



# **Race and Criminal Justice** in Northern Ireland

Towards a Blueprint for the Eradication  
of Racism from the CJSNI

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## 1. Introduction

- [1]. NICEM (the Northern Ireland Council for Ethnic Minorities) published its *The Next Stephen Lawrence: Racist Violence and Criminal Justice in Northern Ireland* report in 2006.<sup>1</sup> This report described the frightening reality of racist violence in Northern Ireland at that time through the testimonies of NICEM clients. It also addressed responses to that violence, particularly those of the police and the criminal justice system in Northern Ireland (CJSNI). The tone of people's experience was characterised by the title – one victim of sustained racist violence made it clear that he had to leave Northern Ireland because he did not want to become the 'next Stephen Lawrence'.<sup>2</sup> This illustrated graphically the impact of racist violence on the lives of BME (Black and Minority Ethnic) people living in Northern Ireland. The report went on to detail ways in which the response of the police and the criminal justice system to that violence might be improved. The report found that the criminal justice system was 'institutionally racist' in the sense that this term was employed by Macpherson.<sup>3</sup> The research suggested that there had been a, 'collective failure' across the CJSNI, 'to provide an appropriate and professional service to people because of their colour, culture or ethnic origin'. It was hoped that the report would play a pivotal role in transforming the situation vis-à-vis BME people and racism in Northern Ireland.
- [2]. Unfortunately that hoped for outcome has not materialised. Since 2006 members of the BME community in Northern Ireland have continued to suffer intense racist violence. In 2009, one period of sustained scrutiny saw images of a 'pogrom' against Roma flashed around the world. (NICEM involvement in this episode is detail in Annex Four.) This episode saw Northern Ireland characterised yet again as the 'race hate capital of Europe'.

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<sup>1</sup> This report is available to download from NICEM at: <http://www.nicem.org.uk/elibrary/publication/the-next-stephen-lawrence>

<sup>2</sup> Stephen Lawrence (September 14th 1974 – April 22nd 1993) was a Black British teenager living in London who was murdered in April 1993 at the age of 18. While waiting at a bus stop in with his friend Duwayne Brooks, he was attacked and stabbed by a gang of white racists – one of whom called out "what, what nigger?" The failure of the police in particular and the criminal justice system in general to respond appropriately to this racist murder resulted in a campaign for justice for Stephen Lawrence and, ultimately, led the British Government to institute the Stephen Lawrence Inquiry. The Macpherson Report (1999) was the report of this public inquiry. Macpherson concluded, "Stephen Lawrence's murder was simply and solely and unequivocally motivated by racism. It was the deepest tragedy for his family. It was an affront to society, and especially to the local black community in Greenwich. Nobody has been convicted of this awful crime. That also is an affront both to the Lawrence family and the community at large". In 2011- after years of campaigning by his family and supporters – it was announced that 'new and substantial evidence' had become available in the case. On 3 January 2012, two men were found guilty of Stephen's murder and were sentenced to detention at Her Majesty's Pleasure for what the judge described as a "terrible and evil crime". His other killers remain at large.

<sup>3</sup> Macpherson defined 'racism' and 'institutional racism' thus: "Racism" in general terms consists of conduct or words or practices which advantage or disadvantage people because of their colour, culture or ethnic origin. In its more subtle form it is as damaging as in its overt form. "Institutional Racism" consists of the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people. (MacPherson 1999: 6.4, 6.34).



Another episode in 2009 saw whole communities 'ethnically cleansed' from parts of south Belfast after violence between fans at a Northern Ireland/Poland soccer match. Suggestions have continued of an intimate connection between loyalist paramilitaries and racist violence. And in 2011 one member of the BME community did become another 'Stephen Lawrence'. In other words, profound problems remain in terms of racism and racist violence in Northern Ireland. Moreover, questions remain in terms of both the desire and the capacity of the Northern Ireland criminal justice system to address this violence. Meanwhile, the reality of living with racism continues to be reflected in the experience of NICEM's clients:

"I find it difficult to accept how being called a Paki and being told to return to your 'native' home is not racially motivated. How can an incident that resulted in my daughter having a broken nose, stitches, bruising all over her body, being called 'a Paki' and told to go back home throughout the assault ... not have a racial connotation? Especially when the word 'Paki' was used throughout the assault? [She] now hates the colour of her skin, her name, [and] won't go into the town without an escort. She has been to three different schools due to racial harassment. I'm totally appalled at the lack of any support or understanding for my daughter's predicament. I don't feel she has been heard or protected from harm. I believe that the whole experience has left her scarred and has stripped her of any confidence she had. [She] hates discussing what she has been through as it emotionally drains her. [She] tried taking her own life at one point stating that the abuse is never going to go away and that she wishes she was born white" (NICEM client)<sup>4</sup>

[3]. While this is at the most shocking end of the spectrum of the experience of racism in Northern Ireland, it is a sobering reminder of why this research matters. First of all, profound questions remain in terms of the reality of racist violence and the response of the criminal justice system. Beyond this, the broader issues of race and criminal justice remain almost untouched.

[4]. We want to ask, therefore, how this situation might be positively transformed – to ask what a 'blueprint for the eradication of racism' might look like for the criminal justice system in Northern Ireland. This is a particularly opportune time to propose a new beginning on race and criminal justice. With the recent devolving of the administration of justice and a new Minister and Department for Justice in place, the opportunity for addressing race and criminal justice in Northern Ireland has never been better. The Department of Justice has made a very clear commitment to radical, wide ranging reform:

Since being in office, David Ford has initiated a wide ranging programme of reform to reshape the justice system and to build a fair, just and safer community in Northern Ireland. The reform programme will touch almost every aspect of the justice system and significant advances have already been made in reform of legal aid and the Prison Service.<sup>5</sup>

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<sup>4</sup> Testimonies from victims and survivors of racist incidents are indicated by italicised and shaded text. These all come from NICEM clients. These accounts are anonymised.

<sup>5</sup> See 'About the Department of Justice' <http://www.dojni.gov.uk/index/about-us.htm>



- [5]. In this context, there should be every opportunity for a radical initiative on race and justice in Northern Ireland. Fifteen years after the GFA - which promised a new beginning on human rights and equality – and fourteen years after the Macpherson report, there is no excuse for inaction. The whole devolved administration can and should be addressing an innovative approach to race and criminal justice now, whatever the failures of the past.

## 1.1. Background to this research

- [6]. This research stems directly from an earlier scoping study - 'Race and the Criminal Justice System in Northern Ireland – a scoping study for NICEM' which was completed in 2010. This scoping study was prepared for NICEM following up on the issues raised in the 'Next Stephen Lawrence' report in 2006.<sup>6</sup> The summary of the scoping study suggested:

The minimum action suggested is to revisit the 'Next Stephen Lawrence?' report in the context of recent developments. The report might be obviously updated in a range of ways – most importantly, the new empirical data from NICEM should be incorporated and used to confirm or change analysis were appropriate. The questions on racially aggravated violence should also be revisited. The more challenging action would be for NICEM to undertake a thorough-going review of race and criminal justice across the whole system in Northern Ireland. The recommendation of this scoping paper is that both options are progressed simultaneously. This approach offers the possibility of synergies between the two pieces of research.

- [7]. The research question for this analysis is framed by the issues of race and the criminal justice system in Northern Ireland. In other words, there are three defining elements of interest – *race* or ethnicity or BME groups; the *criminal justice system* (this is defined in some detail below); and *Northern Ireland*. Each of these elements overlaps and creates areas of interest and different degrees of research and analysis. Thus the focus of this research is the specificity of race within the criminal justice in Northern Ireland – not least because criminal justice was so central to the Good Friday Agreement (GFA) and its outworking. It is also clear that developments in the criminal justice system in England and Wales and Scotland - as well as developments in the Republic of Ireland - have a direct relevance to Northern Ireland.
- [8]. Traditionally debates in the UK focused on the *over-representation* of Black people in the criminal justice system – particularly among the prisoner population - and the question of whether this was to be explained in terms of criminality or racism. More recently - especially post-Macpherson Report - analysis has focused on other issues. For example, the Institute of Race Relations 'policing and criminal justice' index provides a stark reminder of just how profound those problems remain in the UK. As the IRR indicates,

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<sup>6</sup> See McVeigh (2010) 'Race and the Criminal Justice System in Northern Ireland – a scoping study for NICEM'. This document was widely circulated for discussion among BME groups and other interested organisations in Northern Ireland. It is available from NICEM.



BME people in the UK find themselves trebly discriminated against by the criminal justice system – in terms of *victimisation*, *criminalisation* and *employment*:

People from ethnic minority backgrounds are effectively discriminated against three times over when it comes to crime and the whole criminal justice system. They are more likely than white people to be victims of crime; they are likely to receive much harsher penalties than their white counterparts; in terms of employment the legal establishment is almost uniformly white and ethnic minorities are under-represented in both the prison and police services. (Institute of Race Relations 2002)

- [9]. We can suggest that these three foci should frame any investigation of race and the criminal justice system in Northern Ireland. In fact it would be striking if there were *not* similar problems within a jurisdiction and a criminal justice system has been subjected to almost none of the reform relating to race implemented within the UK system over recent years.
- [10]. There is not an extensive literature to inform any investigation. In terms of an overview of the situation in Northern Ireland, NICEM's own *The Next Stephen Lawrence?* (2006) remains a crucial text. There is a general dearth of discussion on racism and criminal justice in Northern Ireland. This is partly explained by the lack of statutory data – which itself remains indicative of a problem. Crucial data are still not being collected and/or made public by the criminal justice system. The only other significant publication specific to the situation in Northern Ireland is *Policing, Accountability and the Black and Minority Ethnic Communities in Northern Ireland* (Radford, Katy, Jennifer Betts and Malcolm Ostermeyer 2006). This was commissioned by the Northern Ireland Policing Board (NIPB) and the Office of the Police Ombudsman for Northern Ireland (OPONI). These statutory bodies commissioned the Institute for Conflict Research to undertake research on attitudes towards, and experiences of, the new policing arrangements in Northern Ireland by individuals from the black and minority ethnic (BME) population. The main issues addressed are the BME population's attitudes towards and knowledge of the PSNI, NIPB and District Policing Partnerships (DPPs); and OPONI. The research identified both progressive developments on race associated with the new policing structures as well as continuing issues of concern.
- [11]. NICEM's ongoing work on the issue continues to point towards significant concerns as well as new challenges:

*There has been the focus on the Unite Against Hate campaign which is a good branding campaign but there is some concern that there is too much reliance on this campaign to deal with some of the underlying issues around hate crime and people's perceptions. For us there is the trap that agencies can fall into of relying on this as their stand against hate crime without looking at fundamental issues around access and reform. There is also a growing trend for organisations to categorise hate crime/harassment as anti-social behaviour as there are systems in place for this and these issues seem to get dealt with fairly quickly whereas there still seems to be a*



*struggle to deal with harassment as being motivated by hate... some of this is down to people still not wanting to admit or confront behaviours that are racist.<sup>7</sup>*

- [12]. In other words, for all the change there has been in rhetoric, the NICEM experience suggests a profound, ongoing problem with the ability of the Northern Ireland criminal justice system to recognise and confront racism. When the Macpherson report from the Stephen Lawrence Inquiry was launched in 1999, the Independent characterised it as forming 'nothing less than a *blueprint for the eradication of racism in the British criminal justice system*'. The NICEM experience suggests that Northern Ireland remains in a 'pre-Macpherson situation'. Our analysis suggest that all parties interested in racial justice in Northern Ireland – statutory and non-statutory alike - need to work towards an appropriate implementation of the letter and spirit of Macpherson – as well as incorporating subsequent lessons from England and Wales and Scotland. Put simply, there remains a pressing need to move towards a blueprint for the eradication of racism in the Northern Ireland criminal justice system. That is the focus of this research.

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<sup>7</sup> Research communications comprising new qualitative data gathered during the research are indicated by italicised text. These come from NICEM workers and other race and criminal justice experts in both statutory and NGO sectors. The authors are anonymised.



## 2. The Criminal Justice System in Northern Ireland

### 2.1. What is a criminal justice system?

- [13]. It is useful to situate this discussion first more generally in terms of the notion of the criminal justice system in the UK. Here we can begin with self-definition by the sector itself:

The criminal justice system (CJS) in England and Wales ... comprises: the crime related work of the following criminal justice departments, agencies and services: Home Office – Police, Prison and National Probation Service and their respective directorates; other central and national police services; and support for victims primarily through an annual grant to the independent charity Victim Support. The Home Office also takes advice from the Youth Justice Board, an executive non-departmental public body. Lord Chancellor's Department – the Crown Court and Court of Appeal, magistrates' courts, their committees and inspectorates; publicly funded criminal defence services. Law Officers' Departments – Crown Prosecution Service and its inspectorate; Serious Fraud Office. It also includes the judiciary and magistracy. And at a broader level, local authorities and community and other organisations also play an important role. The objectives of the CJS are to reduce crime and the fear of crime, ensure effective delivery of justice by increasing the number of crimes for which an offender is brought to justice, improving public confidence in the CJS, *including increasing that of ethnic minority communities*. Increasing year on year the satisfaction of victims and witnesses, whilst respecting the rights of defendants, and delivering effective custodial and community sentences to reduce re-offending and protect the public. (Home Office 2002: 16, emphasis added)

- [14]. In other words, it is not unusual to have race equality issues regarded as absolutely central to notions of what the criminal justice system is and how it works. This system assumes specific forms in the context of the devolved administration in Northern Ireland that emerged from the peace process and the Good Friday and St Andrews agreements. In terms of criminal justice, this took definitive shape with the devolution of most aspects of criminal justice in April 2010.

### 2.2. What is the Criminal Justice System in Northern Ireland?

- [15]. The website for the Criminal Justice System Northern Ireland (CJSNI) provides a useful self-definition. This site suggests it has been 'designed to help, inform and advise those



coming into contact with the system, or those who would just like to know more about it'. The CJSNI suggests that it is made up of seven main statutory agencies:

- Northern Ireland Prison Service
- Police Service of Northern Ireland
- Probation Board for Northern Ireland
- Public Prosecution Service
- Youth Justice Agency
- NI Courts and Tribunals Service
- Department of Justice

[16]. The self-defined purpose and aims of the CJSNI are:

- to support the administration of justice, to promote confidence in the criminal justice system and to contribute to the reduction of crime and the fear of crime.
- provide a fair and effective criminal justice system for the community;
- work together to help reduce crime and the fear of crime;
- make the criminal justice system as open, inclusive and accessible as possible, and promote confidence in the administration of justice; and
- improve service delivery by enhancing the levels of effectiveness, efficiency and co-operation within the system.

[17]. The CJSNI website also suggests:

Dealing with crime in an effective way is what we're here to do. But we can't do that without the co-operation of the community as a whole. We are committed to working in partnership to achieve our aims for the benefit of all of society.

[18]. Northern Ireland is unique in UK terms in having an integrated criminal justice inspectorate. *Criminal Justice Inspection Northern Ireland (CJINI)* provides a slightly different perspective on the notion of criminal justice in Northern Ireland.<sup>8</sup> The CJI defines itself as, 'an independent, statutory inspectorate established in 2003 under s.45 of the Justice (Northern Ireland) Act 2002'.

CJI is one-of a-kind as it is the only unified inspectorate in the United Kingdom or Ireland that can look at all the agencies that make up the criminal justice system apart from the judiciary. Agencies which CJI can inspect include the police service, prison service, prosecution service, youth justice services and the courts. This means CJI is in a unique position to identify issues that are common to some or all agencies and is in a strong position to promote inter-organisational learning and best practice across and between the various agencies.

[19]. The CJINI situates itself in relations to the criminal justice system in Northern Ireland:

The criminal justice system is the collective term for the agencies and processes by which victims, witnesses, defendants, offenders and young people who experience,

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<sup>8</sup> CJI is a 'Non-Departmental Public Body (NDPB) in the person of the Chief Inspector'.



come into contact with, or engage in criminal activity are dealt with and/or supported. The criminal justice system in Northern Ireland is made up of five key agencies that represent the 'coal face' of criminal justice that interlink together to provide a fair, effective justice system for the local community. They are the Police Service, the Prison Service, the Prosecution Service, the Court Service, the Probation Service and the Youth Justice Agency. These core agencies are supported in the delivery of criminal justice services by Government and a number of supporting agencies such as Criminal Justice Inspection Northern Ireland, Forensic Science Northern Ireland, and the Police Ombudsman's Office. Valuable support and assistance is also provided by organisations within the voluntary and community sector such as Victim Support Northern Ireland and the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO).

## 2.3. Department of Justice in Northern Ireland

[20]. The political context for criminal justice has obviously profoundly changed by the devolution of many justice responsibilities to the recently created Department of Justice and Minister of Justice. This self-defines thus:

The Department of Justice (DOJ) is a new Northern Ireland Department which came into existence on 12 April 2010 and was established by the Department of Justice Act (Northern Ireland) 2010. It has a range of devolved policing and justice functions, set out in the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010. The role of the Department is to support the Minister of Justice, David Ford MLA to help keep the people of Northern Ireland safe. In addition to its statutory functions, the department provides resources and a legislative framework for its agencies and arms length bodies (which together constitute most of the justice system in Northern Ireland). Together with these organisations the department is responsible for ensuring there is a fair and effective justice system in Northern Ireland and for increasing public confidence in that system.<sup>9</sup>

[21]. The Department has five agencies and it characterises their work thus:

The Northern Ireland Prison Service (NIPS) is an executive agency of the Department of Justice responsible for providing prison services in Northern Ireland. By working with prisoners and stakeholder organisations it also aims to reduce levels of re-offending.

The Northern Ireland Courts and Tribunals Service (NICTS) is an executive agency of the Department of Justice. It provides administrative support to the Northern Ireland courts and tribunals, and to the Judiciary; enforces civil court judgments through the Enforcement of Judgments Office and sponsors the work of the Northern Ireland Legal Services Commission.

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<sup>9</sup> Department of Justice 2010 'About the Department of Justice' <http://www.dojni.gov.uk/index/about-us.htm>



The Compensation Agency (CA) is an executive agency of the Department of Justice responsible for supporting the victims of crime, either by personal injury or criminal damage, by ensuring that they are appropriately compensated in accordance with relevant statutory schemes.

The Forensic Science Agency (FSNI) is an executive agency of the Department of Justice responsible for the provision of effective scientific advice and support to enhance the delivery of justice.

The Youth Justice Agency (YJA) is an executive agency of the Department of Justice responsible for preventing offending by children and young people through delivery of a range of community based, court ordered and diversionary interventions, youth conferencing and the provision of custody where necessary.

- [22]. The Department also sponsors a number of Non-Departmental Public Bodies/bodies affiliated with policing and justice. Crucially it provides a new Northern Ireland-specific focus for work on race and criminal justice. Arguably this presents new opportunities for progressive changes in terms of racism and the criminal justice system in Northern Ireland.

## 2.4. Northern Ireland Policing Board

- [23]. The Northern Ireland Policing Board (NIPB) has a specific role within the CJSNI. As part of the Good Friday Agreement in 1998, an independent commission was established under Chris Patten to look at all areas of policing and to make recommendations for change. The Commission published its *Report of the Independent Commission on Policing for Northern Ireland* in 1999. Following recommendations from the report, the Policing Board was established on 4<sup>th</sup> November 2001. The Policing Board takes its powers from the *Police (Northern Ireland) Act 2000*. The Policing Board is an independent public body made up of 19 Political and Independent Members established to, 'ensure for all the people of Northern Ireland an effective, efficient, impartial, representative and accountable police service which will secure the confidence of the whole community, by reducing crime and the fear of crime'. Given that policing is so central to questions of race and criminal justice, NIPB has a particular role to play in terms of any 'blueprint for the eradication of racism' from the CJSNI.

