



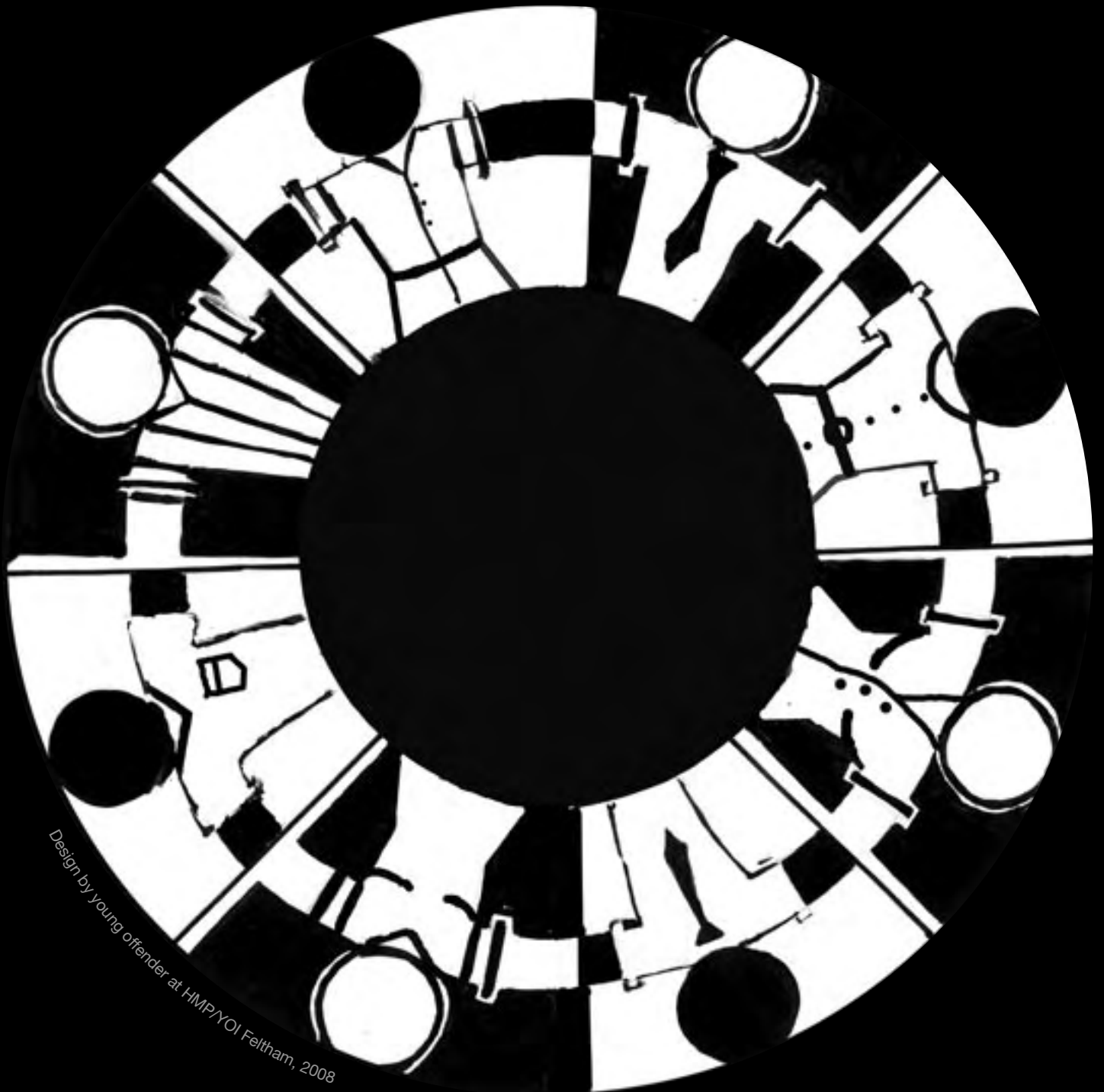
Ministry of
JUSTICE

National Offender
Management Service

RACE REVIEW

2008

Implementing Race Equality in Prisons –
Five Years On



Design by young offender at HMP/YOI Feltham, 2008



“

The quality of staff-prisoner relationships is at the heart of running prisons successfully. Fairness and respect are the values which make relationships work. That's what this report is about. ”

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NOMS Director General*

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ISBN 978 0 9561337 0 0

December 2008

Design and artwork: postscript, www.post-comms.co.uk
Printing: Crowes Complete Print, www.crowes.co.uk





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Foreword: Phil Wheatley, NOMS Director General

Five years ago the Commission for Racial Equality issued a highly critical report into the state of race equality in the Prison Service. Five years on, we invited some of our harshest critics back to formally assess progress. We have done so because we believe much has been achieved, but also because we want to benefit from authoritative and independent input. That sense of progress, particularly in largely eradicating the most blatant forms of racism, appears to be shared by the external contributors to the Review and by the Independent Advisory Group. However, while the report concludes that the actions taken over the last five years have generated substantial improvements, it also acknowledges that the experience of BME prisoners and staff has not been transformed.

That work still lies ahead of us.

This report will help us in that work. As well as providing an up-to-date picture of progress and reminding us of the numerous actions implemented and outcomes delivered since 2003, perhaps more importantly it reminds us that relationships are at the heart of imprisonment, and that you run a prison properly only by getting relationships right – neither overindulgent nor disrespectful.

In this way, the report is about nothing more than how to run a successful prison. Race is an integral part of managing prisons – it is a key part of our work and a key part of how we make everything else work. Getting race wrong is dangerous to society, duplicates resources and wastes time and money. It also sours relations between prisoners and staff – the key component in securing control, order, and a reduction in re-offending.

I welcome this report because it lays out precisely where we are on race and it does so by reference to a clear evidence base. That evidence base draws on the various sources of local and national data, but also takes seriously the view of regulators and external stakeholders, as well as the perceptions of prisoners. As you read the report you will see it is comprehensive in describing the many changes made since 2003. Those changes are a tribute to the staff who have done that work. They add up to a strong foundation for change and they have been achieved in a very challenging operational environment and at a time of immense organisational change. But as you read the report you will also see that it is unflinching in listing the detail of where we are still failing.

I believe the report to be comprehensive, balanced and fair. It purposefully does not call for a raft of new initiatives. That is not what is needed. In so far as the report calls for anything new it is for a more common sense, ordinary understanding of race, where attitude is more important than knowledge, right relationships are the key to progress, and where good prison officers, good managers, and good leaders are the means of achieving that.



Foreword: Lord Rosser and Farida Anderson MBE

As Chairs of the Independent Advisory Group (IAG), our role has been to act as ‘critical friends’ to the Prison Service, providing advice and guidance on the process and outcomes of their review. Above all, our role was to seek to ensure that this report provides an honest assessment of the progress made by the Service over the last five years, based on sound evidence and analysis.

The review report is the culmination of considerable hard work and commitment by individuals from a wide range of external partner organisations and practitioners from related fields who gave up their own time to participate in Review Teams or to be members of the IAG. The fact that they were so willing to do this not only speaks volumes about the importance of achieving race equality in prisons but is also an acknowledgement of the willingness of the Prison Service to open itself up to external scrutiny.

Our thanks also go to the staff in establishments who have hosted visits of the Review Teams and have been equally open and honest in offering their perspectives of where the challenges remain, and to the prisoners who have shared their experiences and thoughts through surveys and focus groups.

Mention should also be made of the Service’s Race and Equalities Action Group who managed the review process from start to finish and have been determined to ensure that this final report provides an accurate and frank assessment of how the Service has responded to the Commission for Racial Equality’s (CRE) criticisms.

The review highlights just how far the Service has come on delivering race equality since the CRE published its report in 2003. It is evident that the systems and processes that were absent then have now been implemented, and many of the problems identified by the CRE have been fully addressed. However, the review report acknowledges that systems and processes alone are not enough – real, long-lasting change requires strong and effective leadership and a shift in culture. Without culture change at all levels of the Service, the felt experience of Black and Minority Ethnic prisoners and staff is unlikely to be transformed. In our view, this is where the significant challenge remains.

Although the findings of the review may make uncomfortable reading in places, we believe that it has been a uniquely open and transparent process – a model of good practice to be replicated across the wider public sector. By inviting some of its most concerned critics to comment on progress made, the Prison Service has demonstrated a level of maturity and transparency which will provide the foundation on which to build and secure the further progress which is needed.

The report has been scrutinised by members of the IAG and we have full confidence in its findings. We are therefore pleased to commend this report which will set the agenda for the way forward to achieve race equality in prisons.

1 Introduction and Context

Murder of Zahid Mubarek and CRE Formal Investigation

In March 2000, Zahid Mubarek was murdered by his racist cellmate in Feltham Young Offenders Institution. This tragedy marked a watershed in the history of tackling race issues in the Prison Service. Zahid's murder, along with negative reports on a number of prisons and a successful tribunal case brought by a Black prison officer against HMP Brixton, led to the Commission for Racial Equality's (CRE) formal investigation into racial equality in the Service.

The CRE's investigation focused on three prisons – Brixton, Feltham and the privately-run Parc. Part One was published in July 2003 and covered the circumstances leading to the murder of Zahid Mubarek at Feltham. The CRE also uncovered numerous failures across the three establishments covered by the investigation which are detailed in Part Two, published in December 2003.

They found institutionalised ways of working which had a profoundly negative impact on the promotion and achievement of race equality. As well as specific issues surrounding prisoner treatment, the complaints system and access to goods, facilities and services, they [the CRE] found an absence of management information systems and structures and the failure to give race equality matters the priority and attention they required under law.

The CRE made several findings of unlawful racial discrimination and identified 14 failure areas. They found failures in the handling of individual matters within individual prisons;

failures to put right what was wrong; and failures at the strategic policy level when practices were introduced without considering the potential consequences for Black and Minority Ethnic (BME) prisoners. They also reported failures of line management when staff were allowed to ignore instructions or orders.

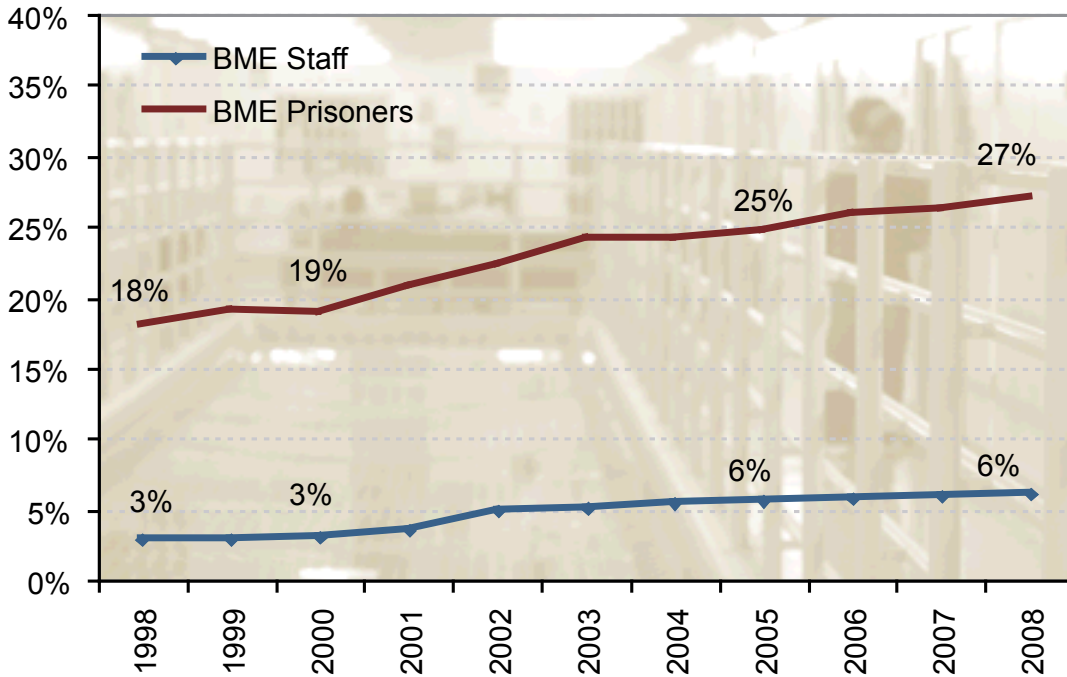
As well as specific issues surrounding prisoner treatment, the CRE found an absence of management information and the failure to give race equality the priority and attention they required under law.

Criticism focused less on policy and more on practices in establishments and, in particular, on the use of discretion by staff which often impacted negatively on BME prisoners. This was compounded by the Service's long-standing difficulties in recruiting BME staff – in December 2000, only 3.5% of staff were BME, compared to a BME prisoner population of approximately 18%.

In light of the investigation's findings, an action plan containing 14 high-level key deliverables and 40 action points was agreed with the CRE in 2003. This set out a framework for change and contained a wide range of actions aimed at addressing the specific failures and at improving the monitoring and management of race equality across the Service.

The Service began implementation of an ambitious programme of work and took on the challenge of tackling racial discrimination. A Race Equality Action

Percentage of BME Staff and Prisoners



Source: BME Staff - NOMS HR Directorate; BME Prisoner – Home Office website

Group was created at Prison Service Headquarters — a multi-disciplinary team established to provide practical support and advice to establishments, as well as undertake national monitoring and policy development.

A national Race Equality Action Plan was developed and a Programme Management Board put in place to oversee its delivery.

HMCIP Parallel Worlds and Zahid Mubarek Inquiry

In 2005, as the Service was building the infrastructure to manage race equality, the Chief Inspector of Prisons’ thematic review of race was published, which provided a

more detailed and sophisticated picture of the challenges. It painted a worrying picture of ‘parallel worlds’ — a lack of shared understanding of race issues within prisons. While White managers and staff thought that prisons operated in a broadly fair way, BME staff and prisoners were less positive. BME prisoners consistently had the most negative perceptions of all, reporting poorer experiences across almost all aspects of prison life. The report highlighted a number of areas for development, including: prisoners’ experience and perceptions; training; and leadership and management.

At the same time, following a number of unsuccessful requests by Zahid Mubarek’s family for an independent public inquiry into

the circumstances of Zahid's death, the House of Lords finally ruled that, in order for the UK to comply with its obligations under the European Convention on Human Rights, there had to be an independent investigation, which would take place in public and include the participation of Zahid's family.

In 2006, Lord Justice Keith published the findings of his inquiry. He highlighted a number of issues relating to racism and religious intolerance and identified 13 failings in race relations at Feltham.

He made a total of 88 recommendations for improvement, including ten relating specifically to race and diversity. He recommended that training for prison officers should stress putting themselves in the position of BME prisoners; and that consideration should be given to using an independent body to carry out the investigation of complaints of racism, and to recruiting Race Equality Officers from outside the Prison Service. The Inspectorate's areas for development and the recommendations of the Mubarek Inquiry were subsequently incorporated into the Service's national action plan.

Operating context

The work on race equality was expanding at a particularly challenging time for the Service. Following publication of the Carter review of correctional services in December 2003, there was a period of organisational upheaval and uncertainty as attention became focused on the establishment of the National Offender Management Service (NOMS), which brings together prison and probation services into one organisation.

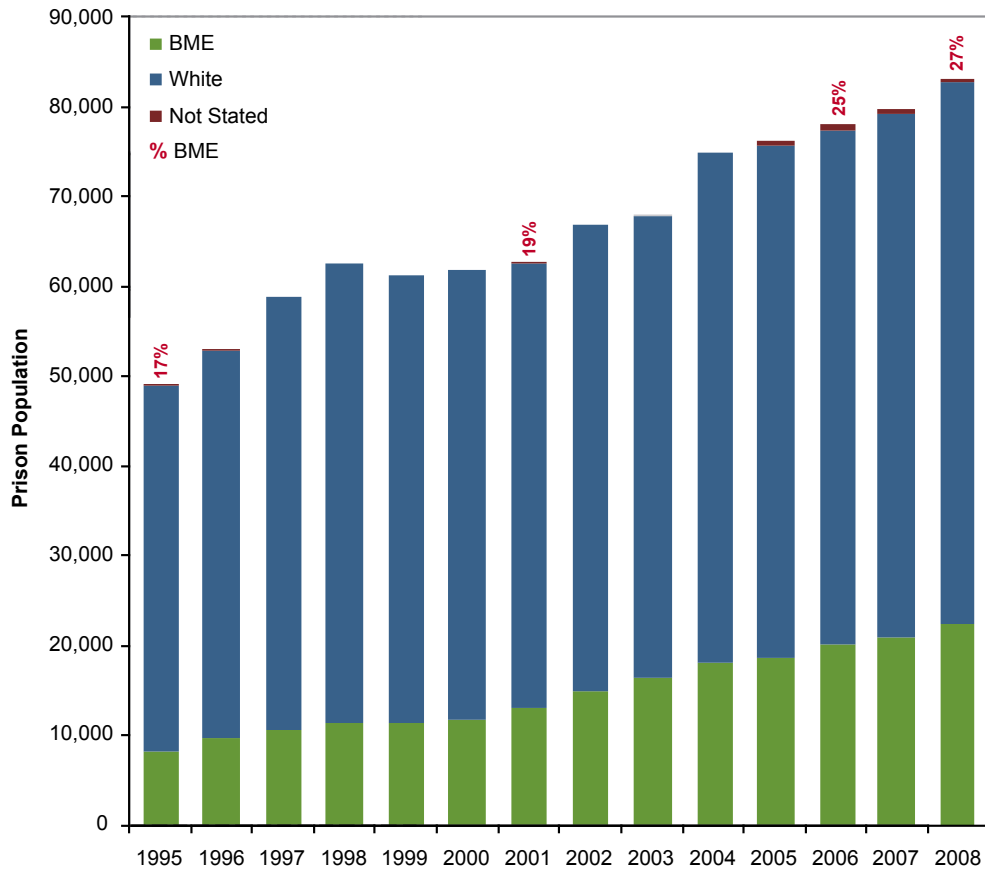
In April 2008, the Director General of the Prison Service was appointed as the head of the new organisation and took on responsibility for probation areas as well as managing contracts for private prisons and escort services.

Since the period of the CRE investigation, resources have also become increasingly tight, with a firm emphasis on ensuring value for money. There were also steep increases in prisoner numbers. At June 2001, the prison population was 66,403. By June 2005, this had risen to 76,190 and in September 2008 to 83,852.

Since the period of the CRE investigation, there has been a steep increase in prisoner numbers. At June 2001, the prison population was 66,403. By June 2005, this had risen to 76,190 and in September 2008 to 83,852.

At the same time, the number of BME prisoners also increased — from 11,332 in 1998 to 22,421 in 2008. The number of foreign nationals also rose from 8% of the male prison population and 15% of the female population in June 1998 to 14% and 25% respectively in June 2007. Whilst most foreign nationals are BME, 28% are White. (The CRE investigation did not specifically mention the needs of foreign national prisoners. Therefore, we have not highlighted issues relating to their treatment and experience in the report.) Black prisoners make up 15% of the prisoner population and this compares to 2.2% of the general population — there is greater disproportionality in the number of Black

Prison Population and Percentage BME 1995–2008



Source: Home Office website; 2008 data from NOMS A&O Extract Store

people in prisons in the UK than there is in the United States.

Annual statistics reported by the Ministry of Justice on race and the criminal justice system consistently show that members of BME communities are over-represented in almost all stages of the criminal justice system. For example, the latest data shows that Black people are seven times more likely than their White counterparts to be stopped and searched, three-and-a-half times more likely to be arrested, and five times more likely to be in prison.

Annual statistics reported by the Ministry of Justice show that members of BME communities are over-represented in almost all stages of the criminal justice system – Black people are seven times more likely than their White counterparts to be stopped and searched, three-and-a-half times more likely to be arrested, and five times more likely to be in prison.

A further development since 2003 has been the rising number of prisoners declaring themselves Muslim — an increase of 141% over ten years (3,681 in March 1997 to 8,864 in June 2007). At the same time as this increase, external events have led to the introduction of a NOMS programme to address the risk of violent extremism and radicalisation in establishments. The work has been developed with our responsibilities under the Race Relations (Amendment) Act (RR(A)A) 2000 in mind. However, there are clearly potential risks to our work on race equality. Increasingly, evidence is emerging, for example in Inspectorate reports, that suggests that the perceptions of Muslim prisoners are generally even more negative than those of BME prisoners. They are less likely to feel safe or seek help from staff.

CRE Review

To mark the end of the five-year partnership agreement with the CRE (now Equality and Human Rights Commission (EHRC)) in December 2008, a review was commissioned to assess the progress made in addressing the failure areas identified by the CRE in their formal investigation.

One of the underlying principles of the review was openness and transparency. Whilst we believe considerable progress has been made, it was important to take account of the views of external stakeholders, to ensure they had confidence in, and could contribute to, the process. We were particularly keen that the review should include a process of



HMP Brixton

crosschecking the Service's own analysis of the progress made. In light of this, individuals from partner organisations were invited to participate in the review and to provide a view on where the challenges still lie and assist us in developing further work to meet these challenges in the future.

An Independent Advisory Group (IAG) was established to provide advice and guidance to support the review, co-Chaired by Lord Richard Rosser, non-executive member of the NOMS Management Board, and Farida Anderson MBE, Chief Executive of Partners of Prisoners (POPS). The group comprised 20 individuals from voluntary and community sector organisations, as well as academics and policy-makers in related fields. The EHRC Commissioner for prisons also attended meetings in an observer capacity.

The review assesses the progress made on race equality since the publication of the action plan with the CRE in 2003, highlights

the lessons learned and identifies priority areas for action over the next few years. The findings will inform the development of the NOMS single equality scheme for 2009-2012 and will set the future agenda for race equality in prisons.

Structure of the report

The first two chapters of the report outline the background to the review and its methodology. Chapters 4 to 9 explore each of the themes of the review in turn and provide a commentary on the findings of the CRE investigation in 2003 (see Annex B for full details of CRE failure areas); what action the Service took in response; where we are now, including the findings of the independent Review Teams; and what further work is needed. Finally, the concluding chapters set out the lessons learned over the last five years and highlight some emerging issues which will require focused attention going forward.

2 Executive Summary

Following several findings of unlawful racial discrimination, in December 2003, the Prison Service committed itself to five-year partnership for reform with the CRE. The action plan, agreed with the CRE, set out a framework for change and contained a wide range of key actions aimed at addressing the specific failures and at improving the monitoring and management of race equality in establishments.

As we approached the end of the five-year period, we embarked upon a wide-ranging review, with the assistance of partners from external organisations, to assess the progress the Service has made against the CRE failure areas and action plan. This report details the findings of that review. It gives a comprehensive account of the key actions the Service has undertaken since 2003, but also identifies where the challenges remain and the emerging issues that will need to be at the centre of our work on race equality over the next few years.

The review report highlights the significant progress made in putting the systems and processes in place that are the foundation for

the effective management of race equality in prisons. However, despite considerable investment in procedural changes, the experience of BME prisoners and staff has not been transformed.

Further work is needed to build on the foundations laid, with a renewed focus on leadership and on conceiving of race equality as being an issue of fairness and performance.

The report is largely diagnostic in character and serves primarily as a stock-take against the action plan agreed with the CRE in 2003.

Whilst areas for development and possible ways forward have emerged, the report does not set out recommendations for action or a programme of work. Following publication we will determine the precise actions needed.

These will be set out in the Single Equality Scheme which we are committed to publishing on 1 April 2009, and which will govern our work from 2009-2012, and will include other NOMS priorities in respect of other equality strands.

“

This report highlights the significant progress made in putting the systems and processes in place that are the foundation for the effective management of race equality in prisons. ”

Actions at a national level

At a national level, structures have been put in place to enable the effective management of race equality. A detailed and comprehensive Race Equality Action Plan (REAP) has been developed.

This sets out all the high-level actions that the Prison Service is taking on race equality, including those to address the recommendations of the Zahid Mubarek Inquiry and the 'Areas for Development' identified by the Chief Inspector of prisons in the Parallel Worlds report, as well as the programme of work to meet and go beyond our legal obligations set out in our Race Equality Scheme. It consists of over 100 actions, many of which are substantial projects in their own right.

A Programme Management Board, chaired by a member of the NOMS Management Board, oversees implementation of the REAP. This reports quarterly to the NOMS Management Board, for whom race equality has been a consistent corporate and operational priority over the last five years. Progress on the action plan is also reported to the Equality and Human Rights Commission three times a year via the Ministerial Scrutiny Panel on Race.

To co-ordinate and lead the Service's work in this area, a 25-strong Race Equality Action Group (REAG) was created at NOMS headquarters. The Group is led by the Race Advisor who plays a key role in ensuring that issues of equality contribute to all Board discussions and decisions. It includes senior practitioners recruited from partner organisations, the regulatory environment and operational line.

As well as being responsible for developing policy and monitoring performance, it includes a Service Delivery and Implementation Team, comprising experienced managers and staff seconded from establishments, who provide practical help with service delivery to establishments.

A detailed and comprehensive Race Equality Action Plan has been developed. This sets out all the high-level actions that the Prison Service is taking on race and including those to address the recommendations of the Zahid Mubarek Inquiry and the 'Areas for Development' identified by the Chief Inspector.

An externally recruited Race Advisory Group was also set up to act as a critical friend, supporting and challenging our work. Reconstituted in 2007 through an open recruitment process, the Group's members come from a broad range of backgrounds, experiences and communities. As well as meeting regularly to advise on policy developments, members visit establishments to observe and feedback on progress.

As well as putting management structures in place, huge progress has been made in implementing systems to manage race equality effectively. A revised national policy on race equality – set out in Prison Service Order (PSO 2800) – was issued. An accompanying Prison Service Standard on Race Equality provides the framework for auditing delivery of the PSO in establishments in a way that moves

beyond testing compliance and is focused on ensuring that establishments are successfully delivering outcomes which increase race equality.

SMART (Systematic Monitoring and Analysing of Race Equality Template) facilitates the analysis of data on a wide range of processes to alert establishments to potentially disproportionate impact.

PSO 2800 includes the requirement for all new and revised policies to be subject to race equality impact assessment prior to issue, as are other relevant decisions, with the Race Advisor and/or Race Advisory Group providing advice where necessary. Impact assessments of over 70 of the most important national policies have been published on the Prison Service website.

To support the impact assessment process, a comprehensive ethnic monitoring tool has been developed. SMART (Systematic Monitoring and Analysing of Race Equality Template) facilitates the analysis of data on a wide range of processes, employing a range-setting methodology to alert establishments to areas in which impact is potentially disproportionate. Monitoring of eight key processes - including areas such as segregation, use of force and incentives and earned privilege levels identified as problems by the CRE - is mandatory at all establishments, and there is the capacity to monitor other processes selected because of their importance locally.

On a quarterly basis, data from local SMART monitoring is aggregated to

produce a national picture of the effect of key policies. This is supplemented with a quarterly report that analyses results on Key Performance Indicators according to a number of diversity strands, including race. There is also an annual Staff Ethnicity Review that publishes monitoring data for key employment functions.

