

# **‘RACE’, ETHNICITY AND THE COURTS:**

## *A REVIEW OF EXISTING AND ONGOING RESEARCH*

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### **ABSTRACT**

*This paper discusses findings that have emerged from the Department for Constitutional Affairs (formerly the Lord Chancellor’s Department) Courts and Diversity Research Programme. During 1999-2003 four projects were commissioned, completed by academic researchers and published by the department. This paper explores the background issues to the research programme, the specific area of ethnicity within the criminal justice system, and addresses the implications of findings for socio-legal research evidenced-based policy. Aspects of the phase two programme of research and the associated projects are highlighted. Conclusions are drawn and implications considered for theory, policy and practice.*

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## Introduction

The experience of British ethnic minorities within the criminal justice system has been notoriously problematic. Although ethnic minorities within the civil justice system are particularly under-researched, research on how ethnic minorities experience the criminal justice system over the last decade, carried out by both academic and government researchers, continues to show a negative experience at the level of enforcement and sentencing (Hood 1992; Bowling and Phillips 2002a, 2002b; Home Office 2003). This paper is a discussion of the salient issues facing ethnic minorities, based on contextualising research commissioned by the Department for Constitutional Affairs Research Unit as part of its Courts and Diversity (CAD) Research Programme, the important lessons that have been learnt and what they might mean for policy and practice.

In 1999, the then Lord Chancellor's Department established, as part of its wider social research programme, a research agenda dedicated to specifically examining whether and to what extent the courts deal fairly and justly with the needs of a diverse and multicultural society. The point of origin for the research was the need for evidence-based policy in the light of the *Stephen Lawrence Inquiry* (1999).<sup>1</sup> The key questions for the programme have been a) to what extent is there evidence of any *direct* discrimination (for example, through 'colour racism')? b) How do questions of ethnicity influence decisions made in courts? c) To what extent is there evidence of any *indirect* discrimination (for example, through court procedures)? To what extent do processes have different impacts on people from different ethnic minority groups? And, d) to what extent do different ethnic minority groups believe they are likely to be treated fairly? Initial topics were identified in dialogue with senior members of the judiciary and lay magistracy, academics with expertise in the area, officials from various government departments and specialist interest groups. Furthermore, the CAD programme is being disseminated in two stages. Phase one is based on research commissioned between 2001-2002 and phase two between 2002-2003. Findings from Phase one projects were formally announced in March 2003.

Methodologically, studies were qualitative in the main. Quantitative and qualitative data generated from court files and in-depth semi-structured interviews and observations were presented in conjunction with textual data: the open-ended nature of qualitative research, combined with quantitative data, interviews, observations and documentary material provided a holistic approach to engendering answers to the research questions. The extent of the data permitted tests of statistical significance in some of the studies.

## **Context**

The issue of racial discrimination was first addressed in the Race Relations Act 1965, strengthened by the Race Relations Act 1976. Under English law, racial discrimination is defined as treating an individual less favourably than any other on the grounds of perceived ethnic or racial difference. Irrespective of the nature of this treatment, the fact that a difference has been identified on the part of the victim is enough to make it unlawful (Elliot and Quinn 2002).

The Race Relations (Amendment) Act 2000 now makes it unlawful for a public authority, including any government department, to discriminate while carrying out its functions. There is a positive duty on public bodies to promote race equality and have due regard for the need to eliminate racial discrimination and to promote equality of opportunity and good relations between people of different ethnic groups. Specific duties affecting government departments include publishing a race equality scheme on how they will assess and consult on the likely impact of policy in relation to the promotion of race equality. In addition, there is a duty to monitor the proportion of staff from ethnic minorities in employment, their appraisal and promotion.

