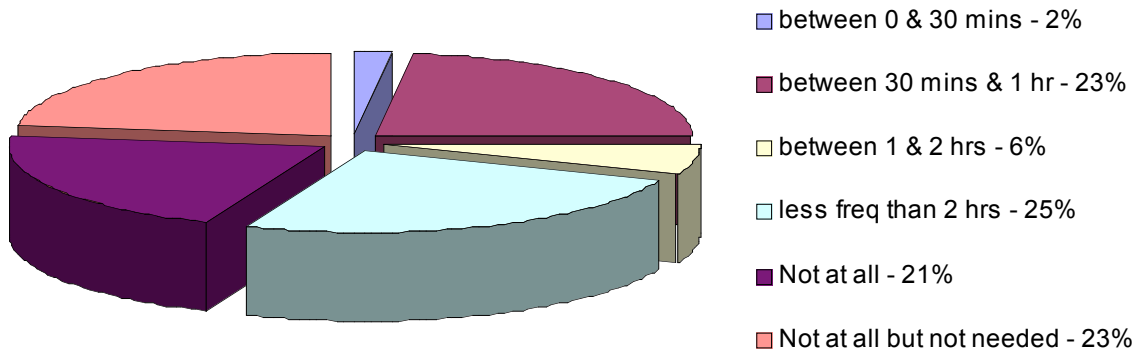
Figure 1 overleaf shows the distribution of responses, in percentage terms, relating to frequency of breaks that are given, while interpreting at court.

Good practice suggests that breaks should be given, or at least offered, after approximately every 30 minutes. Even allowing for breaks up to one hour as being acceptable it is clear that the majority (52 per cent) indicated that the breaks they received were much less frequent than this. In fact, some were not offered breaks at all.

Note that 23 per cent respondents indicated that they received no breaks, but that breaks were not actually needed. Generally, it was indicated that this was because of the length of time involved in interpreting (usually between 30 minutes and 1 hour, although on one occasion longer).

Figure 1

How often do you get breaks when interpreting?



However, it appears that not all of those receiving breaks less frequently than is recommended by good practice actually felt that they required one within that limit. A further question asked if the breaks received were adequate. Over half of respondents (58 per cent) indicated that the breaks they received were either always or mostly adequate with another 11 per cent indicating that breaks given were adequate sometimes. However, 31 per cent of respondents indicated that the breaks they were given (or not, as the case may be) were mostly not, or never, adequate.

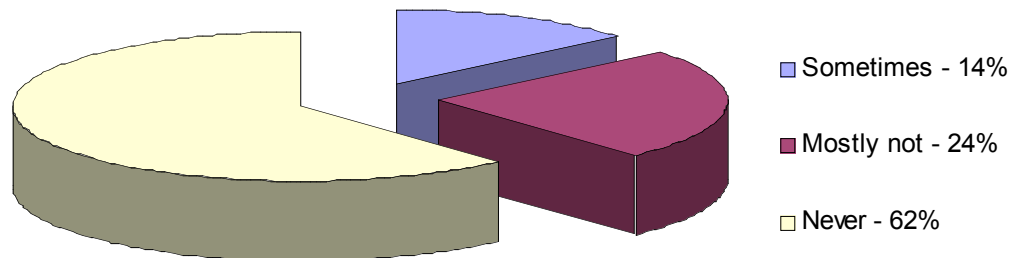
In relation to those who indicated that the breaks given were not adequate, a further question was asked about whether this caused problems for them. Where respondents indicated either yes or sometimes (71 per cent), the main difficulty reported was a loss of concentration when having to interpret for long periods of time and related difficulties following on from that – loss of confidence, slower speed of interpreting and so on.

The provision of breaks for the interpreter in court is, of course, a matter for the court (see [Recommendation 4](#) in Chapter 3).

Interpreters were also asked whether they ever felt they were unsuitable for an assignment, for whatever reason. Figure 2 below shows the responses received, in percentage terms.

Figure 2

Do you ever feel you are not suitable for an assignment you are given?