Two Key Performance Targets (KPTs) on race equality — one focusing on prisoners and one on staff — were introduced to ensure a focus on improving race equality.

Two Key Performance Targets (KPTs) on race equality — one focusing on prisoners and one on staff — were introduced to ensure that establishments are focused on pursuing work to improve race equality. Scores on every one of these measures improved during the first year of operation.

We have also worked towards increasing the diversity of our workforce. Recruitment and retention of BME staff has improved. BME representation is up from 3.5% in December 2000 to 6.2% in April 2008, against a target of 6.3% for 2007/08. This has been achieved through recruitment of BME staff at levels above their representation in the areas around prison establishments (in 2006-07, 7.7% of staff recruited were BME, compared to 7% of the population in the areas in which we were recruiting) as well as action to address higher leaving rates amongst BME staff (7.8% in 2006-07, down from a peak of 9.7%). The difference between the leaving rates of BME and White staff is also narrowing.

Actions at a local level

Given that the majority of the CRE's criticisms focused on practices in establishments, a great deal of work has been undertaken at a local level to ensure that the failures identified by the CRE have been addressed.

Revised PSO 2800 sets the framework for the local management of race equality in establishments. A local REAP is managed

by a Race Equality Action Team (REAT), led by the Governor or Deputy Governor.

REATs include prisoner representatives and individuals from external community organisations who are positively engaged in work to promote race equality.

A comprehensive programme of training for REATs has been rolled out and, at September 2008, over 1,900 REAT members have been trained.



HMP Brixton

Each establishment also has a Race Equality Officer (REO), with a three-fold increase in the average time given to their work over the last four years. In many cases the grading of the REO role has also been changed, with many more establishments now having a middle manager in the post or leading a small team, and some with diversity managers on the Senior Management Team.

Local delivery is supported by full-time Area Diversity Leads in each of the eleven Prison Service Areas and in the High Security Estate. As well as supporting REATs and REOs in establishments, these staff provide key information to Area Managers which enables them to monitor and scrutinise

performance on race equality, for example by quality assuring race equality impact assessments.

Systems and processes that were absent at the time of the CRE formal investigation are now in place and the needs of the diverse prisoner population are taken into account in the provision of goods, facilities and services.

The Service also requires the completion of local impact assessments at establishment level. All establishments completed impact assessments on ten key areas derived



HMP Brixton

from the CRE failure areas. They have then developed these documents to address comments received from the internal quality assurance process, and to put in place programmes of further impact assessments, prioritised according to local need. Over 1,500 impact assessments have now been completed at local level.

Local impact assessments and management of race equality more generally are informed also by prisoner consultation arrangements. These include regular large-scale surveys through the Measuring the Quality of Prison Life (MQPL) questionnaire, developed by Cambridge University. Establishments also use prisoner representatives on REATs to articulate prisoner views, and most REOs hold regular focus group meetings with BME prisoners, as well as specific consultation meetings over issues subject to impact assessment.

The handling of racist incident reporting forms (RIRFs) has been improved considerably. Initial action was taken to put in place rigorous processes to ensure access, tracking and thorough investigation. External scrutiny of a proportion of completed investigations was mandated nationally, with local implementation having produced some particularly good practice using external panels. There is evidence that this has increased the accessibility of the system, with the number of RIRFs having increased from 8,454 in 2004-05 to 13,323 in 2007-08.

Further improvements in the handling of both RIRFs and general complaints have been piloted in four prisons, with positive outcomes using a prisoner confidence

survey developed by Cambridge University. Improved training for investigators has been introduced, and mediation awareness training has been piloted, and encouragement given to REOs to use informal conflict resolution methods in appropriate cases.

Improvements to services such as catering and prison shops have sought to make provision more suitable to the needs of BME prisoners and there are strong indications that this has been effective in responses to HMCIP surveys. The proportion of BME prisoners rating the food as good or very good increased by ten percentage points from 2004-05 to 2006-07, and the proportion of BME prisoners stating that the goods on sale in the shop meet their needs increased by seven percentage points in the same period. Halal food is now provided in establishments and menus include a main meal daily choice suitable for Muslims.

The CRE's criticisms of the Service's failure to provide for the faith needs of Muslim prisoners have been fully addressed – establishments facilitate attendance of Muslim prisoners at Friday prayers and many provide suitable washing facilities. Overall, systems and processes that were absent at the time of the CRE formal investigation are now in place, and the needs of the diverse prisoner population are taken into account in the provision of goods, facilities and services. The workforce is becoming increasingly representative of the wider community and informed commentators who, as part of the review, revisited establishments five years on agree that the Service has made significant improvements.

Where the challenges remain

Although it is impossible to guarantee that there will never be any incidents of overt racial discrimination, the action that we have taken has had considerable success in moving towards the elimination of the more blatant forms of racism. Considerable progress has also been made in enabling the monitoring of outcomes of policies and practices, with the introduction of ethnic monitoring and the impact assessment process. Senior Management Teams in establishments are now in a much better position to be able to identify and take action to tackle unjustified differential treatment.

However, the fact remains that differential treatment of BME prisoners has not yet been fully addressed. National monitoring data shows significant differences between minority groups, as well as between the BME and White groups. Black prisoners, in particular, are consistently more likely than White British prisoners to be on basic regime, to be in the segregation unit for reasons of Good Order or Discipline and to have force used against them.

In addition, with regards to almost all aspects of prison life, the perceptions of BME prisoners are still more negative than those of their White counterparts. Both MQPL data and HMCIP surveys indicate that the most significant differences between BME and White prisoners are in perceptions of their relationships with staff, with BME prisoners having more negative perceptions than White prisoners.

These areas of prison life are often difficult to resolve via the complaints process,

which was developed to deal with clear-cut incidents of harassment or discrimination. There is more to be done to make the process suitable to handle more covert forms of discrimination.

Prisoners also still sometimes lack a detailed understanding of how the complaints system operates, and BME prisoner perceptions of the system remain more negative than those of their White counterparts. In moving forward, improvements will be obtained through more consistent application of the existing policy and in improving communication with prisoners about the system. Properly established and supported prisoner rep schemes have the potential to make an important contribution in this area and can help build confidence.

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With regards to the provision of goods, facilities and services, we need to continue to ensure, within the limited resources available, a broad range of cultural diets are provided, to prevent the cross-contamination of halal food and ensure that the products available in the prison shop fully meet the needs of BME prisoners.

Challenges also remain in ensuring that establishments are making their services accessible to Gypsy Traveller and Roma prisoners, through effective monitoring

arrangements and the sharing of good practice.

In relation to staff, although there has been a huge investment in the HR infrastructure, specific challenges remain in several areas.

For example, BME staff are less likely to receive an 'exceeded' marking for their appraisals, and White staff tend to have higher pass rates for the Prison Officer Selection Test and at the Job Simulation Assessment Centre. There is also a need to ensure that all staff feel able to challenge inappropriate behaviour and that they have confidence in using the policies and processes, such as grievance procedures, that already exist.

The work undertaken over the last five years has enabled the Service to have a much better understanding of the complexity of the issues. However, in moving forward, the focus must be on taking effective and consistent action to tackle the remaining challenges.

The way ahead

There can be no doubt that the Service has made huge strides in implementing systems and processes that ensure a more thorough approach to race equality. There is also a broad consensus among informed commentators that blatant racism is now much less common. But, for all the investment, we know that many of the issues that informed the CRE report have not been fixed.

While the report concludes that the aggregate of the actions taken over the last five years has issued in substantial

improvements, it also acknowledges that the experience of BME prisoners and staff has not been transformed. Perhaps that is best demonstrated by reference to national monitoring data, which shows equal treatment in many respects, but also shows persistently disproportionate treatment in other key areas.

This report calls for race equality to be seen as a business function as much as a moral imperative and to be viewed through a lens of fairness and performance.

Following evidence to the CRE in 2003 that promised procedural and cultural change, we have made significant procedural changes, even beyond those promised. The programme of organisational change we set ourselves first required a series of process changes which took time to develop, operationalise and embed. However, although process change goes some way towards changing customs and habits of behaving and thinking, it alone is not enough. More can be done to hasten progress through the exercise of an explicitly value-based leadership, which issues in a set of effective management actions, leading to a change in organisational culture and the improvement of race equality outcomes.

The review report calls for race equality to be seen as a business function as much as a moral imperative and to be viewed through a lens of fairness and performance. It suggests that tools and processes in place – such as SMART ethnic monitoring and impact assessments – are

not being fully utilised. However, rather than introducing a raft of new initiatives, the report calls for a more common sense, ‘ordinary’ understanding of race, focusing on (1) the right leadership priorities – explicitly and frequently stated – backed up by (2) effective use of the tools, systems and processes available, with (3) prompt action taken through the management line.

While race equality remains a legal and moral imperative, in more straightforward language it is simply about ensuring fairness, and as such it is key performance outcome in any prison. Accepting that fairness is a fundamental requirement in running a prison, defining race equality in this way allows us to be absolutely clear

that if you are performing poorly on race, you are performing poorly. Conversely, getting race right is about getting management and leadership right and does not sit outside that process as a separate programme of work or activity.

The Prison Service has come a long way since the CRE’s investigation report in 2003. The last five years have been spent laying the foundations for change in the organisation. The task now is to continue that work to build a Service in which the delivery of fair outcomes and decency in prisons is at the heart of our primary purpose of protecting the public and reducing re-offending.

3 Methodology

This chapter sets out the methodology used to review progress against the CRE failure areas and action plan. An important underlying principle of the review was openness and transparency in order to ensure that external stakeholders would have confidence in, and contribute to, the process. In undertaking the review, we

have drawn upon a number of sources of evidence, including: Measuring the Quality of Prison Life (MQPL) Surveys, reports of Her Majesty’s Chief Inspector of Prisons and ethnic monitoring data, at national and local levels. (It should be noted that most of the statistics in this report relate to public sector prisons only.)

Terms of reference

The terms of reference for the review were:

- 1 To review Prison Service work and progress against the action plan agreed with the Commission for Racial Equality (CRE) following their formal investigation into racial equality in the Prison Service in 2003, paying specific attention to:
 - a) the progress made in addressing the 14 failure areas identified by the CRE, as set out in Part 2 of their formal investigation report and
 - b) the key deliverables contained within the Implementing Race Equality in Prisons: A shared agenda for change.

In light of the findings in relation to point 1:

- 2 To assess the extent to which the Prison Service has improved outcomes for Black and Minority Ethnic prisoners and staff through its programme of work on race equality
- 3 To highlight any examples of good practice, as well as areas for improvement, at a national or local level
- 4 To consider and make recommendations on the key priorities for action, at a national and local level, over the next five years, to improve race equality outcomes for prisoners and staff across the service.



By inviting some of its most concerned critics to comment on progress made, the Prison Service has demonstrated a level of maturity and transparency which will provide the foundation on which to build and secure the further progress which is needed. ”

Lord Rosser & Farida Anderson, MBE - co-Chairs of Independent Advisory Group

Governance

Independent Advisory Group

In order to ensure transparency and that the final review report was able to present a recognisable picture to key stakeholders, an Independent Advisory Group (IAG) was established to provide advice and guidance to support the review.

The IAG was co-Chaired by Lord Rosser, non-executive member of the National Offender Management Service (NOMS) Management Board, and Farida Anderson MBE, Chief Executive of Partners of Prisoners (POPS). As co-Chairs, their responsibilities were to ensure that the review was open and transparent, and that the Review Teams' assessments were robust and based on sound evidence and analysis.

Representatives from a wide range of organisations were invited to become members of the IAG – the full membership list is at Annex A. Joel Edwards, the lead Commissioner on prisons at the Equality and Human Rights Commission (EHRC), attended IAG meetings in an observer capacity, in order to retain the Commission's independence as a regulator. The role and remit of the IAG was to:

Role:

- provide advice and guidance to support the review of Prison Service work and progress against the action plan agreed with the Commission for Racial Equality following their formal investigation into racial equality in the Prison Service in 2003
- consider and make recommendations on the key priorities for action, at a



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national and local level, over the next five years, to improve race equality outcomes for prisoners and staff across the service

Remit:

- act as a ‘critical friend’ to the Prison Service by providing expert opinion and constructive comment on all aspects of the review process, including planning, emerging findings and draft reports
- convene seminars, roundtable discussions and symposia as necessary to support the review
- advise and make recommendations on the key priorities for action on race equality by the Service over the next five years, based on the review findings
- assist in bringing together the outcomes of each theme of the review into a final report for consideration by the Programme Management Board (PMB) and NOMS Management Board
- contribute a foreword to the final report, commenting on the review process itself and its outcomes

Four meetings of the IAG were held through the course of the review at a variety of locations, including at HMYOI Feltham, where prisoner representatives were also able to contribute to the discussion.

Internal governance arrangements

The detailed and ongoing work of the review was reported internally to the Programme Management Board (PMB), responsible for overseeing progress against the Service’s national Race Equality Action Plan (REAP), and to the NOMS Management Board, chaired by the Director General. Emerging findings were

reported to these Boards as well as to the Ministerial Scrutiny Panel, chaired by the Parliamentary Under-Secretary, Ministry of Justice and Joel Edwards, Commissioner at the Equality and Human Rights Commission.

Timescales

In December 2007, early discussions took place with senior colleagues in the operational line regarding the outline, purpose and methodology of the review. The first quarter of 2008 was then spent undertaking planning work, putting in place the governance arrangements and establishing the Review Teams. The review work began in earnest in May 2008, with visits taking place from June to October.

A draft report was considered by the PMB and IAG in November and the final report submitted to EHRC on 1 December.

The publication date of 16 December 2008 marks exactly five years since the launch of the joint CRE/HMPS action plan in 2003 and provides the ‘sign-off’ of the five-year partnership agreement between the two organisations.

Review themes

The themes were:

- 1 Prisoner treatment
- 2 Prisoner access to goods, facilities and services (e.g. catering; canteen (prison shop); access to religion)
- 3 Complaints and investigations
- 4 Staff
- 5 Management and leadership
- 6 General atmosphere in prisons

Given the broad range of failure areas covered by the CRE formal investigation, the 14 areas were grouped into a number of themes which formed the structure of the review. The themes were:

- 1 Prisoner treatment
- 2 Prisoner access to goods, facilities and services (e.g. catering; canteen (prison shop); access to religion)
- 3 Complaints and investigations
- 4 Staff
- 5 Management and leadership
- 6 General atmosphere in prisons

A summary of each of the themes and details of the CRE failure areas is at Annex B.

Review teams

The Service was determined to ensure that the review process was open and transparent and that it worked with external partners to develop an honest assessment of the progress made since 2003. In light of this, trusted and recognised external stakeholders, from partner organisations such as Nacro, the Prison Reform Trust and Partners of Prisoners, were invited to lead small Review Teams made up of academics, practitioners from related fields and other key stakeholders. Membership of the Review Teams is at Annex C.

Their primary role was to undertake a series of visits to establishments to help inform the assessment of progress made by the Service against the CRE failure areas and agreed action plan.

Establishment visits

Review Teams selected and visited a wide range of establishments, including: male locals, female, young offender institutions, high security and Category C/training prisons, across a wide range of geographical areas and at different performance levels.

A total of 23 establishments were visited as part of the review process from June to October 2008. In order to ensure that the findings were as representative as possible of progress across the Service, Review Teams selected and visited a wide range of establishments, including: male locals, female, young offender institutions, high security and Category

C/training prisons, across a wide range of geographical areas and establishments of different performance levels. Given that Brixton, Feltham and Parc were the focus of the CRE's formal investigation, each establishment was visited at least twice as part of the review.

The visits were co-ordinated and accompanied by senior members of the Race and Equalities Action Group (REAG) and Staff Diversity and Equality Team (SDET). In advance of the visits, teams were provided with information about the work undertaken by the Prison Service since 2003, as well as quantitative and qualitative data and analysis to support the Review Teams in undertaking 'reality checks' of progress and to help inform their judgements.

A wide range of management information relevant to the theme was provided for each establishment, including:

- SMART ethnic monitoring data
- Measuring the Quality of Prison Life data
- sample of Racist Incident Reporting Forms (RIRFs)
- Her Majesty's Chief Inspector of Prisons reports
- establishment Race Equality Action plans and minutes of Race Equality Action Team meetings
- copies of Race Equality Impact Assessments of key policies

Teams spent between one and two days at each establishment, during which they met with a wide range of relevant individuals, including Black and Minority Ethnic (BME) and White prisoners and staff, Governing

Governors, Senior Management Team members, members of the Chaplaincy team, functional Heads, HR Business Partners and the Race Equality Officer/ Diversity Manager. The Review Teams also met with key stakeholders at a national and local level in order to gain their views on the extent to which the Prison Service has been successful in addressing the CRE failure areas. Around 1,300 prisoners and over 200 staff took part in focus groups or were interviewed as part of the review process.

The teams were given unlimited access to all parts of the prison and they spent time talking to prisoners and staff in those areas relevant to their theme, including wings/houses, segregation unit, education, workshops, kitchen, prison shop and serveries.

A leaflet was produced and distributed to prisoners in advance of the visits. This provided information about the review, and short biographies of the Review Team members visiting the establishment.

In order to obtain prisoner perceptions of how race equality was being managed in the establishment, focus groups were held with prisoners and prisoner race representatives. Prisoners were selected on a random basis from the Local Inmate Database System (LIDS). Prison staff were not present during the sessions and anonymity was guaranteed.

Staff views were also gathered through focus groups. Invitations were sent to all staff to take part in the staff focus group on a voluntary basis. Both BME and White members of staff participated in

the sessions with an approximate 50:50% BME/White staff split.

Following the visits, each Review Team presented a report on their emerging findings to the IAG.

It is important to note the limitations of visiting only a relatively small but representative sample of prisons as a way of reaching a full and accurate view of the management of race equality in prisons. This is a complex area about which it is almost inevitable that conflicting perceptions are held by different individuals and groups and, even with the assistance of the management information that was provided in advance of the visits, it was not possible for a small team to reach a

definitive conclusion on the basis of a short visit. The intention was to gather evidence from a number of sources and bring these together with the observations of the senior practitioners and academics who comprise the Review Teams in order to reach an overall view. The visits should not be regarded as inspections or audits but as a means of collecting evidence from a cross-section of establishments and as fair an assessment as we are able to give.

Seminars and workshop

In addition to the establishment visits, two seminars were held to enable further investigation and discussion of key issues: one on the use of discretion and another on management and leadership.



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Professor Alison Liebling of the Institute of Criminology, University of Cambridge – who has written extensively on prison work and is recognised as having unrivalled expertise in this area – hosted and gave presentations at both seminars.

The aim was to consider the Service's progress since 2003 in these two key areas, identify good practice and map out the future direction that should be taken both nationally and locally to ensure effective management and monitoring of prison officer discretion and to ensure effective leadership and management of race equality across the Service.

The seminars were attended by a wide range of senior practitioners from within the Service, as well as policy makers from related fields and academics with a research interest or experience in these areas. Further details of the seminar outcomes are provided in Annexes G and H.

In addition, a workshop was organised by the NOMS HR Directorate with the Staff Review Team in order to discuss the work the Prison Service has undertaken on staffing issues since the CRE's formal

investigation. (See Staff chapter for further information.)

Prisoner perception survey

In 2003, the Prison Service commissioned IONANN Management Consultants to undertake a survey of prisoner perceptions, covering issues such as provision of goods and services, fairness and relations and safety. The survey findings touched upon many of the CRE failure areas.

The 2003 survey was originally devised for the purpose of evaluating diversity training in the Service. Recognising the limitations of the methodology and its use in the context of the review, Nacro were commissioned to replicate the IONANN survey in order to enable a comparison of prisoners' perceptions in 2003 and 2008.

In total, approximately 900 prisoners were surveyed. Qualitative data was also collected through focus groups and the comments and experiences of prisoners recorded in order to highlight areas of common concern or good practice.

Further information about the survey and its findings is provided at Annex F.

4 Prisoner Treatment

Where we were

The treatment of BME prisoners was a central theme of the CRE formal investigation reports. The CRE reported having received many examples of prisoners wishing to complain about their treatment – about restrictions, punishments and harassment – and making allegations of racial discrimination.

Data consistently showed that Black male prisoners were more likely to be charged with disciplinary offences and more likely to be found guilty, and once found guilty they received more punishments per offence than White prisoners.

The impact of officers' use of discretion on BME prisoners was central to many of their findings on prisoner treatment. They found that much of what staff needed to do was left unsaid and the system of management in operation meant that lower grades made decisions on which rule or requirement to ignore without having any accountability.

This resulted in the use of considerable discretion by officers when carrying out their duties.

Negative stereotypes often played a particular role in the approaches of staff towards BME prisoners and the decisions they made. This meant that the use of discretionary powers, which was unsupervised and unaccountable, greatly increased the chances of discriminatory behaviour against BME groups. However, at the time of the CRE investigation,

there were almost no statistics available that would enable an examination of the extent to which BME prisoners were disadvantaged as a result.

The CRE highlighted the significance of the use of discretion to a number of specific processes within establishments: prison transfers and allocations, discipline, IEP scheme and access to work.

They found that prisoners frequently raised concerns about the way in which they were moved from one prison to another or between wings or units, and anecdotal evidence of racial discrimination in this decision-making process.

Data consistently showed that Black male prisoners were more likely to be charged with disciplinary offences and more likely to be found guilty, and once found guilty they received more punishments per offence than White prisoners. However, there was a failure to examine the reasons for this or consider what action should be taken against staff for the wrongful use of discretion.

Available evidence indicated possible discrimination in the application of the IEP scheme, with Black and Asian prisoners more likely to be on basic, but there was ineffective ethnic monitoring of the decisions and actions taken.

Black prisoners also consistently complained that they either did not have the opportunity to work to the same degree as other prisoners or did not have equal access to more favoured areas of work, and the quality of monitoring of access to work was variable.



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In total, 11 out of the 14 failure areas identified by the CRE directly relate to issues of prisoner treatment and experience, and six of these to the findings outlined above (see Annex B for full details of CRE failure areas).

A number of common issues emerged across all the different activities:

- lack of, or poor-quality, ethnic monitoring data
- weak or poorly developed management structures, including lack of managerial supervision of use of discretion by officers
- negative stereotyping by officers
- evidence of BME prisoners being treated more harshly than their White counterparts
- lack of sustained management action where evidence of discriminatory treatment was found

Against this backdrop, we embarked upon a challenging and wide-ranging programme of work aimed at tackling the failure areas and putting right what was wrong. This is detailed at Annex D.

The following section sets out what we did in response to the CRE's findings.

What we did

The action plan, agreed with the CRE in 2003, set out a wide range of key deliverables aimed at addressing the specific failure areas and at improving the monitoring and management of race equality within establishments.

Many of the CRE findings and failure areas

relating to prisoner treatment centre on issues of the management of race equality in prisons. For example:

- the lack of ethnic monitoring, or monitoring data of variable quality
- poor management of the use of discretion
- failures to address differential or discriminatory treatment where it was apparent

In response, we undertook a number of actions aimed at ensuring that race equality is integrated within the management of, and day-to-day work in, establishments, and that systems for monitoring the impact of policies and practices are in place.

Ethnic monitoring

To address the lack of ethnic monitoring, the Systematic Monitoring and Analysing of Race Equality Template (SMART) tool was developed for establishments. SMART applies basic range-setting principles to assist in monitoring the outcomes of functions or policies by ethnicity and gives an indication of whether action or further investigation is required.

For the purposes of the Key Performance Target (KPT) on race equality for prisoners (see below), mandatory ethnic monitoring was initially required of ten key processes in establishments, with the majority directly relating to prisoner treatment (highlighted):

- 1 **activities** (including employment)
- 2 **accommodation** (i.e. the population of all residential units)
- 3 **adjudications** (charges laid, charges proven, charges dismissed, and charges referred)

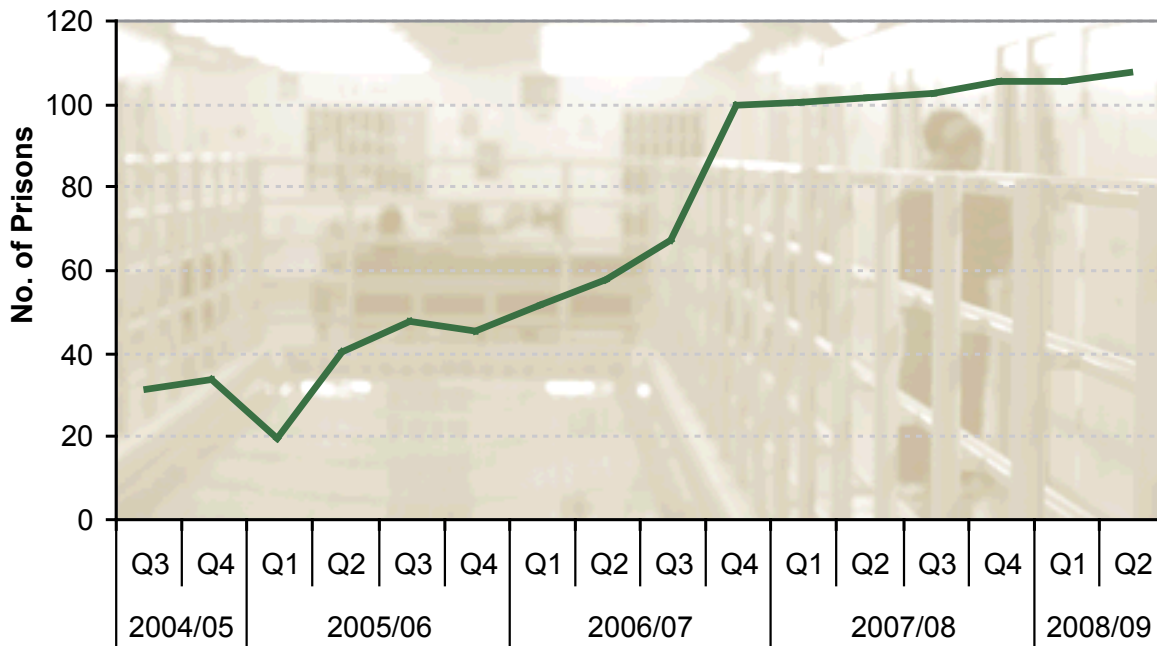
- 4 **segregation** (cellular confinement, Good Order or Discipline, Own Interest, and Awaiting Adjudication)
- 5 complaints
- 6 **IEP**
- 7 **Use of force**
- 8 Release on temporary license (ROTL)
- 9 Re-categorisation
- 10 Home Detention Curfew (HDC)

The software has been further developed and SMART II has been rolled out to all public and private sector establishments. Eight areas for SMART monitoring remain mandatory – including segregation, use of force and IEP levels – with five of these areas contributing to the KPT. There is also

the capacity to monitor other processes selected because of their importance locally.