Since the first research seminar on ethnicity and the courts held in 1999, an analysis of the ethnic background of staff at the Department for Constitutional Affairs was carried out. There was also the establishment of the Corporate Diversity Unit (CDU), responsible for ensuring a strategic approach to the delivery of the department's equality and diversity agenda. The Judicial Group monitors the ethnic background of candidates for judicial appointments. Similarly, the Magistrates' Court Service Race Issues Group, which first reported in September 2000, makes practical recommendations for

improving public confidence in the judicial process and monitors progress towards meeting performance targets.

### **Ethnic minorities and the criminal justice system**

Before elaborating on the nature and detail of the findings from the CAD research programme, it is important to explore some of the genuine issues that impact on ethnic minorities within the criminal justice system and particularly in relation to the courts. There are three important aspects to consider here. The first explores the apparent link or otherwise between ethnicity and crime, the second analyses the evidence for and against racism within the criminal justice system. Finally, existing and new research on ethnic minorities in the courts is explored.

Interaction with the criminal justice system begins with the police. The police have more direct impact on people's lives than any other enforcement agency of the Home Office. Frustration among certain ethnic minority groups is based on 'criminalisation and harassment on the one hand and inadequate attention to race crime and behaviour on the other' (Parekh Report 2000, p. 112). Indeed, the *Stephen Lawrence Inquiry* (1999) referred to institutional racism in a large public sector organisation such as the Metropolitan Police Service. Although there was hostile reaction to it from different police authorities and public policy commentators, it is quite apparent, nevertheless, that approximately five years after the publication of the report, in relation to ethnic minorities both stop-and-searches and deaths in custody are at an all time high (Bowling and Phillips 2003).

It is clear that as ethnic minorities first became established in Britain's inner cities, the racialisation they experienced also affected the ways in which they were labelled criminals within the host society at one level; at another level how they became victimised, culminating in concerns that impact on ethnic minorities at all levels of the criminal justice system. There are three areas of focus in analysing the key issues facing ethnic minorities in the criminal justice system: deconstructing offending, over-policing and sentencing.

*Deconstructing offending*

Up until the mid-1970s, South Asians and African-Caribbeans were not considered to be any more criminally inclined than their white counterparts. This, however, changed when confrontation between African-Caribbean groups and the police led to increasing rates of arrest. It is from this basis that 'black criminality' became associated with African-Caribbean culture. In contrast, South Asians were originally regarded as 'passive', 'inward-looking', or 'possessing strong family ties'. More recently, there is some thinking to suggest the 'Asian gang' is less conformist and more prepared to defend what it regards as territorial rights. The disturbances in the North of England during the summer of 2001 are testimony to the increasing instances of labelling South Asian youth as criminals (Kundnani 2001).

A significant factor in how groups are perceived to be criminally inclined or otherwise is the media. There is a much social construction carried out by the press, which has sought to over-emphasise cultural difference or exaggerate rates of criminal activity (cf. Hall *et al.* 1978). The idea of the creation of 'folk devils' (Cohen 1972) is not new in British society – historically, the Irish, Russians and Jews have been comprehensively criminalised. In the context of ethnic minority reporting, then, it is perhaps unsurprising that news often generates images of ethnic minorities in terms of conflict, drama, controversy, violence and deviance (Cottle, 2000; Hallam, 2000). At present, it is African-Caribbeans and South Asians as well as 'refugees and asylum seekers' who are considered to be part of a criminal ethnic minority 'underclass'. Ultimately, the process of labelling people negatively has the impact of making real the very invention such characterisation is based on. The Home Office Citizenship Survey of 2003 found that among people who said there was more prejudice today, 55% cited prejudice against 'asylum-seekers' or 'refugees' and 18% cited prejudice against 'new immigrants' (Home Office 2004). African-Caribbeans, South Asians and other ethnic minorities are more likely to be cautioned, stopped and searched, arrested and eventually sentenced, permitting the myth to become the reality (Gilroy 1987; Home Office 2003b).

