



CROWN PROSECUTION SERVICE

# Evaluation of the West Yorkshire Crown Prosecution Service Scrutiny Panel

Final Report  
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# 1. Executive Summary

- CPS West Yorkshire (CPSWY) established a Race Scrutiny Panel in November 2004 with the overall aim of maintaining the trust and confidence of race hate crime panels in the area and, ultimately, of the diverse communities which it serves by increasing accountability and transparency in the decision making process.
- CPSWY tackled the establishment of the panel in an organised and focussed way, setting up Terms of Reference for the panel in May/June 2004 and formally setting out the roles and responsibilities of CPS Staff and the independent External Facilitator at an early stage. Standing Orders were developed after the July 2005 meeting as the need became apparent at Panel meetings. However these documents do not cover all aspects of the constitution of the panel. A major omission is that the composition of the panel appears nowhere to be formally defined. This may be of importance to replication of the panel elsewhere in the country.
- The Race Group panel members resulted from an invitation to the five main race hate crime organisations in West Yorkshire to nominate a representative. While it is generally accepted that this was a good way of getting the panel off the ground quickly, reservations have been expressed as to whether the panel is truly representative of the BME community and whether some more democratic process should be used for the future.
- CPSWY established the post of Independent External Facilitator (IEF) to assist the smooth operation of the panel and to ensure that the panel could be regarded as independent rather than CPS dominated. The principle of an independent facilitator and chair has been generally welcomed. CPSWY appointed the IEF as a person trusted by CPS and thought to be acceptable to communities of interest. While all were happy with the person selected and his fulfilment of the role, some felt that there could have been consultation about the appointment process.
- At the suggestion of the panel, it was agreed that a police representative should be invited to join the panel to advise on police matters in connection with cases considered. While all feel that it is important to have police

representation on the panel, there are some problems with definition of the police role and the extent of police responsibilities to a CPS panel.

- The Chief Crown Prosecutor (CCP) has taken a lead role in the establishment of the panel and has been active in accepting responsibility for the quality of the casework considered by the panel and in taking forward lessons learned from the panel. This high profile involvement is important to the success of the panel in that race representatives can thereby be assured that there is capacity for action as a result of panel reviews. This will be an important factor in replicating the WYCPS Scrutiny Panel elsewhere.
- CPSWY recognised that members from race hate crime organisations were unlikely to have had legal training or be familiar with CPS procedures. An induction training package was therefore devised and delivered. Such training is important to the success of the panel, as witnessed by the lack of confidence of a later replacement panel member who had not had the training. With the best of motives CPSWY gave the panel members essentially the same race training as received by CPS lawyers. However, some panel members felt unhappy with the detail and depth of the training, and would have preferred a more easily absorbable overview, at least initially. There are also issues regarding a need for ongoing training.
- There have been six panel meetings to April 2006, all of which have been supported by the race hate crime representatives, although one district has not been represented for a number of months following the resignation of its member. Because of occasional problems in achieving a quorum and a perceived need for continuity of representation, a suggestion has been made that panel representatives could usefully have deputies.
- Case files for review are selected by race group panel members, a factor important in achieving panel ownership by these representatives. The case file documentation is presented to the panel at the meetings and the members guided through the files by CPS lawyers. It has been felt that for a truly independent review, the case files should be available to panel members for examination before the meetings. While it is accepted that the files cannot leave CPS premises, it is suggested that files could be made available one week before the meeting at CPS offices. It has also been found that it is



important for CPS lawyers to be involved in preparation of the files rather than this being left to administrative staff.

- The practice established by the panel, although not formally defined in Standing Orders, is for consideration of five cases per panel meeting. This has been felt on occasion to be too many for thorough review. It is therefore suggested that there should be some flexibility, with cases being held over to the next meeting if necessary.
- The meetings are minuted and copies sent to all panel members. There was general satisfaction with the content of the minutes but some concern about their timely production and a failure to action minuted items on occasions. CPSWY have already taken action to improve these matters.
- After each meeting a briefing note is sent to panel members and all CPS lawyers by email, highlighting issues raised through the scrutiny process. These have been an effective way of publicising throughout CPS the lessons learned from the scrutiny process, although the simple email has needed reinforcing by discussion at team meetings. There are some issues about the timing of the notes. The briefing notes have also served a function of providing evidence to the race group panel members that CPS have taken the issues on board. For them it is important that interim briefing notes are produced reporting progress when continuing case investigation precludes a finalised note.
- Personal feedback is made to all lawyers whose cases have been reviewed. Lawyers at a focus group organised by the evaluators viewed this as a useful way of learning so long as the process did not become a witch hunt.
- There have been proposals for other ways of developing an interaction between race group representatives and CPS lawyers in general which would merit consideration.
- If the WYCPS Scrutiny Panel is to be effective in promoting the message to the BME community that the CPS wishes to be accountable and transparent, it is vital that race group panel members feed back to their parent organisations and to the community the existence and role of the panel. It has not been clear to the evaluators that this has happened universally, certainly so far as

community members not involved in the race hate crime organisations are concerned.