From April 2008 for public sector prisons and September 2008 for private prisons, data from local SMART monitoring is aggregated, on a quarterly basis, to produce national and area pictures of the effect of key policies. This is supplemented with a quarterly report that analyses results on Key Performance Indicators according to a number of diversity strands, including race. Production of national monitoring figures for key policies and functions was an action point on the plan agreed with the CRE in 2003 and is in line with our

Prisons with a Full Time REO



Source: NOMS Quarterly Questionnaire

responsibilities under the Race Relations Act 1976, as amended.

Management structures

In September 2006, a revised PSO (2800) on race equality was issued, which sets out an outcomes-focused management framework for establishments. It contains guidance on the role of the Governing Governor, the Senior Management Team (SMT) and re-establishes the Race Relations Management Team (RRMT) as the Race Equality Action Team (REAT), giving clear direction on its leadership, membership, terms of reference and how it should operate. The REAT is a sub-group of the SMT, to which it reports regularly and is led by the Governor or Deputy Governor. The REAT is responsible for delivery of the establishment's Race Equality Action Plan (REAP), which sets out a clear programme of work, including race equality impact assessments, community engagement and communication strategies, and monitoring of complaints and Racist Incident Reporting Forms and associated investigations.

Although responsibility for managing race equality rests with the REAT, each establishment also has a Race Equality Officer (REO). From 2004-05 to 2007-08 there has been a three-fold increase in the average time given to the work of the REO. From an individual REO with an average of 16 hours per week, we have moved to a position where nearly 100 prisons now have a full-time or equivalent member of staff in the role, and many have diversity teams, boosting the amount of time spent on race issues to an average of 48 hours per week per establishment. In many cases the grading of the REO role has also been changed, with many more establishments

now having a middle manager in the post or leading a small team, and some with diversity managers on the Senior Management Team.

A comprehensive programme of training for REATs has been rolled out and at September 2008, 1,911 REAT members, including 1,456 Prison Service managers, 249 prisoner representatives, and 101 external representatives were trained. By March 2008, 111 REOs had also undertaken a newly developed course devised specifically to equip them for their roles. This covers, amongst other things: race awareness, use of discretion, consultation and focus groups, prisoner representatives, awareness of religion and religious property, racist incident reporting, community engagement, KPT and SMART II.

Local delivery is supported by full-time Area Diversity Leads in each of the eleven Prison Service areas and in the High Security Estate. This reflects the greater focus being placed on race and diversity issues by Area Managers. As well as supporting REATs and REOs in establishments, these staff provide Area Managers with assurance about performance, for example by quality assuring race equality impact assessments.

In addition, the Race and Equalities Action Group at NOMS (formerly Prison Service) headquarters created a dedicated Service Delivery and Implementation Team, comprising managers and staff seconded from establishments, who provide practical help with service delivery to establishments. This has included undertaking health checks and providing assistance with performance

improvement processes and, more recently, in a programme of support visits to establishments in advance of HMCIP-announced inspections, with the aim of evaluating the extent of any resulting change through the inspection report. The Team has also given focused support to a number of establishments who have faced particular challenges in relation to race equality.

In 2004, REAG also set up a helpline which allows REOs and others to seek information and advice on any race-related issues.

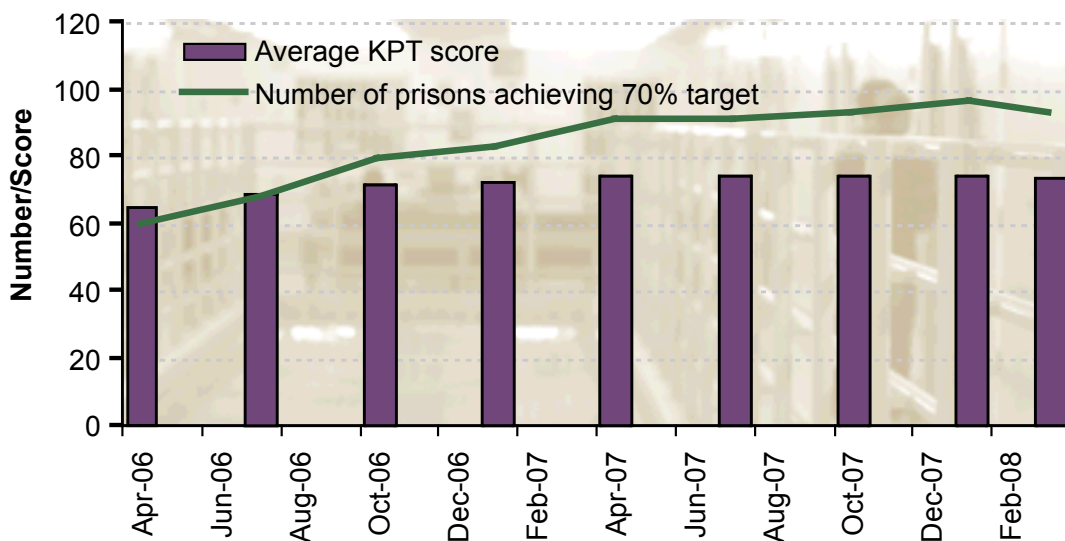
Management systems

In order to drive performance on race in the same way as other areas of the Service’s work, a Key Performance Target on race equality was introduced. The KPT forms an important part of the

weighted scorecard that forms one of the most important general performance measurement arrangements for the Service. It is composed of a basket of measures, including a score for management processes (audit score for the Race Equality Standard (see below)), for prisoner outcomes (using the SMART data) and for prisoner and visitor perceptions (using results from the Measuring the Quality of Prison Life survey and the Visitor Survey). The KPT was run on a shadow basis during 2005-06 and rolled out across the Service from April 2006.

The target score was set at 70%. The average score improved from 65.4% in April 2006 to 74.6% in March 2008, with the number of prisons achieving the target going up from 61 to 92 during this period. This overall improvement was made up of

Prisoner Race Equality KPT Average Score and Number of Prisons achieving the Target



Source: Race Equality KPT scores 2006 - 2008.xls

improvements on each of the individual measures. Most relevantly for the Prisoner Treatment theme, the score for prisoner outcomes increased from 83.1% in April 06 to 85.6% in March 08.

Following a review in 2007, improvements to the KPT were implemented from April 2008. These are designed to make it a fairer and more accurate reflection of race equality performance in establishments, and include changes to the way that the SMART data is scored and a new auditing process, administered directly by Audit and Corporate Assurance (rather than through the self-audit process) which is more outcome-driven.

In July 2007, a revised version of Standard 48 on race equality was introduced. This is more closely aligned with the requirements of PSO 2800. It is used to audit delivery in a way that moves beyond compliance testing and is focused on ensuring that establishments are successfully managing risks around race equality issues. By March 2008, only ten prisons had not achieved a score of at least 70% for the audit element of the standard. Recent scores have been particularly good: between July and October 2008, five establishments received a 'well-controlled' rating and five a 'satisfactory' rating, with only one receiving a 'marginal' rating and none being 'deficient'.

On a very different note, systems have been designed to address the issue raised by the CRE of the failure to tackle prisoners' racist behaviour. A manual has been developed which explains how to detect and manage offenders who display racist attitudes, with material drawn from

the 'Signs of Hate' publication produced by Searchlight. Once detected, monitoring and disruption strategies are used for those offenders assessed as high risk, and an educational intervention has been piloted for lower risk offenders. The education programme has been accredited by the Open College Network (OCN) for use by education departments in establishments or other appropriate facilitators such as psychologists.

Differential treatment

As well as a system for ethnic monitoring, we have introduced a requirement for impact assessments to be undertaken across the organisation.

CRE failure areas concerned the local implementation of policies, rather than the policies themselves.

In order to ensure compliance with our legal obligation to assess the impact of national policies we have issued PSI 21/2006 which requires race equality impact assessments to be completed on all new national policies and amendments to existing national policies before they can be issued.

In the light of the fact that many of the CRE failure areas concerned the local implementation of policies, rather than the policies themselves, we have also required establishments to carry out impact assessments of relevant functions and policies. This not only demonstrates a willingness to go beyond our legal responsibilities, but also provides a useful way of bringing together the various sources of evidence of adverse impact or

differential treatment and generating action to change it locally.

This work on local impact assessments began with a focus on the key failure areas identified by the CRE. In 2005-06, all 127 public sector establishments completed impact assessments of adjudications, Good Order or Discipline, IEP and use of force, and in 2006-07 of access to, and allocation of, work.

In 2006 a revised PSO 2800 was issued, including specific guidance on the impact assessment process and containing a list of the mandatory areas for impact assessment, which include several relating to this theme.

In total, since 2005, over 1,500 impact assessments have been completed, and all establishments have considered the key failure areas identified by the CRE.

Changes were also made to the national policies that govern practices in establishments to ensure that lessons are learned from the findings of the CRE investigation.

For example, PSO 2000 on adjudications now requires Governors regularly to review performance, including collecting and analysing data on adjudications by ethnicity. Similarly, PSO 4000 on IEP includes a requirement for ethnic monitoring data to be produced quarterly



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for the Senior Management Team and REAT, and any apparent imbalance in the distribution of privilege levels between different ethnic groups to be investigated. The national Standards have also been amended to reflect the new requirements. For example, Standard 12 on prison industries requires that records of applications for and allocations to work must be maintained and monitored ‘to ensure equality of opportunity irrespective of ethnic origin’.

Where we are now

This section draws on evidence from a variety of sources to provide an assessment of what progress has been made in addressing the failures identified by the CRE in relation to prisoner treatment.

Part of this evidence derives from the Review Team — made up of five people from partner agencies and academics — who undertook visits to establishments in order to assess progress against the failure areas. They visited a Category C and high security establishment as well as a young offenders institution.

In addition, given that much of what happens in prison rests on the use of discretion, we invited Professor Alison Liebling of the Institute of Criminology at the University of Cambridge to host a seminar on race equality and the use of discretion as part of the review process. Professor Liebling has written extensively on the subject of prison officer work and is widely acknowledged as having unrivalled expertise in this area.

The aims of the seminar were to discuss

the Service’s progress since 2003 against the CRE failure area, identify and discuss good practice in management and monitoring the use of discretion, and map out the future direction that should be taken to ensure effective management and monitoring of the use of prison officer discretion.

Further details of the methodology can be found in Chapter 3.

Ethnic monitoring

Considerable progress has been made to improve the arrangements for collecting ethnic monitoring data. The development and introduction of the SMART tool means that establishments are now able to monitor the outcomes of their functions and policies across the whole range of activities undertaken in prisons.

This has recently been further improved through the issue of SMART II software, which is more user-friendly and offers increased functionality, including a more detailed breakdown of results — distinguishing between different BME groups, as well as between the BME group and the White group — and the capacity to monitor trends over time. The existence of the new software — and its use by the contracted prisons as well as the public sector from the second quarter of 2008 — has brought with it the capacity to aggregate data to provide area and national ethnic monitoring figures.

The SMART II software has received praise from agencies across the criminal justice system and Whitehall. The CJS Race Unit within the Office for Criminal Justice Reform requested a demonstration

to a number of other agencies, and the programme received praise and interest from a range of stakeholders, including the head of the National Policing Improvement Agency and a representative of the Prime Minister's Delivery Unit.

Introduction of a Key Performance Target on race equality means that establishments are now required to monitor a number of key processes which include those highlighted by the CRE as areas of concern – for example, adjudications, segregation, IEP and use of force. Data is scrutinised by REATs at a local level and is aggregated on a quarterly basis to provide national and area pictures of the effect of key policies.

For all the positives, however, Review Team visits found there was sometimes a lack of awareness of how to use ethnic monitoring data in a meaningful way to address race equality issues or improve outcomes for prisoners in the establishment. There was also little evidence that data was subject to robust analysis or shared with staff and prisoners across the establishment.

Management structures and systems

A structure for managing race equality is now in place, which begins in the establishment and ends at the National Offender Management Service (NOMS) Management Board, chaired by the Director General.

Data collected centrally by REAG shows that good progress has been made in implementing these structures at a local level. Management commitment to race equality is demonstrated through the Governor or Deputy Governor chairing the REAT, with functional heads taking personal

responsibility for race equality within their areas. All establishments have a REO, all REATs include prisoner representatives, up from 67% of prisons in September 2004, and external community involvement in REATs now takes place in over 100 prisons.

Although management structures are now in place in establishments, the Review Team found that delivering race equality at a local level remains a significant challenge.

All establishments have a REO, all REATs include prisoner representatives and external community involvement in REATs now takes place in over 100 prisons.

Although systems exist to monitor outcomes, such as ethnic monitoring and impact assessments, establishments were not yet able to use these to their advantage and there was a danger of slippage if this did not become a meaningful activity. Race equality had not yet been built into core business processes in establishments but was being delivered as an additional extra, often only meeting the minimum mandatory requirements.

For example, in the establishments visited, impact assessments had been undertaken of key processes such as IEP, segregation and access to work, and ethnic monitoring data was collected and discussed at REAT meetings. However, the impact assessments were often of a poor standard and staff, other than the REO or Diversity Manager, were unaware of the content or findings. There was little evidence to suggest that the results of

impact assessments were being used to drive change where needed.

Differential treatment

At the time of the CRE investigation, the lack of any consistent or comprehensive ethnic monitoring system meant it was extremely difficult for establishments to identify areas where BME prisoners may have been subject to differential treatment or have poorer outcomes. With the introduction of SMART, comprehensive data is now available in all establishments and at a national level to help identify any differential treatment of BME prisoners.

In the establishments visited, the Review Team found evidence of efforts being made to introduce systems regularly to monitor if decisions of prison officers were resulting in the differential treatment of BME prisoners. For example, in two of the three establishments visited, changes had been made to the IEP system in an attempt to manage officers' use of discretion. This included requiring written justification of warnings in history sheets and undertaking random checks of warnings given every month.

Despite improvements in monitoring and management systems, the Review Team frequently heard complaints from BME prisoners about unfairness, favouritism and a perception of harsher and/or differential treatment in comparison to White prisoners. In particular, in all establishments visited, BME prisoners thought that the IEP system was unfair.

There was a widespread perception of favouritism and of differential treatment of BME prisoners, with White prisoners

being able to 'talk officers round' to avoid receiving an IEP warning in a way that BME prisoners could not. These perceptions persisted even where local ethnic monitoring data did not indicate any apparent differential treatment.

Similarly, BME prisoners complained of favouritism in the allocation of work and believed that the most prized jobs are given to White prisoners. Again, ethnic monitoring data did not always support this but the perception remained. BME prisoners also expressed concern about the over-use of force against them and of harsher treatment in the operation of the discipline system.

The findings of the Review Team reflect those highlighted by Her Majesty's Chief Inspector of Prisons in both her establishment reports and her thematic review of race relations, *Parallel Worlds*. BME prisoners stated that racism manifested itself in establishments in discriminatory treatment by staff and inequality of access to the regime. In line with the Review Team's findings, key areas of dissatisfaction were fairness of IEP, allocation to better jobs, discipline systems and segregation.

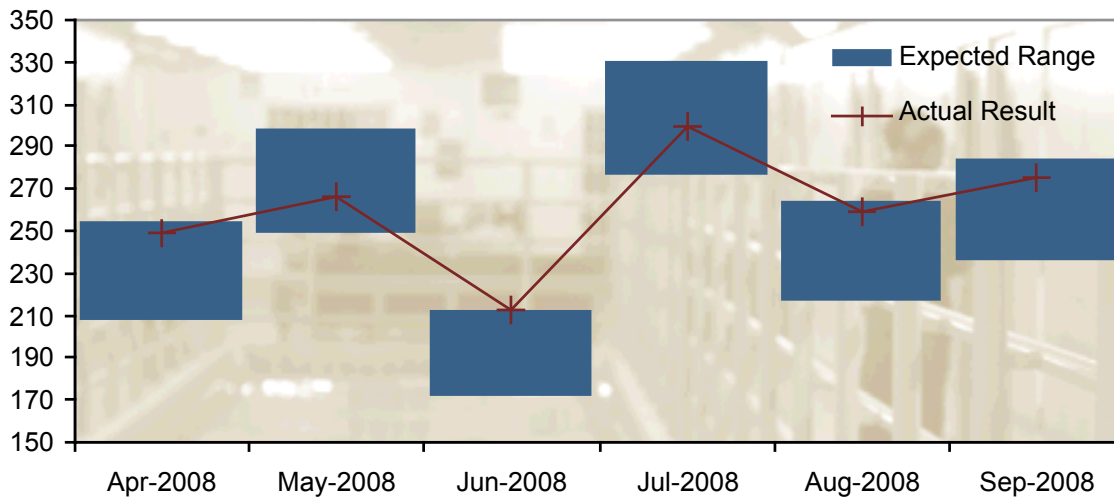
As well as perceptions of differential treatment, national data derived from SMART indicate disproportionate outcomes in some areas. As explained above, it has only been with the recent development of SMART II that it has been possible to aggregate this data nationally. The first set of figures – for April to September 2008 – shows that where there are formal processes in place – for example, adjudication outcomes, which are the result of considered decisions reached

by applying clearly specified criteria in a structured process — outcomes across ethnic groups are broadly fair.

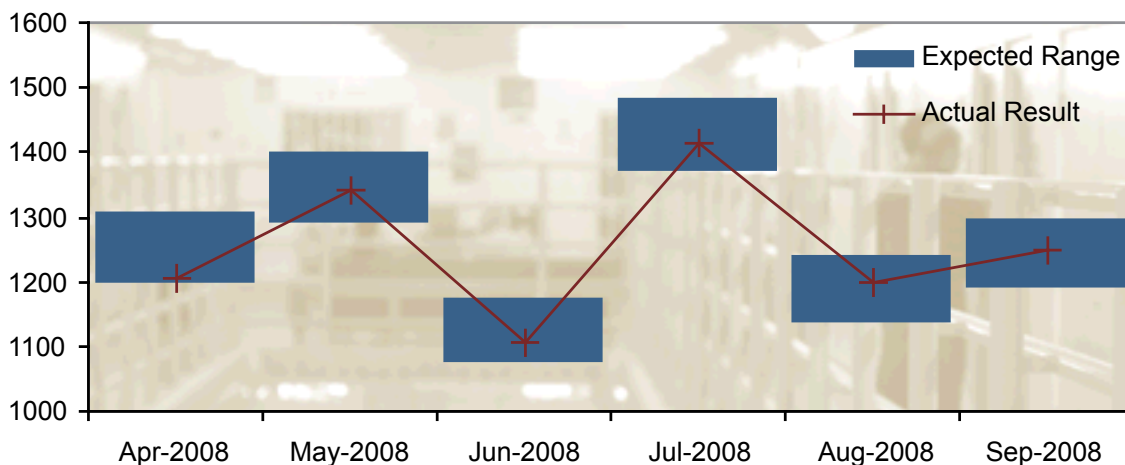
This is illustrated in the following graphs of the SMART data. Each month’s expected

range (derived from the population data and set statistically to reflect an acceptable variation around a wholly proportionate representation) is depicted by the blue box, with the actual outcome shown by the red cross.

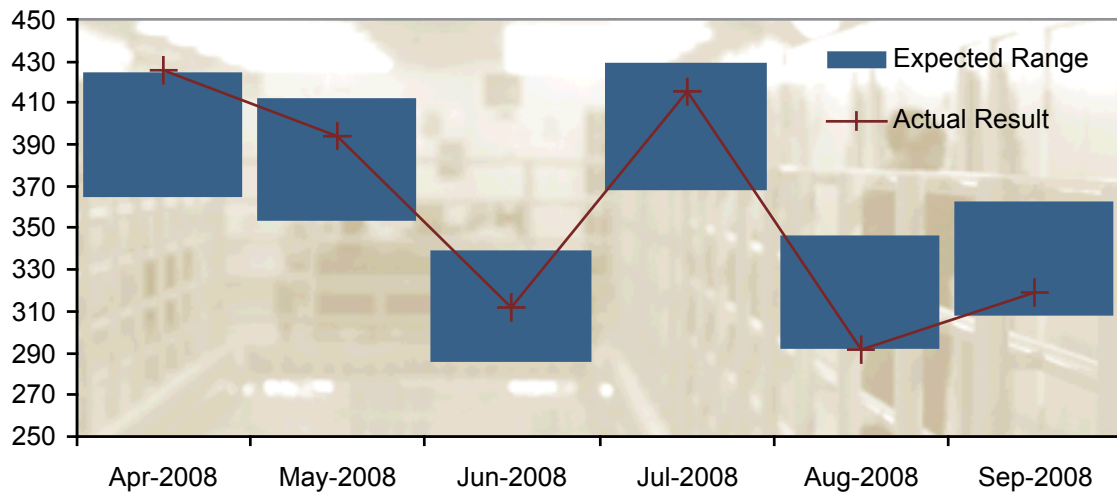
Adjudications Dismissed | Black Prisoners



Adjudications Proven | Black Prisoners



Adjudications Referred | Black Prisoners



However, national data also shows that, for those processes which are much less formal, where discretion is used, a different picture emerges and disproportionate outcomes become apparent. For example, outcomes for Black prisoners in particular are concerning – they are consistently more likely than White British prisoners to:

- be on basic regime – on average around 30% more likely
- be in the segregation unit for reasons of Good Order or Discipline – on average around 50% more likely
- have force used against them – on average around 60% more likely

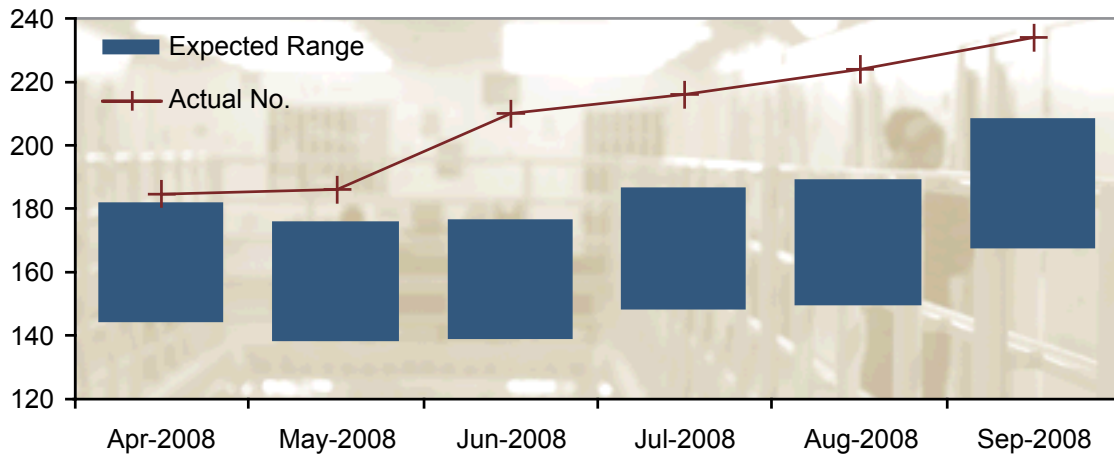
This suggests that the use of discretion by officers – although necessary to the effective day-to-day running of an establishment – continues to have a significant negative impact on outcomes

for BME prisoners. This may be the result of negative stereotyping by some officers – highlighted by the CRE investigation – or a lack of understanding of different cultural behaviours, both of which could lead to BME prisoners being treated, at best, differently to White prisoners and, at worst, more harshly and in a manner consistent with discrimination.

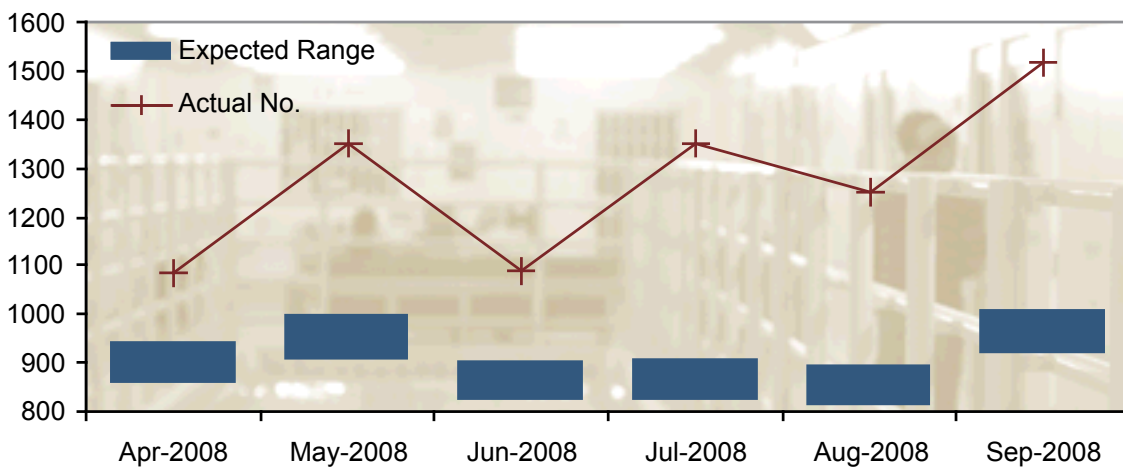
There is more work to be done to analyse this data, and in particular to examine the effects of other factors upon the outcomes.

It will be particularly interesting to see whether there are differences between results in prisons where proportions of BME staff (and/or prisoners) are higher, and to try to isolate what is working well in prisons where the differences between outcomes for different ethnic groups are less pronounced than they are nationally.

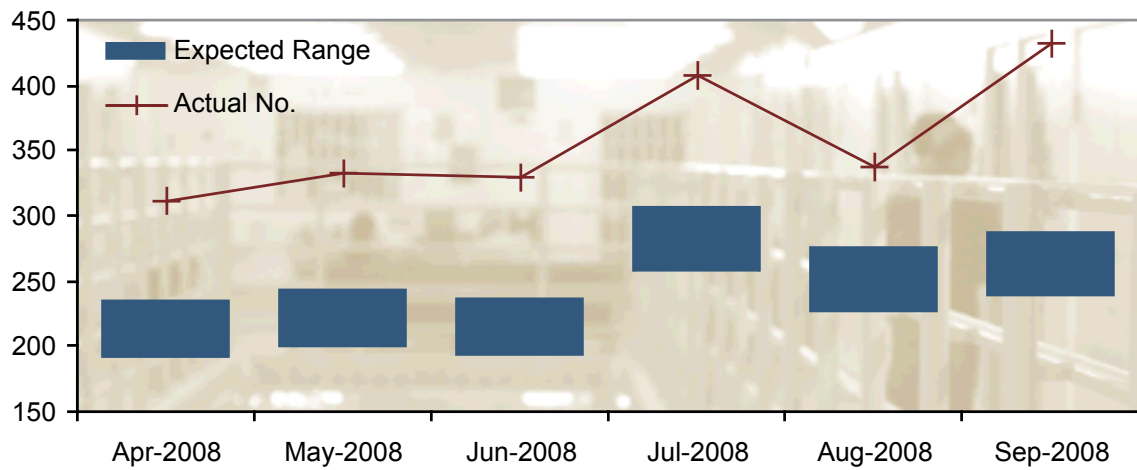
IEP Basic Regime Black Prisoners' Expected Ranges and Actual Numbers



Segregation G.O.o.D. Black Prisoners' Expected Ranges and Actual Numbers



Use of Force: Black Prisoners' Expected Ranges and Actual Numbers



HMP Brixton

During Review Team visits, BME prisoners frequently commented that they thought staff felt anxious when BME prisoners were in a group together. They felt that many staff had a weak understanding of cultural diversity – sometimes as a result of their limited knowledge of, or interaction with, BME communities – and that incorrect assumptions about the meaning of different patterns of communication of people from different cultural backgrounds resulted in unnecessary and inappropriate interventions. They complained that staff often perceive Black prisoners in particular to be more aggressive and their language or behaviour is often misinterpreted.