- [24]. The main statutory duties and responsibilities of the Policing Board are:
- to secure an effective and efficient local police service
  - to appoint (and dismiss, if necessary) the Chief Constable and senior police officers (Assistant Chief Constable and above)
  - to consult widely with local people about the policing of their area
  - to set local policing priorities and targets for police performance
  - to monitor everything the police do and how well they perform against the targets set by the Policing Board
  - to publish a three year and annual policing plan which tells local people what they can expect from their police service and report on police performance every year



- to make sure local people get best value from their local police
- to oversee complaints against senior officers
- to discipline senior officers

[25]. The Policing Board works with stakeholders in the criminal justice field, and 'uses the valuable information generated by others to assist the Policing Board in discharging its accountability and oversight functions'. In terms of policing in Northern Ireland these 'key stakeholders' are the Police Ombudsman for Northern Ireland and Her Majesty's Inspectorate of Constabulary (HMIC) (as well as Criminal Justice Inspection Northern Ireland). Therefore each of these also has a specific role in terms of the question of race and criminal justice in Northern Ireland.



## 3. Key contexts for addressing race and criminal justice

### 3.1. Human Rights

- [26]. Both international human rights standards and developments at the EU level continue to provide a key context for race and criminal justice in Northern Ireland. Anti-discrimination provisions appear in most international conventions. The UN context provides key mechanisms on equality and the administration of justice. Thus in Article 26 International Covenant of Civil and Political Rights (ICCPR):

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- [27]. Likewise in Article 5 International Convention on the Elimination of Racial Discrimination (ICERD):

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

- [28]. In its reporting to CERD, the state is encouraged to go beyond these general principles. Thus the UK is given more specific advice in terms of improving race and criminal justice: 'The Committee recommends that the State party vigorously pursue its efforts to close the existing employment gap in the personnel administration of the criminal justice system and other sectors between ethnic minorities and the wider population. Bearing in mind the Committee's general recommendations No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and No. 32 (2009) on special measures, the State party should also consider adopting such special measures to ensure that employment in the criminal justice administration reflects the diversity in the State party's society (para. 22)'.<sup>10</sup>

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<sup>10</sup> See CERD concluding observations: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/454/89/PDF/G1145489.pdf?OpenElement>.



- [29]. Some of the CERD analysis also has a specific reference to Northern Ireland: 'The State party is invited to examine whether the legislative and policy framework for dealing with the situation in Northern Ireland could not benefit by being underpinned by the standards, duties and actions prescribed by the Convention and the Durban Declaration and Programme of Action on inter-sectionality between ethnic origin, religion and other forms of discrimination (para. 20)'.
- [30]. The Council of Europe also provides human rights context. For example, in Article 6 Framework Convention for the Protection of National Minorities (FCNM):
1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
  2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.
- [31]. This too has consequences in terms of monitoring and responding to racist violence. For example, the Third Opinion on the UK, 30 June 2011: 'The Advisory Committee urges the authorities to take further resolute measures to prevent hate crime and provide adequate remedies to victims of hate crime. Measures to encourage and facilitate reporting of hate crime by victims should also be continued (para. 119)'.
- [32]. It is also important to bear in mind that the development of the criminal justice system in Northern Ireland will be influenced by policy developments at the EU level, given the desire of the EU to create a 'common European area of justice' under the Stockholm Programme.<sup>11</sup> On 12 September 2012, the European Parliament adopted a Directive which establishes minimum standards on the rights, support and protection of victims of crime in the European Union. The Directive in particular seeks to promote the right to non-discrimination amongst others. As a next step, the European Council has to approve the Directive. After the Directive has been adopted, EU countries (including the UK and Ireland which have decided to opt in to the Directive) will have three years to transpose it into their national laws. This landmark Directive marks an important development in promoting equality and non-discrimination in the field of criminal law.
- [33]. Article 1(1) of the Directive establishes that its purpose is to, 'ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings'. Therefore, Member States have an obligation under the Directive to, 'ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner'. Significantly, according to Article 1(1), the rights set out in the Directive apply to, 'victims in a non-discriminatory manner, including with respect to their residence status'.

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<sup>11</sup> See: [http://ec.europa.eu/justice/criminal/index\\_en.htm](http://ec.europa.eu/justice/criminal/index_en.htm)



[34]. Paragraph 9 of the Preamble to the Directive articulates the fundamental principle of non-discrimination that is central to the Directive. Accordingly, victims should be treated:

[W]ithout discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity.

[35]. The Directive contains many important provisions on the protection of all victims of crime including those who are more likely to be discriminated against by criminal justice systems due to their particular characteristics and circumstances:

Article 3 provides for the right to understand and to be understood requiring communications to be “given in simple and accessible language” and to “take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.” Article 4 provides for the right to receive information which would enable victims of crime to access their rights under the Directive. This includes “information about access to medical support, any specialist support, including psychological support, and alternative accommodation (...) how and under what conditions they can obtain protection (...) how and under what conditions they can access legal advice, legal aid and any other sort of advice (...and) how and under what conditions they are entitled to interpretation and translation”. Article 7 provides for the right to interpretation and translation free of charge. Article 8 provides for the right to access confidential victim support services free of charge, in accordance with the needs of the victim. Article 11 provides that victims have a right to a review of a decision not to prosecute. Victims have a right to access legal aid (Article 13) and reimbursement of expenses (Article 14). Article 18 stipulates that victims have a right to protection “from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of, emotional or psychological harm”. Articles 19, 20 and 21 elaborate on the content of the right to protection, dealing with avoidance of contact between victim and offender, protection during proceedings and protection of privacy respectively. Article 22 obligates states to perform an individual assessment of victims to identify their specific protection needs. The assessment would take into account the personal characteristics of the victim and the type and circumstances of the crime. Article 22(3) states that “particular attention shall be paid to (...) victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics. Article 25 provides that “officials likely to come into contact with victims, such as police officers and court staff receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.”



[36]. In principle, therefore, this new EU approach creates an innovative context for improvement in Northern Ireland. No doubt EU developments will increase pressure to implement effective policies in the criminal justice system, for example the finalisation of the Directive on minimum standards for victims.<sup>12</sup> It bears emphasis, however, that the UK must opt in to every individual development in this area. The devolution of justice has also created opportunities for new initiatives like this to be progressed at Stormont level. Certainly any justice administration seeking to address race properly might be expected to integrate these measures as quickly as possible.

## 3.2. Equality Duty – Section 75

[37]. Equality issues within the CJSNI are framed by the operation of the Section 75 equality duty. Initially the criminal justice system tried to argue that Section 75 did not apply to its work but had to withdraw the claim. More recently, however, the debate has been couched in terms of the effectiveness of Section 75 on the sector. The CJINI published a report two years ago specifically addressing this question:

CJI examined in detail the impact of Section 75 (s.75) of the Northern Ireland Act 1998 on the criminal justice system, and how each of the organisations are managing their obligations," said Dr Maguire. "Our findings revealed that while all agencies were aware of their responsibilities under the law, the information Inspectors examined in many cases was incomplete and only provided a limited picture of what was happening across the system." Section 75 he explained charged all public sector organisations, including those in the criminal justice sector, with ensuring equality and human rights are promoted in every aspect of their operation, policies and practice. "Without the monitoring of effective, accurate and timely equality information, agencies cannot fully meet these obligations, identify any inequalities that may exist, take action to correct any disparity, or establish the reason or reasons behind it," explained the Chief Inspector.

[38]. This process provide examples of what effective monitoring could and should achieve:

"The information we examined in relation to the Northern Ireland Prison Service for example," he said, "identified a number of issues in relation to the ways in which prisoners were treated and the make up of the workforce." It showed that a disparity existed between the number of prisoners from a Roman Catholic background that are on the highest level of the Progressive Regimes and Earned Privileges Schemes when compared with Protestant prisoners. It also showed the predominantly male workforce within the Prison Service's discipline staff came from a Protestant background. "This information has been valuable to the Prison Service and has prompted it to carry out an internal review of the available monitoring information to establish the reasons behind any disparities which exist".

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<sup>12</sup> See <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/585>



[39]. But the review also made clear the profound limitations of data gathering across the system:

[W]ithout the availability of similar in-depth information on the other criminal justice agencies, Dr Maguire said organisations were unable to ensure any other as yet unidentified issues that may exist, were brought to light and addressed. “This inspection has shown that the collation and monitoring of effective, accurate and timely equality information lies at the heart of each agency’s ability to fulfil their legal obligations in respect of Section 75,” he stated. “It is also the key to ensuring equality of opportunity and fairness of treatment among different members of the community, is at the core of the criminal justice system whether you are a defendant, victim, prisoner or witness.”<sup>13</sup>

[40]. Subsequently following a debate in the Assembly, members supported the motion that, ‘the recommendations published in the Criminal Justice Inspection’s report on the impact of Section 75 on the criminal justice system; and calls on the relevant agencies to implement the recommendations’.<sup>14</sup> It is difficult to argue with the conclusions of the CJI:

The challenge is very much for the criminal justice system to grasp the opportunity that Section 75 offers. Given the history of Northern Ireland, it offers the agencies a way to engage with difficult to reach communities, and to demonstrate to the public at large, that the system is operating fairly and equitably. It is a legal duty and one which cannot be ignored but, we are convinced that ultimately, it will be in the best interests of the criminal justice system to see it as an opportunity and grasp it with both hands. (2009:40)<sup>15</sup>

[41]. In other words there is a need to examine the effectiveness of Section 75 in relation to the criminal justice system within the wider question of the unfilled promise of the equality proofing mechanisms consequent upon the Good Friday Agreement. Arguably Section 75 has sometimes become a mechanistic tool, but it in fact could be a radical tool to argue that public bodies (including criminal justice entities) should be looking at race (and other issues) in the course of every single new/revised policy; this should clearly affect data gathering, staff training, and outreach to representative groups. The fact that public bodies started to speak to NICEM and other groups was consequent upon the realisation that they had to identify representative groups to engage them in participative processes. The fact that civil servants have now arguably turned this into a tame way of ‘controlling’ the debate is problematic, but is definitely crucial to explore what difference this makes – or more importantly *should* make – to race and the Northern Ireland criminal justice system.

[42]. It bears emphasis that there is already a statutory duty on the Minister, in carrying out their Section 75 duties, to gather and publish data (and this is not limited to avoiding discrimination, but includes promoting greater equality of opportunity). The Section 75

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<sup>13</sup> CJINI 2009. ‘Greater effort needed to promote equality across criminal justice system’ 12 May 2009.

<sup>14</sup> PRIVATE MEMBERS’ BUSINESS Criminal Justice Inspection’s Report on Section 75 22nd June 2009

<sup>15</sup> CJINI 2009. *The impact of Section 75 of the Northern Ireland Act 1998 on the criminal justice system in Northern Ireland* Belfast: CJINI.



duty was meant to generate data similar to that which is generated by Section 95 of the Criminal Justice Act in England and Wales. With regard to race, the provisions of Section 75, mean that much of what is needed *should* be produced in the context of Section 75. Since such data has *not* been produced, we need to consider introducing something stronger and more tailored. Certainly there is currently a striking comparison between the lack of impact of Section 75 on race and statistics and the more effective Section 95 provisions. In terms of our specific concerns with race, therefore, it is clear that Section 75 monitoring should be implemented as a 'bottom line' with any further data requirements requested over and above that.

## 3.3. 'Read across' from England and Wales

[43]. The Statutory Sector in the UK produces a huge amount of relevant research and analysis directly and indirectly relevant to race and justice. As discussed in detail below, the Home Office's annual *Statistics on race and the criminal justice system* makes a defining contribution to discussions on this issue. But there have also been two public inquiries over the last ten years which addressed very specifically and directly institutional racism within the criminal justice system – the *Stephen Lawrence* and *Zahid Mubarek* inquiries. Both of these – and their outworking – should be definitive comparators in analysis of race and criminal justice in Northern Ireland.

### 3.3.1. Section 95 of the Criminal Justice Act

[44]. Even prior to the Macpherson Report, England and Wales was provided for comprehensive ethnic monitoring across criminal justice system by Section 95 of the Criminal Justice Act 1991. This states that:

The Secretary of State shall in each year publish such information as he considers expedient for the purpose of facilitating the performance of those engaged in the administration of justice to avoid discriminating against any persons on the ground of race or sex or any other improper ground.

[45]. The consequent data brings together statistical information on the representation of BME people as suspects, offenders and victims within the Criminal Justice System and as employees/practitioners within criminal justice agencies. This allows appropriate critical engagement with other non-statutory actors on race and criminal justice. It provides key baseline data in order to examine the three core questions on race and criminal justice concerning victimisation, criminalisation and employment.



**Table A: Proportion of individuals at different stages of the CJS process by ethnic group compared to general population, England and Wales<sup>16</sup>**

	White	Black	Asian	Mixed	Chinese or Other	Unknown	Total
<b>Population aged 10 or over 2009</b>	88.6%	2.7%	5.6%	1.4%	1.6%	-	<b>48,417,349</b>
<b>Stop and Searches (s1) 2009/10</b>	67.2%	14.6%	9.6%	3.0%	1.2%	4.4%	<b>1,141,839</b>
<b>Arrests 2009/10</b>	79.6%	8.0%	5.6%	2.9%	1.5%	2.4%	<b>1,386,030</b>
<b>Cautions 2010(1)</b>	83.1%	7.1%	5.2%	-	1.8%	2.8%	<b>230,109</b>
<b>Court order supervisions 2010</b>	81.8%	6.0%	4.9%	2.8%	1.3%	3.2%	<b>161,687</b>
<b>Prison population (including foreign nationals) 2010</b>	72.0%	13.7%	7.1%	3.5%	1.4%	2.2%	<b>85,002</b>

Note: 1. Data based on ethnic appearance and therefore do not include the Mixed category.

[46]. Furthermore, there is detailed breakdown in terms of race and ethnicity across a whole range of issues within the criminal justice system (See Annex Two).<sup>17</sup> Without this kind of data, it is impossible to even *begin* to prepare a 'blueprint' for the eradication of racism from the criminal justice system.

### 3.3.2. The Stephen Lawrence and Zahid Mubarek Inquiries

[47]. There have been two key statutory processes in the UK over recent years: the Stephen Lawrence Inquiry and the Zahid Mubarek Inquiry. The Lawrence Inquiry redefined relations between BME people and the criminal justice system in England and Wales. It also placed the notion of *institutional racism* at the heart of British policy and practice on race and criminal justice. The definition was accepted by the Government when the report was published. The then Home Secretary, Jack Straw, emphasised the relevance of the definition for other governmental departments, particularly those involved in criminal justice:

[The definition formulated by the Stephen Lawrence Inquiry] is the new definition of institutional racism, which I accept... In my view, any long-established, white-dominated organisation is liable to have procedures, practices and culture that tend to exclude or disadvantage non-white people. The Police Service, in that respect, is little different from other parts of the criminal justice system or from government departments, including the Home Office.

<sup>16</sup> These figures are from 2010 – the latest available at the time of this research going to press. Updated and historic data are available from the UK Ministry of Justice 'Race and the Criminal Justice System' at: [www.justice.gov.uk/publications/statistics-and-data/criminal-justice/race.htm](http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/race.htm)

<sup>17</sup> List of tables and figures from the most recent MOJ publication: 'Statistics on Race and the Criminal Justice System 2010: A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991' at <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/stats-race-cjs-2010.pdf>



[48]. NICEM's *The Next Stephen Lawrence?* extensively referred to the implications of the Lawrence Inquiry for Northern Ireland. These need to be restated and re-emphasised. But further intervention on race and criminal justice should also pay specific attention to the *Mubarek Inquiry*. This engaged with institutional racism in the British prison service in some detail:

The issue of racism was at the heart of the Inquiry. Not simply because Zahid's killer was himself a racist, and his racism may have played an important part in his selection of Zahid as his victim. It was also because of the need to explore whether explicit racism on the part of individual prison officers had been the reason for Zahid sharing a cell with Stewart in the first place or continuing to share a cell with him. There were lurid allegations about prisoners of different ethnic origin being put in the same cell to see if violence would ensue. It has been necessary also to explore the extent to which racism might have unwittingly played its part in what happened to Zahid. That could not be answered in a vacuum. It could only be answered in its context. And this was that the Prison Service in general, and Feltham in particular, had already been found to be institutionally racist – both by the Prison Service's own investigation into Feltham and the one by the CRE into the Prison Service as a whole. So one of the Inquiry's key tasks was to investigate whether the series of events which resulted in Stewart sharing a cell with Zahid, despite what was known about him, were attributable to the culture of indifference and insensitivity which institutional and individual racism breeds. (Keith 2006: Volume 2: 617)

[49]. It also has wider implications in terms of the interface of race and religion and criminal justice – these are particularly important obviously in terms of Northern Ireland:

The Inquiry's terms of reference did not, of course, permit it to investigate generally how Muslim prisoners are treated in prison. It is an important topic which should be properly investigated by professionals in the field. But the perception that Islamophobia is on the rise highlights the fact that the definition of institutional racism adopted by the Stephen Lawrence Inquiry focused on discrimination and prejudice because of a person's colour, culture or ethnic origin. It did not refer to the person's religion. There is no reason why institutional prejudice should be limited to race, and thought should be given by the Home Office to recognising the concept of institutional religious intolerance. Since the Stephen Lawrence Inquiry's definition of institutional racism was accepted by the Government, there is no reason why it should not be adapted to define institutional religious intolerance as follows: 'The collective failure of an organisation to provide an appropriate and professional service to people because of their religion. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and stereotyping which disadvantage people of a particular religion. (Keith 2006: Volume 1 546, 62.27)

[50]. It seems remarkable that the implications of Mubarek do not seem to have informed prisons policy in Northern Ireland at all. For example, the Prison Review Team 'Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons'



makes no reference to the Mubarek Inquiry at all – even though the PRT work address the experience of BME prisoners in Northern Ireland in some detail.

- [51]. This kind of omission seems attributable – at least in part – to the ongoing desire to maintain racism and sectarianism as ‘separated discourses’. Over recent years, however, there has been a convergence of anti-racism and anti-sectarian measures in Northern Ireland within the ‘good relations’ paradigm. This process carries with it many contradictions. Rather oddly the PSNI now categorise *three* separate categories of hate crime within this approach – ‘racist’, ‘sectarian’ and ‘religious’. In contrast new interventions like the CSI document appear to collapse the difference between racism and sectarianism in Northern Ireland completely (OFMDFM 2010). Either way, it becomes increasingly difficult to ignore the profound overlap between ‘religion’ and race in much of this work. There are equally forces moving in this direction in the British context. For example, in October 2010 Lord Avebury (Liberal Democrat) asked of the government in the House of Lords:

whether they will provide that the annual Statistics on Race and the Criminal Justice System include all available information about the religion or beliefs of the defendants and victims; and that separate tables are given for racially and religiously aggravated offences.

- [52]. To which the government in the person of Lord McNally (Minister of State, Justice; Liberal Democrat) replied:

The Ministry of Justice Head of Profession for Statistics is responsible for the content and timing of Statistics on Race and the Criminal Justice System, and takes very seriously the view of users of the publication. Police data on racially or religiously aggravated offences have been published in the report since 2002 and tables showing the figures for individual police force areas have been published since 2003. Due to the way in which police figures are recorded, it is not possible to separate offences that are racially aggravated from those that are religiously aggravated. The religion and belief of defendants and victims has been collected by the CPS since April 2007, and we are assessing data quality for inclusion in the next publication. The Ministry of Justice's chief statistician is responsible for the timing and content of statistical releases and will ensure that if the data are of sufficient quality it will be published.<sup>18</sup>

- [53]. Thus while the British model fails to disaggregate racially and religiously-aggravated offences, the interest in recording and identifying both is not specific to Northern Ireland. The Mubarak Inquiry further integrated notions of ‘religion’ into the UK race paradigm. Crucially, however, any intervention on race and criminal justice has to remain aware of the sensitivities on this issue connected to the overlap with sectarianism within the criminal justice system.