- Issues identified by the panel have been generally more concerned with general casework handling than with any specific problems in relation to racially aggravated crime. Issues in relation specifically to racially aggravated cases include a tendency to prosecute evidentially weak cases because of an over emphasis on the racial aspects, the importance of context and the appropriate use of other forms of intervention than prosecution in some cases and the need for helpful and clear feedback to the victim rather than over use of standard letters.
- The WYCPS Scrutiny Panel has the potential to impact on CPS accountability, decision making and handling of racially aggravated crime. Concerns about representativeness of the community and feedback to the community were raised in connection with accountability. In relation to decision making the panel must be seen in the context of the overall CPS drive for improvement in casework handling. There is scope for further development through the panel of CPS learning opportunities in relation to cultural issues.
- The WYCPS Scrutiny Panel has strengthened existing partnerships between the CPS and the race organisations participating. There is scope for closer working in future. Race representatives feel that they have experience and skills to offer which CPS could easily access through the panel, although resource implications for voluntary organisations need to be considered.
- It is unlikely that the WYCPS Scrutiny Panel will have a significant impact on BME confidence in the criminal justice system or engagement in the criminal justice system unless greater efforts are made to publicise the panel and the CPS generally.
- The evaluation has generally been welcomed but a suggestion has been made that a regular progress review would be advantageous.
- A number of key points for replication of the scrutiny panel elsewhere have been identified.

## Recommendations

### (a) Panel documentation

- CPS should ensure that standing orders are expanded to cover all important constitutional and operational issues.

### (b) Panel Membership and meetings.

- There could be a more democratic process for the appointment of panel members. Concerns raised by Panel members on this issue should be taken seriously.
- The CPS should ensure that panel membership is truly representative of all the BME groups in the county, including organisations or groups representing hard-to reach groups, faith groups and young people.
- Efforts could be made to seek a community group representative with legal training or an independent legal advisor, to sit on the panel, as an independent expert. This could be in the form of a non-CPS criminal lawyer.
- Other CPS lawyers may be invited to the Panel, as observers.
- Members of other criminal justice agencies may be invited to attend as observers; for example, local magistrates.
- As suggested by the IEF, the Panel could consider having additional meetings, to discuss general issues.
- Provision of ongoing training should be considered as panel members identify needs arising from their work or new developments in law or the criminal justice process.
- Appointment of deputy race representatives could be considered. These would stand in for regular representatives on leave or off sick in order to ensure representation of all five areas of West Yorkshire at all panel meetings. This would also help to maintain continuity of representation if panel members left the panel for any reason. It would also serve to widen knowledge of the workings of the panel.

(c) The Independent External Facilitator

- The role of the IEF should be clarified with regard to the executive functions of Chair.

(d) The role of the police representative

- The role of the police representative should be clarified with regard to the scrutiny of individual cases. If the role of the police representative is to provide explanations of individual police case handling, the casework should be provided to the police in advance of panel meetings. If the police role is to advise on general issues only this should be made clear. The extent to which the police are expected to provide written feedback to the panel should also be clarified. Either standing orders should be amended or it should be ensured that the police accept such a responsibility.

(e) Panel operating procedures and meetings

Case Files:

- The CPS should consider making case files available to be consulted by Panel members on CPS premises, one week before meetings. This might increase Panel members ability to discuss issues more effectively and alleviate their fears of being led by the CPS. A more thorough reading of the files might provide the opportunity for race group representatives to introduce a more community-oriented perspective as opposed to primarily responding to a legal one.
- The Panel should not feel bound to consider a specific number of cases but review as many as can be thoroughly handled within the time available. It is envisaged that where panel members came to the meetings with some acquaintance with the cases to be discussed, the proceedings are more likely to be faster and more fruitful.

Minutes:

- It is important that the recent plan to ensure that minutes are produced and actioned promptly is implemented

Briefing Notes

- It is important that briefing notes are produced without delay so that cases are still fresh in lawyers' memories.
- The briefing notes could include more advice on cultural issues of which CPS should be aware when dealing with race hate crimes and the reasons why those cultural issues are important.
- From the viewpoint of race group panel members, where there are unresolved issues which preclude the production of a full briefing note, written feed back should be given to the panel members on progress to date.

(f) CPS case handling

- CPS should continue to take forward the issues identified by the panel on case handling, in order to improve CPS performance, maintain the credibility of the panel and raise public confidence in CPS prosecution of race-hate crimes

(g) Community engagement

The role of the race-hate organisations

- Race group representatives should continue to make active efforts to feedback to their parent organisations and investigate the potential for onward transmission of information to the community.

Publicity;

- Efforts should be made to publicise the Panel in the community and promote it as part of CPS community engagement strategy. If the panel is to impact significantly on BME confidence in the CJS and on community engagement,

Panel members need to accept the responsibility for being proactive in promoting the Panel in their various organisations and in the wider society. CPS needs to build on the relationship it has developed with those panel members and consider how it can help those members to ‘spread the word’.

(h) Panel development

The suggestion by panel members that the Panel could evolve into a wider LCJB Panel, examining cases “from the cradle to the grave” may be considered.