Both prisoners and staff told the Review Team that they thought it would be beneficial to have more opportunities to interact in less formal settings as a way of learning about other ethnic groups or religions – there were very few positive comments about training having had a transformational effect in this area.

A further issue relating to differential treatment emerged during the Review Team's visits. In one establishment in particular, when staff were asked to name the key race equality issue in the establishment, the answer given was almost always 'Muslim prisoners', 'Muslim gangs' or the 'Muslim issue', and there was a widely held view by staff that the Muslim prisoner population is particularly demanding. In focus groups, there was a perception, held by prisoners of all ethnic groups, that Muslim prisoners are treated differently by staff, and often more harshly.

There was a concern that some staff were stereotyping Muslim prisoners, and

that they may be subject to differential treatment as a result of this.

Use of discretion

The REAT and Senior Management Teams in establishments are now in a much better position to be able to identify where, and how, the use of discretion is impacting on BME prisoners and to take action to tackle unjustified differential treatment.

One of the specific points highlighted by the CRE was the use of unauthorised punishment regimes such as 'reflections' or 'unofficial bang ups', which were more likely to be used against BME prisoners. We are confident that these have significantly reduced. In addition, the areas highlighted by the CRE where officer use of discretion was most marked – IEP and access to work – are now subject to monitoring and scrutiny via the REAT. However, the fact that, some BME groups are still more likely to experience disproportionately negative outcomes compared to White British prisoners means that challenges remain in the management of the use of discretion.

The following section draws on discussions held at the Cambridge seminar mentioned earlier (see Annex G for more details) to examine the issue in a little more detail. Drawing on some research and theory around the use of discretion in general, this section is designed to give a clearer understanding of how this impacts on race equality and to help us to build towards a different way of moving forward.

As the CRE report acknowledges, the use of discretion by prison staff is not only inevitable, but also desirable. Prison staff are professionals, and the legitimate and

effective exercise of their authority involves them continually in making decisions about how to respond to prisoners.

These decisions are not always made simply by following rules, but by employing judgement and using a range of interpersonal skills in the context of their relationships with prisoners. Moreover it is these relationships that are crucial. It is through ensuring that they are right – in the sense of respectful and appropriate – as well as good – in the sense of close and supportive – that order is maintained in prisons.

In exercising their authority within the context of these relationships, prison officers draw on a number of different sources of power, from the coercive power of discipline – and where necessary the use of physical force – to more subtle forms of control through rewards, expertise or personal authority, as well as through the formal power of their position. Choices as to which of these methods to use are in part questions of personal style, but they are also structured by the more general climate of the establishment.

The Service has found that cultures can develop in establishments in which either staff become too passive, standing back from prisoners and losing control of the environment through becoming distanced, or too intolerant, provoking unnecessary confrontation through overly rigid enforcement of rules. Good prison officer work is a question of achieving balance – the quiet flow of power in a respectful and ordered environment.

The CRE report describes the use of discretion by officers as often operating in a

way that leads to discriminatory outcomes, and suggests that more should be done to control it.

Prisoners have often had negative previous experiences of people in authority – these sometimes issue in hostile attitudes towards staff.

Research on the prevalence of unconscious race bias in society, as well as the facts about the contrasting composition of the prison staff and prisoner populations in terms of ethnicity, would suggest that unequal outcomes are a predictable result.

Some features of the role that prison officers fulfil, working in often stressful situations, managing a very needy group, with sometimes limited resources, add to the likelihood that outcomes will not always be fair. However, this is not an issue that only affects officers, and managers and other staff are just as likely to use discretion in ways that draw on unconscious biases and issue in unequal outcomes. Prisoners too bring such biases, and as involuntary clients, some of whom have had negative previous experiences of people exercising authority, these sometimes issue in hostile attitudes towards staff. This contributes further to the likelihood that interactions will issue in differential treatment.

The consequences of this theoretical discussion are perhaps best understood through a simple practical example. A White prison officer with few other relationships with Black people is likely unconsciously to be less comfortable and confident around Black prisoners.

Moreover, encountering disproportionate numbers of Black people in the prison context may well reinforce any prejudices that the officer holds. Noticing this lack of comfort, a Black prisoner could respond by becoming wary of and avoiding the officer, feeling that the officer is likely to behave in the same discriminatory way as others in authority over him in the education and criminal justice systems have done. The predictable outcome of this is that the officer sees this behaviour as suspicious and uses discretionary power not to reward the prisoner, despite his behaviour being as good as that of other prisoners,

resulting in a differential outcome in terms of the incentives scheme. Moreover that suspicion may result in the submission of a security information report that results in the prisoner suffering further detriment through being targeted for a cell search.

Within this context the possible range of measures to control the use of discretion by individual members of staff is limited. Those measures that are realistic are mostly in place, for example the requirement to hold review boards, ensures that decisions about incentives levels are taken in a structured way by groups of



HMP High Down

staff rather than individuals. Implementing such procedures has had some effect in reducing discriminatory outcomes, but as we have seen it has not eliminated them.

This is because the largely unsupervised nature of prison officer work means that the extent to which discretion can be controlled is limited. Moreover, greater control through formal processes brings with it dangers, for instance of disempowering and demotivating staff, preventing the use of initiative in responding to circumstances. In particular, where such attempts to control behaviour are perceived as threatening, they add to the anxiety felt by staff and are likely to lead to less effective working practices.

For instance staff tell us that the strong organisational message that racist behaviour will lead to disciplinary action is sometimes misunderstood to mean that honest mistakes in this area will not be tolerated. This can combine with a more general lack of confidence around race issues to cause staff such anxiety that they react by avoiding situations which they perceive as potentially leading to allegations of racism against them from prisoners. The effect of this is to reduce levels of interaction between White staff and BME prisoners and to increase the reliance of staff on formal processes when dealing with this group, rather than using their skills to achieve informal resolution of issues by under-enforcing rules. This can result in disproportionately negative outcomes for BME prisoners and a perception amongst them that White prisoners (with whom staff may have greater confidence to employ informal methods) are favoured.

As we have seen, these problems are not located only at prison officer level. For example, a similar unintended negative outcome has sometimes also been the result of some of the cruder attempts by managers to use the SMART data to drive improvement.

For example, lacking a full understanding of the issues and anxious to be seen to be doing something, some managers have responded to the over-representation of Black prisoners on the basic regime by requiring a review of the cases of the individual prisoners concerned and moving some or all of them up to standard regime. This is perceived by staff as unfair and as undermining their authority, and can add further to the cycle of avoidance of informal interaction described above.

A more effective way of tackling discrimination is to use more subtle means to ensure that individual staff make decisions that are sensitised to race issues. A number of ways in which this can be done, including a more sophisticated response to the ethnic monitoring data, are explored in the next section.

What we still need to do

Ethnic monitoring

In 2003, the lack of ethnic monitoring data and effective management of race meant that it was impossible to identify whether BME prisoners were experiencing differential treatment or outcomes. The introduction of SMART has meant that establishments now have the tools to enable them to monitor these key areas and to identify and tackle any evidence of disproportionality.

Whilst the systems and processes are now in place in establishments to collect ethnic monitoring data, the extent to which establishments then use the data in a proactive way to engender change is patchy. In their establishment reports for the past year, one of the most repeated recommendations made by the Inspectorate related to the need to improve the use of monitoring data.

General public perceptions of the criminal justice system are poorer amongst BME groups than are those of their White counterparts.

In the establishments visited by the Review Team, there was evidence – through minutes of REAT meetings – that ethnic monitoring data is discussed, but it was less clear that it is always subject to robust analysis and that actions are then taken where there is consistent evidence to suggest differential treatment of or outcomes for BME prisoners. In addition, data was often not made readily available to prisoners.

Further work must focus on ensuring that REATs use the tools already in place to scrutinise practice and make changes where needed. The fact that national data shows continuing and consistent over-representation of Black prisoners on basic IEP and being subject to the use of force suggests that data is not being analysed locally and disproportionate outcomes tackled.

Management structures and systems

Establishments have been provided

with the tools to enable them effectively to manage race equality – from impact assessments, SMART monitoring and Key Performance Targets, to the revised PSO 2800 with its guidance on the proper role and operation of REATs.

Further efforts need to be made to ensure that establishments are using these tools properly and effectively to drive changes in policy and practice, and to improve outcomes for all prisoners. More work is needed to ensure that actions are taken by the REAT where there is consistent evidence to suggest differential treatment of or outcomes for BME prisoners. Similarly, the race equality impact assessment process has often been seen as laborious, desk-bound and bureaucratic, and a renewed emphasis is needed on its importance as a tool in generating change.

The review has also shown that race equality is still not fully embedded in the running of establishments across the estate. There is often a heavy reliance on the REO or Diversity Manager, rather than ownership by functional heads and staff across the establishment.

Race equality must be seen as core business and the responsibility of everyone in the establishment, rather than the preserve of the REO, Diversity Manager or REAT. See Lessons Learned for a fuller discussion of this issue (Chapter 10).

Differential treatment

Evidence suggests that discrimination also takes more subtle, hidden forms and that surfacing and tackling it is a considerable challenge – this was the subject of REAG's fourth annual conference in 2007.

National monitoring data shows that specific challenges remain in ensuring fairness for BME prisoners, and Black and mixed-race prisoners in particular, in the IEP scheme, the use of force and segregation.

Some establishments have already taken action to address differential treatment as a result of identifying disproportionate outcomes through ethnic monitoring data. Further support and guidance is needed to ensure that such practice is replicated across the Service.

In addition, the reports of Her Majesty's Chief Inspector of Prisons, as well as the Service's own Measuring the Quality of Prison Life (MQPL) surveys, show that the perceptions of BME prisoners are still more negative than those of their White counterparts to almost all aspects of prison life. In many cases, the Review Team found staff and Governors failing to acknowledge or engage with prisoner perceptions, particularly when monitoring data did not appear to support their perceptions.

General public perceptions of the criminal justice system are poorer amongst BME groups than are those of their White counterparts, and it is therefore no surprise that this is true also of BME prisoners' perceptions of prisons. Moreover it is likely that in part these poorer perceptions amongst BME prisoners are the result of their previous contact with criminal justice agencies – and in many cases their experiences in education and other public services – during which many have experienced discrimination and who therefore enter prison feeling vulnerable and suspicious of the motivations and

actions of those in authority.

These issues are recognised as problems across the criminal justice system, and to meet the Government's Public Service Agreement 24 target there is a multi-agency programme of work to reduce disproportionality and improve perceptions, co-ordinated by the Office for Criminal Justice Reform in which the Prison Service plays an active role. A major part of our contribution to this work is to ensure that we recognise and engage more effectively with these perceptions and to use the available monitoring data either to allay prisoners' concerns, where the figures shows no difference in outcomes, or to identify and tackle the causes of disproportionality where it exists.

Use of discretion

It is impossible to run a well-ordered and safe prison without staff and managers being able to use their discretion in their daily work. Being a good prison officer means making choices about the interpretation of rules, and managing effectively requires flexibility in applying policies to individual cases. However, there is still much evidence that some BME groups are more likely to experience disproportionately negative outcomes compared to White British prisoners, and this is at least in part the result of the inappropriate use of discretion by staff and managers. We know from the national SMART data that, where there is a formal process and a considered decision, such as occurs in reaching a finding of guilt or otherwise during the adjudication process, outcomes for prisoners of all racial groups are broadly fair. However, where issues are resolved less formally through day-to-

day interactions and relationships, or less structured decision-making by managers, disproportionate outcomes continue to be the result. As we saw above, it is not possible or desirable to seek to resolve this simply through the imposition of further formal systems. Work is also needed to sensitise decisions to race issues by using more subtle means to structure the way in which staff and managers make choices, and thereby to change their behaviour. The first and most obvious is to ensure that effective monitoring takes place and that its results are widely known and acted upon. As we have seen, the Service has gone some way down this path with data being widely available in establishments and equal outcomes incentivised through the KPT. However, this has not always meant that the data has been understood or used effectively, with the KPT sometimes acting as a perverse incentive, and some managers feeling that they were being asked to operate quotas rather than to help to sensitise staff discretion to race issues. The key tool for bringing together monitoring data with other sources of evidence and generating actions to tackle disproportion – the impact assessment process – has not always been effectively used. Improved ethnic monitoring software and national and area reporting will help here, as will a revised approach to the impact assessment process – more focused on practical problem solving and less concerned with the bureaucratic requirements of the process – that is being rolled out in 2009.

A second means of tackling unequal outcomes is to find more effective ways to give feedback to staff and to help them to reflect on their professional judgement

and practice. For example, there are establishments at which the use of force has been reduced – and the disproportion in use between ethnic groups being narrowed – through the introduction of a requirement for staff to debrief with a manager after every occasion on which force was used. As well as introducing greater accountability, this allows the discussion of alternative courses of action that may have allowed the avoidance of conflict or its resolution through a different method and/or de-escalation at an earlier stage. Adopting such practices more widely will involve upskilling managers in providing professional supervision.

Improving prisoner consultation is another way of getting more helpful feedback about the effects of the use of discretion, and the measures to further define and support the work of prisoners representatives described in chapter 6 will go some way towards this. We know that in prisons, as in other situations, some perceptions of racism are the result of the fact that reasons are not always given for discretionary decisions. More effective prisoner consultation will also help to ensure that there is greater awareness amongst prisoners of the constraint within which staff operate and the criteria applied in making judgements.

A third way forward is through making the business case for race equality. As we have seen, the message that racism is not tolerated can have unintended negative consequences. By contrast a language that is more positive – around professionalism and the provision of a fair and decent service – and an articulation of the benefits of race equality will be more effective in changing behaviour. Returning

to the example that we discussed above, describing the Black prisoner as having been treated wrongly by being targeted for the search is unlikely to shift the attitudes or behaviour. Noting instead that the time spent conducting the unnecessary search was wasted and that professional prisoner officer work is about gathering reliable intelligence on the location of unauthorised articles to ensure that searching is effectively targeted is more likely to do so.

A fourth important step is to articulate the fact that errors will be made, and for the message to be that this is acceptable provided that they are made in good faith and corrected when discovered. It is only by repeatedly making this point – alongside the message that deliberate and malicious racism will result in dismissal – that staff and managers will feel able to take the kind of managed risks that will allow them to overcome anxieties around difference and to develop the kind of relationships with BME prisoners that are in the last analysis the only way that equal outcomes will be achieved.

Finally, and most importantly, a consistent message from Governors and other managers around race equality issues, alongside a positive personal example, as described in the management and leadership chapter will be the only way that change will be embedded in this area, as in others.

In conclusion, the CRE's criticisms focused on practices in establishments, rather than on the policies themselves. In light of this, our focus has necessarily been on improving those practices. Ensuring that monitoring data is now available,

where it was absent, management structures are strengthened and systems are in place to ensure that any evidence of disproportionality or discriminatory treatment is properly investigated and appropriate action taken.

We need to turn our attention to tackling more subtle forms of discrimination, to ensuring that discretion is sensitised to race, and that those in positions of authority reinforce the importance of getting race right.

The Review Team's findings show that the Service has made good progress in implementing systems to manage and monitor race equality. However, they also found that, whilst there had been an emphasis on process change, there was little evidence of any real culture change. We know that discrimination also takes more subtle, hidden forms, and that surfacing and tackling that is a considerable challenge.

Much of this relies on leadership and a move from process change to culture change. The systems and processes that were absent at the time of the CRE investigation are now in place. However, this has not always translated into real changes in outcomes for BME prisoners.

We need to turn our attention to tackling more subtle forms of discrimination, to ensuring that discretion is sensitised to race and that those in positions of authority positively reinforce the importance of getting race right.

5 Prisoner Access to Goods, Facilities and Services

Where we were

In carrying out its formal investigation, the CRE collected a broad range of evidence, from acts of intimidation and racial harassment to what may appear to be small matters but which are of great significance to prisoners, including: whether the products available cater for the needs of all prisoners or whether the food provided is culturally diverse.

As stated in the CRE report, section 20 of the Race Relations Act 1976 makes direct or indirect discrimination in the provision of goods, facilities and services unlawful. For example, the failure to stock goods that meet the needs of BME prisoners may amount to an act of indirect discrimination.

As well as the legal requirements placed on the Service, the failure to provide a culturally diverse diet or to ensure that the prison shop stocks goods to meet the needs of BME prisoners can have negative consequences for good race relations in prisons. If BME prisoners perceive they are being treated unfairly, this may disrupt staff-prisoner relationships by reducing prisoners' feelings of trust of, and respect towards, staff.

The CRE made findings of unlawful racial discrimination in relation to the failure to provide, or ensure access to, goods, facilities and services that met the needs of BME and Muslim prisoners, in particular (see Annex B, failure area 4). Specific findings included that meals provided to prisoners and goods in the prison shop did not meet the needs of a range of different faiths or different cultural backgrounds, and that the mark-up put on items for BME

prisoners was higher than that for other items.

They also found that many prisons were not ensuring there was appropriate religious and spiritual provision for Muslim prisoners, such as the use of a suitable prayer room, or ensuring that Friday prayers take place at the permitted time on the correct day.

Finally, the CRE reported that the full diversity of groups was often ignored in any discussion about race equality in the Prison Service. This was particularly the case for Irish Travellers, who were not apparent in any ethnic monitoring system and, as they often had very low literacy levels, found it difficult to make applications or complaints. Overall, the Prison Service did not do enough to change its practices so that those with low reading skills could cope with prison life.

What we did

In order to address the issues identified by the CRE, the Service put in place a series of measures designed to improve access to goods, facilities and services for BME and Muslim prisoners, in particular.

In 2005-06, all 127 public sector establishments completed impact assessments on canteen and catering and, in 2006-07, on access to religion.

This has resulted in all establishments thinking through their policies and processes in a systematic way, and has highlighted the importance of prisoner consultation on these issues. In addition, impact assessments of national policies on catering and prison shops were undertaken

and published, and an impact assessment of the religion manual is underway.

REAG also set up a Service Delivery and Implementation Team (SDIT) whose role it is to work with establishments, offering practical advice on how to address the CRE failure areas, and to measure and monitor their progress with a focus on outcomes. Over the last five years, SDIT have advised establishments on how to improve the cultural diversity of the meals provided and how to prevent cross-contamination of halal products, assessed and collected good practice in relation to

working with Gypsy Traveller and Roma prisoners, and brought together prisoner focus groups to discuss canteen provision, feeding back the findings to establishment senior management teams.

A specific example of SDIT's work is the provision of focused support to one particular establishment which was struggling to provide a menu that reflected the diverse population it held in custody. SDIT co-opted the services of an external caterer to assist local catering staff in the preparation of meals considered to be more appropriate for the population.



HMP Brixton

As well as establishing systems for monitoring, and for identifying and tackling adverse impact (see Chapter 4), a number of changes were made to the policies and practices relating to catering, prison shops and religion to ensure equality of access for BME prisoners.

Meals/food

The Prison Service Order (PSO) on Catering (PSO 5000) has been subject to ongoing revisions and was extensively revised to include the findings of the CRE formal investigation, and now includes a requirement to ensure establishments provide a varied diet that meets the religious and cultural needs of prisoners.

In planning menus, Catering Managers must take account of the religious, cultural and ethnic background of prisoners. Menus must be clear and easy to read, using symbols to indicate diet suitability, for example (H) for halal food and (v) for vegetarian. The PSO also recommends that pictorial symbols are used to make menus accessible to non-English speakers or those prisoners with low literacy skills.

Establishments must operate a multi-choice, pre-select menu system which means that all prisoners are able to choose their meal. This is a significant development from 2003 when pre-select menus were not being consistently used across the Service, which resulted in prisoners having little or no choice of food. A minimum three-week menu cycle means that a wide choice and variety of food should be available throughout the year.

Establishments are also required to undertake surveys of prisoners' views on

food preferences to ensure that, where possible, these are provided and that the diverse needs of prisoners are met.

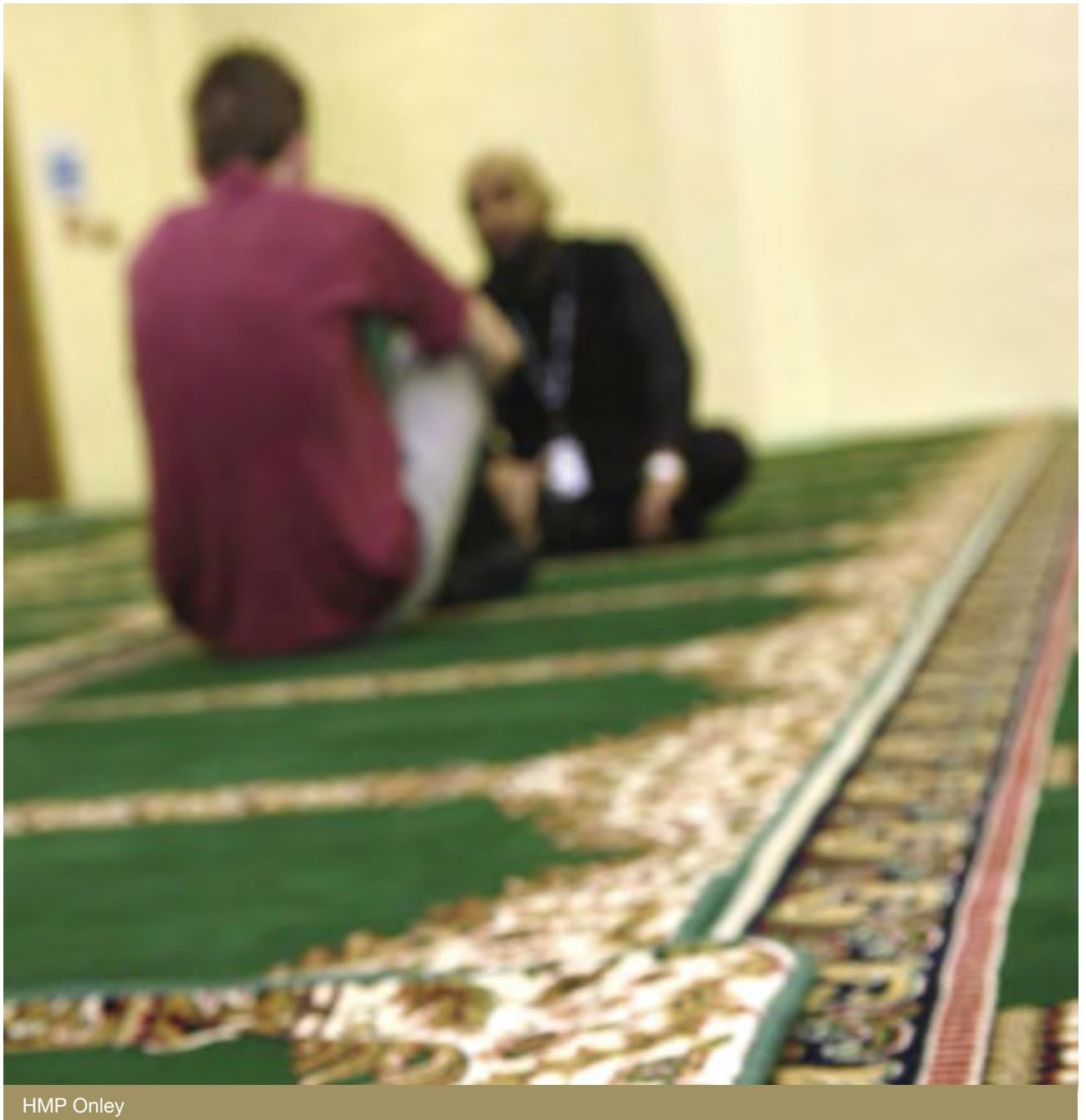
The provision of food during religious festivals is also covered extensively in the PSO. Establishments work closely with the relevant faith chaplain to ensure that appropriate food is provided, with a wide range of religious festivals covered, including: Buddhist, Christian, Greek Orthodox, Hindu, Jain and Jewish. Of particular concern to the CRE was the lack of provision of halal food. A significant part of the PSO is dedicated to setting out the requirements in relation to Muslim festivals and the provision of halal food more generally.

It requires establishment menus to include, as a minimum, a main meal daily choice suitable for Muslims, which is clearly marked as such. All halal meat and poultry products must be purchased from the agreed national suppliers and the diet must be free from any product or by-product derived from pigs and from alcohol.

The PSO contains detailed guidance to ensure that halal products are clearly labelled, handled and kept separately from non-halal products, with requirements to use separate pots, pans and utensils, designated for use with halal products only, for food preparation, cooking and serving. In order to assist establishments, a catering conference was held in 2006 which included 'live' demonstrations of Caribbean, Asian and Mediterranean cooking styles. REAG funded and arranged for the distribution of distinctively coloured utensils for use with halal food at all food serving points in establishments.

In their report, the CRE also highlighted that some Asian and Black groups suffer from lactose intolerance, which means that the provision of cereal and milk for breakfast was not appropriate and amounted to indirect discrimination. PSO 5000 now includes a specific section on food intolerance and an annex on dealing with lactose intolerance, which recommends a

number of alternative products which could be provided, such as soya and rice milk. Establishment performance in these areas, and adherence to PSO 5000, is measured using Catering Standard 4. Baseline 20 states that *all religious, cultural and medical dietary needs must be met. The menu choices and meal provision must reflect the religious and cultural*



HMP Onley

needs of the establishment and baseline 21, that distinctly separate utensils must be identified and used for the serving of Muslim meals.

Delivery is supported by area Catering Advisors in each region who ensure that caterers are aware of their responsibilities to provide food suitable for prisoners of all ethnic groups.

Prison shops (prison retail)

Since the period of the CRE investigation, the majority of prisons have contracted out the supply of retail products to prisoners. Under these arrangements, the provision of goods to meet the needs of BME prisoners was largely a local issue and the agreed list of products mentioned in the CRE report went into abeyance.

From October 2008, a new prison retail strategy, set out in PSO 5200, is being implemented, and will be in place across the public sector prison estate by the end of March 2009. Prior to this, there had not been a PSO on prisoner retail.

Two of the objectives of the new strategy relate directly to issues raised by the CRE – first, to ensure a product range that reflects the diverse need of the prison population and second, to have reasonable selling prices, that is prices comparable with high street prices, independently verified.