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<sup>18</sup> House of Lords, Written answers and statements, 22 October 2010 Hansard source (Citation: HL Deb, 22 October 2010, c205W)



## 3.3.3. The Macpherson Report—Ten Years On

[54]. While the 'Next Stephen Lawrence?' report dealt in some depth with the implications of the original report for race and criminal justice in Northern Ireland, it is also important to take into account reflections on - and the review of - this process in England and Wales. Here *The Macpherson Report — Ten Years On* (2009) provides a key reference. The review suggests that the Home Office believed that 67 of Macpherson's 70 recommendations have been implemented fully or in part. (This, of course, raises the question of how many of these recommendations might be regarded as having been implemented with the CJSNI.)

[55]. The report acknowledges that: 'The police have made tremendous strides in the service they provide to ethnic minority communities and in countering racism amongst its workforce'. It commends police leadership who, 'have shown a clear commitment to increasing awareness of race as an issue throughout the service'. But it also identifies continuing problems suggesting there are a number of areas in which the police service continues to fail ethnic minorities (2009: 4). Among its reservations it notes that, 'Black communities in particular are disproportionately represented in stop and search statistics and on the National DNA Database' and more generally acknowledges, 'black people's over-representation in the criminal justice system'. It also records its disappointment:

that the police service will not meet its target to employ 7% of its officers from ethnic minority communities nationally by 2009 and that BME officers continue to experience difficulties in achieving promotion, as well as being more likely to be subject to disciplinary procedures. The police service must now focus its efforts on tackling issues of discrimination within the workforce. (2009: 7)

[56]. There are also other - much more critical - reflections on the outworking of Macpherson in the UK. Former Stephen Lawrence Inquiry member, Richard Stone identifies many ways in, 'which the relationship today between the police and Black and minority ethnic groups has not changed significantly from what it was ten years ago. This is evident in terms of the challenges faced by officers from [BME] backgrounds who work for the police service and, in a chilling echo of the old 'sus' laws, the continued over-representation of black people in ... Stop and Search procedures' (cited in Rollock 2009).

## 3.3.4. Other Developments in England and Wales

[57]. Following Macpherson, the Criminal Justice System Race Unit was established within the Office for Criminal Justice Reform. This had a key role in the strategic implementation of recommendations. The work of the unit continues although there are some concerns that it is being downgraded. Alongside this, the critical evolution of race statistics with the CJS continues. One key example of this is the *Minimum Data Set (MDS)*. The Minimum Data Set, 'enables the analysis of consistent and robust ethnicity data across the criminal justice system in order to identify and, where necessary, address race disproportionality'. The MDS represents a prosaic but important achievement, and it is still proceeding locally and being serviced by the centre, which is a key process to make it work. In this sense, the MDS contains much of the nuts and bolts of what needs to be established across the



CJSNI. The importance of getting reliable data recorded cannot be underestimated in efforts to address race within criminal justice.

- [58]. As we have seen, the monitoring of ethnicity has a long history in England and Wales to the 1991 Criminal Justice Act. It took some time to get this approach working and the Root and Branch review was just the latest of a series of initiatives intended to refine and improve the data provided (CJS Race Unit 2005, 2006). The continued publication of data over a period of some 20 years has set a baseline for policy development and discussion. However, it has also been suggested that the fact that data exists is often used as an excuse for 'passing the buck' around between the agencies of England and Wales. If anything, this process has become more challenging in England and Wales as notions of 'ethnicity' become increasingly complex:

*It was always difficult to convince people that ethnicity was always relative depending on who you were interacting with and an uneven mix of factors. Asian or South Asian is pretty useless as a category and is generally not used by 'Asians' with other 'Asians'. The distinctions that are made are a mix of geographical and linguistic origin (Gujarati), religion by itself (Sikh) but even here, it implies linguistic and regional origin. On top of both of these categories in the UK is the effect of class and origin. Most self ascribed Gujaratis and Sikhs in the UK arrived from East Africa and were 'middle class' so that even if they arrived with little money, they had networks experience and knowledge etc. Neither of these groups is properly picked up by 16+1. Pakistani tends to imply region, religion and language, as does Bangladeshi, but the latter arrived later. Both came mainly from the Indian subcontinent and were not middle class. Pakistani young men and black young men occupy a similar class profile and have similar incarceration rates, but although Bangladeshis appear objectively similar, young men do not get imprisoned at a high rate. I mention this all simply to illustrate that apportioning into race or ethnic categories like 'Asian' or 'Catholic' without consideration of class is very dubious.*

- [59]. There is also the issue of 'official ethnicity' categories being outdated. The Office for National Statistics recognises that 16+1 is outmoded and really based on migration from 50s to 70s in the UK (Black, White, Asian, other) and there are similar issues beyond the dominant discourse and provision in NI - Polish, Armenian, Somali and so on. The other key point was the finding in areas of the work was that younger people are increasingly less likely to want to be 'labelled' as from an ethnic group which will be an interesting challenge in terms of monitoring whether they are discriminated against. Since the year 2000, in England and Wales (as in Northern Ireland) there has been a widening of potential discrimination issues away from just ethnicity to race, religion, disability, sexual orientation and anything that can be considered as 'Hate Crime'. There have been consequential improvements in data availability for all these areas. Northern Ireland already has written into legislation much firmer statements about what should not be allowed – including the Section 75 categories - so in this sense there may be a better baseline for changes to practice and data collection.

- [60]. As well as better data, there could be a move towards some of the other structural changes that have taken place with the criminal justice system in England and Wales over



recent years.<sup>19</sup> One key example of this is hate crime scrutiny panels. These consider cases of hate crime where the prosecution has failed for whatever reason and makes suggestions as to how the CJS should better deal with such cases. The CPS answers the question, *What does a Hate Crime Scrutiny Panel do?* thus:

The panel is a mechanism for ensuring transparency and accountability in decision-making in dealing with hate crime. At each panel meeting (usually three or four a year) panel members look at a number of randomly selected case files, where the case has been finalised. Case files comprise those investigated by the police and charged by the CPS – either to full trial or discontinuance – and those cases that the police investigate but the CPS did not charge. Members usually look mainly at unsuccessful cases in order to learn lessons for the future. At the end of each case scrutiny, members go through a pro-forma checklist, which helps to ensure that the panel considers the key issues related to the case e.g. one question asks, “If pleas were accepted to lesser offences, was this justified?” By the end of the day the panel will have put forward a series of recommendations that reflects issues related to the handling of the cases considered. The CPS will then either act on the recommendation itself, or if the recommendation relates to partner agencies, pass the comments on to the partner service. Each meeting starts with a progress report on the implementation of previous recommendations. (CPS 2009: 7-8)

[61]. The London panel defines its terms of reference thus:

- To review and scrutinise randomly selected hate crime case files
- To increase understanding of CPS decision-making processes in relation to hate crime
- To increase CPS London’s understanding of how decision-making processes can be improved from a community perspective
- To identify issues, common themes and trends in decision-making processes and their impact on communities
- To improve CPS London’s response to hate crime by encouraging the panel to act as a ‘critical friend’ in relation to training, development and delivery
- To identify and share good practice and lessons learnt (CPS 2009:8)

[62]. Equality Impact assessments of new legislation, and practice, including statistical analysis where appropriate, have also had an important impact. Alongside this, race relations/race equality officers and policy statements have also helped improve aspects of criminal justice. These have played a key role in foreground race and criminal justice in public institutions such as prisons.<sup>20</sup> Paying closer attention to developments and reforms in England and Wales would undoubtedly assist the CJSNI. Often there is no need to ‘reinvent the wheel’ but rather draw on and integrate existing practice in a jurisdiction which has been forced to prioritise issue of race and criminal justice since the Macpherson report.

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<sup>19</sup> See for example CJS Race Unit’s ‘What is being done’ (2005: 20-5)

<sup>20</sup> See for example HM Inspectorate of Prisons (2009: 21).



## 4. Scotland as the key comparator for Northern Ireland

- [63]. The Scottish experience on race and criminal justice is important to Northern Ireland because Scotland – like Northern Ireland - was not formally covered by the Macpherson process.<sup>21</sup> Scotland like Northern Ireland sits within the UK criminal justice system – including crucially its international obligations on race and criminal justice - and yet operates in a devolved manner. Scotland has a broadly comparable dynamic in terms of race and criminal justice. (And, more specifically, an ongoing engagement with the overlap between racism and sectarianism and the implications of this for criminal justice.)
- [64]. The Scottish criminal justice system required a separate political and judicial process to engage with the implications of Macpherson for Scotland. In comparison to Northern Ireland, however, the challenge was taken very seriously. Importantly Scotland chose to implement the Macpherson recommendations fairly quickly.<sup>22</sup> As the Scottish Parliament records in *Action in Scotland Following the Macpherson Report*:

The MacPherson report on the murder of Stephen Lawrence was published on 24<sup>th</sup> February 1999. While the Lawrence Inquiry related to events in England, the report has had important consequences for Scotland, notably: *Stephen Lawrence: An Action Plan for Scotland* was published in July 1999 with consultation until September 1999. A Steering Group was set up by the Scottish Executive chaired by Dr Raj Jandoo, to oversee the work contained in the Action Plan. It first met on 7<sup>th</sup> February 2000. ACPOS Racial Diversity Strategy was published in March 2000. *A Fair Cop? Thematic inspection of police complaints* was published in April 2000. *Without Prejudice? Thematic inspection of police race relations* was undertaken between May and November 2000 and the report published in January 2001. *Review of the Stephen Lawrence Action Plan* was published in February 2001. (Scottish Parliament 2000, emphasis added)

- [65]. Thus the Scottish Executive published an action plan for Scotland immediately and then established a Steering Group to oversee implementation of the action plan. This group, chaired by Deputy First Minister Jim Wallace, oversaw the implementation of the Stephen Lawrence inquiry recommendations. Chaired by Mr Wallace, the Steering Group included representatives from the police, Crown Office, other criminal justice agencies and independent members. Examples of the major work it was involved in include:

- a. the police Racial Diversity Strategy and the police Guidance Manual on Race Matters;

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<sup>21</sup> The Republic of Ireland too remains a key comparator. However, its response to Macpherson has been arguably less impressive. While the commitment to 'identify and tackle institutional racism' has been a long established 'priority area', accusations of such racism persist. See, for example, Irish Examiner 'Ireland faces institutional racism claims' February 15, 2012.

<sup>22</sup> BBC News 1999. 'Anti-racism group make-up revealed' <http://news.bbc.co.uk/1/hi/scotland/576666.stm>



- b. police national policy on recruitment and retention of minority ethnic officers;
- c. Scottish Police College anti-racism training;
- d. developing performance indicators for inspections of the police in Scotland;
- e. the drafting of a Scottish Executive Code of Practice for reporting and recording racist incidents for public sector bodies;
- f. Crown Office work on prosecuting racist crime.

[66]. In February 2001 the Group produced a review of the Scottish Executive Stephen Lawrence action plan and made a number of recommendations for future work. The Group completed its work in 2002. Again, while this process may have been far from perfect, it contrasts starkly with the lack of any activity from within criminal justice in Northern Ireland. Further work in Northern Ireland would benefit greatly from an updating and critical assessment of the situation in contemporary Scotland. This provides the most obvious template for measuring the model of integrating post-Macpherson reforms to the criminal justice in the UK but outside the immediate English frame of reference.

[67]. It bears emphasis of course that the situation in Scotland is far from perfect. In terms of policing there was a long negative lesson connected to the Chokkar case and issues continue to be raised around another racist murder. In terms of prisons, there similarities between the 'Prisoner B' case in Northern Ireland and the case of Lin Jai Wu who died in similar circumstances in Barlinnie a few years back. The Fatal Accident Inquiry did not accept that his ethnicity could have had any impact. But there have been tangible improvements:

*Scotland embraced the lessons of Macpherson more than NI, and equally I think more so than in England where we still see gross disproportionalities in Stop and Search for example, which have largely been eradicated in Scotland. Where they do occur, interestingly they tend to have been where GB Forces operate on Scottish soil – for example on trains or at airports.*

[68]. In Scotland this is attributable as much to a *cultural shift* in policing as much as a change in policy and procedure:

*One of my primary reflections on the Police and Macpherson is on the profile of diversity in operations. Prior to Macpherson, diversity was a low status activity usually left to the community services teams who were often staffed by dedicated but peripheral officers, often towards the start or end of their careers. The emphasis that Macpherson brought was internalised in Scotland and since then if you want to get on and get promoted you have to demonstrate that you have "embraced diversity" and done your time on the issue. Critics would say that they simply now know the words to mouth, but I do think that over time this has changed and there is a genuine acceptance that applied diversity is critical to understanding and dealing with crime. Operationally I'd cite the confidence with which Strathclyde Police tackled the murder of Kriss Donald. We were really struck by the confidence with which the police approached the Donald case – they had clearly learned from their*



*mistakes and were confident in their approach in what was a potentially very heated situation.*

[69]. This is turn had positive consequences 'on the ground':

*I have been really struck by how the police in Scotland internalised and operationalised race issues. Far more than in England, "diversity" became a corporate objective and also an individual competence for officers on the way up. Whereas previously "community relations" was seen as a dead end job suitable for those on the way out, or for particularly dedicated, but "liberal" officers, now it is seen as being an important part of your career. Whilst this doesn't prevent lip service being paid to equality, knowing the talk and demonstrating the talk has become important for advancement. In all cultures, especially uniformed ones, I think this type of expectation can have a very important subtle form of influence.... The small c cultural argument is very relevant here. Whilst not wishing to downplay the impact of racism in the force (or the lack of impact of race issues) to what extent is this reflective of a 20c approach to policing with all the cultural baggage that that entails. Again I have been struck in Scotland by the work and particularly the analysis of the Violence Prevention Unit and the re-evaluation of domestic abuse policy. The former uses massive amount of social data to unpick and unravel the causes of violent crime ... to enable a historical picture of individual and family dysfunction to emerge more fully. The latter has seen the examination of data to reconceptualise a major resource headache for the police into a series of positive, if yet unevaluated, preventative approach.*

[70]. Of course, Scotland is not perfect on this issue.<sup>23</sup> Recently the handling of the racist murder of Simon San received a great deal of critical attention.

*I'm not 100% sure that the San case has the significance that some of the campaign groups do. Reading the report it seems to me that the Police certainly didn't have the locus flagged as a hot spot but given the occasional nature of incidents directed at the family it is hard to know if the crime could ever have been prevented. Things certainly went wrong shortly after the crime and the treatment of the family was poor. I don't however see it as having the same impact as Chokkar or Lawrence. There wasn't the same indifference or confusion. Having worked a lot with white families affected by murder in the past it struck me as a badly managed family liaison exercise which isn't too uncommon (regrettably) rather than directly impacted on by issues of race.*

[71]. Scotland is also weaker on monitoring than England and Wales. Scotland does not have the same depth of monitoring as there is in England and Wales:

*Currently in race or religion there is insufficient data to draw conclusions about over or under representation in the CJS in Scotland. The same approach that was scoped in the early 1990s in England and refined through ongoing improvements in data collection should be applied here should resources warrant it.*

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<sup>23</sup> See BBC News 2011. 'Simon San death 'public inquiry' raised' 24 August 2011  
<http://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-14651169>



[72]. This is confirmed by the Scottish Ministry of Justice:

As you know, the Ministry of Justice publish these statistics for England and Wales in response to the requirement of Section 95 of the Criminal Justice Act 1991. The statutory basis for this publication does not apply in Scotland, and there is no single equivalent publication covering Scotland. From a victim perspective, the closest comparable Scottish statistics are probably those contained in 'Racist Incidents Recorded by the Police in Scotland'.<sup>24</sup> Further information on racially aggravated offences reported to the procurator fiscal can be found in the Crown Office publication 'Hate Crime in Scotland'.<sup>25</sup>.... Information on the ethnic origin of offenders in custody is contained within 'Prison Statistics Scotland'.<sup>26</sup> (research communication 27/07/2012)

[73]. Despite these comparative limitations, monitoring in Scotland still provides a more comprehensive overview than is the case in Northern Ireland. Monitoring in Scotland provides a comprehensive overview of the dynamics of racist violence. The number of racist incidents reported to the police in Scotland has fallen for the fourth year on the run, according to the latest statistics. People of Asian origin were targeted in about 46% of the incidents. *Police recorded 4,907 cases in 2010-11*, down from the 4,960 the previous year and 8% lower than the 2006-07 figure. A racist incident is defined by the Scottish government as any incident "perceived to be racist by the victim or any other person".<sup>27</sup>

[74]. Of the 46% of victims who classed themselves as Asian, 23.31% said they were from a Pakistani background. Just over 17% of recorded victims classified themselves as white British. Where information on perpetrators was available, 82% were white British, while 96% were of any white origin. Of the cases in which age and gender was known in 2010-11, 46% of the perpetrators were aged 20 or under. Racist incidents most commonly occurred on Friday and Saturday nights, and a third of them took place in the street.

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<sup>24</sup> Available online, here <http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/PubRacistIncidents>

<sup>25</sup> Available online here: <http://www.copfs.gov.uk/Publications/2012/05/Hate-Crime-Scotland-2011-12>

<sup>26</sup> Available online here: <http://www.scotland.gov.uk/Publications/2011/08/19154230/0>. The Scottish Ministry of Justice adds: 'We do not hold information on the ethnic origin of prison service staff centrally. You may be able to obtain this information directly from the Scottish Prison Service (<http://www.sps.gov.uk/>)'

<sup>27</sup> BBC News 2012. 'Racist incidents fall for fourth year in Scotland' 12 June 2012.



## Ethnic origin of victims of racist incidents in Scotland

Ethnic group	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
White British	826	1,030	983	1,030	1,095	1,158	1,045
White Irish	63	91	139	121	124	87	131
Other white	130	122	414	477	509	534	546
Mixed	127	149	170	152	150	129	248
Indian	443	431	507	488	609	557	536
Pakistani	1,773	1,545	1,833	1,654	1,584	1,458	1,376
Bangladeshi	67	26	67	48	54	62	95
Other Asian	508	984	532	559	505	497	503
Caribbean	92	171	59	53	59	46	46
African	321	325	404	443	478	505	416
Other black	118	68	111	181	160	115	249
Chinese	151	153	183	117	152	127	109
Other	295	379	339	290	290	323	335
Unknown	145	346					

SOURCE: SCOTTISH GOVERNMENT'S STATISTICAL BULLETIN, CRIME AND JUSTICE SERIES 2012

[75]. These statistics inform a political discussion on racism that is broadly similar to that in Northern Ireland. For example, the Scottish government gave a 'cautious welcome' to these statistics. Community Safety Minister Roseanna Cunningham warned against complacency in light of Crown Office prosecution statistics which showed there had been a rise in the number of charges for racism and other forms of hatred reported to the procurator fiscal in 2011-12:

We must continue with the work we are doing to tackle racism and hatred in all its forms. Hatred of any kind has no place in modern Scotland and we need to do everything we can to stop it wherever and whenever it occurs, whilst tackling the root causes. While these figures show a decrease in incidents in 2010-11, we cannot be complacent, particularly as we saw new prosecution figures being published last month which show an increase in racist charges this year. That is why we must continue with the work we are doing to tackle racism and hatred in all its forms whilst constantly looking at new ways of getting across the message to the next generation of young Scots.