(i) Evaluation

- The CPS should consider the possibility of a further evaluation of the Panel, to assess its impact on communities and other affected groups. As suggested by a panel member, the Panel “should be reviewed on a regular basis”.

## 2. Introduction

### **2.1 Background**

As a result of the Race Relations (Amendment) Act 2000, the Crown Prosecution Service, together with other public services, has a general duty to promote race equality. As part of that duty the CPS set out and published in 2002 a Race Equality Scheme, subsequently updated in 2005. One of the key race equality issues identified is the monitoring of charging decisions.

In 2003, partly to demonstrate commitment to promoting race equality in accordance with obligations under the Act as set out in the Race Equality Scheme, the CPS launched a policy statement and published “Guidance on Prosecuting Cases of Racist and Religious Crime”. Other factors influencing the preparation of the policy statement included the target in the Criminal Justice System Public Service Agreement for 2003 and beyond to improve levels of confidence in the Criminal Justice System and increase year on year the satisfaction of witnesses, whilst respecting the rights of defendants. A specific influence is the government’s commitment to the delivery of fair services for BME communities as set out in its strategy “Improving Opportunity, Strengthening Society” and reflected in the Public Service Agreement Target 2e which requires that “the percentage of people from black and minority communities who think that one or more CJS agencies would treat them worse than people of other races is lower than the baseline year (2001)” (Home Office 2005). A further factor was the recommendations made by Her Majesty’s Crown Prosecution Service Inspectorate in the Thematic Report on Casework having a Minority Ethnic Dimension (April 2002) which are designed to improve the way CPS deals with such cases. The intention was to make clear a commitment to dealing effectively with this type of offending and let the community know what to expect from the CPS.

## **2.2 The CPS and 'Race'**

From its inception in 1985 and start of business in 1986 the Crown Prosecution Service (CPS) declared its commitment to equal opportunities but was slow to implement this in practice. From the mid 1990s, management attention began to focus on issues of equality and diversity as a result of the concern expressed by the Commission for Racial Equality about issues raised by Black and minority ethnic (BME) CPS staff and community concerns about the way in which the CPS prosecuted crimes. The CPS agreed to an independent enquiry led by Sylvia Denman. The Denman Report in 2001 found that the CPS appeared to be discriminating against ethnic minority defendants by failing to correct the bias in police charging decisions and allowing a disproportionate number of weak cases against ethnic minority defendants to go to trial. The report suggested that lack of vigilance was the issue rather than conscious discrimination but that this could give rise to institutional racism.

The CPS commissioned a Diversity Monitoring Project in summer 2001 which resulted in a report in October 2003 (John, 2003). The report reviewed cases between September 2000 and August 2001 and suggested that Black and Asian defendants may be brought to trial on a less sound basis than white defendants. The report found poor quality in endorsements relating to the application of evidential and public interest tests, that African Caribbeans were more likely and Asians less likely than whites to have their cases discontinued, and that cases involving a racial dimension were slightly more likely to fail than cases as whole and within those, where the defendant was Asian or African Caribbean, the failure rate was much higher. Issues identified in relation to case studies included:

- General failure by police and CPS to properly acknowledge and/or record racial aggravation even when there was clear evidence to have reached such a judgement
- Acceptance by police and CPS of lesser charges not including the racially aggravated element



- CPS downgrading of racially aggravated offences put forward by police
- High number of discontinued and failed cases
- Failure to complete Racial Incident Data Sheets

The report commented:

“Some CPS areas demonstrated evidence of management scrutiny of prosecutors case management and file review practices. In those Areas prosecutors handling of files and recording of reasoning behind decisions is highly commendable. In some CPS Areas such good practice is sustained across all CPS branches while in others there are marked variations”.

The report pointed to the importance of a sound management focus of Chief Crown Prosecutors (CCP) in the quality of service delivery and made a number of recommendations for processes to be put in place to improve the prosecuting of racist and religious crime including the appointment of specialist prosecutors to oversee prosecution of racial and religious crime.

The CPS Race Equality Scheme, published in 2002 set out key steps planned by CPS 2002-5 towards ensuring policies, service delivery and employment systems eliminate unlawful racial discrimination, promote equality of opportunity and promote good relations between those of different racial groups. In 2003, the CPS, partly to demonstrate CPS commitment to promoting race equality in accordance with obligations under the Act as set out in the Race Equality Scheme, launched a public policy statement on the Prosecution of Racially and Religiously Aggravated Crime. Other factors influencing the preparation of a policy statement included the target in the Criminal Justice System Public Service Agreement for 2003 and beyond to improve levels of confidence in the Criminal Justice System, including that of black and minority ethnic communities, and increasing year on year the satisfaction of witnesses, whilst respecting the rights of defendants. A further factor was the recommendations made by Her Majesty's Crown Prosecution Service Inspectorate in the Thematic Report on Casework having a Minority Ethnic Dimension (April 2002)

which were designed to improve the way CPS deals with such cases. The intention was to make clear a commitment to dealing effectively with this type of offending and let the community know what to expect from the CPS. The 2003 policy on prosecution of Racially and Religiously Aggravated Crime was informed by extensive community engagement and was supported by a training programme for prosecutors, to enhance their understanding of the context within which such hate crime occurs. To support prosecutors, CPS produced in July 2003 “Guidance on Prosecuting Cases of Racist and Religious Crime”, providing advice in some detail on relevant legislation, case decisions and issues and procedures for consideration with regard to victims and witnesses. The guidance includes a checklist for prosecuting racist or religious crime.