*'Over-policing' ethnic minorities: from arrest to prosecution*

Over the last four decades, there are many examples of how the police and ethnic minority communities have come into adversarial contact. Throughout the 1970s and 1980s, the high use of stops and searches came to attention. Presently, ethnic minorities are more likely to be stopped; the stops are more likely to result in searches which also tend to be more intrusive, including the use of clothing and strip searches (Newburn and Hayman 2001), and especially in the post-September 11 climate. Since the 'war on Terror', it is South Asian Muslim men who have been seemingly over-targeted (Kundnani, 2004).

The above experiences impacts on the ways in which ethnic minorities are processed through the criminal justice system and particularly in relation to prosecutions. Once arrests are made, case files are sent to the Crown Prosecution Service (CPS). Based on the strength of the evidence, prosecutors are required to consider whether there is a 'realistic prospect of conviction'. Research has shown that the CPS is often less likely to proceed with prosecutions which concern ethnic minorities than ethnic majorities, as both perpetrator and victim (Phillips and Brown 1998; Mhlanga 1999). Furthermore, when cases proceed to court, it is found that ethnic minority groups experience higher acquittal rates compared with ethnic majorities – consistent with termination rates at the CPS. What these findings demonstrate is that impartiality earlier on in the process is an important aspect. These biases are potentially more a reflection of arrest procedures but, as the Denman Inquiry (2001, p. 107) concluded, the CPS is guilty of institutional racism, '...discriminating against ethnic minority defendants by failing to correct the bias in police charging decisions and allowing a disproportionate number of weak cases against ethnic minority defendants go to trial'.

*Sentencing*

Hoods's (1992) classic study, *Race and Sentencing*, was one of the first to look at the impact of racism and discrimination on patterns of sentencing. Based on research carried out at the end of the 1980s on five Crown Courts in the West Midlands, it found that a higher proportion of African-Caribbeans than whites or South Asians were being

sentenced to custody. The question was whether differential types of criminal activity, prior record or any other factor could account for these differences. It was ascertained that, given these controls, African-Caribbean defendants were up to twenty-three per cent more likely to be sentenced to custody.<sup>2</sup>

No other systematic study has been carried out in this area during the last decade. The Home Office, however, do publish regular statistics on sentencing practices in Crown Courts and Magistrates' Courts and it has been found that ethnic minorities in general are *not* found to be negatively treated in the Magistrates' Courts but South Asians are, given the nature of the offence, 'significantly more likely' to be sentenced to custody (Flood-Page and Mackie 1998). More recent Home Office publication data, that is section 95 statistics, as required by the Criminal Justice Act 1991, has suggested that there is no evidence of difference in the rates of custody between groups. Recently, in terms of Crown Court decisions, in relation to violent offending, African-Caribbean offenders are far more likely to receive custodial sentences. In relation to prison populations, ethnic minorities, in particular African-Caribbeans are disproportionately represented. Furthermore, these prisoners are more likely to be younger than whites (Home Office 2003).

Within the criminal justice system, all of the above reminders show how evidently different the experiences of ethnic minorities are. These broad observations are important to bear in mind when considering the overall experiences of ethnic minorities within the criminal courts as the final-stage of a journey through the criminal justice system full of biases and indiscretions towards certain ethnic minority groups.

### **Issues of confidence**

The Home Secretary, the Department for Constitutional Affairs and the Attorney General share the responsibility for the effective workings of the criminal justice system. The Department for Constitutional Affairs is primarily responsible for the courts and legal advice. In line with the specific interests of the research programme and the key areas of work that the Department for Constitutional Affairs is involved in, four

projects were carried out as part of phase one of the Courts and Diversity Programme (2001-2002).

*Perceptions of trust within the criminal justice system*

Arguably the most significant of the phase one studies was that carried out by Hood *et al.* (2003). This study investigated the extent to which ethnic minority defendants and witnesses in Crown and Magistrates' Courts perceived their treatment to have been unfair, whether any unfairness was attributed to racial bias and how this affected their confidence in the criminal courts. Experiences were compared with those of white defendants. The study also considered the views of court staff, judges, magistrates and lawyers. Altogether, 1,252 people were interviewed in Manchester, Birmingham and London and proceedings in relation to more than 500 cases were observed.