Under the new system, all shop provision will be from a National Product List which will comprise about 800 products. The National Product List was subject to widespread consultation, including with prisoner representative groups in a large

number of establishments. The list will be updated on a quarterly basis, taking into account the results of prisoner surveys. The National Product List will be available in a number of foreign languages, and a format suitable for those with limited literacy and numeracy skills will be developed. In terms of pricing, all items on the list will be regularly benchmarked against other retailers by an independent agency.

Establishments must then use the National Product List to devise a local product list, following consultation with prisoner representatives, including Race Equality Action Team representatives and race and gender equality impact assessments. Prisoners will also have access to specialist catalogue services to cover a wide range of goods that could not be practically held on the National Product List.

PSO 5200 has been subject to a race equality impact assessment and, as part of that process, the CRE criticisms of prison shops have been taken into account to ensure these are addressed through the new strategy.

The PSO is underpinned by Standard 40, issued in January 2005, which has been extensively revised to reflect the new strategy. The current plan is that the revised Standard will go live from March 2009 when the new service will have been implemented across the Prison Service. The revised standard requires that an annual written prisoner satisfaction survey is conducted and an action plan agreed and implemented – the survey must include the adequacy of the product range as well as the access and provision of specialist and catalogue items.

Faith needs

The Prison Service has done a great deal since the CRE investigation to provide for the religious and spiritual needs of prisoners of different faiths. The Service's Chaplaincy works closely with Faith Advisors to ensure that the voices of minority faiths are heard in a structured and regular way.

The Religion Manual — PSO 4550 — has been expanded with many updates and amendments since its initial publication in October 2000. The Service also publishes an annual Prison Service Instruction (PSI) on religious festival dates.

A full-time Muslim advisor was in place at the time of the CRE investigation. However, this post now has additional resources to help deal with the expanding range of responsibilities falling to the advisor. PSO 4550 covers a wide range of areas, including: appointment of Chaplains and Ministers, places of worship and corporate worship, pastoral care, religious observance and diet, dress and religious artefacts.

All prisoners have the opportunity to attend weekly corporate worship for a minimum of one hour, and their religious obligations are to be respected by staff. When choosing an area for worship, establishments are required to consider its size and proximity to suitable washing facilities, and ensure that it is located away from undue noise or disturbance. The views of all Chaplains and Ministers who will use it are also taken into account.

The practice of Islam in prison forms a specific section of the PSO covering the

appointment of Muslim Chaplains, diet, Ramadan, religious texts and artefacts, work, dress and personal hygiene. It gives guidance on the time frame for prayers, their duration, the provision of ablution facilities and who should lead Friday prayers.

Two actions are mandatory: Muslim prisoners must be allowed to attend Friday prayers within the time frame specified in the PSO and to perform ablutions before attending Friday prayers.

The PSO highlights the importance of adherence to high standards of personal hygiene at all times and that the provision of modesty screens in communal showers is good practice.

The CRE also commented on the inappropriate searching of male Muslim prisoners by female officers. PSO 4550 now makes clear that searches of male prisoners with a religious or cultural objection to being searched by a female member of staff must be carried out by a male member of staff.

The PSO is supported by Standard 51. It requires establishments, amongst other things, to: appoint Chaplains to reflect the needs of the prison population, provide written details of religious provision to new receptions, provide places for private and corporate worship and ensure prisoners have access to religious diet, dress and artefacts. None of these provisions were in place at the time of the CRE investigation.

Prisoners with low literacy skills

The CRE found that the full diversity of groups was often ignored in any discussion

about race equality in the Prison Service – for example, the problems faced by White minority groups were overlooked. To address this, the Service’s ethnic monitoring system, SMART, now has the capacity to capture the differences between the White British and other White groups – an important move given the growing numbers of non-English speaking White prisoners, whose experiences and treatment are potentially very different from their British counterparts.

The CRE made specific reference to Irish Travellers and the fact that very low literacy levels made it difficult for them to make applications or complaints. All prisons now undertake basic skills screening to assess literacy levels among prisoners. This provides an opportunity for prisoners to attend a Basic Skills programme if they are identified to have that need.

Moreover, these formal educational opportunities are supplemented in many establishments by the Toe-by-Toe programme, in which prisoners teach other prisoners to read using materials specially prepared for the purpose.

More generally, many establishments have taken steps to ensure that goods, facilities and services are accessible to those with limited literacy skills. These vary from the use of pictorial menus and cartoon leaflets explaining the complaints process to databases capturing the other languages spoken by staff and prisoners, facilitating ready access to interpretation. In recognition of the importance of addressing their wider needs, a sub-group of the Service’s Race Advisory Group is developing a strategy to improve support for Gypsy Traveller Roma prisoners. The terms of reference of the Steering Group include:

- making recommendations for the formal identification and monitoring of Gypsy Traveller Roma prisoners using IT systems
- reviewing how Gypsy Traveller Roma prisoners are able to gain access to services such as education, work, healthcare, and offender behaviour programmes



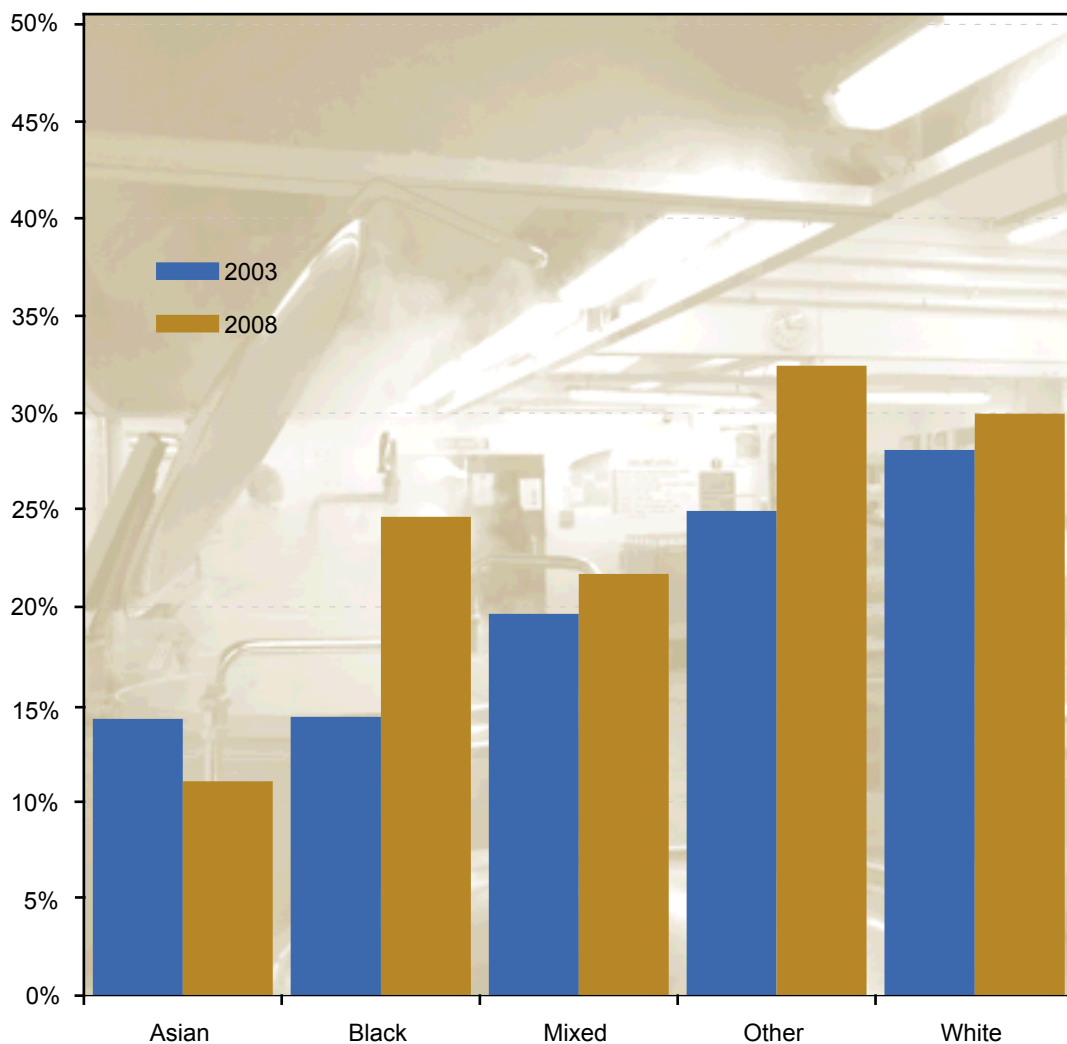
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- investigating how establishments ensure inclusion of Gypsy Traveller Roma prisoner issues in their race equality action plans

The Steering Group has met on two occasions and is led by the Director of the Irish Traveller Movement in Britain. June

2008 also saw the inaugural Gypsy and Traveller history month. REAG provided promotional material to all establishments to support and encourage them to celebrate the event and dedicated one of the quarterly community engagement newsletters solely to issues relating to Gypsy Traveller Roma communities.

Satisfaction with Variety of Prison Food



Source: Ionann Survey 2003 & NACRO survey 2008

Where we are now

This section draws on evidence from a variety of sources to provide an assessment of what progress has been made in ensuring equality of provision of and access to goods, facilities and services across the Prison Service. Part of this evidence derives from the Review Team — made up of representatives from organisations including Partners of Prisoners, Nacro, RESPECT and the Irish Traveller Movement— who undertook visits to establishments in order to assess progress against the failure areas. They visited a high security establishment, a young offender/juvenile institution and a female establishment. Details of the methodology can be found in Chapter 3.

Meals/food

Evidence suggests that progress has been made in providing a wider variety of food to meet the needs of prisoners of different faiths or cultural backgrounds, and in improving the level of choice available.

The Nacro survey of prisoner perceptions showed that all ethnic groups, with the exception of Asian, felt there had been an improvement in the variety of prison food since 2003, with the most noticeable improvement being among the Black group.

In the 2006-07 HMCIP annual report, figures were also included relating to Muslim and non-Muslim prisoners – these showed that 26% of Muslim prisoners thought the food was good or very good compared to 29% of non-Muslim prisoners. Good progress has been made in ensuring that halal food is available for Muslim

prisoners. The Service Delivery and Implementation Team in REAG report that, of the 50 or more establishments they have visited, all have a halal option available and many offer more than one choice.

Establishments have also been praised for ensuring that halal products are stored, handled and served correctly. For example, a HMCIP inspection in 2007 found that the arrangements to store and prepare halal meals were good... All halal food was stored and prepared separately and transported to units in clearly identifiable trays. Special colour-coded utensils were used for halal food, and wing servery workers had been fully briefed on these arrangements. All halal utensils were held in separate tool cabinets.

Similarly, another inspection report states that halal food was stored, prepared and served in foil containers. Halal certificates were displayed at the serveries and the Muslim Chaplain regularly checked the kitchen and serveries.

And at another establishment, one area of the kitchen was identified specifically for the preparation of halal food. Separate cooking facilities were used, all halal food was stored separately and appropriate halal licences were in place.

The national Muslim Advisor to the Service frequently undertakes spot checks in establishments to ensure that halal food is being stored and prepared correctly. It is also part of the remit of Muslim Chaplains to ensure that the arrangements for halal food are correct and that cross-contamination of products is avoided. This is covered regularly in training events for

Muslim Chaplains and a training pack on these issues is being developed for use in establishments.

Such improvements were evident during the Review Team's visits to establishments. They found that progress had been made in meeting the needs of Muslim prisoners, with halal diet options available, separate utensils for the serving of halal meals and menu cycles which no longer relied on 'wet meal' (e.g. curry) halal options only.

However, although all establishments had been supplied with separate utensils for serving halal food, in two of the three prisons visited there was little evidence that they were being used, leading to possible cross-contamination. A number of recent inspection reports have also commented on the fact that, although separate serving utensils are available, they are not always used to serve halal food. Since 2004-05, the Inspectorate have made 32 recommendations about the handling and preparation of halal food.

In addition, in the establishments visited by the team, halal certificates were obtained from suppliers, but these were not displayed resulting in some prisoners having little confidence in the authenticity of the halal products available. The Team also found that the cultural diversity of the diets available varied greatly between establishments. In all three establishments, no specific consideration had been given to the dietary preferences of Gypsy Traveller Roma prisoners in the food that was available. Overall, improvements had been made in the provision of food for Muslim prisoners, but further work was needed to ensure that more culturally

appropriate meals were available that met the needs of prisoners from a wider range of backgrounds. Meaningful consultation about dietary needs was limited as the focus tended to be on religious requirements.

These findings broadly concur with those of HMCIP in their thematic review of race in 2005, which found that some BME adult men felt that a more culturally diverse menu was now available but that BME women in general were unhappy with the food and BME young adults complained of the poor variety of food.

Prison shops (prison retail)

Prisoner retail is another area featured in HMCIP inspections. In a 2006 inspection report, HMCIP commented on the impressive range of items for prisoners from BME backgrounds and highlighted that the canteen SO attended consultation committees and amended the product list to include items requested by foreign national prisoners.

In the establishments they visited, the Review Team found that hair and skin products available for BME prisoners had improved, but that there was a lack of diversity in the range of food, music and greetings cards available to buy on the product list. Of particular concern to the Review Team was the cost of items for BME prisoners. When comparing prison prices with prices in the community, it was found that the former could be up to two times more than the latter. It was not clear that this price variance was monitored.

Criticisms of the prices charged as well as the lack of choice were both issues

highlighted by HMCIP in their thematic review of race. In their focus groups, BME female prisoners raised concerns about the high cost and lack of choice in black hair and beauty products for purchase. In addition, the Review Team felt that prisoner consultation on the shop was often not effective in identifying the needs of BME prisoners, with their voices being lost in the majority White British population.

When consultation with BME prisoners did take place it was often ad-hoc or unplanned, leading to poor outcomes. There is clearly therefore a need to improve the arrangements for consultation with BME prisoners regarding the shop provision.

Prison staff in the establishments visited complained about the contractual restraints which meant that they were unable to source products outside the agreed contracts. However, there was a sense

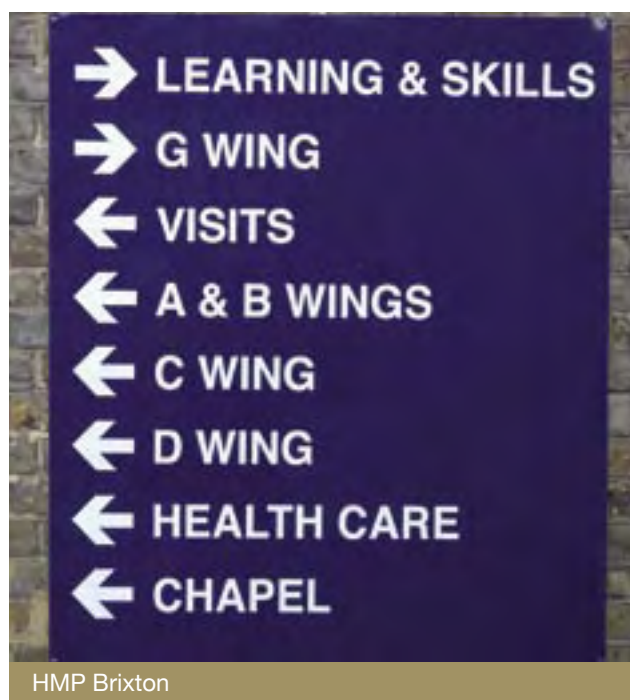
that the new national prison retail strategy should help improve the provision available.

Faith needs

Evidence suggests that the Service has made significant progress in providing for the religious and spiritual needs of Muslim prisoners, with the vast majority of the CRE's criticisms having been fully addressed. Figures from the NOMS Chaplaincy show that there are now 41 full-time and 37 part-time Muslim Chaplains, along with 115 visiting Muslim Chaplains nationally.

Surveys undertaken throughout 2006-07 by the Inspectorate found very little difference between White and BME prisoners reporting that they were able to speak to a relevant religious leader in private if they wanted to. However, there remained a small but significant difference of six percentage points between non-Muslims and Muslims. Similarly, the findings of the survey undertaken by Nacro as part of this review show that, in terms of access to religious services, overall results for 2008 were better than those for 2003. Results were, though, lower for most BME groups than those for White prisoners in the 2008 survey.

During their visits, the Review Team found that Muslim Chaplains are now an integrated part of daily prison life and prisoners had access to either a Muslim Chaplain or equivalent provision (in the case of the female establishment visited). Friday prayer is no longer an 'add on' to the regime but is now part of the standard routine for the establishments visited. Washing facilities for Muslim prisoners have improved, with two of the three prisons



providing at least adequate facilities, with the other establishment recognising this weakness and having a clear plan for improvement. (In their inspections, HMCIP have also found that washing facilities cannot always be used.)

In focus groups held by the Review Team, prisoners felt that, whilst the Service had improved provision, staff did not always respect prisoners' faith, for example when searching visitors' religious artefacts. This mirrors findings of the Inspectorate's prisoner survey which showed 53% of non-Muslims compared to 47% of Muslims, felt that their religious beliefs were respected, with the figures for White and BME prisoners being almost identical.

Although the Review Team acknowledged that the Service had made great efforts to address the issues raised in the CRE report, it appeared that the good work undertaken to improve services for Muslim prisoners had not yet extended to all other faiths. For example, at two establishments visited, it had proved difficult to retain the services of a Buddhist minister.

Prisoners with low literacy skills

Although basic skills education is mandatory across the prison estate, progress on ensuring that prisoners with low literacy skills are able to access goods, facilities and services is less evident. During their visits, the Review Team found that some prisoners felt they could not remain in education as the basic skills level was too high and there was no pre-entry level available.

The CRE highlighted the particular needs of Irish Travellers. Ethnic monitoring

in establishments is carried out using the ethnic categories, derived from the 2001 census. Therefore, the majority of establishments do not record how many Gypsy Traveller Roma prisoners they have in their population. The Review Team found no monitoring of these groups being undertaken in the establishments visited, and Gypsy Traveller Roma prisoners complained that they did not feel their needs were considered.

Overall, the Review Team was concerned that, five years on from the CRE report, there was still a lack of recognition in the establishments visited of the issues facing White minority groups and therefore no strategy in place to tackle these. Particular concerns relating to Gypsy Traveller Roma prisoners included: difficulties accessing services, including offender behaviour programmes, as the literacy level required was too high, derogatory and racist name calling primarily by prisoners, and by some staff, in two of the prisons visited, lack of confidence in the complaints system and the lack of cultural awareness and understanding of staff. For example, Irish Travellers complained of being accused of intimidating or bullying prisoners and staff and they felt this was the result of officers misinterpreting their distinct accent and non-verbal communication style.

The lack of monitoring is, in part at least, because it is not supported by a ready means to capture the data through the Local Inmate Database System (LIDS). However, the Service's ethnic monitoring tool, SMART, has been further developed and now includes the provision to monitor the number of Gypsy Traveller Roma prisoners in each establishment. Governors have been asked to ensure that

the monitoring that is possible is in place, and to make use of the data to improve provision for Gypsy and Traveller prisoners. In addition, the Service's new IT system, P-NOMIS, when fully rolled-out, will allow for the collection of Gypsy Traveller Roma monitoring data at reception, and SMART II has been adapted to enable monitoring of access to goods, facilities and services.

There are also examples of good practice in some prisons where the numbers of Gypsy Traveller Roma prisoners are monitored. This data is collected through regular forums run by Chaplains, which expands through word of mouth. For example, in one establishment, the Roman Catholic Chaplain has been running Gypsy Traveller Roma groups for over two years.

Other examples of good practice include:

- a Traveller prisoner has been trained to act as a prisoner Race Equality Action Team representative as a means of highlighting the issues affecting this group
- during Gypsy Roma Traveller History Month in June 2008, an establishment held forums with Traveller prisoners to discuss their culture, history and experiences of discrimination, and the catering department produced a range of dishes for Travellers. Both the catering and education departments were later praised by the local Traveller Education Service
- another establishment organised a drama workshop, the script of which was based on true life events recounted by three Traveller prisoners. The final drama was shown to the whole establishment and will later be produced as a DVD

What we still need to do

Meals/food

Evidence suggests that there is good practice across the estate in relation to providing food to meet the needs of a wide range of prisoners of different cultural and religious backgrounds. However, some establishments appear to be further forward on providing a culturally diverse diet than others and additional work is needed to assist those who are struggling by ensuring the effective sharing of good practice.

In addition, the findings of the Review Team indicate that preventing the cross-contamination of halal food remains an issue in some parts of the Service. For example, although separate, colour-coded utensils for serving halal food are available, they are not always used. As a result, many Muslim prisoners still lack confidence in the authenticity of halal meals. This is exacerbated by the failure of many establishments to display halal certificates in areas where they are visible to prisoners. A renewed effort is therefore needed to ensure that halal food is stored, handled and served correctly and that authenticity certificates are made available with a view to increasing confidence among Muslim prisoners.

Prison shops (prison retail)

Given that the new prison retail strategy only came into effect in October 2008 and will not be fully implemented until March 2009, work will be undertaken to monitor implementation of the strategy to ensure that it does effectively tackle the issues identified by the CRE in its formal investigation and to ensure it does not have any adverse impact on prisoners

of particular racial groups. This includes monitoring the range of products available on the National Product List and what catalogue items are available.

Similarly, PSO 5200 is clear that the price of products will be independently benchmarked to high street prices and will not exceed the manufacturers' recommended retail prices. Given concerns expressed about the high cost of many products generally purchased by BME prisoners, it will also be important to ensure that prices are monitored, in accordance with the PSO, with a view to eliminating any possible adverse impact in pricing differences between BME and non-BME preferred products.

Faith needs

Although the Service has come a long way since 2003 in providing for the faith needs of Muslim prisoners, HMCIP's most recent annual report indicated that the perceptions of Muslim prisoners were less positive than those of other groups. This was particularly true when Muslim prisoners responded to questions on safety. In light of external factors affecting the lives of Muslim people, the Service needs to consider how it can improve the feelings of safety for Muslim prisoners.

In addition, although the increase in the number of Muslim Chaplains in prisons is impressive and their work has been highly praised, they primarily come from Asian backgrounds representing one school of Islam. At 30 June 2007, 42% of Muslim prisoners were Asian, 34% Black and 14% White. Given the diversity of the Muslim prisoner population, consideration needs to be given to providing additional training

or support to ensure they feel confident working with Muslim prisoners from a range of cultural backgrounds.

Finally, the Review Team felt that the Service's progress in providing for Muslim prisoners had not yet been fully replicated in relation to provision for prisoners of some other faiths. It will therefore be important to ensure that establishments are meeting the faith needs of all prisoners.

Prisoners with low literacy skills

Given the lack of ethnic monitoring of Gypsy Traveller Roma prisoners in most establishments, further work is needed to ensure equality of access to goods, facilities and services for this group. A priority area both nationally and locally is to ensure that the needs of Gypsy Traveller Roma prisoners are addressed. There have been some excellent examples of individual establishments working with this group of prisoners and engaging with voluntary and community sector groups from these communities, but — as this review has shown — this is not consistently replicated across the country. The Service's Gypsy and Traveller Steering Group will provide detailed advice and guidance to REAG, which will inform how we move forward in this area.

Over the coming year, as P-NOMIS is rolled-out across the estate, it will also be possible for establishments to capture data on Gypsy Traveller Roma prisoners at reception, and SMART II will be further developed to enable the monitoring of Gypsy Traveller Roma prisoners' access to goods, facilities and services.

6 Complaints and Investigations

Where we were

One of the triggers for their investigation was the number of complaints received by the CRE from prisoners alleging a wide range of racial discrimination. The investigation concluded that complaints of racial discrimination raised within prisons were often not investigated, and that the Prison Service failed to implement its own policies in relation to racial discrimination, abuse and harassment – in particular, both officers and management failed to protect prisoners from racial harassment.

Procedures for making race complaints were complex and off-putting and many prisoners were not aware of, or did not understand, them. Some prison staff discouraged or prevented prisoners from making complaints, and there was a lack of confidentiality around the process. Recording and monitoring were poor or non-existent, and inappropriate attempts were made to resolve complaints informally, usually not to the satisfaction of the complainant.

Investigations into race complaints were generally of poor quality: investigators had rarely received training and were poorly supervised by senior managers.

Unreasonable standards of proof were imposed, and complaints were hardly ever upheld. Race issues were not examined unless the complaint was explicitly about race. Some prisoners who made race complaints were punished or victimised as a result of doing so.

In 2005 HMCIP published *Parallel Worlds*, a thematic review of race relations in prison.

The report highlighted the differences between the perceptions of (largely White) managers and staff and those of prisoners from visible minorities, and reported that these prisoners did not have sufficient confidence in the racist incident reporting and complaints systems.

Procedures for making race complaints were complex and off-putting and many prisoners were not aware of or did not understand them.

In the 2006 report of the Zahid Mubarek Inquiry, Mr Justice Keith reported that he was not convinced that investigations were effective or that their outcomes were appropriate. The report recommends that consideration should be given to some independent involvement in the investigation of complaints, and suggests some improvements to the training of investigators.

What we did**Initial changes to the system**

In 2005 the policy on the reporting of racist incidents was thoroughly overhauled through the issue of a revised version of Standard 48, then entitled Race Relations (Prisoners).

The Standard mandated the following measures to improve the race complaints system:

- explanation of racist incident reporting procedures during prisoner induction
- open access to Racist Incident Reporting Forms (RIRFs)

- availability of RIRFs in 25 languages, and arrangements for assistance to be given to prisoners with limited literacy skills
- the provision of envelopes and locked boxes (with access restricted to designated staff) for the return of forms
- formal investigation of, and responses to, all complaints or reports of racism from any source (all of which were to be converted into RIRFs) within strict timescales;
- recording of all RIRFs on an electronic log (regularly checked by REAT leader and Area Manager) to ensure effective monitoring

In an attempt to improve investigations, it stipulated that:

- the REAT leader must sign off and comment upon the outcome of all investigations
- records of the outcomes of investigations and any actions taken as a result must be kept and reviewed regularly by the REAT
- establishments use an external partner to provide scrutiny over and feedback on the investigation of a proportion of incidents (as well as getting useful feedback on the quality of investigations – the intention here was to demonstrate transparency and to seek to build prisoner confidence)

In order to address issues of victimisation it mandated that local REATs should:

- put in place specific procedures so that all parties involved with a racist incident are safeguarded, including the victim and reporter of the incident

- include an explanation of these procedures in the prisoner induction

These changes were consolidated into the revised version of Prison Service Order 2800 Race Equality, issued in September 2006.