By the time a stocktake report was produced in 2004, the CPS had made significant strides in addressing equality issues (CPS Equality and Diversity Unit, 2004). The CPS Inspectorate had found improvements since its two years earlier inspection in levels of awareness, commitment to monitoring and in cases where charges are inappropriately reduced. However, there were still weaknesses in data collection and monitoring systems, in communication of policy to staff and in charging decisions. The report noted that “the statutory charging initiative creates opportunities which must be taken up to overcome historic issues of inappropriate reductions in charging in relation to hate crime and overcharging of minority ethnic defendants” and that with “racially and religiously aggravated crime, CPS needs consistent implementation, moving beyond good engagement and policy intent. There is a priority need to address training, performance monitoring and the role of specialist coordinators”. There was still a “need to improve performance on the handling of racially and religiously aggravated offences”.

In May 2005 a revised CPS Equality Scheme 2005-8 was published (CPS 2005a), and identified key race equality issues including:

- systematic equalities monitoring of charging decisions, together with analysis and publication of data
- ensuring advice given to police and decisions made on cases are free from bias or discrimination

- ensuring correct advice is given and correct decisions made under Statutory Charging
- effective communication of CPS decisions to victims and listening to their concerns and those of diverse communities.
- fair, independent, objective review and decisions on cases and correct application of the Code for Crown Prosecutors.
- ensuring that the application of the Code is free from bias or discrimination, is applied with respect to human rights and equalities and that safe convictions are achieved for guilty defendants.
- effectively supporting victims and witnesses of crime including those of hate crime.
- equalities monitoring of take up of services such as those for victims and witnesses.
- equalities monitoring of service user satisfaction.

### **2.3 CPS West Yorkshire and ‘Race’**

CPS West Yorkshire (CPSWY) has recognised the importance of race issues in the area in view of the higher than national average proportion of non-white population of 11.4% (Census 2001). The CPS Inspectorate’s Report on CPS West Yorkshire (CPS 2004), found that charging levels were generally appropriate, positive action had been taken to reduce the numbers of ineffective trials with rates better than the national average. Performance in prosecuting cases alleging racist crime was, however, inconsistent and it was thought that this would benefit from greater dissemination to staff of information gained from community engagement. Recent high profile cases had been handled well. Those in the file sample which had been dealt with by more experienced lawyers were generally approached robustly and with an understanding of the context, although in some cases decisions were taken to reduce the levels of the charges that inspectors would not necessarily have taken. The Area had made substantial progress in engaging minority ethnic communities and their representative groups but there was a need for effective dissemination of information gained from these initiatives to better inform casework decision making and increase awareness of staff.

In May 2004, CPS West Yorkshire (CPSWY) established a Race Scrutiny Panel, as part of its approach to improving performance and management with regard to race and hate crimes. The Panel is also intended to contribute to the CPSWY's efforts to raise public trust and confidence in the agency, especially in the BME communities of West Yorkshire, to raise awareness generally and promote understanding in the local communities of how the CPS works.

This document is the final report into the evaluation of the CPSWY Race Scrutiny Panel by the University of Hull.

## **2.4 The Evaluation**

The Race Scrutiny Panel started operation in November 2004 and had therefore been in existence for just over a year at the time of the beginning of the evaluation in January 2006. The Panel is unlikely to have measurable outcomes in terms of its aims in this time scale. The evaluation has therefore concentrated on the processes of panel functioning and the potential to impact on the desired outcomes rather than measurement of such outcomes. The evaluation considered not only what processes have been implemented but the mechanism by which and the circumstances in which those processes may be expected to produce the desired outcomes (Pawson & Tilley, 1997).

The specific requirements of the evaluation specification were to:

- Assess the effectiveness of both the methodology and process of scrutiny adopted by the panel, and make recommendations for improvement.
- Research the existence of comparator models of Scrutiny elsewhere in public service and identify good practice
- Assess the extent to which the role of the external facilitator
  - Meets the objectives set out within the role
  - Provides a useful function to the scrutiny process

- Is affected by the appointment process and tenure of the role. Possible alternatives and their implications are required.
- Explore the potential of the Scrutiny Panel to improve Community Confidence in the CPS/CJS.
- Assess the extent to which the panel is a genuine method of community engagement/involvement.
- Explore the extent to which the process of scrutiny could be extended to look at other types of casework e.g. Domestic Violence and Homophobic Crime.
- Explore the perceptions of District Crown Prosecutors of the role and impact of the Scrutiny Panel as a method of community engagement and public accountability in decision making.
- Identify key points for the CPS to consider in the event that it decides to replicate Scrutiny Panels in other areas.