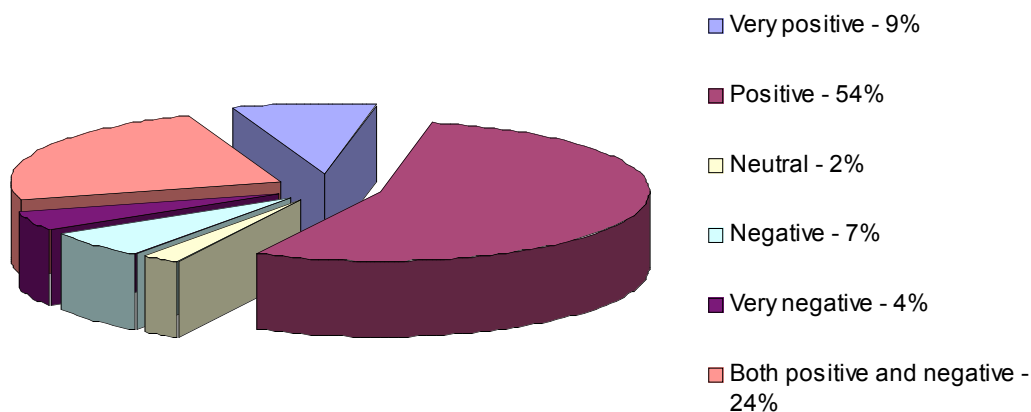


While 86 per cent of responses fall into either the 'mostly not' or 'never' categories, 14 per cent of respondents indicated that sometimes they did feel unsuitable for a given assignment. Note, though, that no replies fell into the 'mostly yes' or 'always' categories.

In an attempt to gauge interpreters' overall level of satisfaction with court as a working environment, an open-ended question was included in the questionnaire, prompting respondents for a general description of their impression and/or experience of being an interpreter at court. This yielded some very interesting feedback. The responses, which were categorized as ranging from very positive to very negative are presented as percentages in Figure 3 overleaf.

Figure 3

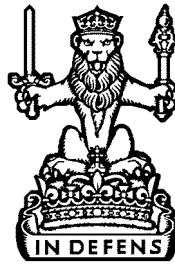
How would you describe your overall experience of being an interpreter at court?



A reassuring number of respondents answered positively – 63 per cent indicated that their overall experience was either positive or very positive. However, a small proportion of respondents felt that their experience generally was negative or very negative (11 per cent) and a further 24 per cent felt it was both a positive and negative experience.

Particularly interesting feedback was obtained via the comments received in relation to the general question posed. Some common themes emerged (many of which were similarly drawn from the face to face interviews conducted with interpreters – the exception is point 5 below):

- Audibility of speakers in the court is often poor;
- All parties in court should be trained in the use of interpreters;
- The need for a separate waiting area for interpreters;
- Cancellations not compensated for;
- Lack of information about cases before assignments is a problem.



Crown Office and Procurator Fiscal Service

LORD ADVOCATE'S GUIDELINES TO CHIEF CONSTABLES

- 1. INVESTIGATION AND REPORTING OF RACIST CRIME**
- 2. ASSESSMENT OF LANGUAGE NEEDS AND CULTURAL SENSITIVITIES**
- 3. DEATH REPORTS AND ASSOCIATED CRIME REPORTS**

INTRODUCTION

Lord Advocate's Guidelines dated May 2001, dealing with the investigation and reporting of racist crime to Procurators Fiscal, have already been issued. This consolidated guidance contains the earlier guidelines and provides further guidance to the police in relation to issues of reporting of racist crime, assessment of language needs and cultural sensitivities and the information which is required by Procurators Fiscal from the police to ensure that liaison with bereaved relatives takes place in a manner which is sensitive to their religious and cultural needs.

Both the recent review of casework conducted by the Crown Office Race Strategy Group and the HMIC Report "Without Prejudice?" identified a number of areas where improvements can be made in both the reporting by the police of racist crime and in the information provided by the police to the Procurator Fiscal in cases:

- of racist crime;
- where victims, witnesses and/or the accused are from an ethnic minority background and
- where the first or preferred language of the witnesses and/or accused is not English.

These guidelines have been drafted in light of the areas highlighted in the reviews by the Crown and the police and also against the background of the requirements of the Race Relations (Amendment) Act 2000.

INVESTIGATION AND REPORTING OF RACIST CRIME

Recommendation 12 of the Lawrence Inquiry Report by Sir William MacPherson states that: -

“A racist incident is any incident which is perceived to be racist by the victim or any other person.”

The Scottish Executive has accepted this definition for the purposes of the reporting to, and recording of, racist crime by the police. The definition does not alter the onus or the standard of proof in criminal proceedings and it remains the case that the prosecutor requires to be satisfied that there is sufficient evidence to proceed before criminal proceedings in respect of allegedly racist crime may be taken against any individual.

It is of crucial importance however that the prosecutor is advised whether the victim or any other person has perceived an incident to be racist.

The Lord Advocate therefore directs that, in the investigation of crime, police officers must ascertain the perception of the victim and witnesses as to the motive for the crime¹. This must be fully investigated and clearly recorded. If racism is perceived to be a factor by the victim or witnesses this should be investigated and evidence recorded. Police officers should bear in mind that victims of racism may be reluctant to express their fears or beliefs, including their belief that an incident has been motivated by racism, and that victims reporting racism may often be doing so against a background of previously unreported racism. It will be necessary for officers in such cases to make every effort to ascertain the true perception of the victim as to the motive for the crime.