Results of initial changes

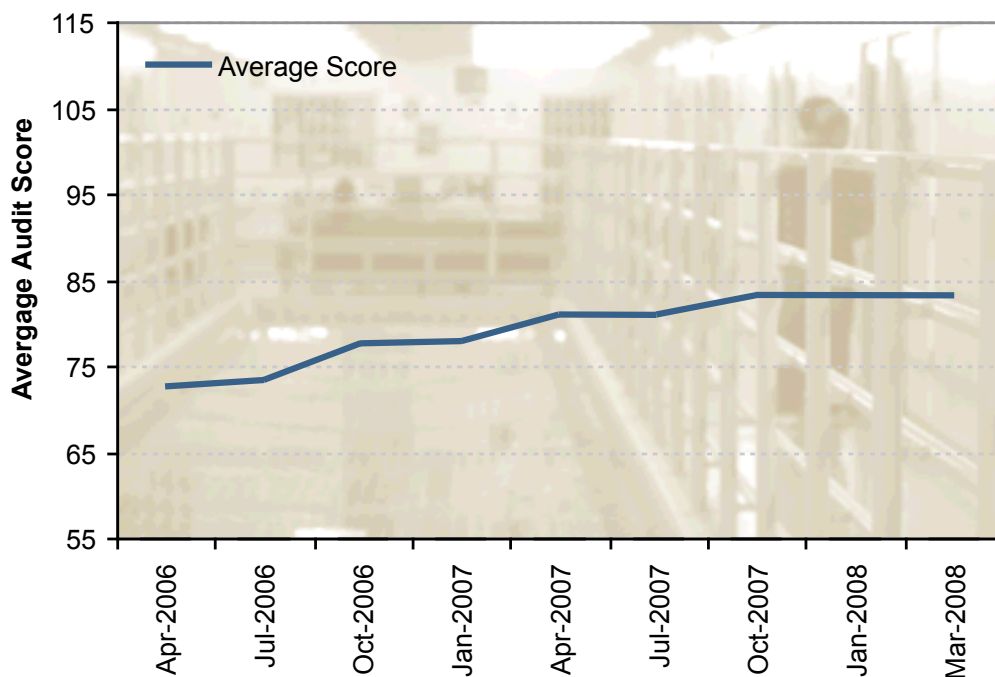
Progress on implementing the revised system was monitored through annual audits of Standard 48 in all establishments from its issue in September 2005 to September 2007.

Scores for this audit formed a major element in the Key Performance Target for Race Equality, providing an extra incentive for establishments to achieve progress on meeting the standard. Moreover, in order to reflect the importance of procedures for the handling of racist incidents, the baselines that related to this were scored separately and the results on them attracted a higher weighting within the KPT.

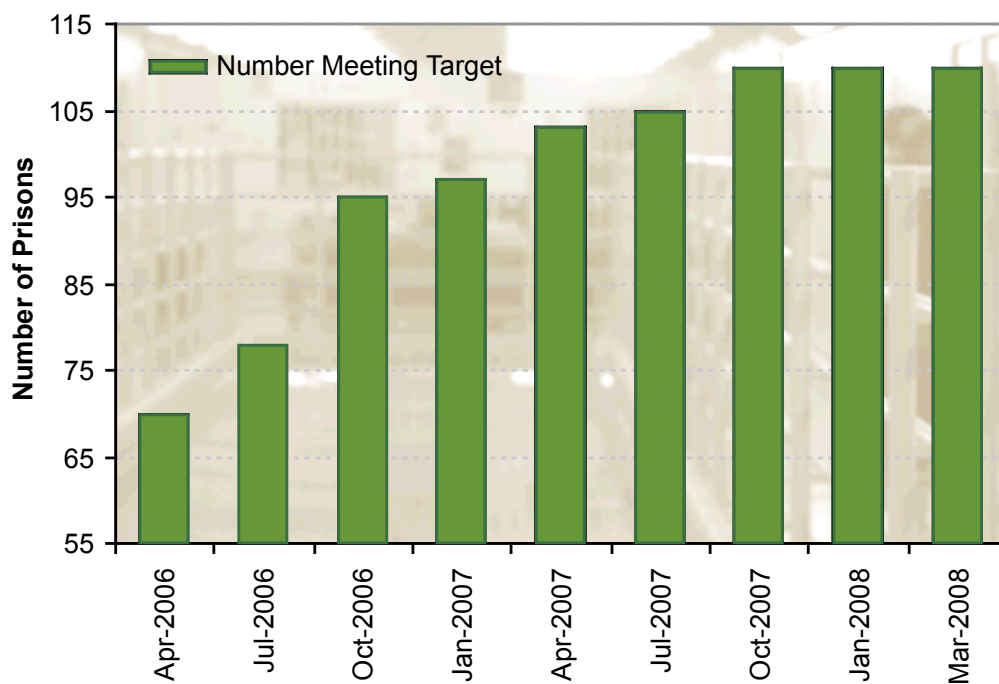
The result was a marked improvement in compliance with the process, evidenced in the following scores: in April 2006 the average racist incident audit score was nearly 72%, and 69 establishments met the target of 70%. By March 2008, the average score was over 83%, and 110 establishments were meeting the target.

Whilst no audit can give full assurance that every case is successfully and properly handled, the level of compliance achieved in these audits was sufficiently high for a decision to be taken to move to different audit criteria from October 2007. A revised Standard 48, entitled Race Equality (Prisoners) was therefore issued in July

Average Prisoner Racist Incident Audit Score



Number of Establishments Achieving the Average Prisoner Racist Incident Audit



Source: Race Equality KPT scores 2006 - 2008.xls

2007, taking a broader approach based on the management of the risks around race equality issues, rather than focusing purely on compliance.

The systems set out above therefore remain in place, but the audit tests are less about routine compliance and more about an assessment of the effectiveness of the system (including timeliness of responses, accuracy of recording and safeguarding of complainants) as well as of the level of assurance provided by the checking of the quality of investigations (by local management, Area Manager and an independent, external source) and the action on the feedback received.

Mediation

Another initiative in the joint action plan was to assess the viability of mediation as a method for resolving racist incidents. As a result, a pilot project took place in four prisons during 2005-06. This was overseen by a reference group including external partners and academics, and care was taken to provide a service that was appropriate to the particular needs of the different groups of prisoners, which included women and young offenders. Mediation training was provided to staff and prisoners, with the intention that they would act as co-mediators.

This was a very formal method of mediation and was very resource intensive (in terms of training and delivery). It proved not to be suited to the operational environment in three of the prisons, where lack of staff time and high prisoner turnover combined to make the provision of the service impractical. The service continues at one site, where the greater resources and more

settled population of the high security estate enable the prison to support the formal model. The mediation service at this site has produced high levels of satisfaction amongst participants (prisoners and staff) and was recently commended by HMCIP in an inspection report.

In the light of the outcome of the pilot, it was decided to seek to implement a model of mediation that is lower cost and fits better with the needs of the organisation. This has been progressed through the training of Race Equality Officers in mediation awareness skills and encouragement to them to use informal conflict resolution to deal with some less serious incidents where both parties are agreeable. In the first phase of this work, 44 REOs have received mediation awareness training, and we have started to receive reports of successful use of these skills to resolve incidents.

REAG Review

In order to assess the extent to which the policy changes implemented in 2005 had achieved improvements, during 2006 REAG conducted detailed research into the complaints and RIRF systems, visiting 14 establishments and analysing nearly 500 complaints and 150 racist incidents.

In order to assess the extent to which the policy changes implemented in 2005 had achieved improvements, REAG conducted detailed research into the complaints and RIRF systems, visiting 14 establishments and analysing nearly 500 complaints and 150 racist incidents.

The result confirmed that whilst many of the processes had been improved, less progress had been made on the quality of the investigation and response. For instance, on complaints it was found that two thirds of replies were not addressed to the prisoner, and that many were sarcastic or dismissive in tone.

In terms of investigations, it was found that investigating officers often simply accepted staff denials of allegations and that this would lead to the closure of the case – investigators rarely looked beyond substantiated facts for evidence from which a reasonable inference could be drawn.

There was variation in the quality of investigations, with RIRFs being consistently better handled when the conduct of staff was not the subject of the investigation.

Moreover, whilst investigations were now being signed off by the REAT lead, the research uncovered no evidence of this resulting in further work (or even proper feedback to the investigator), indicating that the CRE findings about poor supervision had not been addressed.

The review also identified an unintended consequence of the improvements to the accessibility of the RIRF system that had been introduced: evidence that it is now used where a complaint would be more appropriate.

The experience of prisoners is that a RIRF is more likely to receive thorough investigation. Most REOs make a point of talking to every prisoner who submits one, so a RIRF is much more likely to

provide the prisoner with the opportunity to discuss an issue with a member of staff than is a complaint. Inappropriate use of the system is a concern, as it results in valuable REO time being spent dealing with minor issues unrelated to race, rather than on investigating more serious and relevant concerns.

Whilst the overall picture painted by the review was disappointing, some good practice was found: one prison had a very well-developed management and monitoring system; another had put in place effective management checks and had sourced external advice (from a Race Equality Council and an employment lawyer).

In addition, a third had set up an external scrutiny panel to provide feedback on the quality of investigations. This involved a wide cross-section of members, including the local Race Equality Council and Victim Support.

The review concluded that, whilst the policy is fundamentally sound, its local implementation was frequently inadequate. The next step, therefore, was to develop some tools to improve arrangements for the handling of complaints and RIRFs within the current system.

Further Improvement Project

The first phase of the project sought to devise improved arrangements for the handling of complaints and racist incidents, to implement them at four establishments (of different types) and to evaluate their impact, with an emphasis on their effectiveness in raising prisoner (and particularly BME prisoner) confidence.

The improved arrangements comprised measures to tackle:

- process – a range of improvements to the systems, including a screening process to ensure that issues are routed through the appropriate system and handled at the right level and a new database for recording and tracking complaints and RIRFs and generating better management information from the systems
- quality – some simple tools to improve the standard of responses to complaints, including guidance material for staff responding to complaints and a checklist for use in the completion of management checks. Improved training for REOs on conducting inquiries on race issues
- promotion and transparency – a series of measures to promote the complaints and RIRF systems to prisoners and to overcome staff resistance to a more positive approach. Improved external scrutiny of the systems to demonstrate transparency. Work to address the perception that complainants and reporters are likely to be subject to victimisation



HMP Brixton

Some changes, particularly to processes, were quickly effected at all sites. Others took rather longer, and some of the promotional measures – particularly around improved communication to prisoners – were not completely implemented within the period of the project.

Evaluation and next steps

In order to evaluate the impact on prisoner confidence, a survey measure similar to MQPL was developed by the Institute of Criminology at Cambridge. The 27 item questionnaire measures awareness of the systems as well as confidence in them, and the confidence score is made up of four separate dimensions – process, response, investigation and consequences – providing useful information about which parts of the process are rated more and less well by prisoners. Approximately 15% of prisoners at the four establishments were surveyed prior to the implementation of the improved arrangements (in June and July 2007) and again in January 2008.

As might be expected with a short-term project focusing on a restricted – albeit important – part of prison life, no statistically significant difference was found between results at the start and end points of the project, but there was a noticeable improvement in prisoner perceptions across all measures in three of the four prisons.

There are also some noteworthy patterns in the responses. Across all four prisons, confidence on the process and responses dimensions was higher than on the investigations and consequences dimensions. This would suggest that greater emphasis on some of the

promotional and transparency measures will be needed, with communication with prisoners and external scrutiny (and its promotion to prisoners) being particularly important.

On the basis of the broad success of the project in raising prisoner confidence in three of the four prisons, good practice guidance and a toolkit will be developed and issued to establishments to promote a national roll-out of the process and quality measures and to provide further suggestions for action on promotional and transparency measures. Some of these tools and measures will be incorporated into revised policy through a review of the PSO and Standard on Complaints and in a revised chapter of PSO 2800 on Race Equality.

Other developments

The development of the role of prisoner race representatives has been important in improving awareness and understanding of the RIRF systems. This was a role that was largely unknown at the time of the CRE investigation, but in many establishments it is now central to communication with prisoners.

Other measures to improve the handling of race complaints include impact assessments of the RIRF and Complaints systems, which have been conducted locally at every prison. These have involved extensive prisoner consultation, and in many cases have generated useful actions to improve the systems.

The development of the role of prisoner race representative has also been important in improving awareness and understanding of the RIRF systems. This was a role that was largely unknown at the time of the CRE investigation, but in many establishments it is now central to communication with prisoners as well as other aspects of the work on race equality. Prisoner representation on the REAT has been mandatory since 2005, and the role has evolved through this period from simply attending meetings of the team into paid full- or part-time employment that involves a wide range of duties, mostly concerned with communication.

In the specific context of race complaints and investigations, prisoner representatives take on a number of roles, from communicating information about the system generally at induction to advising and supporting individual prisoners who are pursuing complaints.

Training

In response to the recommendations of the Zahid Mubarek Inquiry, and the findings of the internal research described above, the training of investigators has been improved.

Race Equality Officers – who undertake the initial work on most RIRFs and who are responsible for resolving the bulk of less serious incidents – now undertake detailed training on inquiring into allegations of racially discriminatory behaviour.

This training has been developed using guidelines on investigating racial discriminatory behaviour issued by the Independent Police Complaints Commission.

A module on the investigation of race complaints has been developed and now forms part of the formal investigations training. This uses material from both the CRE investigation and the Zahid Mubarek Inquiry to draw attention to the importance of diversity issues in this context as well as giving an outline of the law and some guidance on good practice.

Where we are now

This section brings together:

- data collected by REAG;
- recent published evidence, such as HMCIP reports;
- some relevant findings from the PRT project ‘A Fair Response’ (action research using groups of BME prisoners in four establishments to generate ideas for improving the systems);
- the observations of the Review Team, members of which visited four establishments, observed the training of investigating officers and met with an inspector from HMCIP.

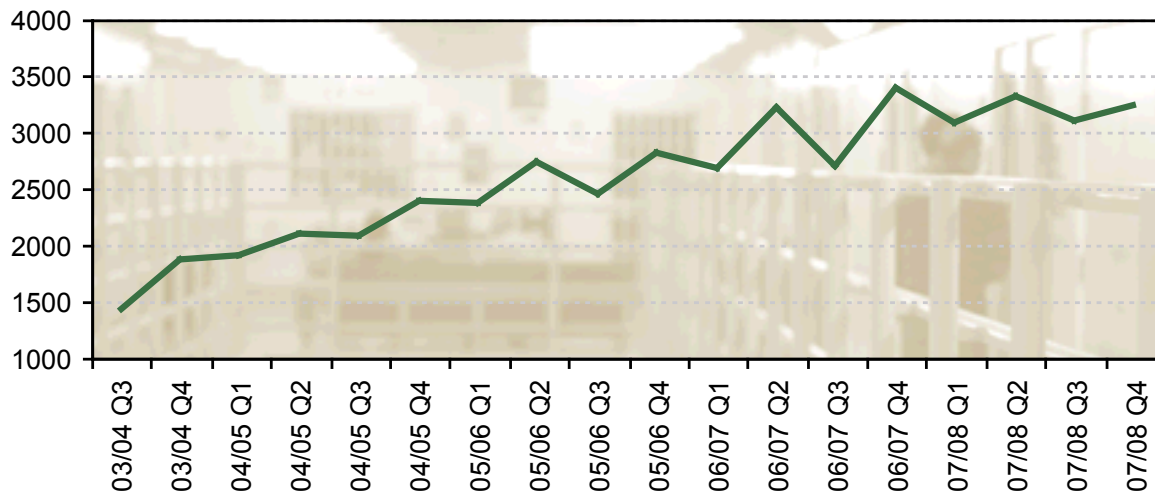
It takes each of the key CRE findings in turn and seeks to assess the extent to which they have been addressed.

Complaints system

An indication that progress has been made on the accessibility of the system is given by the increased numbers of RIRFs being generated: the total number of RIRFs nationally has increased from 8,454 in 2004-05 to 13,323 in 2007-08.

Whilst the systems were well used in all the establishments visited by the Review Team, many prisoners said that they would

Racist Incident Report Forms Completed



not use them, either because they did not believe that anything would result, or because they feared victimisation.

The impression gained by the Review Team – in accordance with the evidence of the Cambridge surveys described above – is that most prisoners have a basic knowledge of the systems and some understanding of how they work. The Team found that the quality of induction processes was variable, with some local prisons in particular struggling to deliver a meaningful induction programme to a very transient population. In these circumstances a great deal of reliance was being placed on prisoner reps to communicate information about the systems. Even where prisoners were sufficiently well-informed to be able to access the system, it was not always the case that they were able to describe in any detail how it operates. Moreover, in some

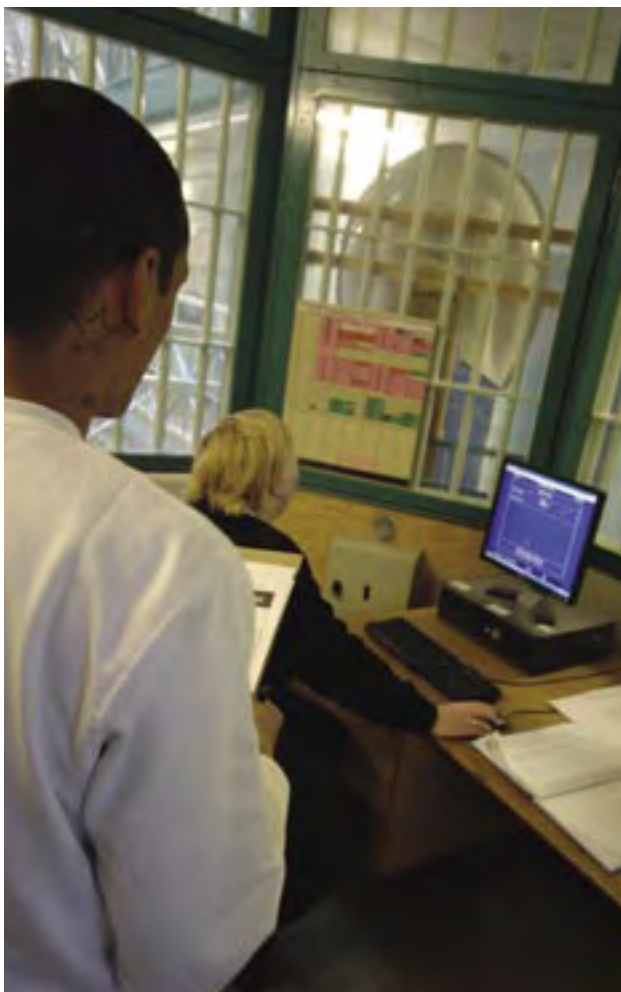
cases information for non-English speakers (and those lacking literacy skills) was limited.

On the other hand, there were some innovative means of communicating information about the systems, such as the use of the prison radio station. A confidential reporting line was available at one establishment. This appeared to be an example of good practice, but it was reported that little use was made of it and prisoners said they did not know about it (although there were stickers advertising its existence on all prisoner telephones).

In one prison there were some restrictions on access to the forms, which appeared to have been imposed by well-meaning prisoners who had misinterpreted their role in administering the distribution of the forms and were keeping a check on those that were issued, rather than allowing free

access. In another prison, there appeared to be a danger that naïve prisoner reps may be discouraging prisoners from reporting problems that they perceived to be racist as racist incidents, encouraging them instead to make more general complaints. These findings are probably more indicative that there are issues to be resolved around the role and training of prisoner reps than they are a cause for concern about the availability of forms more generally.

There appears to be no evidence that staff are preventing prisoners from complaining, and this was not raised as a problem by prisoners on the Review Team visits.



HMP Brixton

However at one of the prisons it was said that staff informally discouraged prisoners from complaining. There is other evidence that this discouragement can take the form of making it more difficult than it should be to raise a complaint. For instance, one recent HMCIP inspection found four cases where complaints had been returned without investigation because the prisoner had used the wrong form.

Staff attitudes to the systems varied between the prisons visited by the Review Team. In the prisons that had high-profile problematic histories around complaints and investigations there was considerable defensiveness from staff. In other prisons without this history, and in particularly in the prison with the most diverse staff group, attitudes were much less negative.

Appropriate measures to ensure confidentiality at the early stages of the process are in place across the Service. There are some exceptions – for instance during a recent inspection HMCIP found a system in operation in one prison which was not confidential, as prisoners had to obtain forms from, and return them to, wing staff. A simple measure used in the improved arrangements project described earlier is for non-uniformed staff who do not work on the wing to empty the boxes. This was appreciated by some prisoners who spoke to the Review Team, but had not been communicated successfully to others.

Later in the process, as the investigation develops, issues of confidentiality become more problematic. The investigator has to manage the need both to inform an alleged perpetrator of the evidence against

them and to maintain confidentiality about the information provided by witnesses or victims. At present there is no policy or guidance on this point. Perhaps as a result, prisoner feedback to the Review Team was mixed, with some respondents stating that the process was now confidential, and others taking the view that it was not.

There is no further evidence of complaints being resolved informally to the detriment of the complainant. If anything, the opposite can now be the case: relatively minor issues that the prisoner wants resolved informally are sometimes escalated into investigations. For instance, sometimes when a member of staff is reported as having used some outdated or inappropriate terminology, inadvertently causing offence, a prisoner may simply want an apology. As the system currently stands, this preference is often not considered, and instead an investigation is launched.

In the PRT project, prisoner working groups in three of the four prisons advocated mediation as a first response, prior to taking the complaint to a formal investigation. One group specifically mentioned restorative justice, a response which is focused on identifying who has been harmed and what can be done by the person who caused offence to make amends. Another group emphasised the need for more options to be available, suggesting that it should be for the complainant – with advice from the reps – to make the decision on which one to employ to seek to resolve an issue. In some of the establishments visited by the Review Team, the REOs had received mediation awareness training and were starting to use informal conflict resolution

to deal with some incidents where both parties agreed to this approach. This appeared to be well-received by prisoners, and particularly by young offenders who often said that they wanted a quick resolution to an issue rather than a long wait for the outcome of a more formal process.

In some of the establishments visited by the Review Team, where the REOs had received mediation awareness training, they were starting to use informal conflict resolution to deal with some incidents where both parties agreed to this approach.

All the establishments had good systems in place for tracking complaints. Whilst very consistent, compliance with the procedures was not universal, and in one prison there had been recent problems, with some complaints with the race box ticked not being referred to the REO as envisaged in the policy. Good practice at some of the establishments was the provision of administrative support to the REO or Diversity Team.

There was limited evidence of patterns of complaints being used as management information, either to identify repeated complaints against individual members of staff or to spot problems with particular policies or processes.

Investigations

The time given to completing investigations has increased. From 2004-05 to 2007-08 the Service has moved from establishments having an individual REO with an average

of 16 hours per week, to a position where nearly 100 prisons now have a full-time or equivalent member of staff in the role, and many have diversity teams, boosting the amount of staff time spent specifically on race issues to an average of 48 hours per week. This increased input of staff time greatly exceeds the increased volume of complaints received.

In many cases, the grading of the REO role has also been changed, with many more establishments now having a manager in the post. This tends to improve the level of skill with which investigations are completed, as well as enhancing the authority of the investigator.

The Review Team saw a selection of ten recent investigations from each of the prisons visited and was satisfied that the standard was generally high, with very thorough inquiries being made in most cases.

External scrutiny of RIRFs now takes place in 91 establishments, and both the fact that it occurs and the very useful feedback that it often produces would suggest that quality is improving. Moreover, the Review Team saw a selection of ten recent investigations from each of the prisons visited and was satisfied that the standard was generally high, with very thorough inquiries being made in most cases.

These improvements are not universal, and in one recent inspection HMCIP found that some replies missed the point of the complaint, and more thorough quality assurance arrangements were needed.

Many investigations tend to focus on the issue of whether or not there has been staff misconduct. In cases where there are allegations of racist abuse this is entirely appropriate. However, in other cases there may be other issues at stake. Even if the complaint is about the behaviour of a member of staff, it is not always a judgement about misconduct that is needed to resolve it. As we have seen, sometimes an issue can be resolved informally through dialogue. Methods that seek to learn from the complaint, and to move forward by solving the problem rather than apportioning blame, can often achieve a quicker resolution, as well as being more likely to satisfy the complainant.

Where the complaint is about a more subtle form of discrimination that may have come about unwittingly, the issue could be one of staff performance, rather than misconduct. Such cases, as well as those where the issue is around the operation of systems or policies, rather than the conduct of individuals, are not always thoroughly investigated, and broader lessons are rarely learned from them.

Where staff misconduct is the issue, there remains some evidence that too high a standard of proof continues to be applied, with judgements being made on the basis of whether or not there is direct evidence that the member of staff was acting on racist motives, rather than by using inferences based on other relevant evidence and patterns of behaviour. This focus on staff misconduct means that the separate question of whether or not discrimination has occurred is rarely directly addressed in investigations. We know that racial discrimination is often

complex and subtle, deriving from the unintended consequences of staff actions or the operation of policies or systems.

REOs are now trained that it is not necessary to prove malicious intent in order to conclude that a decision has had a discriminatory effect, and are advised to make judgements about the presence of discrimination using a simple mental model that focuses on comparing the outcome for the complainant with that reached in other similar cases, rather than by assessing the motives of the member of staff involved.

On the evidence of the Review Team visits, it is taking time for this learning to feed through into action, and in most cases the emphasis remains on judgements about staff misconduct.

The requirement that all RIRFs be signed off by the REAT lead ensures that they receive senior management attention.

Findings that discrimination had taken place were rare. Moreover, findings of misconduct and action against the perpetrators were also described as uncommon, by both staff and prisoners to whom the Review Team spoke. Even where the Governor and/or the Diversity Team were able to cite some examples of action being taken against members of staff, these were not known by prisoners. Prisoners talked of complaints being made consistently about the same people without any visible outcome, and many prisoners believed that there were consequences for the actions of prisoners, but not for those

of staff. The Review Team felt that this was linked to wider issues of management and leadership on race equality issues.

Training for investigators has been improved, and the Review Team found that where REOs had received training they were more confident and effective in their approach to resolving RIRFs. As well as improved training for REOs, the more general investigations course for senior staff undertaking conduct and discipline investigations now includes a session on race equality. A representative of the Review Team attended this session and found that whilst successful in addressing the relevant Mubarek recommendations it could do more to equip staff to recognise less obvious forms of discrimination. There are plans to develop a further course specifically on race and diversity investigations, and there has been a successful trial of such a course in one area.

The requirement that all RIRFs be signed off by the REAT lead ensures that they receive senior management attention. In the sample seen by the Review Team, there was little written feedback on the forms and the sign off mostly consisted simply of a signature. This is not necessarily a problem – most of the investigations had been of a good standard. Moreover all the REOs reported having regular meetings with the REAT lead and receiving useful verbal feedback on their work. Three of the establishments visited by the Review Team had appointed Diversity Managers who were members of the Senior Management Team. This provides more active supervision of the REO in investigating incidents than it is possible for

the Governor or Deputy Governor to offer. For the most part, the requirement to address any report or complaint of racism through the RIRF system has ensured that all race issues are handled by the REO. There was some evidence in one of the prisons that this was not always the case, with some complaints where the race box had been ticked being handled through the general system.

The perception of many of the prisoners to whom the Review Team spoke was that complainants and reporters of incidents face negative repercussions.