## **2.5 Methodology**

The following methods were used for this evaluation:

**2.5.1. Documentary analysis:** Documentation concerning the setting up of the Panel and its appointed operating procedures were examined. In addition minutes of panel meetings and other records of its processes were reviewed.

**2.5.2. Observation of panel meetings:** Two panel sessions were observed on 24 February and 26 April. These provided an independent view of panel proceedings and assessment of the conduct of the scrutiny process.

**2.5.3. Interviews:**

With panel members. Face to face interviews were carried out with all members of the panel in order to assess their views on the value of the panel and the validity of the procedures followed. The interviews also explored the perceptions of panel members of the role and impact of the Scrutiny Panel as a method of community engagement, transparency and public accountability in decision making. The interviewees included four of the potential five race/hate crime group representatives<sup>1</sup>, the independent facilitator who chairs the panel

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<sup>1</sup> The fifth from Kirklees REC declined to be interviewed.

meetings, the police representative, the Chief Crown Prosecutor and the two race specialist lawyers on the Panel.

With other members of the BME community. Telephone interviews were conducted with other members of the race groups from which panel members are derived and other community representatives to assess their views on the panel and the extent to which it meets its objectives in the communities.

**2.5.4. A focus group with CPS lawyers.** The group included CPS lawyers whose cases had been reviewed by the panel and others who had had no close experience of the panel. The aim of the focus group was to assess the CPS lawyers' perceptions of the panel and its usefulness in improving CPS delivery and decision-making.

**2.5.5. A desk based literature review** of the use scrutiny in public service and by other CJS agencies, especially in relation to race hate crimes.

## **2.6 Structure of the Report**

This report is arranged in a number of sections. **Section one** is the Executive Summary and **Section two** the introductory chapter. **Section three** reviews the limited literature on the use of scrutiny in public service and especially in the criminal justice system (CJS). The review identified examples of good practice established by local authority scrutiny processes that may provide transferable lessons to the CPS. **Section four** describes the setting up of the Scrutiny Panel and examines the documentation relating to its structure and aims. It provides comments by panel members on set up processes, panel representation and training of lay panel members. In addition, the section includes comments by the panel members on problems recognised and the improvements that they thought might be made. **Section five** considers the panel operating procedures and how they have been implemented, describes early problems and ways in which these have been overcome and makes suggestions for further improvement based on the interviews. **Section six** discusses principal issues identified by the panel and ways in which these are being taken forward. **Section seven** considers the potential of the Panel for impacting on CPS work and on relationships with the BME community. **Section eight** summarises conclusions and recommendations for the improvement of the CPSWY Scrutiny Panel

and **Section nine** identifies key points to be considered in replication of the CPSWY Scrutiny Panel elsewhere in the country.





## 3. Review of Literature

### 3.1 Introduction

In 2004 the National Audit Office in its report “Delivering Public Services to a Diverse Society” found that while many government bodies were making progress towards addressing the challenges of providing services towards diverse customers, there was scope for improvement. It was recommended that one way of working towards that improvement is through focussing on:

*“Evaluating the delivery of services to diverse customers using multiple methods that involve customers and draw on lessons from government bodies’ own diversity initiatives and that of others” (Page 9)*

Local government has used the process of scrutiny for a number of years and has more recently applied the principle to race issues. For example Southampton has established a Race Scrutiny group composed of community representatives with the remit to evaluate the Council’s Race Equality Scheme. Lambeth Race Scrutiny Commission was set up to assess the progress made by the Council in its duty to promote racial equality.

### 3.2 Scrutiny in Local Government

Scrutiny is often used in Local Government to refer to a local select committee with a specific task to review or examine a local issue or problem in detail and provide recommendations for improvements. This has been a traditional method of bringing about policy change in local government. Local government scrutiny panels can look into any issue of local concern, from the enforcement of litter (see for example, North Lincolnshire Council, 2005), to inquiry into anti-social behaviour, urban regeneration; road safety and public protection (see for example, Leeds City Council, 2003; Derbyshire County Council, 2005; City of Nottingham, 2006)

There is active government support for scrutiny in local government. The government believes that scrutiny committees provide the mechanism, by which real accountability can be delivered, based on a sound knowledge of the facts and the alternatives. In a speech delivered at the annual conference of the Centre for Public Scrutiny, the Minister of State for Local Government and the Regions (Mr Raynsford) said:

*“Scrutiny is about examining alternatives, analysing the decision making process [and] feeding in new ideas into policy. It is about assessing how policy has actually impacted on local people in practice. Scrutiny enables true accountability to take place, by making people aware of what the options and alternatives are. [ ] Where local communities have been intimately involved, constantly updated on information, and have contributed their own views, there has been significantly more progress and much better prospects of lasting improvements. It is no longer enough to impose top-down change on voters; they have to be involved at the grass roots. [ ] People need to know how decisions are taken” (Raynsford, 2003)*

As part of its new models of governance, the government brought into existence new types of body such as the GLA, with a single executive mayor and an assembly whose role is to scrutinise. The GLA is already up and running, and is believed to be setting a good example in scrutiny. In 2003, the government proposed to set up elected regional assemblies with a strong emphasis on engaging stakeholders (Cabinet Office, 2002). This idea has since been abandoned.