[76]. The active acknowledgement of the need for further work is itself some indication of how far things have improved in Scotland since 1999. The criminal justice system in Scotland responded to the challenge of Macpherson in a starkly different manner to that in Northern Ireland. First, the Scottish criminal justice system responded immediately and



resolutely to the challenge of Macpherson. Second, it promoted a generational, attitudinal shift in which taking racism seriously became synonymous with good, professional policing practice. As a parallel devolved criminal justice system within the UK but outside of the direct implications of Macpherson, it remains the key comparator for the Northern Ireland criminal justice system. There is already some cooperation across these criminal justice systems but it seems appropriate to suggest that there should be much greater comparison and interchange.<sup>28</sup>

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<sup>28</sup> For example, the Rehabilitation of Hate Crime Offenders has encouraged a partnership between PSNI and the Scottish Government on this as both countries are at more or less the same starting point



## 5. The NICEM Perspective

- [77]. Since January 2006, NICEM's *Racial Harassment Support and Advocacy Service* has supported a further 168 people. In 2010, the service was reduced from one full time worker to one part time worker as there continues to be no funding for NICEM to provide the service. This is reflected in the reduced number of cases that service was able to cater to from 2006-2011. Despite this, NICEM continues to be the main NGO that provides a comprehensive support to victims. While there are referral protocols in place with other support mechanisms, these continue to be limited in the type of specialist support that is required to deal with the impact and fallout that is experienced by victims of hate crime.
- [78]. The main categories of harassment involved in these incidents over the past six years were 'physical assault', 'intimidation', 'property damage' and 'bullying'. These areas have continued to remain the main issues with an increase in incidents of property damage since *The Next Stephen Lawrence?* report and a slight decrease in incidents of intimidation. Other figures have remained broadly similar. Around two thirds of the incidents had been reported to the police, while one third had not. Around 75% were 'single harassment experiences' while the other 25% involved more than one experience of harassment – with some involving multifarious incidents of ongoing, serious harassment. Where further harassment was experienced, roughly half reported these additional incidents to the police while one half did not. Thus the NICEM experience continues to highlight issues of under reporting to the PSNI.
- [79]. In terms of ethnicity, the majority of NICEM cases were white (mostly involving Eastern European migrants, particularly Polish people). This accords with PSNI data but also marks a marked shift from the situation in 2006 when most clients were people of colour. The second most common ethnic identity among NICEM clients now is 'Black African' and 'Asian-Indian'.
- [80]. In terms of gender of people reporting to NICEM, there was no marked difference, the majority of victims continue to be male. In terms of location, most clients were based in Belfast and most incidents took place in the South Belfast areas with postcode BT12 and BT7 having the highest numbers. Finally, in terms of referrals to NICEM, there was no marked source – clients were referred from a wide range of organisations, across the community, voluntary and statutory sectors. The highest category continues to be self-referral.
- [81]. NICEM published *The Next Stephen Lawrence?* in 2006 in expectation that the intervention would produce a swift and progressive response from the CJSNI. This was not the case. While significant progress has been made in some areas, the radical intervention that would be needed to address institutional racism across the criminal justice system has not been forthcoming:

*When asked what has changed since 2006, it is hard not to give the cynical answer of 'not much'. Of course there have been changes – policy has been developed (most notably the new hate crime policy for the PPS, which is seen as a great move forward), new campaigns have been run (Unite Against Hate, Racism is Wrong –*



*Newry and so on) and further support mechanisms have been initiated (Bi-lingual Community Safety Advocates – South and East Belfast through the Belfast City Council, PSNI and NIHE). Further forums and networks have been formed to raise awareness and discuss issues around hate crime (NIACRO project, Tension Monitoring, Hate Crime Thematic Group).*

- [82]. Moreover, the everyday experience of racism has often changed little as well. Despite the positive changes that have occurred, much else is depressingly familiar:

*On the other hand, we continue to see people who have been victims of racist attacks, intimidation and harassment facing the same issues that we have been dealing with since 2002 when we started the project. Lack of communication from PSNI about the progress of a case, not feeling they are being taken seriously, not having any confidence in reporting because nothing improves, incidents not being noted as racist even though they are being reported as such, inconsistency of practice in different areas, when cases do actually get to PPS level the racist part of the incidents (if they got on record) are not paid attention to, perpetrators are often not identified or caught, ongoing incidents of harassment are not linked, 'low level' incidents are not seen as high impact, to name a few....*

- [83]. NICEM's work with victims of racist violence therefore suggests that for many BME people little has changed – both in terms of the reality of racist violence and in terms of the inability of different elements with the CJSNI to respond appropriately to that violence.

## 5.1. Racist Attacks

- [84]. At its worst, racist violence continues to impact on people's lives in the most profoundly negative way:

*"The very day we moved into our house our window was broken. The next day we received a letter saying 'all blacks out' .... Since that time we have suffered from a barrage of incidents. Most of these have been reported to the police. Our children can no longer play in the yard without stones being thrown at them, also there are often beer bottles and broken glass littering the yard which makes the area unsafe. Both of our children are quite young ... and find living under these conditions very distressing.... On a regular basis there is a group of local residents, around 18-20 years old, who stand in the alleyway behind our house and shout racist abuse and threats. There is also graffiti in this alleyway directly behind our house saying 'All blacks out [Local area named] C18'.... The police are aware of the majority of these incidents and have had emergency lights installed, however they have failed to deter the harassment or the damage done to our home. Furthermore, the police had installed cameras for three months. During this time it was very quiet with very few incidents, however the day the cameras were taken down the incidents began again. This has made us feel even more unsafe as we feel our movements and house are being watched.... The constant harassment we have received since moving into this house has caused our entire lives to be disrupted. The entire family suffers from sleep disturbances, especially the children. The entire family now sleeps on the floor of the master bedroom as we are afraid of the stones coming through the window and causing serious injury. The*



*children have also begun having nightmares and often wake up screaming. Our son has also started constantly biting his nails. A nervous habit he has developed since living under such strenuous conditions. My husband stays up at night watching the house because he is afraid of another attack. Whenever we leave the house we feel we have to sneak out as we are afraid that we are being watched and that if we leave the house unattended it will be attacked in some way.... We no longer feel that we can live in this residence and fear for our safety and the safety of our children. The entire family suffers from anxiety which has led to numerous health problems. Furthermore, we believe the consistency and threatening nature of the attacks may lead to serious injury or worse. We are especially fearful for the health and safety of our two children who continue to suffer. We feel that our human rights are being constantly breached, specifically our right to private and family life and our right to freedom from inhuman and degrading treatment. We also believe that our right to life was seriously in threat".<sup>29</sup>*

- [85]. These kinds of experiences of racist violence can completely transform peoples' experience in the most negative ways:

*"I was at home with my wife and newly born twins [in the early evening] when a man I did not know came to the front door. He began shouting that we needed to leave the house because it was his and we had no right to be there. He pushed his way through the door and pushed me to the ground. He then began kicking me and calling me names. He was kicking my legs and my torso until my wife began shouting and he began to attack her. I could not move as I was in so much pain and was disorientated by being attacked. The man left after assaulting both my wife and I. The door to our house was open the entire time and the attacks took place in the front hallway, I believe that our neighbours may have seen what happened, though no one has come forward. We called the police as soon as we were able to get up. I had loss of memory, bruises on my legs and chest and limited movement for some time after the attack. I am also now suffering from anxiety as a result of the attack. My family and I are now living in a shelter as we are no longer safe in our residence".*

- [86]. Moreover, NICEM workers find that there often appears a general absence of awareness of the profound effects of racist harassment:

*There is still a fundamental lack of understanding about the vulnerabilities and impact of racist hate crime.... Also comments such as 'why do we even have hate crime legislation?' make me think that I would be better trying to talk to a wall.*

- [87]. This sense of the profound impact of racist crime is reflected time and again in the testimonies of NICEM clients.

*"It was around 6:30 pm ... I was standing at my front door waiting for my wife to come home, as I did not have house keys. As I was standing there, a man with two dogs crossed the street and came to my front yard. He asked me why I was there. I told him that I was waiting for my wife. The man then made several racist comments towards me and then began to walk away. He had not gone far when he turned around and returned, he*

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<sup>29</sup> Testimonies from victims and survivors of racist incidents are indicated by italicised and shaded text. These all come from NICEM clients. These accounts are anonymised.



*continued to shout racist and abusive comments at me and then began walking towards me with his two dogs. The dogs began barking at me and the man continued to be abusive. I tried to move away but could not move far as the man and his dogs were blocking my escape. When I moved the man punched me in the nose, which knocked me to the ground. One of the dogs then jumped on me and bit me on the arm. At this point, the man fled. I called my wife and told her what happened, she called the ambulance. The ambulance arrived and after explaining what happened to me, they contacted the police. I had to take three weeks off work. I now experience a high level of anxiety and do not feel safe in my own home. I continue to have nightmares about the attack and cannot sleep well. My nose continues to cause me pain and the doctors have told me I may have to have surgery to correct the damage. I have scars on my arm from where the dog bit me and continue to suffer from nerve damage. The two middle fingers on my left hand do not have the same mobility as before and are sometimes paralysed. This continues to worry me as it may affect my ability to do my job. The attack has also greatly affected my wife and children”.*

[88]. There is evidence of quick and effective police response in some cases:

*“I was out jogging around the Lagan, as is my daily practice. On the way back to my home, I passed the Custom House Square where there was a group of young people, 4 males and 3 females. All of them had bags with bottles of alcohol. As I passed them, they called to me and asked if I had a lighter and a spare cigarette. I stopped and gave them what they asked, and waited for them to return my lighter. While I was standing there, they noticed I was listening to music on my mobile. One of the boys asked what I was listening to, I answered Iranian music and he asked if he could listen. I handed the boy my mobile and headphones so he could hear. The boy then took my mobile and put it in his pocket. When I asked for my mobile back he passed to one of the others and said he did not have it. They did this for about 10 minutes and would not give it back to me. The group also began making comments about ‘Bin Laden’ and ‘Sadaam’. My primary language is Farsi and do not speak English fluently but I recognised these names and that they were directed towards me. The group then began touching my face and shaping their hands like guns and pointing at my knees saying they were going to shoot me. It had now been about 45 minutes since I had first come upon the group. They began walking away and I followed them as they still had my mobile. I moved towards the boy that I knew had my mobile, as I grabbed it off of him I was hit on the back of the head twice with the bottles they were carrying. I began to move backwards to call 999 and get away from the group. At this point another bottle hit me on the middle of my back and then another on the back of my leg. Unbeknownst to me two different people across the street had observed what was happening and had made calls to 999, so by the time they began attacking me with the bottles a police car had arrived. The police intervened and three of the perpetrators were apprehended at the scene. I was taken to city hospital where I was examined and received an x-ray for my head injury. My hair was full of glass and I had four serious cuts on my scalp that were bleeding and had to be treated by the doctors”.*

[89]. However, while policing may be sympathetic, it often shows little capacity for addressing or ending racist violence. There is a common experience of victims being advised by the police to move house:

*“It was approximately 9 pm.... My girlfriend, friend, and I were returning to my home to pick up a pizza delivery. When we had reached the front yard of our house a group of young*



*people in their teens, both male and female, came up to us and started yelling at me. The group started throwing bricks at me, I fell to the ground and began kicking and punching me in the face. The attack was related to an earlier occurrence in which I unknowingly scared the sister of one of the youths in the group. My friend who was standing next to me was also hit with a plank and his hand was injured. Neighbours who witnessed the event called the police. I gave a statement to the police but have decided not to press charges, as I did not want to risk further attacks. I was advised, by the police, to move to a different house, as there was the risk that I would be assaulted again. I was given a head x-ray and treated for bruising and pain”.*

- [90]. Alongside the many negative experiences, NICEM identify some evidence of good practice:

*In terms of good practice, Belfast City Council, while not perfect has been trying to be more robust in their response and strategy. One of the things is possibly bringing over the third party reporting system they have currently in Newcastle.... The great thing about this system being that it ties support for the victim into the whole process meaning that it is not just about collecting statistics, and those who claim to be supporting victims are actually held to account through the system. This is what we were pushing for when the RIOH system was being developed through the NIO and which didn't manifest (for a number of reasons). Something like this innovation would go a long way to pulling together the support and quality checking it. Perhaps then the numbers gathered would help with some of the cynicism still expressed about people using the 'race card' to get their cases investigated. Also help with getting people to understand that you cannot just label everything ASB and this will solve the problem.*

- [91]. These attitudes also impact directly on the effectiveness of NGO intervention in support of victims. Even when the PSNI response to a racist incident has been a model of good practice, victims often feel let down by other elements of the CJSNI.

## 5.2. The Response of the wider CJSNI

- [92]. Many of the limitations of the CJSNI identified in the *Next Stephen Lawrence* report, continue to characterise the NICEM experience:

*There are still so many frustrations with the response of the CJS in this area. We still don't have funding for our racial harassment advisor, still being told that Victim Support is there and therefore specialist help isn't needed – despite the Women's Aid model being in place. What we would like is specially trained people based in BME community groups at a local level who work with local community groups and statutory agencies to support victims of racist hate crime/incidents and advocate and tackle the issue at all the different levels.... There also needs to be a recognition of the impact of hate crime, that 'low level' incidents are high impact, that incidents of harassment need to be linked together and patterns identified – that these incidents should not just be seen as 'anti-social behaviour'.*



- [93]. Even when a case involves arrest and charges and a court case, victims often feel little sense of justice. Their vulnerability and lack of knowledge is often compounded by language issues.

*"My partner and I were asleep in bed when we were awoken by noises in the downstairs of our house. I went to check what was happening and found two persons in my house who appeared to be drunk. One of the men I recognised to be my landlord, with whom I had had previous trouble with. The two men were rummaging around our boxes that we had packed to move and were removing items. I do not speak much English but I did understand that they were demanding money and telling me to get out of the house. At this point, my partner had also come down the stairs. One of the men had a knife and began threatening me with it. We struggled and I was able to take the knife away. At this point, my wife and I left the house and began running down the street. I threw the knife away in the bushes as we ran. The two men from the house began chasing after us. They caught up to us and they had another knife. They tried to stab me with it, but again I was able to get a hold of the knife. My partner and I began running toward our friend's house, again I threw the knife away as we ran. We arrived at a friend's house and began banging on the door asking them to let us in. There was no answer at the door. The men chased us and caught up with us at this house. They had a baseball bat and a shovel and were threatening my partner and I. I told them to leave my partner alone, and they began beating me. I was beat around my body, head and face until the bat one of them was holding broke. It was not until then that they left and ran away. I was taken to hospital and treated for my injuries. I had to have stitches in my head and there has been extensive nerve damage in my face, which will require surgery to repair. Since the assault, I have suffered from headaches and dizziness and find that my coordination is very poor. I am aware that the perpetrators have been arrested and will be going to court. I was told that I might receive compensation as a result. However, no court date has been set as far as I am aware and do not know what the outcome will be".*

- [94]. There are particular problems with the response of the CJSNI in some cases. In particular it is routinely the case that the racist element in crimes is either ignored or actively denied. This can have a very negative impact on victims and their families. Often victims can find no logic or excuse for this kind of 'racism denial' by the criminal justice system:

*"I just cannot understand the fear that professionals have accepting that the assaults have clearly been racially motivated, or at least have had a racial connotation. Calling someone a 'Paki' is racial, what else can it be? Being called names that are deemed racially abusive are being excused for whatever reason".*

- [95]. In the worst incidents, this apparent inability to protect people causes extreme dissatisfaction:

*"There have been 19 further incidents since my son was beaten up... Most have been reported to the police but some minor incidents we did not report, as there had been so many. Incidents included verbal abuse, further incidents of physical assault (not prosecuted by PPS because not enough evidence). Also an incident wherein my son was chased by the perpetrators on the way to his friend's house, they stood outside the friend's house and said they would cut off his head and 'post it to his mother'. PSNI did issue an ASBO restraining order, curfew and limitation of movement. All the abuse has been racist in nature – this*



*doesn't seem to have translated in the prosecution. Police took statements and filed reports for each incident reported to them. After reporting one incident I was told by the police officer that they should just 'turn the other cheek'. I was furious by this and made a complaint to the Police Ombudsman, however as an apology was issued by the Inspector no further action was taken. I was not happy with this response. We moved house again but the perpetrators found us in this area".*

- [96]. There is a general sense across the NICEM clients that racist elements in crimes need to be addressed much more directly than they have been. It is hoped that there will be more recognition of this at PPS and judiciary level with their new policy. The NICEM experience is that third party reporting system like *Agencies against Racist Crime and Harassment (ARCH)* should be seriously considered and implemented.<sup>30</sup> There is also a need for consistency of practice throughout districts. Behind this all is a sense that racist violence needs to be taken seriously across the criminal justice system and not just by policy makers.

## 5.3. Recent developments

- [97]. The NICEM experience suggests that much more work needs to be done by the criminal justice system if it is to be seen to be taking appropriate action on racist violence. Even some of the improvements since 2006 have also been undermined more recently:

*To be fair there does seem to be stronger policy, and in some areas there is proactive work and understanding. Tellingly, however, within the PSNI Network Support Officers (which were roles that were put in place in response to their EQIA [Equality Impact Assessment]) have been subsumed into other duties (under the resource to risk policy) and the good example of hate crime investigators that the sectors applauded have been changed. There are no longer HIMLOs [Hate Incident Minority Liaison Officer] - now all neighbourhood police officers have the role in what the PSNI says will mean more people will have the skills but what looks like the old system that wasn't very effective and why HIMLOs were established in the first place. Also there is still a gap between the policymakers work and the hearts and minds of those on the ground that are supposed to be following these policies.*

- [98]. Generally there is a sense that 'mainstreaming' services for BME communities means less and worse provision for those communities:

*The negative changes [involve] the move back towards mainstreaming all the services rather than having a specific project/contact for groups. Our argument remains that these groups continue to be vulnerable and still do not have the same ease of access so there needs to be a service that caters to their needs specifically until that gap is bridged. Particularly with victims of hate crime that are often*

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<sup>30</sup> See 'ARCH: Our nationally recognised approach to reporting and tackling hate crime' [http://www.newcastle.gov.uk/sites/drupalncc.newcastle.gov.uk/files/wwwfileroot/your-council/equality\\_and\\_diversity/arch.pdf](http://www.newcastle.gov.uk/sites/drupalncc.newcastle.gov.uk/files/wwwfileroot/your-council/equality_and_diversity/arch.pdf)



*experience a complete severing of the ties they thought they held within a community. After being the target of a hate crime, their perceived 'foreignness' comes to the forefront, which may be a completely new experience to them. Any ties and support network they thought they had could completely disappear from their perspective. Also those that are new within a country are inherently vulnerable because of their newness to the community that may or may not be experiencing internal tensions.*

- [99]. There have also been a whole series of negative changes over recent months which from a NICEM perspective suggest that the criminal justice system is becoming less rather than more capable of responding to the needs of BME communities across Northern Ireland:

*The withdrawal of HIMLO's, the reference groups in the Policing Board, the hate crime thematic group in the Belfast City Council and the change to PCSPs [Policing and Community Safety Partnership] (which we believe has a severe under-representation of ethnic minorities) has meant that the paths of communication that were available are no longer there. It is now as it was, difficult to find who you need to be talking to with seemingly no single point of contact. The shift to neighbourhood policing teams as being the 'implied' HIMLOs assumes there is a feeling of complete integration and comfort of ethnic minorities within communities to interact with these officers and visa versa. Anecdotal evidence suggests this is not the case and there is dissatisfaction at the loss of the relationships the communities have worked to build up over the past number of years.*

- [100]. Put simply, therefore, the NICEM experience suggests that for many BME communities across Northern Ireland the situation is getting worse rather than better. While many of the important lessons of Macpherson remain to be learned and/or implemented, other recent local improvements have been diluted and clawed back. This of course raises the question of what current policy is vis-à-vis race and criminal justice in Northern Ireland. Moreover, it raises the question of what needs to be done to transform the experience of criminal justice of BME people across Northern Ireland.