At a more subtle level, however, it was not always clear that issues of race were properly identified and addressed. This relates to the point about standards of proof discussed above – the model of investigation in use was set up to handle allegations of explicit racially motivated behaviour, such as verbal harassment or direct discrimination, but was much less well-suited to less direct forms of racism.

Victimisation

The perception of many of the prisoners to whom the Review Team spoke was that complainants and reporters of incidents face negative repercussions. In particular, the belief that complainants are likely to be transferred to another prison persisted.

These findings are supported by the Cambridge survey described earlier, in which there were particularly poor results in all prisons on the consequences dimension, compared to the others.

It was impossible for the Review Team to determine the extent to which these perceptions are valid, but the fact that they exist is enough to suggest that further work is needed.

The Review Team witnessed some very good practice in this area. In one prison, the REO followed up complainants at a suitable interval to ask if they believed that they had suffered any disadvantage as a result of making the complaint. In another prison the REO had made effective links with the Safer Custody team to ensure that, rather than being handled in isolation, arrangements for the protection of complainants and reporters used the full range of systems in place across the prison to keep prisoners safe.

Failure to deal with racist abuse or to protect prisoners from racist harassment

The Review Team reached the conclusion that there is a strong sense of a change in atmosphere on the wings. With some exceptions, officers in general appear to be less defensive and more willing to recognise the existence of racism than five years ago, and the team found a sense of confidence in staff that the Service has made real progress in eradicating blatant and malicious racism.

Despite the ongoing challenges with the conduct of investigations into racist incidents, the team was impressed by the commitment to racial equality which was evident in Governors, Race Equality Officers and prisoner race reps.

This conclusion is supported in some recent academic research which, whilst

finding that there were significant undercurrents of racism in prisoner-prisoner interactions, also found enthusiasm for diversity amongst prisoners and noted that this was consistent with the high-profile official discourse of diversity and race equality (particularly Prison Service Order 2800) that pervaded the prison.

The research found a stated abhorrence of racism amongst prisoners, and that acting in explicitly racist ways in prison was regarded as indefensible, to the extent that the inmate code of not 'grassing' would be broken to report such incidents. This suggests that prisons are now much better at dealing with issues of racial harassment. There is, however, more to be done to improve the complaints and racist incident reporting systems and to make them suitable to handle more covert forms of discrimination.

What we still need to do

The effort applied to improving the systems for race complaints and investigations has produced systems that are fundamentally sound. However, both HMCIP and the Review Team have found that there remain instances of the kinds of failures described in the CRE report, and in the PRT project several of the ideas generated by prisoners for improving the system were examples of existing policy that had not been implemented at the prison in question.

Further work is needed to ensure that the systems are properly used and consistently applied, and that the improvement measures used during the Further Improvements project described earlier are rolled out.

There are also three further concerns which need to be more fully addressed.

Victimisation

The first key area of concern is that the victimisation of complainants revealed by the CRE may be continuing. It is difficult to come to a definitive view on whether or not this is the case, but it is a perception that continues to be very widely held and expressed by prisoners.

Even if this perception is not the result of real instances of victimisation, it is a problem as it is cited as a major reason for the lack of confidence in the system and particularly a reluctance to use it. The first step in addressing this issue is to undertake some more sustained work on the nature of the problem, and in particular to ascertain the extent to which it is a reality or simply a perception.

The effort applied to improving the systems for race complaints and investigations has produced systems that are fundamentally sound. However, there remain instances of the kinds of failures described in the CRE report.

This has begun through some research at one prison to explore more precisely what negative consequences are feared and to collect evidence to demonstrate whether or not there is a real basis for the perceptions. The results of this small-scale project will be carefully studied, and similar work undertaken in all establishments where these perceptions are frequently expressed. Future local impact assessments of the

RIRF and complaints systems will attempt to establish the extent to which perceptions of victimisation are founded in reality.

Where they do prove to be grounded, rigorous action should be taken. Where they do not, more needs to be done to communicate this fact effectively and sensitively.

Lack of outcomes

The second key concern is similar to the CRE failure area concerning the fact that complaints were rarely upheld, but conceives of this a little more widely as

a lack of concrete outcomes from the process.

In other words, this is not simply a question of investigations failing to yield results, but includes also the need to consider a wider range of options for the handling of complaints.

This relates to the point made above that, rather than engaging with what the prisoner is seeking to achieve by complaining, the process often becomes overly focused on making a judgement about



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the appropriateness or otherwise of the behaviour of a member of staff. In cases where a member of staff is said to have physically or verbally abused a prisoner, this is precisely the right way to proceed. However, as we have seen, such cases are now less common.

Instead, many complaints are now about more subtle forms of discrimination, such as prisoner perceptions that they are disadvantaged in the distribution of privileges or opportunities. In particular it is often felt that favouritism is resulting from unconscious differential treatment by staff. As we have seen, the existing approach to investigating RIRFs is less well equipped to deal with these more subtle types of discrimination.

Where the issue is one of overt racism, upholding a prisoner's allegations is often difficult. For example, such cases often amount to one person's word against another's, and there is an understandable tendency to conclude that there is insufficient evidence to reach a judgement.

However, as we saw earlier, more can be done to ensure that such cases are fairly resolved, particularly through correctly applying the balance of probabilities as the standard of proof. The improved REO training described should result in a greater willingness to make inferences from patterns of behaviour, which will increase the number of cases in which complaints are upheld.

However, more fundamentally, the 'win-or-lose' structure of the process fails to provide any means of resolving problems where there is detriment to the prisoner

but either there is insufficient evidence for action to be taken against the suspected perpetrator, or the cause is systemic rather than the behaviour of an individual. It is clear that prisoners who experience racism may be looking for a number of outcomes that do not involve action against the perpetrator, for instance a practical solution (eg being given a job that they were unfairly denied), an apology from an officer who was rude or insensitive, or simply the recognition of the validity of their perceptions.

Consulting the complainant about what he or she would like to see happen would offer a simple first step towards greater satisfaction in the system. The Further Improvement project described above mapped out a range of options for the resolution of complaints and provided a screening tool for allocating cases between them. This was not always successful, and it will need to be developed further prior to national implementation, but it does provide the most likely way of ensuring that the method chosen to resolve the complaint is targeted, proportionate and effective. The Review Team concluded that more could also be done to monitor outcomes, both in terms of tracking patterns of complaints about individual members of staff and particular functions and policies, and learning lessons accordingly. Where appropriate, this can be accompanied by greater publicity for the results of completed cases, which will form one part of a plan to address the final key concern which is the level of prisoner confidence.

Prisoner confidence

The issue of the lack of confidence in the systems amongst BME prisoners

remains. In the Cambridge evaluation of the improved arrangements project described above, on every measure, in every prison, on both occasions, White prisoners had higher confidence levels than BME prisoners in complaints generally, as well as in the RIRF system.

In part this can be attributed to the fact that BME perceptions of the criminal justice system more generally are more negative than those of the White group. But this is an area where perceptions remain particularly negative, and where it is particularly important to address them – the only way that we will eradicate racism is to give prisoners the confidence to report it.

The results of the improved arrangements project suggest that it is possible to make a positive impact on perceptions in this area. In part this is an issue of communication: prisoners' confidence in investigations depends on the effort made to communicate with them. For example, in all the prisons visited, external scrutiny was employed to assist in quality control of the investigations and to add transparency to the process. But the prisons made limited efforts to publicise this step, and the prisoners to whom the team spoke did not know that it had occurred.

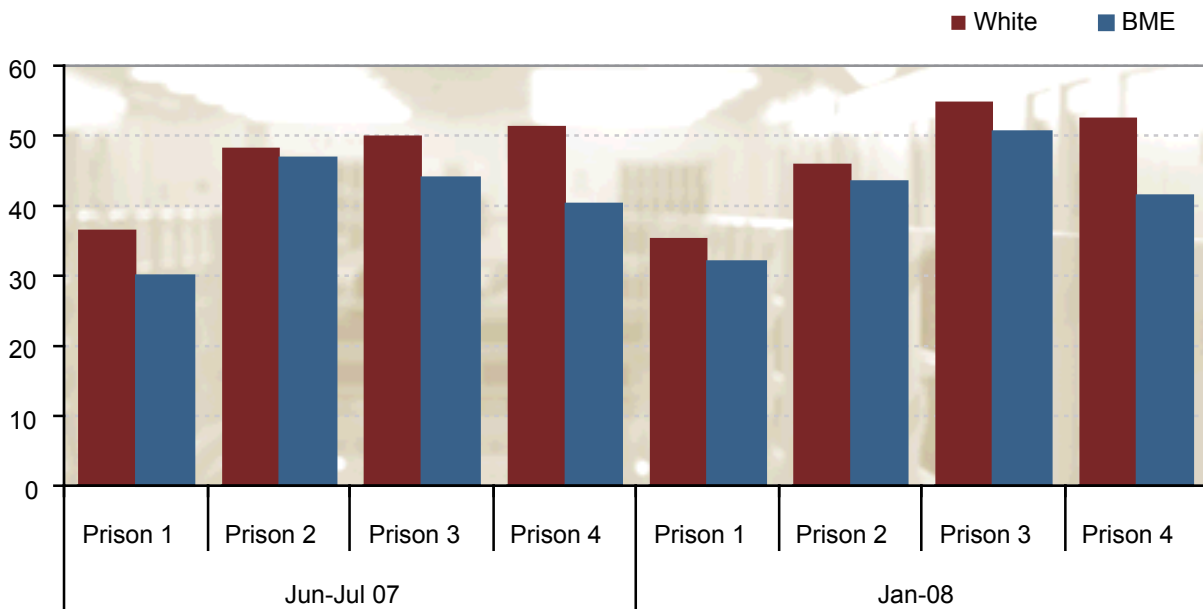
The Cambridge evaluation of the improved arrangements project found very low confidence levels in the investigation phase of the response to racist incident reports, indicating perhaps that the processes of investigation need to be more transparent. The PRT project report recommended that the procedural rights of complainants should be explained in full to anyone who submits a RIRF and suggested that

prisoner race reps could play a key role in explaining the process to other prisoners. The PRT project report includes some important insights into process itself, including the observation that there is very little practical guidance to REOs about how to practise confidentiality in conducting the investigations. This will be developed. On another note, prisoners often argue that there should be independent investigation. As we have seen, even where there is independent scrutiny, this is rarely explained to prisoners. Measures to improve confidence must include better communication of the fact of external involvement where it is already occurring, as well as the introduction of such involvement in those establishments where it is not. The route for issues to receive independent investigation – appeal to the Prisons and Probation Ombudsman – will be better publicised.

The Review Team concluded that more could also be done to monitor outcomes and learning lessons accordingly.

The call for independence in the investigation process often results from concerns about a lack of impartiality. The Review Team found this to be particularly evident where the REO is perceived as isolated and is in uniform and/or not a management grade. In these circumstances they are often seen by prisoners as employed to protect colleagues rather than to conduct proper investigations. It is interesting to note that despite the fact all RIRFs are signed off by the Governor / Deputy Governor, the response to the

Prisoner Confidence in Complaints



prisoner is often signed by the REO – when asked by the Review Team, some prisoners had no idea that their complaint has been seen by a senior manager and not simply adjudicated by the REO.

At a more basic level, in one prison visited, induction had been suspended (pending a move to new accommodation), and in another, it was optional. These examples suggest that, far too often, information about the racist incident reporting process relies on word of mouth. The team considers it crucial that the complaints and investigation processes be explained to prisoners when they make a complaint – as well as on induction and through the activities of race reps.

Although PSO 2800 Race Equality requires prisons to provide forms in different

languages, the Review Team heard concerns that prisoners who were unable to communicate in written English were effectively excluded from the complaints processes, often due to a lack of publicity in their primary language.

As stated above, there is persistent evidence that complainants are not sufficiently consulted in the course of investigations – in particular about the outcomes they want. Finally, there was some evidence on our prison visits that the results of investigations were not consistently communicated to the complainants.

It is important to note that improvements in the handling of race complaints cannot be achieved separately from a more general programme of work on race equality

and diversity. For instance, many of the recommendations from the PRT project were for action on issues beyond the complaints and RIRF systems themselves.

This supports the view developed through the improved arrangements project that it is not possible to tackle these issues in isolation, and that consistent improvement in prisoner confidence will be obtained only through a wider programme of work on race issues.

One area that should form a part of the more general programme of work is sufficiently closely related to the theme of race complaints to merit brief discussion here.

Role of prisoner representatives

The Review Team endorse the results of the PRT project, which identified the role of prisoner reps as central in handling race complaints.

Improvements in the handling of race complaints cannot be achieved separately from a more general programme of work on race equality.

The questions of how reps are selected and trained, and what tasks they are asked to perform, have been left for local development and the result is a wide variety of practice and a failure in some establishments to maximise the effectiveness of these key people.

As well as the suggestions from prisoners captured by PRT, the Review Team saw some very good practice that could

be replicated elsewhere. There are establishments that have found excellent ways of identifying, training and supporting reps, but this is not consistently the case across the estate, and national guidance that captures this best practice will be issued.

More work will be done to enhance the status of these roles – the Listeners provide a model for this that could be followed. This work needs to ensure that the credibility of reps with fellow prisoners is not diminished, and that staff are encouraged to adopt positive attitudes towards the work of reps.

In conclusion, the Prison Service has delivered significant procedural changes, beyond those promised in the joint action plan agreed in 2003. Moreover, there are further improvement measures, tested in four prisons, which will be rolled out nationally in 2009.

Considerable progress has been achieved, and there is every indication that implementation of the further measures will have further positive impact on prisoner confidence. However, there is more work to do, both further to improve the systems and as part of the broader programme of work that will be necessary to address the wider issue of the more subtle forms of racism that remain across the Service.

7 Staff

Failure area 2 of the CRE report relates to the treatment of staff in prisons (see Annex B). In their investigation, the CRE found evidence of complaints made by staff members in relation to a whole range of issues: promotion and study opportunities for staff, racist taunting of BME staff members where managers failed to deal with the problem and persistent discriminatory actions by middle managers and other staff against BME staff.

The CRE report explains in detail the case of Claude Johnson — a Black prison officer at Brixton who brought three employment tribunal cases against the Service. His cases centred around prison staff's racist attitudes and senior officers' failure to investigate any of his complaints. He was eventually awarded aggravated damages but the Governor failed to act on the tribunal findings and there was no evidence that a serious process of change was attempted.

Overall, the CRE commented that management had failed to give proper leadership to staff who demonstrated poor behaviour. None of the staff and managers who shared responsibility for the discriminatory actions suffered by Mr Johnson were ever disciplined, and the onus was placed on the victim to complain, which personalised the process and increased the likelihood of victimisation.

The CRE investigation also found discriminatory recruitment practices at Brixton. The CRE found that one exercise did not follow basic equal opportunity practices, as there was no formal application process requiring standard information from candidates measuring

their skills, training or experience against job descriptions and person specifications. Equally the selection panel had not set criteria against which to assess candidates and make decisions. No standard questions were prepared and no proper notes of responses to questions were made during the interviews.

Finally, the CRE criticised staff training, highlighting the need to embed diversity, evaluate and monitor training activity. The action plan agreed with the CRE contains a series of high-level key deliverables focused on ensuring the Service was compliant with its duties under the Race Relations Act 1976, as amended, increasing the diversity of the workforce and improving training on race equality (see Annex D).

It should be noted that this chapter relates only to the actions taken with regard to staff in the public sector Prison Service. Staff in prisons in the contracted sector are managed by the contractors, with compliance with the law and Prison Service policy being enforced through the contract.

What we did

Our approach

The immediate priority for investment after the CRE investigation was to address the conditions and experiences of Black and Minority Ethnic prisoners. However, new staff training was developed quickly, as well as work to address key process area. Our strategy, though, has been to build a sustainable infrastructure in order to begin the process of effecting organisational cultural change to improve experiences for all our staff, particularly BME staff, given

the criticisms of the CRE investigation, as well as delivering improvements in key HR processes.

Our approach has been to deliver fully integrated and diverse human resources and management processes, embedded within establishments and headquarters and driven by high-quality professionals across the Service.

Alongside getting the structures and processes right, we have focused on addressing the racist and discriminatory behaviours highlighted by the CRE.

For example, supported by a clear consistent message from the Board that racist behaviour will not be tolerated, 26 members of staff have been dismissed for racist offences since 2003. (Statistics are those reported to HQ and we are aware that there has been under-reporting which will be addressed through the introduction of the Shared Service Centre.)

Staff have been prohibited from membership of racist organisations since 2001 – a policy stance that has been robustly defended at an Employment Tribunal.

We are also making progress in terms of the diversity of our workforce. BME staff representation has increased from 5.7% in 2004/05 to 6.2% in 2007/08. In terms of progression, in some grades the proportion of promotions of BME staff has been slightly higher than that of White staff.

Using a new Single Equality Scheme as a framework, we developed our network of HR Business Partners as local diversity

champions. And our multi-million-pound investment in new technology, people and processes in our new Shared Service Centre will enable us to drive greater standardisation in processes, spread best practice and learning from Tribunals and provide a much richer data set to target future improvements.

As detailed in the Management and Leadership section of the report, we are investing in our managers and their improved understanding of race, and broader diversity issues at all levels will be targeted through proactive communications and training.

The remainder of this chapter sets out the detailed work that has been carried out and our plans for the future. Much of it will be cast in the broader context of improved HR processes and delivery.

Targets

The Race Relations (Staff) Key Performance Target was piloted in a number of establishments in 2004-05, before a shadow year in 2005-06 and full implementation in 2006-07. It consists of a basket of measures:

- Prison Service Standard 62 Staff race equality audit score
- Prison Service Standard 62 racist incident audit score
- % BME staff (measured against local target)
- % BME staff in prisoner contact roles (measured against local target)

The target set for establishments is to achieve 70% or higher.

Atmosphere of racist taunting and intimidation

As an organisation we have been clear that racism will not be tolerated and this message is clear to staff and managers. Accordingly, overt racism has either been largely eradicated or is robustly addressed wherever it surfaces.

The Prison Service took a robust stance to addressing racist attitudes and behaviour by staff by introducing, in August 2001, the policy of prohibiting staff membership of racist organisations or groups. Such a move was unprecedented by any other organisation at the time. The policy requires applicants, whether to external recruitment or internal selection panels, to declare that they do not belong to the National Front, BNP, Combat 18 or any other group with racist policy or philosophy.

The policy for existing staff was also clear, that any such membership must be relinquished forthwith and, consequently, evidence of membership could constitute gross misconduct that may lead to dismissal. Similarly, any candidate found to have made a false declaration or who later becomes a member of a prohibited organisation after joining the Prison Service will also be subject to disciplinary procedures.

Given the nature of the work undertaken by the Prison Service and the environment in which it takes place, this policy is entirely consistent with the duty of the Prison Service under the Race Relations (Amendment) Act 2000, to have due regard in carrying out its functions to eliminating unlawful racial discrimination and to promoting equality of opportunity and

good relations between persons of different racial groups. It has been commended by a number of organisations, including the CRE, now EHRC.

In August 2001, the Prison Service introduced the policy of prohibiting staff membership of racist organisations or groups.

In line with a wider strategy to professionalise HR delivery in the Prison Service, a dedicated Staff Diversity and Equality Team (SDET) was formed in December 2006 to give added impetus and leadership across all diversity strands. Its first task was the creation of a Single Staff Diversity and Equality Scheme. The scheme was developed to reflect the core aims of the Service and further to ensure that its strategic objectives of achieving equality of opportunity and decency were met. Through the development of the scheme, the Service has set out how it intends to meet its corporate vision of developing a culture of decency and equality of opportunity in all that it does. The scheme published in April 2007 sets out how the Service seeks to integrate equality and diversity in its actions as a business priority across the Service.

In 2007 the EHRC agreed a further programme of action with the Service to address issues of sexual harassment. One of the recommendations from that Action Plan was for a clear statement to be given to all staff to reiterate and reinforce the Service's commitment to tackle unacceptable behaviour. A new policy statement was therefore developed by the

Board and communicated to all managers and staff on 14 February 2008. The Statement makes clear that the specific role that managers have in ensuring that discrimination and harassment is tackled. Our approach is underpinned by our 'Challenge it – Change it' strategy, highlighting that all have a responsibility to tackle unacceptable behaviour.

Improved guidance and advice on appropriate sanctions for inappropriate behaviour and maximising confidentiality has also been developed. As a result, a new staff training tool kit and Diversity DVD has recently been launched which will place emphasis on encouraging all staff to challenge unacceptable behaviour

– irrespective of whether it is witnessed or experienced. This training will replace the existing diversity training package.

Onus on staff to make complaints and complaints not being taken seriously

Managers now proactively tackle overt racism, but addressing covert racism is more challenging and more reliant on either the willingness of staff to come forward or the capability/approach of individual managers. In recognition of this, the Prison Service has invested heavily in support systems such as RESPECT (a staff network) and an in-house Employee Support service to make it easier for staff to seek confidential advice and support. There is also now increased protection available



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for staff through the ‘Whistleblowing’ policy. We discuss some of these systems in more detail later in this chapter.

Racist complaints are taken seriously and addressed in a systematic fashion. They are subject to scrutiny and analysis at senior levels in establishments and headquarters. Statistics are discussed at monthly management meetings and Area Managers scrutinise the Complaints Log when they visit. Our policy has been renewed in light of findings from past cases and Employment Tribunals, the training for investigators has been reviewed and updated, and a series of masterclasses have been held for senior managers to ensure we get our processes right.

Staff victimisation

The extent of victimisation is difficult to monitor. However, key indicators (such as retention rates) indicate that concerns about victimisation have been tackled robustly with the leaving rates for White and BME staff (which are very low anyway) converging. However, this is an area that requires on-going vigilance. In its clear manifestations of bullying and other forms of inappropriate behaviour, it is being tackled through the staff discipline processes. However, we are realistic that pockets of inappropriate behaviour remain across the organisation, for example in exercising management discretion. Monitoring systems are in place for key areas of management discretion, such as the use of temporary advancement in the operational line, and our new HR Business Partners now have the clear responsibility (as members of establishment SMTs) to review and analyse all the data available and take any action as necessary through Local People Plans.

Acting on Employment Tribunal findings

We have learnt lessons from Employment Tribunals and sought to address priority areas, where findings had revealed flaws in our policies and procedures. In particular, the Prison Service’s Conduct and Discipline Prison Service Order (PSO 8460) was revised and published in June 2007. This used the website format to provide clearer guidance and standard templates to aid compliance. Greater clarity has been provided on the key standards of professional and personal conduct expected of all staff, and how to deal effectively with non-compliance. We have also developed new training and guidance on whistleblowing as a consequence of findings from Employment Tribunals. Protocols are in place to ensure that we are alerted, promptly, to potentially complex and sensitive Employment Tribunals by the Treasury Solicitors, and lessons learned are now systematically fed back to our HR caseworkers to ensure advice to managers is up-to-date. A recent series of masterclasses for senior managers on conduct issues also centred on learning lessons from past cases.

Dealing proactively and systematically with racial discrimination

We have transformed our HR infrastructure, giving us the capability to monitor and challenge racial discrimination. We have created a foundation for organisation-wide change in this area.

We have put in place better data systems, and refreshed our policy framework, reiterated Board-level commitment, improved the diversity of our workforce, dismissed staff for racist conduct and improved our staff training.

Effective training

There have been improvements in the quality of training provision. Diversity and race issues are increasingly incorporated in all training courses. Systems to ensure quality are in place across training curriculum design and trainer development. We describe these improvements in more detail later in this chapter.

Staff awareness on race issues

There has been an extensive rollout of our original communications package on race issues, which has been supplemented in many areas by local initiatives. However, we need to maintain momentum in this area and reinvigorate our communications to take into account recent developments.

The Competency and Qualities Framework describes behaviours that the organisation expects among its staff, such as respecting others and showing integrity.

In 2002, IONANN Management Consultants were contracted to develop and design new training materials in order to foster a better working environment and to improve staff awareness in equality issues. The training centred on a series of video scenarios where inappropriate behaviour is being displayed to open discussion and improve understanding. The training was originally targeted at senior managers and equalities staff before being rolled out across the Service.

That training has now been replaced with a new diversity training package which takes as its theme the need to challenge

and change all forms of unacceptable behaviour, including that which bears on race issues for staff.

The Competency and Qualities Framework, which was published in April 2008, describes behaviours that the organisation expects and encourages among its staff, such as respecting others and showing integrity. The framework embeds decency and respect as criteria of cultural and organisational change. It clearly sets out for all employees - and their managers - what is expected of them in terms of clear and observable indicators of behaviour that apply across most situations they are likely to face. The framework (and hence these behaviours) now underpins our key HR systems.

Investigations training

Training for investigators had been in place for many years but was revised following the changes to the Service's Conduct and Discipline policy in 2007. In 2008, a programme of two-day master classes was developed for managers. The classes looked at a number of different areas, with the focus of day two being aspects of the disciplinary process and whistleblowing.

The course dealt in the key aspects of conduct and discipline and whistleblowing, and drew heavily on lessons learnt from past cases.

Management information

All available data has been used to inform policy and process changes. We describe later in this chapter some examples of how we have used data in this way. Our multi-million-pound investment in our new Shared Service Centre and the new

HR operating model will provide a richer data set (and improved accuracy and speed of reporting), allowing the service to understand better the impact of our HR and management processes across all the diversity strands.

Addressing the CRE investigation through broader personnel processes

Selection

To address the failings identified by the CRE as regards selection arrangements, the Prison Service reviewed its procedures for recruitment and filling vacancies, with the new policy introduced in October 2003. The website format is more user-friendly than the old style ‘hard copy’ Prison Service Orders (PSOs). Key mandatory requirements are clearly set out and hyperlinks are used to provide further information, guidance, forms and templates.

At the time of publication of the CRE Report, the Prison Service had already started to move away from using educational qualifications in recruitment and instead was increasingly adopting competency-based assessments. In the key area of prison officer recruitment, the Prison Service had already introduced a two-staged approach comprising a selection test and Job Simulation Assessment Centre.

A key aspect of the Job Simulation Assessment Centre used for promotion at key stages of the operational grading structure is the testing of ‘Respect for Others’. This is measured three times in three different simulations. In October

2005, it was decided that anyone failing to achieve a pass for this element would fail the JSAC, irrespective of how well they had performed in the other elements. In order to influence a positive organisational change, the pass rate of this element of the JSAC has gradually been increased.

A more diverse workforce

2004 saw the launch of a Service-wide campaign to attract a more diverse pool of candidates for jobs in the Service.

A Recruitment Outreach Toolkit was developed, providing information, best practice guidance and support to those involved in recruitment outreach to help raise BME recruitment to achieve a more representative workforce.