However, the government is convinced that the use of scrutiny panel is an approach to local government operations that appears to be producing good results. According to Mr Raynsford:

*“There is no question that this is the way forward. The research led by Professor Gerry Stoker on evaluating new council constitutions suggests a strong correlation between those councils rated as having*

*both strong scrutiny and those with high CPA scores. While we cannot yet say that this is a case of direct cause and effect, it is certainly worth thinking about” (Ibid: 2003)*

Scrutiny provides a form of democratic representation that has the potential of:

*“Providing democratic representation and a new political voice; giving regional stakeholders a clearer decision-making framework to engage with, improving delivery by ensuring better co-ordinated government at regional level and promoting sustainable development and improving quality of life” (cited from Your Region Your Choice: Revitalising the English Regions, 2003, p. 11)*

According to the Centre for Public Scrutiny (2005c), it is increasingly clear, that scrutiny can achieve more than an improved accountability relationship. It can also drive improved services, informed by public needs.

Mr Raynsford concluded:

*“We are still at the beginning of local government scrutiny. The difficulties local authorities still face are clear. But so are the opportunities which scrutiny presents. Already we are noticing improvements to scrutiny over time. I am sure that with the continued commitment of councillors, and the support of the Centre, scrutiny can reach its full potential. And by doing so, it will help to re-energise our democracy.”*

### **3.2.1 Good Practice in Local Government Scrutiny**

As scrutiny has been used in local government for some years, there has developed a body of literature around good practice. Some of the factors identified as important for effective scrutiny include:

### **3.2.1.1 *The qualities and skills of panel members***

In a report published for the Office of the Deputy Prime Minister (ODPM), Snape, Leach and Copus (2002) suggested that one of the pre-conditions for effective scrutiny is “active and enthusiastic engagement of panel members with appropriate skills and knowledge”. This disaggregates into a need first for panel members to be enthusiastic, to prioritise panel work and actively feed back to their constituents issues discussed and changes recommended. Further, panel members must have appropriate skills and knowledge. Where specialist knowledge is required, the obvious route would be by training. Centre for Public Scrutiny, in its 2005 report (CfPS 2005a), specifically recognised the particular need for ongoing training and support for representatives of voluntary organisations because of a potential lack of capacity.

### **3.2.1.2 *Inclusive approach***

Both Snape, Leach and Copus (2002) and the CfPS (2005b) emphasise the importance of inclusive panel representation. The view expressed is that all stakeholders should be drawn in, including seldom heard and disadvantaged groups. The CfPS report makes the point that lack of capacity, resources and time may prevent voluntary organisations and particularly community groups from participating and that availability of financial support through expenses or allowances should be considered.

### **3.2.1.3 *Responsive agency***

Snape, Leach and Copus (2002) suggested that further pre-conditions for effective scrutiny are a responsive executive, willing to take on board the panel findings and a supportive senior management.

### **3.2.1.4 *Understanding of the scrutiny process***

Snape, Leach and Copus (2002) indicated that a further pre-condition for effective scrutiny is an understanding of the scrutiny process and identified a need for publicising the work of the panel with partners, the public and the media. The report from the CfPS conference report (CfPS 2005b) reiterated a need for feedback, for

keeping people informed. The CfPS Overview and Scrutiny guidance for fourth option councils in 2004 also emphasised a need for clarity of role to members, officers and the public.

#### **3.2.1.5 *Transparency and accountability***

Snape, Leach and Copus (2002) considered that the process of scrutiny should work in a transparent way where it is clear to all how the scrutiny panel works and that the panel should demonstrate accountability. The CfPS (2005a) also reiterated these factors.

#### **3.2.1.6 *Chairmanship***

Snape and Taylor (2001) pointed to a need for strong chairmanship and the development of a critical friend relationship between the chair and executive and officers. The CfPS (2005a) also suggested that the quality of chairmanship is crucial to achieving dialogue and ensuring that the scrutiny process is open and accessible to all participants.

#### **3.2.1.7 *Workload***

Snape and Taylor (2001) pointed to a need for realism in the number of issues considered because of the constraints of time. They recommended that panels should start small and work up with experience.

#### **3.2.1.8 *Panel Ownership***

Snape and Taylor (2001) took the view that scrutiny members need to take a lead in selecting the panel's work and that "Scrutiny will only ever work if it is owned and led by the members". The CfPS (2005a) also recommended that papers should be available in time for adequate preparation.

### **3.3 Scrutiny in Criminal Justice**

Scrutiny has also been part of the operation of the criminal justice system in the UK, the police having a longer history of the use of scrutiny than the other agencies. However, the focus of criminal justice scrutiny has traditionally been about the need for local accountability rather than the need for transparency; and the extent of local participation in them is minimal, the more so as many are set up by central government. Essentially, they are executive scrutiny structures, motivated, in most cases, primarily by the drive for financial accountability.