## 6. Race and Criminal Justice in NI

[101]. The absence of *any* assessment of race and justice in the recent *A Community Safety Strategy for Northern Ireland 2012-2017* (DoJ 2012) at least makes clear the need for some kind of additional, race-specific intervention.<sup>31</sup> The CJSNI has, however, paid some attention to the specific needs of BME communities in other contexts. The most recent assessment from within the CJSNI of their experience suggests:

Under reporting of crime among ethnic minority communities has been well documented in recent research. The extent of the problem in Northern Ireland is not clear, but it is acknowledged as an area for concern. In the consultations with individuals from minority ethnic communities in Northern Ireland, the following factors were cited:

- a lack of confidence that police will respond to their calls for assistance;
- a reported precedent of unacceptably slow responses from the police;
- a track record of unresolved cases;
- a lack of communication between investigating officers and the injured parties;
- a fear of reprisal from the perpetrators of crime and their allies for having involved the police;
- a lack of confidence that the police would deal with the complaint discretely (e.g. an example was given of police arriving in uniform to a consultee's shop after the injured party had expressly requested that the police conduct the interview off-site);
- advice from police to the injured party that it would be unwise to pursue the case due to the poor likelihood of securing a conviction and the high likelihood of recrimination from the alleged perpetrator; and
- a lack of understanding among beat and patrol officers of the impact of racial harassment in the lives of ethnic minority communities. (NIO 2004: 89-90)

[102]. As we have already seen, the testimony of NICEM clients over the intervening period suggests that this snapshot holds true in terms of contemporary experience nearly ten years later.

[103]. This analysis also emphasised that, '[d]espite the general findings of low confidence, some consultees indicated that they had positive relationships with their local police, that they were comfortable reporting crime to the police and that the police had sought to find ways to support them through racist attacks. (NIO 2004: 90). However the broad sense of alienation from the CJSNI among BME people recorded in this earlier research concurs with the more recent overview of the NICJI. In *The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland* the NICJI suggests:

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<sup>31</sup> This document does not mention racism at all. Its discussion of race and criminal justice is limited to the broader issue of 'hate crime'.



Despite ongoing outreach and engagement work in this area, some of the groups and victims representing the ethnic minority communities in Northern Ireland indicated that they were reluctant to engage with police. This was stated to be mainly due to:

- experiencing poor service when reporting incidents to the police. This included many who felt that the issues would not be taken seriously or considered important;
- language becoming a barrier (despite good access to interpreter services);
- a perception that “state authorities are corrupt”, based on their experience/views from their country of origin; and
- fear that a complaint made against the police will result in harassment or lack of service in future. (NICJI 2011: 21-2)

[104]. In other words, the evidence from the CJSNI itself, supports the notion that there remains a huge challenge in terms of race and the delivery of criminal justice.

## 6.1. Current Data from the CJSNI

[105]. If the situation is to improve in the CJSNI, there is a need for effective data equivalent to the Minimum Data Set in England and Wales. (As we have already seen, this, ‘enables the analysis of consistent and robust ethnicity data across the criminal justice system in order to identify and, where necessary, address race disproportionality’.) The issue of such data in Northern Ireland has received some recent discussion. In January 2012, an AQW was tabled on this issue:

To ask the Minister of Justice whether he will introduce ethnicity monitoring of the criminal justice system, which mirrors Section 95 of the Criminal Justice Act 1991 for England and Wales, in order to safeguard against the discrimination of individuals on the basis of their ethnicity.

[106]. The response from the Minister of Justice was:

My Department works with the PSNI and other partners at regional level and locally through Community Safety Partnerships to address hate crime and encourage reporting. The new Community Safety Strategy will include a commitment to tackling hate crime in partnership, and a key element will be around building confidence in the justice agencies and encouraging reporting of hate crimes. Section 95 of the Criminal Justice Act 1991 (the 1991 Act) gives the Secretary of State the ability to publish information to support improved performance of the criminal justice system in a number of areas. This includes “facilitating” the avoidance of any discrimination against anyone on the grounds of their race or gender. It does not create any system for monitoring ethnicity in the criminal justice system. As administrative mechanisms already exist which allow for



the sharing of relevant operational information across the justice system in Northern Ireland, I have no plans to replicate Section 95 of the 1991 Act.<sup>32</sup>

- [107]. This response seems markedly off the point. As the *Root and Branch Review of Race and the CJS Statistics: Final Report* makes very clear:

Statistics on the position of BME communities within the CJS have been collected and published since 1992 under the provisions of S95 of the 1991 Criminal Justice Act (CJA). *The reason for this legislation was to produce statistics that would facilitate the performance of members of the CJS agencies in their duty of non-discrimination on grounds of race.* The collection of such statistics has been mostly through CJS agencies and the most visible evidence of publication has been through the annual S95 publications of the Home Office. (CJS Race Unit 2005: 11, emphasis added).

- [108]. With regard to the CJSNI, the key issue is the public availability of data. There is no data equivalent to that produced in the context of Section 95 in England and Wales and this has a serious, detrimental effect on monitoring race in the criminal justice system. With the exception of the PSNI statistics on racist incidents and crimes, there no appropriate data comparable on race and criminal justice comparable to that available in England and Wales. While PSNI data stand as a model of good practice, there is a dearth of other statistical information. It appears that some additional ethnic monitoring is clearing undertaken and not put in the public domain, however, it proved impossible for this research to access that data – despite sustained requests to that effect. In consequence it seems necessary that this become a statutory sector responsibility. The ‘system for monitoring ethnicity in the criminal justice system’ which generates Section 95 data for England and Wales, should be replicated in Northern Ireland.

## 6.1.1. The PSNI and racist incidents

- [109]. The PSNI currently provides much more detailed statistical information relevant to race than any other element of the criminal justice system in Northern Ireland. The definition of ‘racist incident’ has changed since the *Next Stephen Lawrence?* report – it now conforms with the Macpherson recommendation and also specifically names Irish Travellers in accordance with the NI Race Relations Order (1997). Thus:

A racist incident is defined as any incident which is perceived to be racist by the victim or any other person. A racial group can be defined as a group of persons defined by reference to race, colour, nationality or ethnic or national origins (this includes UK National origins i.e. Scottish, English, Welsh and Irish) and references to a person’s racial group refer to any racial group into which he/she falls. Racial group includes the Irish Traveller community. (PSNI 2012: 6)

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<sup>32</sup> Tabled Date: 20/01/2012 Answered On Date: 31/01/2012



[110]. The PSNI recording also allows us to disaggregate racist from other hates crimes as well as longitudinal analysis of patterns of recording and comparison with other hate crimes.

<b>Racist motivations: incidents, crimes and sanction detection rates, 2004/05 to 2011/12</b>								
<b>Numbers and percentages</b>								
	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Racist incidents	813	936	1,047	976	990	1,038	842	696
Racist crimes	634	746	861	757	771	712	531	458
Sanction detection rates (racist motivation)	11.0	13.1	11.7	11.4	12.5	16.2	13.4	16.8

<b>Racist incidents</b>	
<b>Incidents with a racist ... motivation recorded in the year to 30 June 2012 compared with the previous year</b>	
12 months to June 2011	12 months to June 2012
836	675

<b>Racist motivated crimes</b>				
<b>Crimes and sanction detection rates with a racist ... motivation in the year to 30 June 2012, compared with the previous year</b>				
	12 months to June 2011		12 months to June 2012	
	Offences Recorded	Sanction Detection Rate	Offences Recorded	Sanction Detection Rate
Violence Against the Person Offences	244	23.0	199	21.6
Property Crime	279	7.9	213	8.9
All Other Crime	11	9.1	6	33.3
Total Recorded Crime	534	14.8	418	15.3

[111]. This makes increases and decreases in patterns easy to follow and analyse. Thus the most recent statistics trace the following patterns across quarterly reports:



- Racist incidents have shown a general downward trend over the last two years, falling from a high of 231 in Q2 2010/11 to a low of 158 in Q4 2011/12. However, in the latest quarter (Q1 2012/13) the number of racist incidents has risen to 175, an increase of 17 on the previous quarter.

- Racist crimes have also shown a general downward trend from 147 in Q2 2010/11 to 99 in Q4 2011/12. While Q1 2011/12 increased to a level of 147, there were falls in each subsequent quarter of 2011/12. However, the latest quarter shows an increase of 8 on the previous quarter.

- The sanction detection rate for crimes with a racist motivation for the latest 12 months is 15.3%, compared with 14.8% for the previous 12 months.<sup>33</sup>

[112]. The key potential weakness here is obviously the robustness or otherwise of the data. The work of NICEM – as well as many other sources – suggest under-reporting to the PSNI. In other words the data may accurately trace reporting of racist incidents to the PSNI but much less accurately an indicator of levels of racist violence or, indeed, the success of the PSNI in dealing with racist violence.

[113]. With this important caveat in mind, however, the presentation of the data remains a good example for other elements in the criminal justice system in Northern Ireland. Within the limitations of its own performance and recording, the statistics provide a clear baseline from which it is possible to measure the delivery of a key service to the BME community across Northern Ireland. This is provided at the level of both police district and area, including an urban and rural comparison. This detailed information is provided on Total number of incidents, Total offences recorded, Total offences detected, and Detection rate (%). The data also allows effect comparative analysis of racist crimes in terms of issues like ethnicity, age and gender of victims as well as trends in detection rates over time and geographic patterns of incidents and crimes with a racist motivation. This analysis is presented in an open and accessible form to the public (PSNI 2012:13-24).<sup>34</sup> This detailed approach facilitates critical engagement with the statistics from an NGO perspective – if community organisations know that there has been a particular dynamic in an area, this would expect to show up in local area statistics.

[114]. The one other area of policing and data collection that generates data broadly comparable with Section 95 data in England and Wales, is 'fair employment' statistics. While there has been a great deal of interest and analysis of PSNI recruitment, this has focused almost exclusively on the Catholic/Protestant differential (or more accurately on the Catholic/non-Catholic differential). This means that it is impossible to trace the representation of BME in the PSNI since these are collapsed into 'non-Catholic' figures. Fair Employment returns offer some indication of this – from 2008 we find Northern

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<sup>33</sup> 'Incidents and crimes with racist motivation' Incidents and crimes recorded by the police in Northern Ireland with a racist, homophobic or sectarian motivation: Quarterly update to 30 June 2012 Published 30 August 2012 [http://www.psnipolice.uk/quarterly\\_hate\\_motivation\\_bulletin\\_apr-mar\\_11\\_12.pdf](http://www.psnipolice.uk/quarterly_hate_motivation_bulletin_apr-mar_11_12.pdf)

<sup>34</sup> See 'Racist Motivations: Trends 2004/05 to 2011/12' in Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2011/12 Annual Bulletin published 05 July 2012 [http://www.psnipolice.uk/hate\\_motivated\\_incidents\\_and\\_crimes\\_in\\_northern\\_ireland\\_2004-05\\_to\\_2011-12.pdf](http://www.psnipolice.uk/hate_motivated_incidents_and_crimes_in_northern_ireland_2004-05_to_2011-12.pdf)



Ireland Policing Board, The 1,173 359 60 1,592 [76.6%] [23.4%].<sup>35</sup> This may well actually impact negatively on BME recruitment and it certainly can do nothing positively to monitor representation in terms of BME recruits.

## 6.1.2. Other CJSNI Data

[115]. Ideally, of course, we would wish to see data equivalent to that published under Section 95 in England and Wales to monitor race and criminal justice. In essence as we have seen this monitors the proportion of individuals at different stages of the CJS process by ethnic group compared to general population. In reality, however, nothing like this data exists. It is possible to generate some useful data from existing sources. For example, we can track cases 'aggravated by racial hostility' through the PPS.

<b>Cases Considered by a PPS Prosecutor to have been Aggravated by Racial Hostility – Decisions Issued by Type 2010-11<sup>36</sup></b>						
	Prosecution		Diversion			No Prosecution
	Indictable	Summary	Caution	Informed Warning	Youth Conference	
2010-11	14	67	16	1	13	44
2009-10	4	100	19	6	13	59
2008-9	6	82	9	3	11	51
2007-8	11	77	9	8	1	57

Source: *Cases Considered by a PPS Prosecutor to have been Aggravated by Hostility - Prosecutorial Decisions Issued by Type*<sup>37</sup>

[116]. The Northern Ireland Prison Service can provide detailed information on *nationality* – but not ethnicity - across the prisons system.

[117]. It is also clear that there is some other ethnic monitoring which does not appear in the public domain. This research made strenuous efforts to access this data but it was not forthcoming. It seems likely that only putting this process on a statutory footing equivalent to Section 95 will ensure that appropriate data is generated for Northern Ireland. It bears emphasis that such data is a necessary condition for any blueprint for the eradication of institutional racism in the criminal justice system.

<sup>35</sup> See Monitoring Report No. 19 A profile of the Monitored Northern Ireland Workforce Summary of Monitoring Returns 2008 Belfast: ECNI, p. 158.

<sup>36</sup> The PPS notes motivation data reflect each occasion in which a prosecutor flags one of four motivation types'. (In this case the motivation flagged is obviously 'racial'.)

<sup>37</sup> <http://www.ppsni.gov.uk/Annual-Statistics-6720.html>



## 6.2. Current policy and practice across CJSNI

- [118]. As part of the research for this report, we asked the key elements of the CJSNI for and update on their approach to race and criminal justice. Agencies were asked to identify whether they had undertaken any review of their performance on race and criminal justice in the aftermath of the publication of the MacPherson report in 1999. They were also asked if they had developed any race- or ethnicity- specific policies or practices or developed any posts with race-specific responsibilities. (The responses to this information request are included in full in Annex Three.) There are a number of salient points.
- [119]. First, there is some specific attention to race which is clearly an improvement on the situation some years ago. PSNI data on racist incidents in particular is much more comprehensive and accessible than it was in the past.
- [120]. Second, there is a marked tendency to reduce all analysis of race to the issue of 'hate incidents'. For example the PSNI reduce this response to the assertion that, 'the Police Service of Northern Ireland constantly review and update our policy and practice around Hate Crime'. While 'hate incidents' remain a key element of issues on race and criminal justice, they are by no means the only element. Macpherson raised issues way beyond that of one specific incident of racist violence; likewise Section 95 data recording allows analysis of inter alia Stop and Searches, Arrests, Cautions, Court order supervisions and Prison population (including foreign nationals). These kind of data and these kind of issues are just as central to any assessment of how a given criminal justice system is performing on race.
- [121]. Third, there is no evidence of any structured engagement with Macpherson or the follow up to Macpherson by any of these agencies. For example, the Ministry of Justice suggests, 'As the Department only came into being on 12 April 2010, there is not a specific response to the McPherson report. However, we have a number of race-specific policies, strategies and practices, details set out below'. The implication is that if an institution arrived after Macpherson, it no longer needs any attention. This supports the contention that Northern Ireland remains in a 'pre-Macpherson' situation' that was put forward in the 'Next Stephen Lawrence'. Unless, of course, there were other systematic efforts to address the performance of the CJSNI on race. This raises the question of whether *any* historic processes offered an alternative to the obvious strategy of engagement with Macpherson - which, as we have seen, was so actively followed in the parallel Scottish situation. The most obvious of these is the Criminal Justice Review but it also includes policy reviews and changes within the different institutions.
- [122]. In terms of new research *outside* the statutory sector, the most detailed recent examination of the experience of ethnicity and policing is the Institute for Conflict Research project *Over Policed and Under Protected: Travellers, the Police and the Criminal Justice System in Northern Ireland* (2011). This addresses specifically the experience of the Traveller community. The paper characterises Traveller experience of policing and criminal justice as being, 'over policed and under protected'. Their conclusions are that: '[t]he data from the PSNI and NISRA ... suggests that Travellers in Northern Ireland are:
- More likely to be a victim of crime than an individual in the general population;



- More likely to be a victim of racist harassment or crime than a member of other minority communities;
- More likely to be arrested, charged or reported to the PPS than an individual in the general population;
- More likely to be subject to police stop and search than an individual in the general population;
- More likely to be subject to police stop and search than a member of other minority ethnic groups; and
- More at risk of imprisonment than an individual in the general population. (ICR 2012: 27-28)

[123]. The paper also noted that, 'the policing of Travellers and the relationship between Travellers and the police was not a factor that was addressed by the police reform process nor has it been widely highlighted in subsequent internal reforms within the PSNI' (ICR 2012: 28). Furthermore, it suggests that the proportion of adult male Travellers who have been subject to the negative attention of the police appears to be extraordinarily high' (ICR 2012: 13).

[124]. The PSNI stop and search data thus indicates that over the past four years for which data is available Travellers have been up to five times more likely to be subject to stop and search than an average member of the total population; and they have also been disproportionately subjected to stop and search compared to members of other minority ethnic communities (ICR 2012: 16-7).

## 6.3. The Criminal Justice Review

[125]. The Good Friday Agreement provided for a 'wide-ranging review of criminal justice (other than policing and those aspects of the system relating to the emergency legislation) to be carried out by the British Government through a mechanism with an independent element, in consultation with the political parties and others' (Criminal Justice Review Group 2000: 1). The terms of reference for this review were:

Taking account of the aims of the criminal justice system as set out in the Agreement, the review will address the structure, management and resourcing of publicly funded elements of the criminal justice system and will bring forward proposals for future criminal justice arrangements (other than policing and those aspects of the system relating to emergency legislation, which the Government is considering separately).... (Criminal Justice Review Group 2000, 1-2).

[126]. In other words, the review had some reference to race and criminal justice in theory and it also addressed this in practice. Its deliberations included some discussion of the import for Northern Ireland of the Macpherson report:

The inquiry into matters arising from the death of Stephen Lawrence was completed in February 1999. Although it was concerned with events in another jurisdiction, we considered what impact it might have on our deliberations. Four of the report's recommendations were about witnesses and victims. It was



recommended that: there should be improved guidelines for the handling of victims and witnesses, particularly in the field of racist incidents and crimes; proactive use should be made of contacts within ethnic minority communities to assist with victim support and working with sensitive witnesses; trained victim/witness liaison officers should be available and used in racist incidents and where a sensitive approach to young and vulnerable witnesses and victims was required; and appropriate bail conditions should be used to prevent the intimidation of victims and vulnerable witnesses. These recommendations were accepted by the Home Office, which announced a number of initiatives to develop good practice and drew attention to relevant work already being carried out in relation to vulnerable or intimidated witnesses. (Criminal Justice Review Group 2000: 317)

[127]. The review also addressed aspects of race and criminal justice, albeit in very little depth:

We also received comments to the effect that the judiciary was unrepresentative from a class perspective and it was observed that there was no-one from an ethnic minority on the bench. (Criminal Justice Review Group 2000: 119)

We gave careful thought to whether the judiciary should be monitored by gender, ethnicity and community background.... We do understand the reluctance of some to contemplate a situation where applicants for judicial posts are asked for information about their religious or ethnic background. It could be taken as implying a 'representative' role for judges of the type that we have made clear is not appropriate; and this might be seen as having implications for judicial independence. On the other hand this form of monitoring and good practice for employment purposes is accepted throughout Northern Ireland and does not compromise the merit principle; and monitoring of this kind is carried out in England and Wales in relation to ethnic background. (Criminal Justice Review Group 2000: 140-1)

We recommend that consideration be given to finding a satisfactory way, with the assistance of proxy indicators if necessary, of assessing for statistical purposes the religious background of applicants for judicial posts and of those who wish to be included in the database. There would also need to be assessment for statistical purposes of the ethnic background of applicants. This information would not be available to those involved in the selection process. (2000: 141, original emphasis).... Consistent with normal fair employment practice, there would be no question of publishing information about community background in a way that would enable individuals to be identified. However, we would expect the annual report of the Judicial Appointments Commission to make reference in general terms to the background of applicants to posts by reference to religion, gender, ethnicity, disability and geographical location. (Criminal Justice Review Group 2000: 141)

We recommend that in developing a community safety strategy for Northern Ireland specific consideration be given to [inter alia] the needs of ethnic minority communities; (Criminal Justice Review Group 2000: 270)



[128]. The key point about the review was that it emerged from the Good Friday Agreement. It followed that the primary concern was the aspects of criminal justice that might have been related to the conflict in Northern Ireland over the past thirty years. In this sense, it was very clearly not about 'race' and the BME community in Northern Ireland. It paid little attention to the silences and failings of the system in terms of race and could not be regarded as an alternative to the post-Macpherson review that took place in England and Wales and Scotland. Moreover, it paid no attention whatsoever to the place that the new notion of 'institutional racism' could or should have within criminal justice in Northern Ireland. In short, whatever it achieved, it was definitively not a Northern Ireland version of Macpherson on race and criminal justice.