The study examined the experience of defendants and their representatives from first encounter with court staff to completion of court processes. The perceptions of court staff, magistrates and judges were also explored so that comparisons could be made between the perspectives of all the different parties involved. The experiences and perceptions of ethnic minorities were contrasted where appropriate with those of a group of white defendants. Important questions were whether, how and why magistrates and judges are perceived to act fairly or unfairly. The study also examined whether perceptions varied according to whether judges or magistrates had received equality or diversity training.

In relation to some of the key findings, some African-Caribbeans and South Asians still believed their sentences to be overly severe because of their ethnicity. In relation to the key issues of confidence, in the Crown Court, African-Caribbean (38 per cent) and South Asian defendants (34 per cent) were as likely as white defendants (40 per cent) to say they would not expect to be treated fairly next time they came to court. In the Magistrates' Courts, a notably higher proportion of African-Caribbeans (39 per cent) and South Asians (35 per cent) than white defendants (15 per cent) stated this. However, only seven per cent of all African-Caribbean and South Asian defendants in

the Crown Court and nine per cent in the magistrates' courts believed they would be disadvantaged in future because of their ethnic origin.

Widening the perspectives, more white than South Asian clerks and ushers (98 per cent vs. 71 per cent) and a similar proportion of white and South Asian lawyers (69 per cent & 63 per cent) thought there was 'nowadays *always* equal treatment of ethnic minorities by the courts'. But a much lower proportion of African-Caribbean lawyers (43 per cent) and staff (28 per cent) thought this. A higher proportion of African-Caribbean (30 per cent) than either white (13 per cent) or South Asian (11 per cent) lawyers said they had *personally* witnessed incidents in court they regarded as 'racist.' Finally, all the 26 judges and two-thirds of the 125 magistrates had received ethnic awareness training. Only two judges and three magistrates said that it had 'added nothing' or been 'unhelpful.'

This research suggests there is a change for the better in the *perceptions* of ethnic minorities in relation to racial impartiality in the criminal courts. Several judges mentioned that attitudes had altered in recent years and magistrates reported a substantial decline in the frequency of racially inappropriate remarks. Many lawyers also reported that racial bias or inappropriate language was becoming 'a thing of the past'. As Hood *et al.* (2003b) state,

*Every effort therefore should be made when passing sentence to demonstrate to and convince defendants that no element of racial stereotyping or bias has entered into the decision. Among Black defendants and lawyers in particular there was a belief that the authority and legitimacy of the courts, and confidence in them, would be strengthened if more personnel from ethnic minorities were seen to be playing a part in the administration of criminal justice. Indeed, in the Crown Court, 31 per cent of ethnic minority defendants, and in the magistrates' courts 48 per cent, said they would like more people from ethnic minorities sitting in judgement and amongst the staff of the courts. Many judges agreed that more could be done to avoid the impression of the courts as 'white dominated institutions' ... The findings from this study do help in some way*

*towards dismissing the view that most ethnic minority defendants believe their treatment by the courts has been biased. Nevertheless, if it could be shown that the 'cultural change' has the potential to influence differential sentencing of white and ethnic minority defendants, it would further help to improve the confidence of ethnic minorities in the criminal courts.*

Although this study has shown that perceptions of bias amongst ethnic minorities appearing before the criminal courts does appear to be less widely held than in the past, 'the findings should not lead to complacency' (Hood *et al.*, 2003). The finding that one in five African-Caribbean and one in eight South Asian defendants categorically perceived racial bias in the Crown Court and at least one in ten in the Magistrates' Courts, considering also that African-Caribbean lawyers and staff were more likely to perceive bias than others, 'is sufficient cause to continue the efforts' (*ibid.*). Perceptions of bias, often held strongly by African-Caribbean defendants in the Crown Court, could quite conceivably emanate from the conviction that the inexplicably high number of African-Caribbeans affected by the criminal justice and prison systems 'must, at least to some extent, be a reflection of racism' (*ibid.*). It cannot be taken for granted therefore that the experience of ethnic minorities is necessarily becoming more positive based on an analysis of perceptions. It is very much the case, and the evidence overwhelmingly supports this, that whether people perceive it or otherwise, objectively, ethnic minorities experience a harsher reality within the criminal justice system. This occurs from the initial arrest to the final sentence – even though the extent to which ethnic minorities perceive negative treatment might be considered to be less than expected.