The Toolkit promoted the importance of community engagement to help underpin effective recruitment from under-represented groups. The Service has recognised that local outreach activity is crucial to help build strong relationships with communities and to help change the perception of the Prison Service. In 2005, the Prison Service took further action to support BME candidates through the selection and assessment process, including:

- the introduction of a positive action checklist outlining measures that should be taken, against which recruiters can assess themselves
- amendments to the Prison Service Website to provide more information about the selection process, including a self-assessment tool to help potential applicants prepare for the Prison Officer Selection Test (POST)

- familiarisation visits to establishments and briefing sessions to explain what it is like to work in an establishment and to provide more information on the selection process
- offering feedback to near miss candidates and advising them of other roles available in the Service

Areas have continued to strengthen their outreach activities and in early 2007 South Central Area was used to pilot a new attraction strategy aimed at attracting a previously untapped market of passive job seekers who wanted something more rewarding, personally challenging and satisfying from their employment.

A Recruitment Outreach Toolkit provides information, best practice guidance and support to help increase BME recruitment.

It was decided that combining the approaches of tapping into the passive job seeker market, addressing the negative perceptions and weighing more heavily on the angle of professional development, personal growth and career progression would be the most appropriate and positive way of positioning the Prison Service as an employer of choice.

The website, www.whatsontheinside.co.uk, became the avenue for application and also allowed the images used in the media schedules and streams to be replicated. The message was 'find out what's on the inside of you and the Prison Service'. The pilot proved very successful in attracting 12.5% BME applicants.

Building on the pilot in South Central Area, a national recruitment campaign was launched in January 2008. Encouragingly, without revised geographical targeting, the percentage of BME applicants increased steadily throughout the four month campaign. 13% of applicants to the national recruitment campaign were from a BME background.

Increasingly, new data from our management assessment processes is helping to identify the need to hire externally into management positions rather than rely exclusively on internal promotions. This will create a dynamic that presents an opportunity to change diversity at the more senior levels and build a more diverse platform of potential managers for the future. Work has already started on positive action approaches for such external hiring activity. To yield maximum value from the hard work undertaken at local and national levels, we have initiated a diversity marketing campaign to run through 2008/9. This aims to challenge perceptions and encourage minority groups to consider themselves for roles within the Service.

Monitoring

Since 2004, the Prison Service has produced data showing the impact of key HR processes on BME staff and applicants. This analysis has then been used to drive changes to key processes.

The Review provides summary and detailed information to enable analysis across a range of activities, including recruitment of permanent staff, promotions, temporary advancement, leaving rates, management of attendance, annual appraisal markings, grievances, investigations and training.

Data coverage and quality have steadily improved, and the Service has invested heavily to develop new HR systems, which are now live and which will produce even more accurate, detailed and timely information. The Review has been given wide circulation internally and is published on the Prison Service website in order to fulfil our responsibilities under the RR(A)A. In 2008, the Review increased its remit and became the Annual Staff Diversity Review. This has the same core objectives as the Ethnicity Review and includes ethnicity as an important characteristic of interest, but has broadened the analysis to encompass the full diversity range – ethnicity, age, gender, disability, religion and belief, and sexual orientation. This will allow us to look at cross-cutting issues rather than look at

the diversity strands in isolation. Although beyond the requirements of the RR(A)A, it is in line with the pending Equalities Bill.

Leadership

The Prison Service has transformed its approach to leadership development, following the launch in 2007 of a new Leadership Qualities Framework. A key part of this is a diagnostic process called ‘Optimising Potential’. Optimising Potential is a senior manager development and assessment process with two principal foci:

- to build senior manager capability through increasing self awareness of strengths and development areas and provision of guidance and resourcing for individual development planning



HMP Brixton

- to increase effectiveness of talent, whole-Service talent management and succession planning through providing top-line capability data

The programme puts all senior managers through a number of psychometric tests and exercises, the results of which are fed back to participants in an in-depth interview which results in a personal development plan. Funds are available to support development activities which arise.

All participants receive a detailed feedback report and a copy of the summary report which is used for central talent management and succession planning purposes. This provides high-quality development support to all senior managers.

Influential advisers

In tandem with the introduction of the Shared Service Centre (SSC), the Prison Service has introduced a new operating model. This is based on moving transactional work out of establishments to the SSC.

Under the new arrangements, each establishment and HQ Directorate has an HR Business Partner. They have a strategic role to improve people management and staff engagement at a local level, and to drive action required to deliver improved outcomes.

HR Business Partners are Senior Management Team (SMT) members so they have influence at the top table. They are accountable – as ‘Diversity Champions’ – for all aspects of staff diversity as part of our broader people management agenda.

Staff support

RESPECT is the Minority Ethnic Staff Support Network for HM Prison Service staff that was launched in 2001. The aim of RESPECT is to assist Prison Service Management in eliminating racism in the Prison Service by bringing staff together, by breaking down barriers, by educating and enlightening, and by challenging those who promote racial disharmony. Facility time is provided for officials, including full-time arrangements in some areas. RESPECT works closely with other organisations and networks that share these aims.

A key function of RESPECT is to provide a Support-Line. This is the initial contact point for staff who may be suffering from racial harassment or discrimination to request a trained listener to support them.

The RESPECT Support-Line is open to all members of the Prison Service. Having successfully embedded staff networks, the Prison Service is now looking at how best to develop this structure and secure maximum benefit from the investment.

All staff in the Prison Service have access to internal occupational welfare support through the Employee Support service (formally known as the Staff Care and Welfare Service). This is an internal service which provides support to staff on Post Incident Care, conflict management through a professional mediation service and general support and advice through a helpline. Staff support is also available from recognised trade unions that have facility time to support staff.

Development opportunities open to BME staff have included positive action schemes

and programmes run by the Home Office and Cabinet Office and the Positive Action Strategy. This will build on the BME Senior Managers Forum which was established in 2006. In 2007/2008 it met quarterly, including holding a strengths-based development workshop for Forum members.

Use of data

In addition to monitoring the effects of recruitment and selection practices through the use of the Staff Ethnicity Review, the Prison Service has also carried out a number of impact assessments on recruitment policies.

Findings confirm that the policies are fit for purpose, with recommendations being used to strengthen compliance with existing policies. The impact assessments have, however, added impetus to work on providing more support to candidates going through the selection process.

However, areas of concern remain, including in the Staff Performance and Development System, where our analysis has identified an unexplained difference in the distribution of the 'Exceeded' marking between BME and White staff. This data was highlighted to all senior managers to ensure that there was a high level of awareness of this apparent adverse impact to inform their key role in the moderating process for the 2007/2008 SPDR process.

However, the 2007/08 data again show a difference between the two groups for the percentage of staff scoring an 'exceeded' marking – 26% for White staff and 18% for BME. Further work will be undertaken to investigate this data.

We have continually monitored our Prison Officer Selection Test and Job Simulation Assessment Centre (JSAC) arrangements and strengthened these procedures to reduce any adverse impact. Results for the JSAC have traditionally shown variations in pass rates for both BME and White candidates, with White candidates tending to have a higher pass rate. Using the more detailed monitoring data that we have collected, it has shown that there is considerable variation within the BME group for both POST and JSAC pass rates. Current work is now looking at strategic methods of tackling the issues that this information has revealed, including looking at options for preventing learning through the FE sector.

The annual staff survey has also proved a useful tool to engage with staff. Information from staff surveys is used both centrally and locally where it forms part of a 'Listen to Improve' programme. Results from the surveys are discussed locally in focus groups to help draw up a Local People Plan.

The 2007 survey showed us that there is very little difference between BME and White staff in terms of being proud to work for the Prison Service (68% and 66% respectively). However, there was a clear difference in belief in regards to the Service promoting diversity (57% and 72%), encouraging good race relations (60% and 75%) and believing that race complaints are taken seriously (59% and 79%).

The 2008 survey again shows little difference between BME and White staff in terms of being proud to work for the Service (67% and 68%). Clear differences

still exist in belief in terms of management promoting equality and diversity in the workplace (60% and 71%) and being treated with fairness and respect (64% and 72%). This is being addressed through the work on tackling unacceptable behaviour and conduct, discipline and investigations.

Embedding diversity in training

Diversity issues are now incorporated in the Prison Officer Entry Level Training (POELT) course. The POELT course includes two specific four-hour sessions to address knowledge of diversity issues and covers disability, race, age and gender issues. A new establishment-based learning objective has been introduced in week five when students meet the Race Equality Officer/Diversity Officer to discuss local roles, issues and procedures as well as meeting and talking with prisoners, including BME and those from other ethnic backgrounds. In week six, trainers facilitate reflection of this objective, and initial feedback has been positive in highlighting cultural issues to students.

In 2007 a DVD was introduced into the POELT diversity training curriculum to give new prison officers an insight into the perceptions of BME prisoners whilst they were in custody. A further DVD was developed in 2008, in consultation with REAG, which provides more focus on race issues, and will form part of a tutorial class-based session when incorporated into the POELT course later this year.

From 1 September 2007, new prison officers are required successfully to complete a Level 3 National Vocational Qualification in Custodial Care (CCNVQ). The eight-week POELT course delivers

all the underpinning knowledge and understanding required to achieve the CCNVQ, and is followed by continuous workplace assessment. Officers must demonstrate competence in a mandatory unit – ‘Promote equality and value diversity of people’ – to achieve their CCNVQ.

From 2002 to 2004, race and diversity issues were monitored as part of the course review process, with guidance being developed in 2003 to assist trainers to thread diversity throughout their course material and delivery. Self-Assessment Reporting was introduced in 2005 to review the provision of training material in curriculum areas. The process, based on the Adult Learning Inspectorate’s Common Inspection Framework, requires training providers to answer five key questions. The questions are broken down in to evaluation points which incorporate race and diversity.

Training evaluation

Throughout the period of the CRE action plan, there has been constant revision and enhancement to our processes and procedures for quality-assuring training provision and for ensuring that race and diversity issues are threaded throughout our core curriculum. A Training Evaluation System (TES) was introduced in 2003 as an integral part of course delivery and curriculum development. Since then this has been further developed as part of the Quality Assurance Framework, which encompasses TES, Self-Assessment Reporting, Business Case and Fit for Purpose submissions and teacher observations. All are an integral part of the quality process and include mechanisms to promote race diversity and equality of opportunity.

In 2005 the Self Assessment Reporting process was developed, requiring training providers to engage in the quality process. Since then other groups responsible for training (including REAG), and the majority of establishments, have engaged in this process voluntarily. This process requires a Self-Assessment Report of training provision to be submitted annually with a Quality Improvement Plan to address any areas identified for improvement. Training providers must answer and provide evidence for five key questions which incorporate how race, diversity and equality of opportunity are addressed.

HR Learning & Development’s Quality Assurance Department (QuAD) provides guidance on the quality assurance process via the Quality Assurance Framework and Quality Toolkit and its Quality Assurance consultants.

The Quality Toolkit which provides guidance on producing a Self-Assessment Report, submitting a Business Case and Fit for Purpose proposal and conducting a teacher observation, includes specific reference to race, diversity and equality of opportunity.

Most recently, under a new Curriculum Gateway process, sponsors commissioning a new or major review of an existing course are now required to demonstrate that race, diversity and equality issues are fully reflected in the proposed learning solution.

All new training courses are also now required to go through the ‘Fit for Purpose’ process to ensure courses meet their aims and objectives. This requires that equality of opportunity, including race, underpins

all the course content, and is embedded in all aspects of the teaching process and the teaching/learning resources.

Where we are now

Targets

85% of establishments met or exceeded the required Race Relations (Staff) Key Performance Target in 2007-08, up from 77% in 2006-07.

BME representation continues to increase steadily across the workforce, with 2,980 (6.2%) declared BME staff in post at end of March 2008, narrowly missing the target of 6.3%. Representation was 3.2% in 1999. The ethnicity declaration rate was 93.74%, which is one of the highest in the Civil Service.

Year	BME Staff	BME Staff Target
2007/08	6.2%	6.3%
2006/07	5.9%	6.0%
2005/06	5.7%	6.0%
2004/05	5.7%	6.0%

Counting rules changed for 2007-08. Staff that do not declare ethnicity excluded from the divisor.

Investigations, disciplinary action, ET findings

The shorter and clearer conduct and discipline policy is being used to address inappropriate behaviour, and training for investigators has been updated. Our Challenge it – Change it campaign tackles overtly the requirements on staff to create a working environment that is acceptable to all. New case management processes within our new Shared Service Centre will improve consistency. We have analysed

Employment Tribunal outcomes to improve our policies, and we are now routinely feeding lessons learned back to HR caseworkers.

A diverse workforce

BME recruitment continues to be above the local BME economically active population in areas where we are recruiting, a trend that has continued since 1998/99. More than one in eight Prison Officer Selection Test applicants (13.2%) were recorded as BME, up four percentage points since 2006/07. The pass rates for both BME and White applicants have increased, by 22% and 16% respectively.

The most recent information covering the 2007/08 financial year shows that, for the last four years, there has been no substantial difference overall between White and BME groups in the proportion of staff being promoted. BME staff now have a slightly higher appointment rate than White applicants (1%), and a higher proportion of BME staff were promoted into the key operational grades of senior officer, principal officer and manager. We have just concluded an evaluation of our 2008 Operational Manager JSAC and the results show that there is no adverse impact. The leaving rate for White staff has remained constant since 2003/04, whereas the leaving rate for BME has fallen. In 2007/08 the gap between White and BME staff leaving the organisation was just 1.3 percentage points, which can be explained by demographic differences.

Effective Personnel Monitoring

Previously paper-based reporting from establishments is being transformed through our investment in our new HR

system, providing better and more comprehensive data on key HR processes. The Ethnicity Review has been expanded to cover all diversity strands – going beyond our statutory obligations.

Leadership

We have moved from almost no development for Governing Governors to structured capability building and transparent succession planning, drawing on data gathered through our Optimising Potential programme.

In 2008-09, the programme will focus on ‘ethical leadership’, including issues concerning race.

Influential advisers

Under the new HR operating model, each establishment and HQ directorate has a professional HR Business Partner on their Senior Management Team. These individuals are also the local diversity champions to bring about culture change within the establishment.

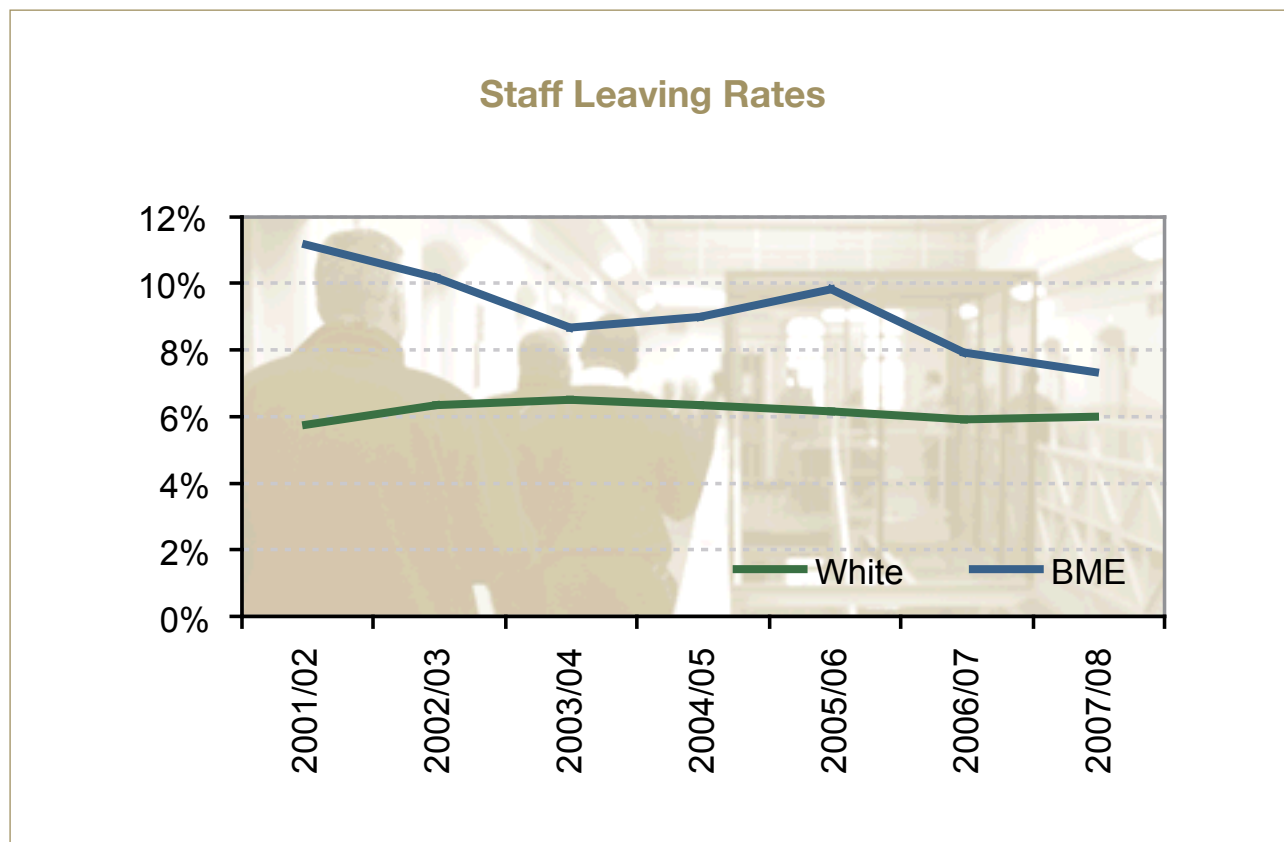
Staff support

Staff have multiple avenues of support for diversity issues. RESPECT, our minority ethnic staff support network, operates a support line as well as organising awareness-building events, and a forum has been created for BME managers.

A professional and confidential Employee Support service offers staff industry-leading post-incident care, qualified mediators to resolve disputes and a 24-hour advice helpline.

Training

Diversity is threaded throughout all course material and its delivery, although it will



take time for the effects of this to translate into results in the field. Good-quality systems are now in place to ensure high standards of curriculum development and training delivery. Ethnicity data on the current Training Administration System is incomplete, despite measures introduced. However, we are investing in a new IT system, Oracle Learning Management (OLM), that will hold training records centrally. This will go live in March 2009 and will be linked to the Oracle HR system which holds staff ethnicity.

As at 30 June 2008, over half of staff nationally had received diversity training in the past three years based on centrally held data, although this masks training which will have impacted on a much higher percentage of staff through locally procured and delivered learning interventions.

What we still need to do

The findings from the Review Team echo what was said in the HM Inspectorate of Prisons report *Parallel Worlds* published in December 2005. This stated ‘it is noticeable that in most of the prisons where we found good practice there was visible robust support from senior managers, and race and diversity were prioritised within the prison’. The comparatively strong leadership was evident in one of the establishments visited by the Review Team and demonstrates what can be achieved. The challenge now facing the Service is to put in place measures to ensure that best practice is universally achieved.

Findings from the Prison Reform Trust work in 2004-5 (detailed below) reported that covert and structural racism were

more widespread causes of concern than blatant racist discrimination. Whilst the Review Team recognised that overt racism was far less likely to occur now, concerns remained about the more subtle forms of discrimination, such as in assessment makings achieved in the Staff Performance and Development Report.

The Review Team considered that improvements in this area would contribute to BME staff confidence that the procedure is used fairly.

Ethnic minority staff had to work in an atmosphere of racist taunting and intimidation

The challenge the Prison Service now faces is to address more subtle forms of racism.

In 2004-5, the Prison Reform Trust, with the support of the Barrow Cadbury Trust, conducted a survey of RESPECT members. On the basis of 394 responses, more than four out of five said they felt race relations were valued in their place of work, and two-thirds judged that race relations were improving.

PRT also interviewed 29 Full members and 21 Associate members. Only five of the 50 interviewed felt that there had been no improvement. The remainder said there had been 'some or little' improvement.

The Review Team found that there was some evidence that racism will not be tolerated, and that this message is now clearer to staff and managers. Accordingly,

the Review Team believe there have been some recent changes which have impacted upon the environment, making it less likely that overt racism would occur.

The Review Team feel that the challenge the Prison Service now faces is to address the more subtle forms of racism, which often cannot be resolved through formal management processes. To do so, cultural change must be effected at all levels, creating an atmosphere where inappropriate behaviour is regarded as totally unacceptable.

The Service is moving to a position of being more focused on outcomes rather than being process driven, but there is still more to be done. The recent investment in leadership development programmes, and investment in professional HR Business Partners as senior managers at each prison, will be key to this work.

The onus on ethnic minority staff to make complaints about discrimination and harassment

The Review Team found evidence that managers are more willing proactively to tackle overt racism. However, covert racism is still reliant on either the willingness of the 'victim' to come forward or the capability/approach of individual managers. In the establishments visited by the Review Team there was little evidence that all staff were encouraged to make complaints if they witnessed discrimination or harassment. A White member of staff stated that, generally, the first person who speaks out is normally the fall guy.

The PRT survey received responses from 117 BME staff members, who reported

that they were more likely to experience racism from their colleagues than from managers or prisoners. Half of those who had experienced racism decided not to report it. The Service accepts that it needs to build the confidence of staff to be able to speak out when they witness or are subject to unacceptable behaviour. The Tackling Unacceptable Behaviour training programme must be monitored closely to ensure it has the anticipated impact.

The training curriculum has been subject to major improvements, but the Prison Service now needs to use this infrastructure effectively to building the capability of all managers to ensure that there is effective and consistent management across the Service. Further work is also required to ensure that full training data is properly collated and this is being addressed through the introduction of the Oracle Learning Management IT system.

Complaints not taken seriously or properly investigated

In one of the establishments visited by the Review Team, there was evidence that serious complaints of overt racism had been properly addressed. There was also evidence that staff would know where to go if they wished to make a complaint. However, negative comments made by staff – such as that managers do not follow things through – suggests that confidence in the complaints system is still likely to be low. This view was further supported by another BME member of staff who stated that there is little confidence in the outcome if you complain about a racist incident.

Monitoring of employment functions is an area where the Service has been hampered

by reliance on paper or electronic returns needing to be completed by establishments and other Prison Service locations. This is being addressed through the introduction of the Prison Service's Shared Service Centre (SSC) in Newport, using Oracle software to improve the accuracy and consistency of information and importantly allow greater scrutiny of data at all levels of the organisation.

This will greatly enhance the ability to capture data and analyse conduct, discipline and grievance information to identify emerging issues at local, area and national level. A major gap in our current monitoring systems is reliable data on reasons why staff leave the organisation.

An exit survey exercise piloted in the London Area between 1 April 2007 and 31 March 2008 did not produce conclusive results, but the consistent message from BME and White staff was that they were not leaving because of discrimination or harassment but general concerns about pay and career prospects. Work is in progress to develop an Exit Survey administered through the Shared Service Centre.

Staff victimisation

The Review Team found this difficult to measure from the limited visits made. However, particularly in the mixed staff groups, there seemed to be a reluctance to speak up on this issue, particularly amongst those BME staff present.

One member of BME staff in the mixed group stated that the issue always comes back to you even if you didn't raise it yourself, and you are then made to feel

that you are in the wrong. Participants were given the option of contacting a member of the Review Team outside the visit and this was taken up by staff at the establishments visited.

All the staff that took advantage of this offer were from BME groups, strengthening the view that victimisation is still a problem. From this contact the Review Team formed a view that staff were concerned about possible victimisation if they were to make a complaint. The Review Team also received feedback of actual victimisation against an individual who had made a complaint.

The strategy outlined earlier of strengthening leadership and management input to the involvement of HR Business partners 'Challenge it – Change it' campaign and the new whistleblowing strategy should once embedded begin to tackle this important area.

The Service places great importance on challenging unacceptable behaviour and is determined to root out those who persist with such behaviours. Any actual or perceived victimisation is totally unacceptable and the Service will be following up the specific instances highlighted by the Review Team to see if the matter had been raised with managers and with what outcome.

The Service knows that confidence cannot be gained from BME staff if the service fails to retain and develop its BME staff so that they can progress to senior management positions and act as suitable role models for others. Overall the Prison Service has continued to recruit above the local

BME economically active population, but representation is confined to junior grades and, five years on from the CRE report, there is still no visible minority ethnic Governing Governor. This will be addressed as part of the Prison Service Talent Strategy launched earlier this year. Amongst other things, the Strategy aims to:

- secure a more diverse workforce across HMPS and increase representation of under-represented groups at all levels, and in particular at senior levels
- retain existing talent within HMPS by preventing or slowing down the drain of talent to external organisations

A key strand of the Talent Strategy is the development of a Positive Action Strategy; this will expand and build upon those initiatives that are already in operation. We are also looking at targeted direct recruitment into more senior positions.

Senior managers' failure to discipline perpetrators of acts of racial discrimination, harassment and victimisation

As mentioned earlier in this chapter, since the CRE investigation, 26 members of staff have been dismissed for racist offences. Similarly, at one of the establishments visited by the Review Team, they found clear evidence that overt racism is being taken seriously with strong disciplinary action being implemented by management.

At the other establishment there was little evidence of disciplinary action being taken, however this should be considered alongside a strong denial that there were any incidents of race discrimination or harassment taking place.

Failure to act on ET findings

The Review Team were unable to measure this area in the time allocated for the review. However the Service has improved its systems for learning from ET findings through early warning systems and management master classes as detailed earlier.

Failure to deal proactively and systematically with racial discrimination

The Review Team found that there was evidence at one establishment that overt discrimination was being dealt with in a proactive and systematic way. They did not find evidence of an overall proactive and systematic approach to race discrimination that pervades all levels in the limited number of establishments visited. In fact, the strong denial of the existence of any form of race discrimination at one establishment, they believed, could possibly preclude the application of a systematic approach.

Review Team overview on progress

The evidence the Review Team was able to gather from existing documentation, discussions with managers and focus groups with staff was restricted by the small sample, e.g. two prison establishments and contact with a relatively small number of staff. The Team felt that this gives rise to concerns as to how the evidence found may impact on the two establishments visited.

The Review Team therefore considered that it would be prudent for the Prison Service further to explore these issues with a more representative sample which would provide

a more realistic evidence base of common practice.

In general, the Review Team considered that fair progress has been made in recent years in relation to policy and procedure, and most staff are aware of these changes. However, a majority of staff in the focus groups felt that change was directly related to specific individuals rather than an overall change in culture – for example, a BME member of staff commented that, if the Governor left, he would be worried about things returning to how they were before.

The Review Team recognised that there is much more to do to realise the cultural change that is essential if the Prison Service is fully to address the CRE failure areas and to implement best practice on the equality and diversity agenda. The Review Team has concluded that the Prison Service must now build on the transactional progress that it has made in order to implement fundamental transformational change, engaging with its entire workforce to make this a reality.

In conclusion, the Review Team's overall finding of fair progress in some areas reflects an organisation that has largely concentrated on building the infrastructure and the processes needed to embed cultural change. This chapter has described this journey and made clear the Service's recognition that although much has been achieved for staff, more needs to be done. In this spirit, the Service fully accepts the Review Team's conclusion and commits to taking this work forward.