## 6.4. Northern Ireland Prison Service

[129]. There is some relevant research and analysis of race and the NIPS. In particular the Prison Review Team (PRT) *Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons* (2011) addressed the issue in some depth:

The national and ethnic mix in prisons in Northern Ireland has changed considerably in recent years, and this is a particular challenge in a community which is predominantly white and English-speaking. The majority of foreign nationals are from eastern Europe, primarily Lithuania and Poland, or from China. Only around 1% of the prison population is Black or South Asian. Irish Travellers also account for about 1% of the population. NIPS collates annual statistics on use of force and regime levels by ethnicity and nationality, which do not show any areas of concern except for high usages of force against Travellers in Maghaberry and Hydebank Wood. It is not possible to detect disproportionality in the routine equality and diversity reports, or in any other area, as there is no ethnic breakdown of the population as a comparator.

[130]. The research also engaged directly with BME prisoners:

In discussion with black and minority ethnic and foreign national prisoners in all three prisons, it was clear that there was a considerable degree of cultural and racial blindness. To varying degrees, prisoners reported discriminatory attitudes and treatment, varying from casual racism, often exhibited in the use of discretion. Many said that the best opportunities went to those who were white, Protestant and Northern Irish (nearly all foreign nationals were Catholic or non-Christian); and some Travellers reported discriminatory treatment. No prisoners said that they had had active contact from a diversity or foreign national officer, or help with immigration issues. Prisoners at Magilligan and Hydebank were more mixed in their responses, and those at Magilligan stressed that it was better than Maghaberry. This was confirmed in the Maghaberry meetings. Prisoners provided many examples of racist and abusive language and favouritism. There was particular concern about the absence of interpretation, especially for health problems, and several examples of undiagnosed serious illness, including a heart attack. One prisoner seeking to make a request to an officer was told he could only do so if he wrote it in English. Many reported feeling depressed and isolated



and pointed out that there had been two suicides of foreign nationals in the prison recently. One extremely distressed prisoner raised a number of easily resolvable practical problems, which should have been spotted and dealt with earlier. Limited and inconsistent information is available about the use of interpretation and translation, but what is available shows very low usage, especially at Maghaberry, and usage that is confined mainly to specialist services, such as offender management and immigration. There is no evidence of use by healthcare and no recorded use on the residential wings, except for some at committal in Hydebank. At all prisons, there was a local rule that foreign nationals could not have free phone calls in lieu of visits if they had more than £50 in their private cash; they therefore faced the choice between saving for their release or to help their families overseas, or being unable to afford expensive overseas calls.

[131]. The PRT review also made a clear and specific recommendation on race and ethnicity:

Recommendation 10 Equality and diversity reports should be presented in a form that signals clearly where there are differential outcomes in relation to religion, race or ethnicity. They should be routinely examined in equality committees and if necessary action taken. Ethnicity and disability should be better recorded and monitored. Recommendation 11 Records of interpretation usage should be kept in each prison, by department and unit or house and regularly interrogated by managers. Support groups for foreign nationals should be established, and issues raised actioned by managers. (PRT 2011: 39)

## 6.4.1. Report by the Prisoner Ombudsman into the Circumstances Surrounding the Death of Prisoner B

[132]. There is also one statutory inquiry process in Northern Ireland which is relevant to the analysis of race and criminal justice. Prisoner B was a Chinese national held on remand in Maghaberry Prison. He was 36 years old when he died by suicide in his cell in Lagan House, Maghaberry Prison, on the night of Sunday 8 March 2009. The Prisoner Ombudsman for Northern Ireland had responsibility for investigating the death of Prisoner B.

[133]. The report makes no assessment of racism in the circumstances surrounding this death. But there are factors which suggest the need for further investigation. For example, the 'lock down' which clearly contributed to the Prisoner's depression was apparently a consequence of racist violence directed towards Chinese prisoners:

The reference to "a period of lock down" resulted from all prisoners in Lagan House being confined to cell for a number of days, following an attack on Chinese prisoners by other prisoners on 13 November 2008. It is unclear from prison records for how long the prisoners in Lagan House were unable to leave their cells for association. Chinese prisoners have said that the lock down lasted several days. (2010: 51-2)



[134]. This suggests that the victims of a racist attack were punished in exactly the same manner as the perpetrators – since both were apparently subjected to ‘lock down’.<sup>38</sup> In this case this contributed directly to the death of the prisoner. It is difficult to say much more than this since the incident is discussed in no further depth.

[135]. There is however some further general discussion pertinent to this issue:

Prisoner B was one of 48 Chinese prisoners taken into custody around the same time, on the back of a PSNI operation. The investigation found that the Prison Service had made efforts to be responsive to the particular needs of the Chinese and other foreign national prisoners. The action taken and the findings of an inspection in 2009 in respect of these are described in Section 11 of this report (2010: 105-9).

[136]. Section 11 of the report (2010: 105-9) discusses these issues under the headings ‘NIPS Draft Foreign National Strategy 2008-2010’ and ‘On-going Challenges in respect of Foreign National Prisoners’. While these are neither limited to problems with racism nor necessarily relevant in terms of other BME prisoners, they clearly should have some awareness of racism as an issue. This should at least overlap with any strategy on combating racism in the prison service – especially since there is already evidence of racist violence causing significant problems, not least contributing to the death of a prisoner. Section 11, however, says nothing about racism other than mentioning the need for ‘relevant training in cultural, racial and diversity issues’ (2010: 106)

[137]. There is no assessment of the role that racism or institutionalism racism might have played in the circumstances surrounding the death of Prisoner B. Of course, since the question is not engaged, we don’t know that racism *was* a key factor in this death – but we would expect the question to be asked. It is further indication of the pre-Macpherson characterisation of the criminal justice system in Northern Ireland – in this case the prison service. It can be strongly argued - post-Macpherson - that the default position in any criminal justice situation clearly involving race should be to proactively address the significance or otherwise of racism in the dynamic. Moreover, if racism is found *not* be a factor then this should be clearly indicated.

[138]. More generally there is evidence to suggest on-going issues. Witness one person working closely with Muslim prisoners:

*As far as the Muslim prisoners are concerned, they face racism every day from prisoners and officers. No one complains. They tell me but that is it. You have to remember that most Muslim prisoner's crimes are ID or immigration related and they are afraid. They are not hard criminals. Also, the prison never makes any considerations and think in a way that would make it easier for the prisoners. They have them in different house instead of the same house, which would make it easier to bring them to the service. When they share a cell, they put a Muslim with a Protestant. This sometimes leads to problems. Instead of pairing two Muslims together. Sometimes they do it. Lately, they are moving a Muslim prisoner to Braid*

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<sup>38</sup> Although there have been other anecdotal suggestions that this was not a ‘racist incident’.



*House which is outside. This is the second time they did this. Of course, the Muslim prisoner will not be brought to the Chapel to attend the service. However, all the Christian prisoners at Braid are brought to the Chapel on Sunday. This is what is visible and I can talk about. A lot happens that the prisoners don't talk about.*

- [139]. Broadly therefore there remain issues and questions in terms of the NIPS and race. These should be addressed as part of a wider move towards a blueprint for eradicating racism from the criminal justice system.

## 6.5. Other parts of the CJSNI

- [140]. There is almost no discussion or analysis of race in other parts of the criminal justice system in Northern Ireland. This is particularly problematic in terms of prosecutions and convictions since so many victims of racist violence are dissatisfied with the process of justice. Certainly with the Public Prosecution Service, the Youth Justice Agency, the NI Courts and Tribunals Service and the Probation Board for Northern Ireland. While the recent *PPS Equality Action Plan* (2012) is widely regarded as a step in the right direction, it is far from being an application of Macpherson to the issues of prosecution and race in Northern Ireland. There is certainly a *prima facie* case for a review of each of these services and what they do or do not do in terms of race. Once again the absence of Section 95 comparable data makes any current assessment of performance next to impossible; and once again the absence of clear policies and guidelines on race indicates a clear failure to learn from the Macpherson report.

- [141]. As suggested, there is some evidence of movement and some evidence of new activity in this area:

Through Community Outreach Strategy events and meetings, senior PPS staff will take every opportunity to address the perceptions of people in affected S75 groups that Hate Crime offences do not result in prosecution and explain the PPS role in the overall process.... [We will also] Publish regular Hate Crime statistics. (PPS Equality Action Plan 2012: 4)

- [142]. Generally, however, there is little awareness of the issue. There is an overwhelming tendency to reduce any analysis of race and criminal justice to issues of 'hate crime'. And there is almost no evidence of any sensitivity to the broader issues of *victimisation*, *criminalisation* and *employment*. One very simple way to begin this process is to juxtapose Section 95 data relevant data to that available in Northern Ireland and to juxtapose Macpherson recommendations on that aspect of criminal justice alongside what is currently practiced. Annex One provides a full list of Macpherson's recommendations – the first step towards any 'blueprint' for the CJSNI is to juxtapose the relevant parts of this list with policy and practice in the relevant parts of the criminal justice system in Northern Ireland.



## 6.5.1. Gangmasters (Licensing) Act 2004

[143]. There is one other specific area of state activity directly relevant to race and criminal justice which has come into force over recent years. This is governed by the Gangmasters (Licensing) Act and operated by the Gangmasters Licensing Authority. While the legislation covers people regardless of ethnicity it is often specifically connected to the experience of migrant workers and perceptions of 'trafficking' and therefore effectively inseparable from issues of race and racism. This has made specific intervention in Northern Ireland:

Many gangmasters may be breaking the law by supplying workers to farms and the food industry without a licence according to ICM research conducted on behalf of the Gangmasters Licensing Authority (GLA). The research surveyed employment agencies in Northern Ireland and found that only 63% of agencies supplying workers to the food processing & packing sector and 64% who supply workers to the farming & horticulture sector hold a GLA licence. It was also noted that the smaller agencies were more likely to be unlicensed.<sup>39</sup>

[144]. The work of the GLA will continue to provide data and legal intervention directly relevant to the nexus of race and criminal justice in Northern Ireland:

The GLA who were set up to safeguard the welfare of workers across the UK have already made their mark by revoking the licences of 76 businesses found to be exploiting workers in Scotland England and Wales. With Operation Ajax under way in Northern Ireland those operating without a licence in the regulated sectors must come forward now, rather than risk being trapped by one of our many operations and face prosecution. Since Operation Ajax was launched in Northern Ireland the GLA have conducted 18 inspections with 6 formal warnings issued. A number of operations aimed to catch unlicensed operators and those who use them will take place over the coming months. (GLA 2008)

[145]. While the work of the GLA has a limited remit and limited powers, it continues to impact on an area of employment and migration that frequently raises issues of race and criminal justice.<sup>40</sup>

## 6.6. Racially Aggravated Offences

[146]. *The Next Stephen Lawrence?* report identified specific issues with the failure of the CJSNI to address the racially aggravated aspects of crime. While there is some evidence of the PSNI re-addressing serious crimes in which they had previously denied a racist motive, the

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<sup>39</sup> Gangmasters Licensing Authority 2008 'Over a third of Northern Ireland gangmasters are Unlicensed' Press Release 29 October 2008.

<sup>40</sup> See for example GLA 'Joint Operation in Northern Ireland' 09/12/2011 <http://gla.cds.co.uk/PageFiles/2227/111209%20Joint%20operation%20in%20N%20Ireland%20.pdf>



NICEM experience is that too often the racial element in crime is denied or underplayed.<sup>41</sup> There was very little evidence of the use of increased tariffs for racist violence. This continues to be the case. Despite the focus on 'hate incidents' in discourse around race and criminal justice, there is no effective recognition of racially aggravated offences in Northern Ireland.

[147]. This bears emphasis: *'there are no 'hate crime' provisions, or racially and religiously aggravated offences in Northern Ireland, equivalent to those established by legislation in England and Wales* (Iganski 2008: 129, emphasis added). Rather Article 2 of the Criminal Justice (No. 2) Northern Ireland Order 2004 on "increase in sentence for offenses aggravated by hostility" states that "if the offence was aggravated by hostility, the court shall treat that fact as an aggravating factor (that is to say, a factor that increases the seriousness of the offence) and shall state in open court that the offense was so aggravated." This article deals with offences that are aggravated by hostility based on the victim's race as well as religion, sexual orientation and disability.

[148]. This difference compounds the issues with the data relating to race and criminal justice in Northern Ireland. For example, a parliamentary question on this issue furnished the following response:

David Simpson: To ask the Secretary of State for Northern Ireland how many people were convicted of a racially-motivated crime in Northern Ireland in each of the last two years. [305007]

Paul Goggins: The information sought on convictions for racially-motivated crimes is not available. Conviction would be for the simple offence (e.g. assault) without reference to any racial motivation. Court conviction data do not contain background information in relation to offences committed, and it is therefore not possible to separate out the number of convictions for offences with a racial motivation.<sup>42</sup>

[149]. As the PSNI confirm:

Hate Motivations: While in England & Wales there are specific offences in law of racially or religiously aggravated assault, these offences do not exist in Northern Ireland. However as with domestic abuse, PSNI will record a motivating factor relating to hate (racist, homophobic, sectarian, faith/religion, disability and transphobic) on the individual crime record where it is appropriate to do so. These figures are available in separate bulletins dedicated to statistics on incidents and crimes with a hate motivation. (PSNI 2012: 10)

[150]. This specific issue of the absence of racially aggravated crime in Northern Ireland law connects with serious questions about the broader use of the term 'hate crime' within the

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<sup>41</sup> See, for example, recent developments around the murder of Simon Tang. This was a case in which the racist motive assumed by many community representatives was previously denied by the PSNI – as was the suggestion of loyalist paramilitary involvement. See BBC News 'Man arrested in Simon Tang murder investigation' 23 October 2012 <http://www.bbc.co.uk/news/uk-northern-ireland-20038868>

<sup>42</sup> House of Commons 8 Dec 2009 : Column 179W. Written Answers to Questions.



Northern Ireland criminal justice system. This has been addressed by the on-going NIACRO 'Challenge Hate Crime Project'.<sup>43</sup> For example:

The Institute for Conflict Research, based in Belfast, compiled figures which show 13,655 hate motivated incidents were reported to the police in the last five years. That includes everything from serious cases like murder through to damage to property and name-calling. The report found that out of almost 14,000 complaints only 12 cases were successfully prosecuted using the 2004 legislation.<sup>44</sup>

- [151]. This analysis suggests that the successful prosecution of generic 'hate crime' in Northern Ireland is infinitesimal – the proportion of this involving racist hate crime is even closer to zero. In other words, the absence of successful prosecutions suggests that there is almost no hate crime at all in Northern Ireland. This situation obtains in a state which continues to attract the appellation 'race hate capital of Europe'. In reality the opportunity for increased tariff in Northern Ireland has done nothing to signal the seriousness of racist violence. The overwhelming evidence from NICEM's experience supports the extension of racially aggravated crime to Northern Ireland as part of a package presenting a blueprint for the eradication of racism from the criminal justice system. While this research has emphasised that it is not adequate to reduce issues of race and criminal justice to 'racist hate crime', this reality is even more deeply compromised in a context in which racist hate crime it not adequately or appropriately framed by legislation.

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<sup>43</sup> See 'Challenge Hate Crime' <http://www.niacro.co.uk/challenge-hate-crime/>

<sup>44</sup> BBC News 'Hate crime: How effective is Northern Ireland legislation?' 15 October 2012 <http://www.bbc.co.uk/news/uk-northern-ireland-19935758>



## 7. Conclusions

- [152]. While there have been some genuine improvements over the six years since NICEM published *The Next Stephen Lawrence*, the CJSNI remains in a 'pre-Macpherson' situation. Put simply, in Northern Ireland the key lessons of Macpherson are yet to be learned and the key reforms are yet to be implemented. Moreover, in respect of data on race and criminal justice, the CJSNI remains in a 'pre-Section 95 situation'. In other words, the key statistics necessary to facilitate, 'the performance of those engaged in the administration of justice to avoid discriminating against any persons on the ground of race' are still not being produced. In the absence of these two key elements of reform, the CJSNI remains wide open to accusations of *institutional racism* – in terms of acts of both commission and omission.
- [153]. In this context there needs to be a rapid and focused process to render the CJSNI fit for purpose on race. The methodology of this process should echo the broad approach of Macpherson - it should aspire towards no less than a '*blueprint for the eradication of racism*' from the Northern Ireland criminal justice system. Here, as we have seen, the Scottish CJS provides a useful comparator model – as a devolved administration within the UK, it provided a progressive, maximalist approach to Macpherson in a context in which, like Northern Ireland, it was not immediately subject to the criticism and lessons of the Stephen Lawrence Inquiry.
- [154]. This process should begin by recognising the *breadth* of CJSNI responsibilities on race and criminal justice. In particular it must concern itself with the issues of *employment* and *criminalisation* of BME people in the criminal justice system as well as the issue of *victimisation*. It bears emphasis that the issue of race and criminal justice is *imperatively not only about 'racist incidents' or racist 'hate crime'*. The minimum outcome of such a process should be the institution across the CJSNI of three key changes – *first*, effective ethnic monitoring across the system using the template of Section 95 monitoring of race and criminal justice; *second*, a blueprint for the eradication of racism in the Northern Ireland criminal justice system and *third*, an institutional mechanism within the criminal justice system to drive change forward.
- [155]. This research confirms that it is effectively impossible for a non-statutory party to establish what data criminal justice agencies can provide – beyond that which is already in the public domain such as the 'racial incidents' figures from the PSNI. In the interim, the minimalist outcome is to establish exactly what data on ethnicity can be currently provided by the CJSNI – this was attempted over course of the research. In the event, different CJSNI bodies were either unwilling or unable to provide data other than that which is in the public domain. In any case responsibility for this data generation should sit with a statutory organisation rather than an NGO. In other words, the first task is to establish whether they can provide any further statistics on race (and here obviously the CJS statistics for England and Wales referenced above provide the template); once this is established, the case for further and better data collection is easier to make.
- [156]. It bears emphasis that while Macpherson represents the 'gold standard' in terms of race and the criminal justice system; we need to acknowledge two key realities. First, Northern



Ireland is not the same as England and Wales (or Scotland) so there will sometimes be quite legitimate reasons for differences in monitoring or reporting. Second, the system in England and Wales is not perfect – while it provides a good template for Northern Ireland, there is no suggestion that there are sometimes better ways to achieve justice. Despite these caveats, the key outcome in terms of monitoring data on race and criminal justice of *at least* equal quality to that generated in England and Wales associated with Section 95 of the Criminal Justice Act 1991.