*Monitoring ethnicity, raising awareness and the multi-layered nature of social exclusion*

Other studies in this programme include research carried out on the question of ethnic monitoring within the courts (Candy *et al.* 2001). A number of important findings and recommendations were made. The civil courts do not currently collect information regarding the ethnicity of court users. In civil cases only the most basic of personal details, for example name and address of the claimant and defendant are recorded. Indeed, obtaining ethnicity data presents difficulties as many civil cases involve

organisations not individuals. Information relating to the financial means of the defendant is only collected where the case reaches enforcement proceedings. In family cases the court records personal information such as date of birth, financial details and the presence of children. The success with which court users are encouraged to provide information on their ethnicity will hinge on the explanations provided on why they are being asked. The explanation should not only elucidate the purpose of collection but should stress the confidentiality of the information and the potential policy implementations which would be of benefit to court users. Future development of monitoring systems will involve careful consideration of the ways in which ethnicity is defined and of the classification systems currently in use (observation or self-classification based on census categories). Although this was the first of the research projects from the CAD programme to report, the introduction of ethnic monitoring has yet to be introduced.

Brophy *et al.* (2003) explored the issues involved in child protection cases where children are of ethnic minority backgrounds. Within a statutory framework that aims to protect all children from parental ill-treatment, this study explored the information on diversity available to courts and whether the legal criteria engaged to assess 'significant harm' and future risk to children are sufficiently sensitive to culturally diverse approaches to parenting. The study involved an analysis of court files concerning applications for care orders under s.31 of the Children Act 1989, observations of court hearings and interviews with key court personnel. Findings support the need for ethnic monitoring in public law proceedings not only to provide information to support consideration of policy questions but also help the everyday operational work of family courts. When a case is heard, the court is highly dependent on the written evidence provided and has no independent way of knowing whether diverse cultural contexts might be relevant in the absence of documented information. The study found some worrying gaps in the information before the court. The clear message of the study is that both courts and other professionals need to be aware that, where appropriate, attention is drawn to culturally diverse contexts. It is equally important from the parents' perspective to ensure fair and just treatment by courts. The issue of providing accurate information on the social, cultural and ethno-religious characteristics of court users

needs also, however, to be combined with greater efforts on the part of court officials to better appreciate issues of ethnic diversity. Culturally-sensitive information inserted in court files cannot be separated from how that information is first added and then to what use is ultimately made of it.

Housing possession cases and how they impact ethnic minorities was explored by Blandy *et al.* (2002). It was found that getting into arrears with both mortgages and rents did not appear to differ between white and ethnic minority households. The level of debt at summons was variable, although substantial amounts were generally owed by the time a summons was issued. Ethnic monitoring would enable further research to analyse whether there are differences in the practices of landlords and lenders towards ethnic minorities. Although judges may on the whole be white and male, there was no evidence in the research that this affected their treatment of different defendants. None of the defendants felt they had been treated unfairly, although numbers in the study are small.

A number of themes ran through the research. Perhaps the most pervasive was that of issues in receiving housing benefit. For the majority of tenants this affects their whole view of the housing possession process and can be a cause of disengagement with the court system. While these problems affect all tenants, some ethnic minority groups are disproportionately dependent on benefit and may be more impacted. It is important here, nevertheless, to remain careful of 'blaming the victim'. That certain ethnic minorities are more reliant on state support should not be seen to be the function that drives the inequality of outcome in housing possession cases.