However, there is evidence of increasing use of non-executive scrutiny methods by criminal justice agencies as a way of involving customers in the evaluation of service delivery. The Centre for Public Scrutiny published examples of scrutiny reviews that have made an impact on the delivery of public services. The list included criminal justice agencies (CfPS, 2005c). For example:

The Metropolitan Police Authority scrutiny of rape investigation and victim care that resulted in the opening of two additional Sexual Assault Referral Centres and an improvement in services to victims

The Scottish Parliament Justice (1) Committee: scrutiny of ‘protection from abuse’ legislation that resulted in a Bill to extend protection mechanisms to a wider range of potential victims

The recommendations of the Macpherson Report (1999) and the increased emphasis in public policy on issues relating to public confidence in the criminal justice system have led to criminal justice agencies having to prioritise Black and minority ethnic issues in their scrutiny process. Equality of treatment for people of all ethnic backgrounds is an important issue in raising confidence and trust.

### 3.3.1 Use of Scrutiny by the Police

Police Authorities generally initiate scrutiny processes in relation to police work. Like Local Government Scrutiny Panels, these are usually ‘one-off’ inquiries to address specific criminal justice problems or issues affecting particular communities or community groups, with a view to providing recommendations for policy review. For example, in 2003, the London Metropolitan Authority (MPA), in conjunction with the Authority’s Equal Opportunity and Diversity Board of the Authority (EODB), established a Stop and Search Scrutiny Panel to look at the performance and practice of the Metropolitan Police Service (MPS) in stop and search and propose means by which it can be improved. The panel included MPA members and other nominated representatives from community groups. The Chair of the Panel (Cecile Wright) was also Chair of the MPA’s Equal Opportunities and Diversity Board. The terms of reference of the Scrutiny Panel were to focus on five particular aspects of stop and search. These were:

- To assess the impact of race
- To assess what use is made of stop and search data
- To identify the cost effectiveness of stop and search
- To review the assertion of disproportionality in criminality
- To identify good practice (MPA, 2004: 6)

The main challenge for the Scrutiny Panel was that of “understanding those aspects of stop and search practice that appear to be the most problematic, and to identify the appropriate strategies that might reduce disproportionality, improve the nature of police public contacts generally, and stop and search specifically” (Ibid)

The panel used public hearing sessions as its main method of gathering evidence. Twelve such sessions were held between June 2003 and January 2004. The sessions were held “to ascertain the views of the public on the issue and in addition, individuals and groups were invited to submit written comments to the Scrutiny Panel. This was supported by a campaign to inform members of the public about the Scrutiny” (MPA, 2004: 7). The panel heard and examined written evidence from the

MPS, community representatives, individuals and other external organisations. The Panel found a huge gap between the institutional initiatives of improving managerial efficiency and professional competence presented by the police and the experience of continuing police discrimination and unfair treatment that were articulated by witnesses from the Black and minority and ethnic communities. At a public consultation held by the Scrutiny Panel in Brixton, it was very apparent that Black people continued to have very strong and hostile views about the continuing use of stop and search. Many felt that little had been learnt from Scarman, Macpherson and numerous other reports written on the subject. The Scrutiny Panel is forced to conclude by the evidence presented that stop and search practice continues to be influenced by racial bias.

In its report to the MPA, the Panel made recommendations, based on the evidence the panel received, on ways in which the Scrutiny Panel considers stop and search practice can move forward (MPA, 2004: Chapter 5). The recommendations included issues pertaining to present policies and practices of the MPS that are intended to ways by which the MPS can ensure that its ongoing use of stop and search is far more stringently applied in a far more effective way.

Another Scrutiny process initiated by the MPA was London wide Race Hate Crime Forum. This is a multi-agency body chaired and run by the Metropolitan Police Authority. The scrutiny process employed by the Forum included a series of high profile meetings with borough commanders, chief executives and others, to prioritise London boroughs that have the highest levels of recorded race hate crimes. The purpose of the meetings was to scrutinise local practices, procedures and policies in order to ascertain whether these processes are effective in dealing with incidents of racial harassment. Key achievements claimed are:

- Engagement with 6 of 8 priority boroughs through Forum process
- Contribution to development of MPS hate crime standard operating procedures
- Positive impact on long standing cases of racial harassment.<sup>2</sup>

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<sup>2</sup> For MPA Scrutiny Panels on CDRPs, Gun Crime and Rape see [www.mpa.gov.uk/issues/scrutinies/default.htm](http://www.mpa.gov.uk/issues/scrutinies/default.htm)



In West Yorkshire, the West Yorkshire Police introduced Scrutiny Panels for Hate Incidents and Stop and Search, in 2005. The aim of the West Yorkshire Police Scrutiny Panels was to review performance in respect of hate incidents and stop and search. A panel was set up for each division in order to examine cases at a local level. Unlike the MPA Scrutiny Panels, West Yorkshire Police Scrutiny Panels are permanent features in the operations of the Force. The panels meet monthly and consist of partner agencies and community representatives with some variation in representation across the divisions and a particular focus on encouraging younger community members. West Yorkshire Police Authority members are invited to attend any meeting. Police representation is at least inspector level but meetings are chaired by non police personnel wherever possible.