- [157]. To paraphrase Section 95 in the Northern Ireland context - the Minister of Justice should, 'in each year publish such information as he considers expedient for the purpose ... of facilitating the performance of those engaged in the administration of justice to avoid discriminating against any persons on the ground of race ...'. So there should be a specific statutory responsibility on the CJSNI to generate this data. As in England and Wales, the outcome should be a Minimum Data Set that 'enables the analysis of consistent and robust ethnicity data across the criminal justice system in order to identify and, where necessary, address race disproportionality'.
- [158]. Finally, it is clear in terms of good practice elsewhere – particularly in Scotland – that formal reforms work best when they are accompanied by informal 'buy-in' by relevant criminal justice institutions and their employees. This is particularly true in terms of policing but it holds across the whole criminal justice system. There is a need to see the kind of 'generational shift' which occurred elsewhere in policing Northern Ireland in the aftermath of the Patten Commission reforms pursued with equal vigor in terms of race. This would involve a transformation in which race equality becomes seen as central to competent policing and the competent delivery of criminal justice. While it is sometimes difficult to pinpoint the processes involved in producing such a 'sea change' on race, it's clear that examples such as the post-Macpherson reviews in Scotland and the Criminal Justice System Race Unit in the UK Ministry of Justice play a crucial part in concentrating minds across the criminal justice system.<sup>45</sup>
- [159]. The positive side of all of this is that the new Department of Justice in Northern Ireland is particularly well-placed to take responsibility for the preparation of a blueprint for the eradication of racism from the criminal justice system. It has direct responsibility for most of the statutory agencies within the criminal justice system and a strategic responsibility in terms of issues of police and policing. Its partner on policing – the Policing Board – has also shown some commitment and ability to begin to address issues of race and policing. Certainly addressing the past failings and silences on race should be one of the defining tasks of its next phase of work on transforming the administration of justice in Northern Ireland. No one in Northern Ireland has welcomed the 'race hate capital of Europe' tag and transforming the delivery of criminal justice to BME people is a key way of making sure this unfortunate accolade is left behind for good.

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<sup>45</sup> The MOJ informs: 'They are part of the Ministry of Justice... [I]t is the name of a local team, within an area of MOJ. The names of these areas and teams are restructured from time to time, and the names of the teams can change. Currently, the situation of the team you request is situated within the following structure: Ministry of Justice (MOJ), Corporate Performance Group, Analytical Services (AS), Access to Justice Analytical Services (AJAS), Equalities and Diversity Research and Statistics Team. They add that, 'the analytical work is published on our justice site': [www.justice.gov.uk/publications/statistics-and-data/criminal-justice/race.htm](http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/race.htm) (research communication)



## 8. Recommendations

- [160]. These recommendations fall broadly into four categories: *first*, a Macpherson style 'blueprint for the eradication of racism' across the Northern Ireland criminal justice system; *second*, the implementation of Section 95 style ethnic monitoring across the Northern Ireland criminal justice system; *third*, the establishment of a 'Criminal Justice Race Unit' mechanism within the Department of Justice to drive forward change throughout the system; *fourth*, other wider reforms on race across the Northern Ireland criminal justice system.
- [161]. The Department of Justice 'blueprint for the eradication of racism from the criminal justice system' should take its terms of reference from Macpherson:
1. That a Ministerial Priority be established for the PSNI: 'To increase trust and confidence in policing amongst minority ethnic communities'.
  2. The process of implementing, monitoring and assessing the Ministerial Priority should include Performance Indicators in relation to:
    - the existence and application of strategies for the prevention recording, investigation and prosecution of racist incidents;
    - measures to encourage reporting of racist incidents;
    - the number of recorded racist incidents and related detection levels;
    - the degree of multi-agency cooperation and information exchange;
    - achieving equal satisfaction levels across all ethnic groups in public satisfaction surveys;
    - the adequacy of provision and training of family and witness/victim liaison officers;
    - the nature, extent and achievement of racism awareness training;
    - the policy directives governing stop and search procedures and their outcomes;
    - levels of recruitment, retention and progress of minority ethnic recruits; and levels of complaint of racist behaviour or attitude and their outcomes. The overall aim being the elimination of racist prejudice and disadvantage and the demonstration of fairness in all aspects of policing.
- [162]. Any new blueprint for change should adopt a 'default position on race' across the criminal justice system in Northern Ireland. Until as such times as the CJSNI is 'race-proofed', race should be assumed to be a factor in incidents involving minority ethnic people until it is ruled out. This is a broad reading of the current post-Lawrence definition of racist incident in policing. This approach would constitute a key indication of seriousness in terms of a new beginning on race and criminal justice in Northern Ireland.
- [163]. A statutory duty should be placed on the Minister of Justice to publish data on race and criminal justice of at least equal quality to that generated in England and Wales under Section 95 of the Criminal Justice Act 1991: 'The Minister of Justice shall in each year publish such information as he considers expedient for the purpose ... of facilitating the performance of those engaged in the administration of justice to avoid discriminating



against any persons on the ground of race'. There should be a specific responsibility placed on the CJSNI to generate this data as there is currently in England and Wales. As in England and Wales, the outcome should be a Minimum Data Set that 'enables the analysis of consistent and robust ethnicity data across the criminal justice system in order to identify and, where necessary, address race disproportionality'.

- [164]. There should be a Criminal Justice System Race Unit established in the Department of Justice, Northern Ireland. This should be modelled on the Criminal Justice System Race Unit in the UK Ministry of Justice. This body should be given responsibility to oversee the strategic implementation of Macpherson and other relevant reforms. It should also assume responsibility for the generation and publication of Section 95 equivalent data.
- [165]. All key elements within the CJSNI should have a mission statement and guidelines on race. The adoption of policy statements on race is important in all criminal justice institutions such as prisons and courts – even in situation in which race is presently regarded as of little relevance. The employment of specific Race Equality officers to drive policy on race and criminal justice should supplement this approach where appropriate.
- [166]. Other reforms from England and Wales offer further models of good practice and should be instituted as part as a process of reform. The adoption of Hate Crime Scrutiny Panels is particularly important in order to critically examine cases of racist violence in which prosecution has failed for whatever reason. This approach offers important lessons as to how the CJSNI might better deal with race and criminal justice cases.
- [167]. Finally, it bears emphasis that the current 'increased sentencing' approach to racist violence is not working effectively. The Northern Ireland Assembly should introduce a specific offence of racially aggravated crime similar to that in England and Wales.



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## Annex One: MacPherson Report Recommendations in full

Openness, accountability, and the restoration of confidence

1. That a Ministerial Priority be established for all Police Services: "To increase trust and confidence in policing amongst minority ethnic communities".
2. The process of implementing, monitoring and assessing the Ministerial Priority should include Performance Indicators in relation to:
  - the existence and application of strategies for the prevention recording, investigation and prosecution of racist incidents;
  - measures to encourage reporting of racist incidents;
  - the number of recorded racist incidents and related detection levels;
  - the degree of multi-agency cooperation and information exchange;
  - achieving equal satisfaction levels across all ethnic groups in public satisfaction surveys;
  - the adequacy of provision and training of family and witness/victim liaison officers;
  - the nature, extent and achievement of racism awareness training;
  - the policy directives governing stop and search procedures and their outcomes;
  - levels of recruitment, retention and progress of minority ethnic recruits; and levels of complaint of racist behaviour or attitude and their outcomes. The overall aim being the elimination of racist prejudice and disadvantage and the demonstration of fairness in all aspects of policing.
3. That Her Majesty's Inspectors of Constabulary (HMIC) be granted full and unfettered powers and duties to inspect all parts of Police Services including the Metropolitan Police Service.
4. That in order to restore public confidence an inspection by HMIC of the Metropolitan Police Service be conducted forthwith. The inspection to include examination of current undetected HOLMES based murders and reviews into such cases.
5. That principles and standards similar to those of the Office for Standards in Education (OFSTED) be applied to inspections of police services, in order to improve standards of achievement and quality of policing through regular inspection, public reporting and informed independent advice.
6. That proposals as to the formation of the Metropolitan Police Authority be reconsidered, with a view to bringing its functions and powers fully into line with those which apply to other police services, including the power to appoint all chief officers of the Metropolitan Police Service.
7. That the Home Secretary and police authorities should seek to ensure that the membership of police authorities reflects so far as possible the cultural and ethnic mix of the communities which those authorities serve.
8. That HMIC shall be empowered to recruit and to use lay inspectors in order to conduct examination and inspection of police services particularly in connection with performance in the area of investigation of racist crime.
9. That a Freedom of Information Act should apply to all areas of policing, both operational and administrative, subject only to the "substantial harm" test for withholding disclosure.



10. That investigating officers' reports resulting from public complaints should not attract Public Interest Immunity as a class. They should be disclosed to complainants, subject only to the "substantial harm" test for withholding disclosure.

11. That the full force of the race relations legislation should apply to all police officers, and that chief officers of police should be made vicariously liable for the acts and omissions of their officers relevant to that legislation.

#### Definition of racist incident

12. That the definition should be: "A racist incident is any incident which is perceived to be racist by the victim or any other person."

13. That the term "racist incident" must be understood to include crimes and non-crimes in policing terms. Both must be reported, recorded and investigated with equal commitment.

14. That this definition should be universally adopted by the police, local government and other relevant agencies.

#### Reporting and recording of racist incidents and crimes

15. That codes of practice be established by the Home Office, in consultation with police services, local government and relevant agencies, to create a comprehensive system of reporting and recording of all racist incidents and crimes.

16. That all possible steps should be taken by police services at local level in consultation with local government and other agencies and local communities to encourage the reporting of racist incidents and crimes. This should include:

- the ability to report at locations other than police stations;
- the ability to report 24 hours a day.

17. That there should be close co-operation between police services and local government and other agencies, including in particular housing and education departments, to ensure that all information as to racist incidents and crimes is shared and is readily available to all agencies.

#### Police practice and the investigation of racist of crime

18. That ACPO, in consultation with local Government and other relevant agencies, should review its Good Practice Guide for Police Response to Racial Incidents in the light of this report and our recommendations. Consideration should be given to the production by ACPO of a manual or model for such investigation, to complement their current Manual of Murder Investigation.

19. That ACPO devise Codes of Practice to govern reviews of investigations of crime, in order to ensure that such reviews are open and thorough. Such codes should be consistently used by all Police Services. Consideration should be given to such practice providing for reviews to be carried out by an external Police Service.

20. That MPS procedures at the scene of incidents be reviewed in order to ensure co-ordination between uniformed and CID officers and to ensure that senior officers are aware of and fulfil the command responsibilities which their role demands.

21. That the MPS review their procedures for the recording and retention of information in relation to incidents and crimes, to ensure that adequate records are made by individual officers and specialist units in relation to their functions, and that strict rules require the retention of all such records as long as an investigation remains open.

22. That MPS review their internal inspection and accountability processes to ensure that policy directives are observed.



## Family liaison

23. That police services should ensure that at local level there are readily available designated and trained family liaison officers.
24. That training of family liaison officers must include training in racism awareness and cultural diversity, so that the families are treated appropriately, professionally, with respect and according to their needs.
25. That family liaison officers shall, where appointed, be dedicated primarily if not exclusively to that task.
26. That senior investigation officers and family liaison officers be made aware that good practice and their positive duty shall be the satisfactory management of family liaison, together with the provision to a victim's family of all possible information about the crime and its investigation.
27. That good practice shall provide that any request made by the family of a victim which is not acceded to, and any complaint by any member of the family, shall be formally recorded by the SIO and shall be reported to the immediate superior officer.
28. That police services and victim support services ensure that their systems provide for the pro-active use of local contacts within minority ethnic communities to assist with family liaison where appropriate.

## Victims and witnesses

29. That police services should, together with the Home Office, develop guidelines as to the handling of victims and witnesses, particularly in the field of racist incidents and crimes. The victim's charter to be reviewed in this context.
30. That police services and victim support services ensure that their systems provide for the pro-active use of local contacts within minority ethnic communities to assist with victim support and with the handling and interviewing of sensitive witnesses.
31. That police services ensure the provision of training and the availability of victim/witness liaison officers, and ensure their use in appropriate areas, particularly in the field of racist incidents and crimes, where the need for a sensitive approach to young and vulnerable victims and witnesses is paramount.

## Prosecution of racist crimes

32. That the standard of proof of such crimes should remain unchanged.
33. That the CPS should consider that, in deciding whether a criminal prosecution should proceed, once the CPS evidential test is satisfied, there should be a rebuttable presumption that the public interest test should be in favour of prosecution.
34. That police services and the CPS should ensure that particular care is taken at all stages of prosecution to recognise and to include reference to any evidence of racist motivation. In particular it should be the duty of the CPS to ensure that such evidence is referred to both at trial and in the sentencing process (including Newton hearings). The CPS and counsel to ensure that no "plea bargaining" should ever be allowed to exclude such evidence.
35. That the CPS ensure that a victim or victim's family shall be consulted and kept informed as to any proposal to discontinue proceedings.
36. That the CPS should have the positive duty always to notify a victim and victim's family personally of a decision to discontinue, particularly in cases of a racist crime, with speed and sensitivity.
37. That the CPS ensure that all decisions to discontinue any prosecution should be carefully and fully recorded in writing, and that save in exceptional circumstances, such written decisions should be disclosable to a victim or a victim's family.
38. That consideration should be given to the Court of Appeal being given power to permit prosecution after acquittal where fresh and viable evidence is presented.



39. That consideration should be given to amendment of the law to allow prosecution of offences involving racist language or behaviour, and of offences involving the possession of offensive weapons, where such conduct can be proved to have taken place otherwise than in a public place.

40. That the ability to initiate a private prosecution should remain unchanged.

41. That consideration should be given to the proposition that victims or victims' families should be allowed to become "civil parties" to criminal proceedings, to facilitate and to ensure the provision of all relevant information to victims or their families.

42. That there should be advance disclosure of evidence and documents as of right to parties who have leave from a coroner to appear at an inquest.

43. That consideration be given to the provision of legal aid to victims or the families of victims to cover representation at an inquest in appropriate cases.

44. That police services and the courts seek to prevent the intimidation of victims and witnesses by imposing appropriate bail conditions.

## Training

### First aid

45. That first aid training for all "public contact" police officers (including senior officers) should at once be reviewed and revised to ensure that they have basic skills to apply first aid officers must be taught to "think first aid", and first and foremost "A (Airways), B (Breathing) and C (Circulation)".

46. That training in first aid, including refresher training, should include testing to recognised and published standards in every police service.

47. That police services should annually review first aid training, and ensure that "public contact" officers are trained and tested to recognised and published standards.

### Racism awareness and valuing cultural diversity

48. That there should be immediate review and revision of racism awareness training within police services to ensure:

- that there exists a consistent strategy to deliver appropriate training within all police services, based upon the value of our cultured diversity;
- that training courses are designed and delivered in order to develop the full understanding that good community relations are essential to good policing and that a racist officer is an incompetent officer.

49. That all police officers, including CID and civilian staff, should be training in racism awareness and valuing cultural diversity.

50. That police training and practical experience in the field of racism awareness and valuing cultural diversity should regularly be conducted at local level. And that it should be recognised that local minority ethnic communities should be involved in such training and experience.

51. That consideration be given by police services to promotion joint training with members of other organisations or professions otherwise than on police premises.

52. That the Home Office, together with police services, should publish recognised standards of training aims and objectives in the field of racism awareness and valuing cultural diversity.

53. That there should be independent and regular monitoring of training within all police services to test both implementation and achievement of such training.



54. That consideration be given to a review of the provision of training in racism awareness and valuing cultural diversity in local government and other agencies including other sections of the criminal justice system.

#### Employment, discipline and complaints

55. That the changes to police disciplinary and complaints procedures proposed by the Home Secretary should be fully implemented and closely and publicly monitored as to their effectiveness.

56. That in order to eliminate the present provision which prevents disciplinary action after retirement, disciplinary action should be available for at least five years after an officer's retirement.

57. That the police services should, through the implementation of a code of conduct or otherwise, ensure that racist words or acts proved to have been spoken or done by police officers should lead to disciplinary proceedings, and that it should be understood that such conduct should usually merit dismissal.

58. That the Home Secretary, taking into account the strong expression of public perception in this regard, consider what steps can and should be taken to ensure that serious complaints against police officers are independently investigated. Investigation of police officers by their own or another police service is widely regarded as unjust, and does not inspire public confidence.

59. That the Home Office review and monitor the system and standards of police services applied to the selection and promotion of officers of the rank of inspector and above. Such procedures for selection and promotion to be monitored and assessed regularly.

#### Stop and search

60. That the powers of the police under current legislation are required for the prevention and detection of crime and should remain unchanged.

61. That the Home Secretary, in consultation with police services, should ensure that a record is made by police officers of all "stops" and "stops and searches" made under any legislative provision (not just the police and Criminal Evidence Act). Non-statutory or so called "voluntary" stops must also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped.

62. That these records should be monitored and analysed by police services and police authorities, and reviewed by HMIC on inspections. The information and analysis should be published.

63. That police authorities be given the duty to undertake publicity campaigns to ensure that the public is aware of "stop and search" provisions and the right to receive a record in all circumstances.

#### Recruitment and retention

64. That the Home Secretary and police authorities' policing plans should include targets for recruitment, progression and retention of minority ethnic staff. Police authorities to report progress to the Home Secretary annually. Such reports to be published.

65. That the Home Office and the police services should facilitate the development of initiatives to increase the number of qualified minority ethnic recruits.

66. That HMIC include in any regular inspection or in a thematic inspection a report on the progress made by police services in recruitment, progression and retention of minority ethnic staff.

#### Prevention and the role of education

67. That consideration be given to amendment of the National Curriculum aimed at valuing cultural diversity and preventing racism, in order better to reflect the needs of a diverse society.

68. That local education authorities and school governors have the duty to create and implement strategies in their schools to prevent and address racism. Such strategies to include:



- that schools record all racist incidents; that all recorded incidents are reported to the pupils' parents/guardians, school governors and LEAs;
- that the numbers of racist incidents are published annually, on a school by school basis;
- that the numbers and self-defined ethnic identity of "excluded" pupils are published annually on a school by school basis.

69. That OFSTED inspections include examination of the implementation of such strategies.

70. That in creating strategies under the provisions of the Crime and Disorder Act or otherwise police services, local government and relevant agencies should specifically consider implementing community and local initiatives aimed at promoting cultural diversity and addressing racism and the need for focused, consistent support for such initiatives.