A second theme was the barrier of communication for those who do not have English as a first language. This affects the whole process: from dealing with landlords and lenders through to fully understanding the summons. While there are no easy solutions to this problem there are some easy changes, e.g., signage in court in significant community languages that could have an immediate impact. Finally, another key theme identified by research suggested that there is bewilderment about the court process. It is clear that many people are confused about the difference between criminal and civil proceedings.

The focus group participants and defendants made frequent reference to features of the criminal courts when talking about the county court. When non-attendees were asked what if anything would have made them feel more confident about attending the court hearing, most people agreed that there was a need for greater information about the court process which could help them to demystify processes and procedures. Poverty through social exclusion and economic marginalisation impacts on (a) being in the unfortunate position of having to rely on state support and then (b) not having the confidence or the articulation needed to engage proactively with the civil justice process.

### *Research in progress*

Phase one of the research programme is now complete. Phase two research projects are currently in the field, working on a range of diverse areas of research specific to ethnic minorities.

One of these projects looks at the experiences of ethnic minority magistrates in order to examine experiences of racism and discrimination in relation to fellow magistrates, court staff and professional court users. The aim of the project is also to discern whether the ability of ethnic minority magistrates to work effectively is compromised because of racism and discrimination. Another project is based on the work of Brophy *et al.* (2003); it is a follow-up study exploring the views, perceptions and experiences of ethnic minority parents. A substantial project which seeks to explore the experiences of ethnic minorities and the tribunal systems has been commissioned – it looks to see how ethnic minorities perceive the system as well as experience it, determining the barriers that exist and which seemingly negatively impact on ethnic minorities. Finally, a similarly substantial project is currently evaluating the view, experiences and perceptions of ethnic minority jurors. All of these projects are set to report in 2005.

It is apparent that the commitment to deliver a justice system that appropriately takes into consideration the needs of a diverse and multicultural society remains. Overall, social research that helps to determine the issues and options available will have been considered from 1997-2005. From 2004 onwards, all the social research the Department

for Constitutional Affairs commissions will need to demonstrate that it recognises the important and contemporary diversity, ethnicity and discriminatory issues that face minorities in the criminal justice system. This needs to occur not just as function of what happens to ethnic minority people within courts but up to the moment they actually enter them – and as a function of pre-court criminal justice processes.

## **Discussion**

There is a range of different factors that affect the experiences of ethnic minorities within the criminal justice system. It appears from the findings from phase one studies and what the projects from phase two are in the process of revealing, that, for the most part, people's experiences of and attitudes towards the courts are becoming less negative. What affects the negative perceptions of ethnic minorities is a cumulative experience of the criminal justice system, from initial contact with the police, crown prosecution service, to prisons or probation – all of which have shown to be negative in certain instances. In addition, there is a clear lack of awareness and knowledge of what the different agencies do as well as the nuance of difference between organisations and how they fit into the wider structures of the criminal justice system and how this impacts on certain ethnic minority groups. How courts are signposted, in what languages and how religious and cultural differences are considered or otherwise all impact on how ethnic minorities experience the criminal justice system. The finding was painfully repeated across all the phase one research projects that dealt with perceptions of the courts.

It is noticeable, nevertheless, that the Department for Constitutional Affairs is firmly dedicated to delivering a fairer system of justice, and the social research that has been carried out is published and widely used among the judiciary, the courts, barristers, solicitors and other parts of the criminal justice system. As a matter of fact, the judiciary has appeared to be potentially the most active and vociferous in wanting to tackle the issues of diversity, having already made significant developments in relation to the publication of useful guidelines. The Judicial Studies Board publishes the *Equal Treatment Bench Book* under the direction of the Equal Treatment Advisory Committee. These are positive developments and encouraging signs that suggest much improvement

in matters and the willingness to want to improve them further since, at least, the publication of Hood's (1992) study.