The Procurator Fiscal should always be advised in police reports of the perception of the victim and witnesses as to motive. The Procurator Fiscal should always be advised of the existence, and provided with a copy, of a racist incident monitoring form.

Bail/Custody/Use of Undertakings

It is important to ensure that prosecutors and courts are able to consider both requesting and imposing appropriate special conditions of bail in cases of repeat offending or where it appears that victims and witnesses may be at risk.

¹ Leading questions should not be used. Examples of appropriate questions include: “Why did this happen?” or “What was the motive behind the incident?”

The Lord Advocate therefore directs that in cases of racist crime² accused persons should be reported in custody where that is consistent with the Lord Advocate's Guidelines on Bail which are already in existence. Further, where reporting in custody is not appropriate in terms of the existing guidelines, accused persons should be liberated subject to an undertaking to appear at court in early course unless there is a good reason not to proceed in this way.

In cases of racist crime where an early arrest is not possible the Police should ensure that an early report is submitted to the Procurator Fiscal in order that a consideration may be given to an application for a Warrant to arrest.

In all cases Reporting Officers should provide an indication of the known language and interpreting needs of the accused.

Impact of crime on victims

As with all crime, when reporting racist crime to Procurators Fiscal police officers should include details of the impact of the crime on the victim. This should include information such as: whether the victim is in a state of fear due to the crime; whether, for example the victim is considering moving home due to the nature of the crime and any financial loss sustained by the victim. Details of the impact of the crime on the victim's family and community should also be provided where relevant.

ASSESSMENT OF LANGUAGE NEED AND CULTURAL SENSITIVITIES

Accused persons, Victims and Witnesses

In any case where it appears that the first language of the accused, victim or witnesses may not be English, the accused, victim or witness should be asked to state their "first" or preferred language should they be called to give evidence in court in due course. The accused, victim or witness should also be asked whether correspondence and documentation sent to them will require to be translated. The preference of the accused, victim or witness should be included in the police report. The Reporting Officer should also include an assessment as to whether the accused, victim or witness will require the services of an interpreter in court and to have correspondence and relevant documentation translated by the Procurator Fiscal.

The language and dialect required should be specified in the police report and in the full statement of a witness³. If the Reporting Officer is in doubt as to whether an interpreter is or is not required an interpreter should be provided

² Racist Crime should be interpreted to mean any case reported to Procurators Fiscal in which the police have charged the accused with a statutory racial offence or aggravation (including offences in terms of the Public Order Act 1986, S50A of the Criminal Law Consolidation (Scotland) Act 1995 and where the aggravation under S96 of the Crime and Disorder Act 1998 has been used).

³ If the reporting officer is unable to ascertain the language and/or dialect required this fact should be set out in the police report to allow the Procurator Fiscal and the police to work together to ensure that a genuine assessment of the language needs of the individual takes place prior to attendance at court.

by the police during the investigation and the Procurator Fiscal advised of the view of the Reporting Officer. If, in the view of the Reporting Officer, an interpreter will not be required, this should be specifically stated.

In cases where an interpreter is required for court purposes (either because of the request of the individual concerned or the view of the Reporting Officer) and it is necessary to ensure that religious and cultural needs are respected, the Procurator Fiscal should be advised of both the ethnic and religious background of the individual who requires interpreting services.

If it has been necessary to use an interpreter to interview the accused, victim or witnesses the name and contact details of the interpreter used by the police should be contained in the police report.

Instruction of Interpreters for Criminal Court Assignments

In cases where an accused requires an interpreter and where he or she is kept in custody pending appearance at court or liberated on undertaking the police should arrange for an interpreter, skilled in the language and dialect required, to assist the accused at his or her first court appearance.

The protocol which is contained in Annex 1 to these guidelines sets out agreed arrangements between the Crown Office and Procurator Fiscal Service, ACPO(S) and Scottish Court Service in relation to the instruction of interpreters for criminal court assignments and should be viewed as being part of these guidelines for that purpose⁴.

DEATH REPORTS AND ASSOCIATED CRIME REPORTS

Liaison with Next of Kin and Bereaved relatives

The Lord Advocate directs that in death reports and associated crime reports the Procurator Fiscal should be advised of the involvement and identity of the Family Liaison Officer where such an officer has been appointed by the police.

In deaths cases police officers should bear in mind that while communication with the next of kin will be appropriate, the deceased may have an extended family or partner to whom relevant information will also require to be communicated. The death report and any associated crime report should clearly identify both the next of kin and any other appropriate individuals to whom communications should be directed. This is to ensure that the family of the deceased is advised of developments in the case. In such cases the death report and associated crime report should also specify whether the next-of-kin or any other individual identified as an appropriate point of contact requires interpreting or translation services. Good practice will

⁴ The protocol will come into force from 1 April 2002 and should be followed with regard to cases calling for the first time in court thereafter.

require appropriate liaison between Procurators Fiscal and Senior Investigating Officers.