## Annex Two: Data by ethnicity provided in the context of Section 95 in England and Wales<sup>46</sup>

1. Stop and Searches (Section 1 PACE and other legislation) per 1,000 population (based on PEEGs) by self-defined ethnicity
2. Arrests per 1,000 population (based on PEEGs) by officer observed ethnicity
3. Cautions per 1,000 population (based on PEEGs) by observed ethnicity
4. Trends in the percentage of adults who were victims once or more of a BCS personal crime by ethnicity
5. Trends in the total number of BCS racially motivated incidents (in thousands)
6. Rates per million population of offences currently recorded as homicide by ethnic appearance, annual average based on data for 2007/08 to 2009/10
7. Number of racist incidents
8. Number of police recorded racially or religiously aggravated offences
9. Stop and Search Section 1 PACE and other legislation by self-defined ethnicity
10. Trends in Stop and Search Section 1 PACE and other legislation by self-defined ethnicity
11. Stop and Search Section 1 PACE and other legislation per 1,000 population by self-defined ethnicity
12. Stop and Search Section 1 PACE and other legislation per 1,000 population by self-defined ethnicity and police force area
13. Stop and Search Section 60 legislation by self-defined ethnicity
14. Arrests by officer-identified ethnicity
15. Arrests by self-defined ethnicity
16. Arrests per 1,000 population by self-identified ethnicity and police force area
17. Percentage of resultant arrests for Stop and Search Section 1 PACE and other legislation by self-defined ethnicity
18. Percentage of resultant arrests for Stop and Search Section 60 of the Criminal Justice and Public Order Act 1994 by self-defined ethnicity
19. Percentage of resultant arrests for Stop and Search under Section 44(1) and 44(2) of the Terrorism Act by self-defined ethnicity
20. Percentage of persons issued with a Penalty Notice for Disorder by observed ethnic appearance
21. Percentage of persons cautioned for notifiable offences by observed ethnic appearance
22. Percentage of persons cautioned for notifiable offences by observed ethnic appearance and offence
23. Persons proceeded against for indictable offences by region and ethnic appearance

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<sup>46</sup> List of tables and figures from the most recent MOJ publication: 'Statistics on Race and the Criminal Justice System 2010: A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991' at <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/stats-race-cjs-2010.pdf>



24. Persons convicted for indictable offences by region and ethnic appearance
25. Conviction ratio for indictable offences by region and ethnic appearance
26. Persons sentenced at all courts for indictable offences by ethnic appearance
27. Average immediate custodial sentence length at all courts by offence group and ethnic appearance
28. Number of persons tried, found guilty and sentenced at the Crown Court for actual bodily harm by plea and ethnicity
29. Number of persons tried, found guilty and sentenced at the Crown Court for burglary in a dwelling by plea and ethnicity
30. Number of persons tried, found guilty and sentenced at the Crown Court for possession of a controlled drug Class A by plea and ethnicity
31. Number of persons tried, found guilty and sentenced at the Crown Court for selected violence offences
32. Court order supervisions commencements by self-identified ethnicity
33. Pre-/post-release supervision orders commencements by self-identified ethnicity
34. Total prison population (including foreign nationals) by self-identified ethnicity
35. Total prison population (British nationals only) by self-identified ethnicity
36. Total prison population (foreign nationals only) by self-identified ethnicity
37. Deaths in prison custody by self-identified ethnicity
38. Police officers in post (full-time equivalents) by self-identified ethnicity
39. Senior police officers in post (full-time equivalents) by self-identified ethnicity
40. Crown Prosecution Service staff by self-identified ethnicity
41. NOMS staff by self-identified ethnicity
42. HM Prison Service staff by self-identified ethnicity
43. NOMS HQ staff by self-identified ethnicity



## Annex Three: CJSNI Current Policies and Strategies on Race

<p>'[This research is seeking] to establish whether [your agency] undertook any review of its performance on race and criminal justice in the aftermath of the publication of the MacPherson report in 1999. [It also seeks to] establish if the [agency] has developed any race- or ethnicity- specific policies or practices or developed any posts with race-specific responsibilities'.</p>											
<p><b>Department of Justice</b></p>	<p>As the Department only came into being on 12 April 2010, there is not a specific response to the McPherson report. However, we have a number of race-specific policies, strategies and practices, details set out below. Please also find attached a copy of the Department's Corporate Plan 2012-2015 and Business Plan 2012-2013 for your information. Pages seven and 43 include an outline of functions and an organisational structure, respectively. The Plan is available on the Department's website: <a href="http://www.dojni.gov.uk">www.dojni.gov.uk</a></p> <p><b>Key Policies and Strategies</b></p> <p>The following table lists key policies and strategies which are relevant to the above review (this is not an exhaustive or definitive list).</p>										
	<table border="1"> <thead> <tr> <th>Title of Policy/Strategy/ Date Published</th> <th>Comment</th> </tr> </thead> <tbody> <tr> <td>Equality Scheme for the Department of Justice 2011-2015/ 28.3.12</td> <td>Approved by the Equality Commission for NI (ECNI). Sets out the Department's commitment to fulfil its Section 75 duties, including arrangements for screening and consulting on policies.</td> </tr> <tr> <td>Section 75 Action Plan 2011-15/ N/A</td> <td>Submitted to the ECNI following an audit of inequalities. The objective of the Action Plan is to assess whether there were any additional areas where outcomes could be improved in terms of the Section 75 responsibilities and to deliver outcomes that are achievable and realistic</td> </tr> <tr> <td>NI Community Safety Strategy "Building Safer, Shared and Confident Communities"/ 26 July 2012</td> <td>Approved by the Executive on 5 July 2012. Sets out the direction for reducing crime, anti-social behaviour and the fear of crime in NI over the next five years. Section on Shared Communities includes outcomes around tackling all forms of hate crime – Pages 30/31.</td> </tr> <tr> <td>Racist chanting at sports matches/ N/A</td> <td>Section 37 of the Justice Act (NI) 2011 established a criminal offence to engage in chanting at regulated sports matches that includes matter which is threatening, abusive or insulting by reason of the victim's colour, race or nationality.</td> </tr> </tbody> </table>	Title of Policy/Strategy/ Date Published	Comment	Equality Scheme for the Department of Justice 2011-2015/ 28.3.12	Approved by the Equality Commission for NI (ECNI). Sets out the Department's commitment to fulfil its Section 75 duties, including arrangements for screening and consulting on policies.	Section 75 Action Plan 2011-15/ N/A	Submitted to the ECNI following an audit of inequalities. The objective of the Action Plan is to assess whether there were any additional areas where outcomes could be improved in terms of the Section 75 responsibilities and to deliver outcomes that are achievable and realistic	NI Community Safety Strategy "Building Safer, Shared and Confident Communities"/ 26 July 2012	Approved by the Executive on 5 July 2012. Sets out the direction for reducing crime, anti-social behaviour and the fear of crime in NI over the next five years. Section on Shared Communities includes outcomes around tackling all forms of hate crime – Pages 30/31.	Racist chanting at sports matches/ N/A	Section 37 of the Justice Act (NI) 2011 established a criminal offence to engage in chanting at regulated sports matches that includes matter which is threatening, abusive or insulting by reason of the victim's colour, race or nationality.
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<b>Service</b>	Department of Justice
<b>Prison Service</b>	No specific response but response assumed in general response from Department of Justice
<b>Public Prosecution Service</b>	<p>The PPS, like all designated public authorities, is required under this legislation "in carrying out its relevant functions to have due regard to the need to promote equality of opportunity between:- persons of different ..., racial group</p> <p>The Equality Commission for Northern Ireland approved the PPS's Equality Scheme on the 28th of March 2012 following a consultation period. The PPS Equality Scheme sets out how we intend to comply with the equality duties and promote equality of opportunity and good relations in carrying out its functions, powers and duties. The Equality Scheme sets out how the organization will put structures in place to effectively assess and report on the equality impact of its policies; and consult with relevant groups on policy development where appropriate.</p>
<b>Youth Justice Agency</b>	<p>In regards to you query about Race or Ethnicity specific policies or practices, our agency is directed by and adheres to the wider NICS and DOJ policies and strategies....</p> <p>The YJA is Section 75 compliant.</p> <p>The YJA have a representative on the DOJ Diversity Steering Group.</p> <p>In keeping with DOJ commitment to Equality, Diversity and Promoting Good Relations, all YJA staff have undertaken mandatory Equality and Diversity training.</p> <p>The DOJ has a 'Diversity in Justice' Diversity Strategy and Action Plan 2011 - 2013.</p> <p>The DOJ have an Equality Scheme 2011 - 2015 which was approved by the Equality Commission for Northern Ireland in March 2012.</p> <p>The DOJ appointed a Board Diversity Champion (Peter May) in early 2011.</p> <p>The DOJ have a number of staff networks, one of which is BEMLINK, the Black and Ethnic Minority Network.</p>
<b>PSNI</b>	<p>I can advise that the Police Service of Northern Ireland constantly review and update our policy and practice around Hate Crime. Please see the attached policy which is currently being reviewed and updated as part of an overall review of the PSNI response to Hate Crime. This policy contains specific information regarding the police response to all hate incidents and details of the role of Hate Incident Minority Liaison Officers. Please also see the Association of Chief Police Officers (ACPO) Hate Crime; Good Practice and Tactical Guidance Manual (March 2005). A link is provided below;</p> <p><a href="http://www.bedfordshire.police.uk/pdf/tacticalguidance.pdf">http://www.bedfordshire.police.uk/pdf/tacticalguidance.pdf</a></p>
<b>Northern Ireland Policing Board</b>	<p>As you are no doubt aware, the Northern Ireland Policing Board was first established in November 2001. The first Board was occupied with major and controversial issues such as the publication of a code of ethics for the new PSNI, establishment of District Policing Partnerships (DPPs), PSNI uniform and badge to name but a few. The Board has always been engaged in consultation with communities, both directly and indirectly through DPPs, to gather their views in relation to crime and policing. However, it was agreed by the Board in 2006 that priority should be given to developing their</p>



engagement role. A small community engagement team was established and staff met with many organisations and individuals to gather information and take their advice on how to proceed and as a result of this the Board took the decision to establish a number of Reference Groups whose skills, knowledge and expertise would assist them in working towards a more efficient and effective policing service and ultimately a reduction in crime. The Board reviews the work of community engagement on a regular basis and takes advice from members of the reference groups to ensure that they remain focused.

### **Community Engagement Strategy**

The Board established a number of Reference Groups, drawn from “headquarters or umbrella groups” representing those parts of society that are regarded as more vulnerable to crime or those communities which have had a difficult relationship with the police. Reference groups were established to represent the following communities:- Minority Ethnic, LGBT, People with Disabilities, Women, Young People and Older People and more recently, the Board has been working with representatives from the Loyalist/Nationalist communities. With the help of Patrick Yu and Anna Lo, the Minority Ethnic Reference Group was the first to be established in 2007. Reference Groups are independent with their own Chair and Vice Chair and their own Terms of Reference. Their membership is wide ranging and is kept under review by the groups to ensure that they are representative of their respective communities.

### **Roles**

It is the responsibility of the Board to hold the Chief Constable to account and also to gain the co-operation of the community in preventing crime. One way in which this is done is by raising with the Chief Constable, the community concerns highlighted by the Reference Groups. In raising concerns, the expectation is that the issue will be resolved, the community will experience an improvement in policing and as a result community confidence in policing will increase. The Reference Groups have also become a resource for the PSNI who have consulted extensively with them as they have developed specific policies. While this was not envisaged as a primary function when the Reference Groups were established, it is a positive development.

The issues raised by Reference Groups relate to policy development and implementation and to the service delivery side of policing. Some of the main issues brought to the Board’s attention have been around Police recruitment, Hate Crime, PSNI Training, Diversity and Equality and Human Trafficking. Access to this information allows the Board to test the validity of the information generated by the police from their position as a service provider and enables the Board to identify any gaps between what the police set out to deliver and what the community actually experiences.

### **Projects**

Facilitated by the Board, members of the Minority Ethnic Reference Group worked closely with PSNI in relation to specific pieces of work and projects including the development of training for Neighbourhood teams and several of the individuals from the group have been involved in the delivery of training to PSNI recruits.



In 2010, they worked with PSNI when PSNI were considering adapting the 'Act Now' anti-terrorism programme in Northern Ireland. They were a strong influencer in the PSNI's decision, not to adapt this programme for use in Northern Ireland but to find an alternative, more appropriate way of communicating their message which would avoid targeting any particular community.

### **Consultations**

In addition to the on-going work with the Reference Groups and in partnership with their Members, the Board has also organised a number of consultation and awareness raising events over the past few years to gather community views on policing, identify any concerns and worries which the communities may have in relation to policing and to assess community confidence and their experience of service delivery from the PSNI.

Some examples are listed below:-

2010 we held a major Hate Crime event in the Indian Community Centre from the perspective of the victims of hate crime. Members of the Indian Community who had suffered the hurt of hate crime, were at the centre of the event and recounted their stories with such dignity and emotion that it could not fail but to move those in the audience into taking a more pro-active approach within their own organisations

2010 we held a consultation event with the Chinese community using electronic voting to identify issues of concern in relation to policing. This was followed by a discussion with Board Members about the issues and about how the Board might take this forward. The questions covered types of crime, victims of crime, service delivery, fear of crime etc. and gave the Chinese community an opportunity to highlight and prioritise crimes and behaviours which were of most concern to them

2010 using the same set of questions, we held the same consultation with the LGBT community but acting on advice, developed an on-line version to allow access to more people

2011 we repeated a similar consultation event with the Muslim community

2011 again we did the online consultation event with the Polish Community using the same database of questions

December 2011 the Board held a public session on Human Trafficking after the main Board meeting inviting a wide range of organisations to attend providing them with the opportunity to put questions directly to the Chief Constable and Board Members on policies and progress in relation to apprehending perpetrators and supporting victims of Human Trafficking.

These have been very significant events which the Communities recognise as being important in that they provided an opportunity for them to have them access to Board Members, senior PSNI Officers and other agencies to raise their concerns and discuss some of the policing related issues which impact on their community.

The key issues from these and other consultations undertaken by the Board and by District Policing Partnerships (now Policing and Community Safety



Partnerships) are considered for incorporation into the Annual Policing Plan. In this way it is guaranteed that issues raised will be actioned by the police with a reasonable expectation of a positive outcome. It is however, recognised that not every issue raised is going to make it into the Policing Plan and that those issues that don't get into the Policing Plan remain important and cannot be set aside or ignored.

### **Additional information**

Board Officials represent the Board on a number of groups including the NIO Community Safety Hate Crime sub group which was formed to take forward recommendations in the Criminal Justice Inspectorates report around the management of hate crime by the Criminal Justice System in Northern Ireland.

### **Human Rights**

The Board's Human Rights and Professional Standards Committee is responsible for monitoring the PSNI's compliance with the Human Rights Act 1998. In 2003 the Board's Human Rights Advisors devised a human rights monitoring framework setting out the standards against which the performance of the police would be monitored and identifying key areas to be examined. Since 2005, the Human Rights Advisor has reported on the PSNI's performance in the Human Rights Annual Report. In recent years the Committee has enhanced its human rights monitoring work by introducing human rights thematic reviews to enable a more in-depth and dynamic examination of specific areas of policing from a human rights perspective.

The Committee has not undertaken a thematic review of the PSNI's performance in respect of race or ethnicity specifically, however, the thematic review on the policing of domestic abuse, published in March 2009, considers minority ethnic victims of domestic abuse (chapter 11) and the more recent thematic review of policing with and for lesbian, gay, bisexual and transgender individuals, published in March 2012, includes a section on PSNI's approach to hate crime and introduction of hate incident minority liaison officers.

The Committee is also responsible for keeping itself informed of the complaints process and monitoring trends and patterns in complaints against police officers; and keeping itself informed about claims made against the police service, suspended officers and the outcome of disciplinary procedures to ensure that lessons are learned and that best practice is promoted. As part of this role the Committee would consider the PSNI's response to incidents of discrimination on the basis of race or ethnicity and hold the Chief Constable to account for his actions and those of his officers and staff where they fall below expected standards, as set out in the PSNI Code of Ethics.



## Annex Four: NICEM and the racist attacks on Roma

15 June 2009

NICEM was first made aware of the attacks on the Roma families in Belfast on 15 June, when Socialist Youth activists rang to request an interpreter for the families to speak with the press.

As our priority is safety in such a case, we went to meet the families to assess their situation and take any action required to ensure their safety. The families were shaken and upset as they explained that their windows and doors had been smashed on the previous Saturday, which was the climax of days of irregular attacks and verbal abuse.

One of the main difficulties was gathering statements from the families and others about the circumstances of the attacks and what had happened in the days beforehand. It was difficult to decipher what had actually happened and what was assumption.

At that point in time approximately 50 people from the three houses that had been attacked had gathered together.

Families were afraid to even go down the street to a shop to buy essentials and the first priority was to ensure their safety. We contacted the PSNI Community Safety Unit to ensure that the Hate Crime Investigators were aware of the situation and that they would take the necessary steps to have the broken window boarded up, thereby reducing the risks of further attacks.

Having ensured that the police would take action, we asked the families to prepare a list of each individual and to indicate whether they wished to stay in Northern Ireland or leave the country. At this point, many individuals declared they would rather stay and be moved to a different area of Belfast. The families agreed to re-assess the situation with the Hate Crime investigators, Social Services and myself the next day.

That night, a rally in protest against the attacks led to confrontations between the protesters and teenagers from the Village Area of Belfast, making the situation increasingly volatile.

16 June

Alarmed by the escalation in tension and the budding media interest in the attacks, 63 new people joined the Roma families in Wellesley Avenue to find safety in numbers, declaring themselves directly or indirectly linked with the families.

Accompanied by a Hate Crime investigator, we were given a list of 100 names upon arrival. Given the situation aggravated by the tensions created the night before, and the large number of families involved further police presence was requested to ensure their safety and to begin enquiries in the area.

On edge, tired and unsure who to believe about the level of danger they were in, the Roma families decided they could not separate and would not be safe in their homes, despite police assurances that they would be protected by a 24-hour patrol at each property if they stayed.



By that stage, we were trying to contain the media, now aware of the attacks and of the presence of NGOs, social services and the PSNI in Wellesley Avenue. This was to ensure the families would not be exposed in the media before their safety could be ensured.

Families became more frightened and agitated as there were so many outside organisations all trying to talk to them, some without interpreters. However, they did their best to remain calm and cooperative despite the media chaos and lack of coordination amongst the responding agencies. As tension increased while options were being explored the only option that the families felt comfortable with was moving to a different location where support agencies could talk with them on an individual basis and try to assuage the fears that were running rampant. The families were given shelter at City Church, where the Church and Red Cross provided bedding, food and support throughout the evening.

17 June

After a short night, families, small and tired children in tow, vacated the Church and were moved to the Ozone Leisure Centre by the Belfast City Council, in the South East of the city. The Housing Executive and Social Services were there to talk to each family individually and start the process of determining needs and eligibility for support.

The Belfast City Council called a planning meeting to talk about strategy and next steps. Unfortunately, the large amount of attendees limited the amount of strategies that could be discussed or decided upon. It was determined the best course of action would be for Social Services and the Housing Executive to take the lead and to include the NGOs, such as NICEM, the South Belfast Roundtable on Racism, Embrace that had been working with the families on the ground. In this way there would be consistency for the families and assurance of support throughout this time.

The families, now with thoroughly exhausted and unsettled children in tow, were moved to temporary accommodation arranged by the Housing Executive.

18-21 June

After the families arrived at the temporary accommodation, the Belfast Health and Social Care Trust took the operational lead on the ground to support them. This assistance covered a broad range of services, including the coordination of catering, attending to health needs and general support on a 24 hours basis. Organisations such as NICEM, Embrace and the South Belfast Roundtable on Racism and several others provided additional and much needed assistance. Clothing and food were provided through generous donations from several charities, community groups and businesses.

After days of uncertainty, fear, and media, the families felt vulnerable and afraid that their children may be injured or worse. Many families felt the safest course of action was to return to Romania with their children as no one's safety could be guaranteed. Only two brothers decided to remain in Belfast and return to work.

During this time, we was in daily contact with the Romanian Consul, who agreed to organise travel documents for those wishing to return to Romania, and NICEM's Executive Director was continuously updating OFMDFM. We were ready for the next step.

22-26 June

After much discussion and debate in the higher echelons it was agreed that funding would be provided for those with children to return to Romania. Some of the people had their own money to buy tickets to return and for those who did not qualify for the assistance from the government,



single individuals and those without any children, donations from several charities and organisations were collected.

To ensure a smooth return, NICEM contacted the European Roma Rights Centre and the Open Society Institute Roma Initiative in Budapest, so they could meet the families at the airport and help them with arrange appropriate transport into Romania. We collaborated with these Budapest-based organisations to coordinate action with Romani CRISS (Romani Center for Social Intervention and Studies), so the families could be welcomed and given support on arrival in Romania.

29 June onwards - lessons and aftermath

By then the attacks on the Roma families in Belfast were making headline news worldwide. Subsequently, as one of the main players involved in the crisis, NICEM received a request from the European Commission to debrief their officials on the situation.

Initially, NICEM's communication strategy rested on damage limitation. We ensured that the correct information was provided to the media whilst ensuring that it would not harm the families' safety. Disclosing locations or names was out of the question.

NICEM disseminated two press releases and gave interviews during the period of the crisis in order to correct inaccurate information in the media and to insist on the need for strong political leadership and a governmental strategy to prevent this from happening again.

To not let the tragic circumstances and consequences of the crisis be forgotten, NICEM assisted journalists from the BBC, the Guardian/Observer, and The Times to write feature articles about the Roma's life in their hometowns. They visited the families who had returned to Romania; NICEM's partner, the European Roma Rights Centre, sensitively facilitated these meetings with the media.

This was the first time that Northern Ireland had to deal with an ethnically-based humanitarian crisis. There have been debriefing sessions since the incident at various levels of government. The purpose of these was to provide motivation for a new approach and comprehensive strategy. However, there has been little evidence of movement and we can only hope the lessons from June have not been forgotten.







# Race and Criminal Justice in Northern Ireland

● Northern Ireland Council

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FOR ETHNIC MINORITIES

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