The broad lesson to emerge from studies in phase one is that, on the whole, aspects of the criminal justice system are improving in relation to how ethnic minorities perceive themselves to be treated *but* not entirely. Furthermore, it is clear that often it is the build-up of, sometimes innocuous-sometimes not, occurrences in the processes of administering justice that has a deleterious consequence for ethnic minorities. More simply, greater sensitivity towards ethnic minorities and their needs are to be exhibited early in the process. Often ethnic minorities are disempowered – those who are from lower social class backgrounds are also more likely to have poorer command of English, poorer health, poorer housing and a genuine lack of confidence in the justice system based on wider alienation and marginalisation in society. Hence they are especially vulnerable to the inexactness of the criminal justice system.

Existing over and above the everyday experiences of ethnic minorities that can lead them to experience the justice system negatively, there are the perceptions and attitudes of British ethnic majorities – which can sometimes be overly negative. An aspect of how the negative stereotypes of African-Caribbeans and South Asians are created is a function of media reporting. Furthermore, how ethnic minorities are depicted in popular entertainment programmes with a crime-detective focus are important considerations in how the 'ethnic minority criminal' is subliminally internalised and accepted as real (van Dijk 1993). The media has a large part to play in how perceptions towards the 'other' are shaped. Therefore, it is important that improvements within the justice system take into full account the patterns of prejudice that have a long history and are often deep-rooted in everyday norms and values. One thing does remain certain, to look at how fairly ethnic minorities are being treated by the justice system, it is apparent that the courts cannot be observed in isolation. They are part of a wider set of processes in relation to the administration of justice, where the courts are the end-stage of a journey that starts with police arrests and referrals, eventually ending in conviction, sentencing and imprisonment.<sup>3</sup> Findings from the research studies carried out by the Department

for Constitutional Affairs show clearly the importance of appreciating the extent of the cumulative impact.

Further research is required in order to determine how the criminal justice process operates in its entirety rather than at any one point in time. Furthermore, the use of the 2001 Census will help to determine experiences based on wider changes to local area demography. Finally, and by no means lastly, the Race Relations (Amendment) Act 2000 has important implications for the system of justice in England and Wales and greater efforts will be required of practitioners to ensure that they are not legitimising the status quo *but* are actively challenging everyday assumptions and beliefs about ethnic minorities in an attempt to deliver a fairer system of justice. Certainly, questions of confidence are important but it is also vital to realise that there are many inequalities within the justice system, and which have deep roots as part of the post-war immigration and settlement of former 'New Commonwealth' countries. The experience of more visible ethnic minorities needs to be considered as part of wider movement to incorporate non-white groups into dominant society. What a focus on perceptions does, however, is to draw attention away from observable difference in treatment and outcomes. The basis of any further research and development in this area needs to take into consideration ethnic disadvantage at the level of individuals and groups in society but also the procedures, practices, ambiguities and inconsistencies found in the systems of justice in general.

### **Disclaimer**

The views and opinions of the author do not reflect those of ministers or civil servants at the Department for Constitutional Affairs.

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## NOTES

1. The Macpherson Inquiry (1999) brought the issue of racial violence to the top of the political agenda. The inquiry found that the investigation into Stephen Lawrence's murder by the London Metropolitan Police Service was, 'marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers' (46.1). The report further highlighted the ways in which Dwayne Brooks, a friend of Stephen Lawrence's at the scene, was racially stereotyped. Stephen Lawrence's parents were also thought to have been handled insensitively.

2. Hood's (1992) study of sentencing practices in relation to ethnic minorities in five Crown Courts was criticised for its statistical findings but Hirsch and Roberts (1997, p. 227) conclude that, 'an adequate threshold of significance was used in the study; that the exclusion of certain status variables did not invalidate the study's findings; and that the choice for which sentencing variables to control for is ultimately a normative matter'.

3. Hough *et al.* (2003) found that from 1991 to 2003, the prison population increased from 36,000 to 62,000. The key reasons for this are that sentences are becoming longer for criminal offences and where people might have received a community penalty in the past they are now more likely to obtain a prison sentence.

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