In cases where it appears that the deceased's family may have specific cultural or religious needs the death report and associated criminal report should clearly specify both their ethnic and religious background to ensure that liaison can take place in a manner which is sensitive to their cultural and religious needs.

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JANUARY 2002**

INSTRUCTION OF INTERPRETERS FOR CRIMINAL COURT DIETS

PROTOCOL

This protocol sets out agreed arrangements between Crown Office, Scottish Court Service and ACPO(S) for the instruction of interpreters for criminal court diets. It is intended to cover the instruction of community, foreign and sign language interpreters (and other interpreters required for those with sensory impairment).

It is the responsibility of the police to advise the Procurator Fiscal in the police report whether the accused or any proposed prosecution witness requires the services of an interpreter to give evidence in court. The Reporting Officer should specify the language and dialect required in the police report and should also provide the name, designation and qualifications of any interpreter used at the investigative stage so that the Procurator Fiscal and the court may ensure that, so far as possible, the same interpreter is not used at any court diet.

It is the responsibility of the Procurator Fiscal to engage a suitably qualified and experienced interpreterⁱ, skilled in the language and dialect specified in the police report, to assist prosecution witnesses in giving their evidence.

It is recognised that there is limited time available between arrest and the first appearance of an accused person in custody.

In all cases therefore where accused persons are appearing for the first time from custody the police will, so far as possible, arrange, *on behalf of the court*, for a suitably qualified and experienced interpreter to appear at court to assist the accused. The interpreter engaged for court should not be the same interpreter who assisted the accused during the investigation stage although it is recognised that it may not always be possible to secure the services of a different interpreter who has appropriate qualifications and experience given the limited time available. The fact that the police have engaged an interpreter for the accused's first appearance from custody should be set out in the police report to the Procurator Fiscal. If difficulties arise in securing the services of an interpreter the police should make early contact with the Procurator Fiscal. The fee of the interpreter in such cases will be paid by Scottish Court Service and the court will instruct the interpreter for the accused for any continued diets in the case.

In respect of all other criminal court diets, both pre-trial and trial diets, it is the responsibility of the court to engage a suitably qualified and experienced interpreter, skilled in the language and dialect required to assist the accused. In respect of all other diets the Procurator Fiscal will advise the Sheriff Clerk (or in High Court cases the Deputy Principal Clerk of Justiciary) in writing of

the language needs of the accused, namely the language and dialect as set out in the police report, at least 14 days prior to the scheduled diet.

It is recognised that the role of the interpreter in the criminal court is crucial. The Procurator Fiscal, Scottish Court Service and the police will ensure, so far as possible, that interpreters are engaged through recognised interpreting services and that interpreters engaged have appropriate qualifications and experience.

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ⁱ So far as possible interpreters engaged should have the Diploma in Public Service Interpreting (Scottish Legal Option) and recent experience of both consecutive and simultaneous interpreting in the court context. It is recognised however that there is a shortage of qualified and experienced interpreters in some languages and that particular difficulties may arise in relation to first appearances from custody. On occasion it is recognised that interpreters who do not have the preferred qualifications and experience will require to be engaged. When this is necessary the interpreting service involved should be asked to provide a written assessment setting out why the interpreter is deemed to be suitable for the proposed work.

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APPENDIX A

Mr Michael Conboy, Commission for Racial Equality Scotland

Mr Christopher Oswald, Commission for Racial Equality Scotland (replaced Mr Conboy on the latter's resignation from CRE)

Dr Elinor Kelly PhD MPhil BA, Honorary Research Fellow in Race and Ethnic Issues, University of Glasgow

Mr Dilawer Singh, Member of SEMPER (Supporting Ethnic Minority Police staff for Equality in Race)

Mr Kenny McInnes QPM BSc, Assistant Inspector of Constabulary

Miss Morag McLaughlin, Head of Policy, Crown Office and Procurator Fiscal Service

APPENDIX B

LIST OF ORGANISATIONS CONSULTED

Anderston Mel-Milaap Centre, Glasgow

Association of Indian Organisations, Glasgow

Ayrshire Race Equality Partnership

The Central Mosque, Glasgow

Chinese Centre, Glasgow

Commission for Racial Equality Scotland

District Councils, Scotland

Ethnic Minority Law Centre, Glasgow

Grampian Racial Equality Council

National Register of Public Service Interpreters

Otago Street, Glasgow, Gurdwara

Positive Action in Housing Ltd, Glasgow

SASLI (Scottish Association of Sign Language Interpreters)

Sheriff Race, Edinburgh, Gurdwara

Taleem Trust, Glasgow

Tayside Police Lay Advisory Group

Victim Support Scotland

West of Scotland Racial Equality Council (WSREC)