The aims and objectives of the panel are to:

- Promote public confidence especially of minority communities through improving transparency
- Engage communities in the Scrutiny process and act on their recommendations
- Improve investigation and supervision in respect of race and diversity matters
- Provide a mechanism for the community to influence policing
- Address issues of disproportionality in discharge of police duties

The panels for Hate Crime Scrutiny examine not less than 6 cases per session, the cases being selected by the panel. There is provision for local variation in the processes according to local circumstances. Panel members have prior data access in advance of meeting to prepare. The cases reviewed are those where the police investigation is complete but prior to finalisation by the divisional commander. Cases are anonymised because of Data Protection issues. Where a case proceeds, the panel is subsequently updated on outcome; and if further work is suggested, this is reported back at the next meeting. Panel recommendations are considered by the police and reported back, generally to the next meeting. Reports of meetings are submitted to HQ Community Safety indicating emerging issues which are then coordinated for response across the force. The Police Authority together with West Yorkshire Police

is to develop a mechanism for contacting victims – to ascertain whether they considered that they were treated fairly and/or received satisfactory quality of service.

The panels have been operating for nearly a year but, to the knowledge of the evaluators, have not yet been evaluated.

### **3.3.2 Other Criminal Justice Agencies**

Local input into the scrutiny of the other criminal justice agencies includes bodies such as Courts Boards Local Probation Boards and the Youth Justice Board, all of which combine executive functions with the duty of scrutinising the relevant criminal justice agency on behalf of users and communities. Other scrutiny bodies within the criminal justice system include lay visitors to prisons (independent monitoring boards) and to police stations (independent custody visitors), which are voluntary bodies acting as independent checks on the operation of the police and prison services. In addition, there are five Home Office inspectorates that exercise scrutiny functions over the prison service, CPS, police, court service and probation. Under the Police and Justice Bill (2006), all five inspectorates will be merged into a single Inspectorate for Justice, Community Safety and Custody, “to simplify the process of inspection and to relate inspection more closely to the needs of service users”. There is already a single, dedicated Inspectorate of Criminal Justice for Northern Ireland.

The evaluators found no evidence of other local scrutiny panels set up by other criminal justice agencies (for example, Probation or Youth Justice), outside the existing executive scrutiny structures, to review their procedures or outcomes, or to review the way that they meet their targets in relation to Black and minority ethnic communities. The evaluators found that Scrutiny Panel under review (The West Yorkshire CPS Race Scrutiny Panel) is the only scrutiny panel by a local CPS that is set up to review retrospectively, CPS decisions in cases related to ‘race’. The evaluators did not find a scrutiny process in criminal justice in the UK or elsewhere that is comparable to this Panel.

# 4. Panel Set Up and Constitution

## 4.1 Background

CPS West Yorkshire (CPSWY) has recognised the importance of the national outcomes approach to equalities as a key driver to improving performance and management. CPSWY has established effective working relations with the main racial/hate crime panels in the area. It recognised that in order to maintain the trust and confidence of key stakeholders and, ultimately, the diverse communities which it serves, it should consider ways in which it can increase accountability and transparency in the decision making process. The Race Scrutiny Panel was established as a means of attaining this increase. The Scrutiny Panel was also designed as a mechanism within which to improve Area Performance and policies in the area of Race Hate Crime, which in turn would contribute to raising public trust and confidence, especially Black, Minority Ethnic Confidence in the Criminal Justice System. The motives of the CPS and the intended value of the panel are set out in a position paper produced immediately after the decision to create the panel.

This paper suggested that:

- a. For the communities that the CPS serves and its key stakeholders, the power of Scrutiny lies in its ability to influence decision makers and hold them to account. It also has an important function within which to raise awareness and understanding of the decision making process, in a climate within which much suspicion and mistrust is present.
- b. For the CPS the scrutiny process is about enabling it to:
  - Achieve greater accountability and efficiency in decision making;
  - Strengthen the relationship with key stakeholders; racial harassment projects;
  - Improve service delivery by encouraging fresh thinking;
  - Contribute to making the CPS a world class prosecuting Authority;

- Ensure that the impact of decision-making on the diverse communities which it serves is handled proactively and positively, by effective, sustainable and meaningful engagement.
- c. The creation of a Race Scrutiny Panel would enable CPSWY to secure an outcomes approach to cases with a Race Dimension, which would incorporate a performance management and continual improvement function. It was felt that this could be achieved in the following ways:
- Highlight specific issues, trends within the decision making process;
  - Add value to the existing quality control mechanisms which CPSWY had initiated in respect of race related cases e.g.
  - The creation of the role of Race Champions;
  - Ensure that decisions to reduce charges in cases with a race dimension are agreed by a senior reviewing Lawyer.
- d. In adopting an outcomes focussed approach the Scrutiny Panel was seen as a mechanism by which CPSWY could:
- Improve the prosecution of cases with a race dimension across West Yorkshire by highlighting issues and trends during the scrutiny process;
  - Increase CPSWY ability to implement consistently the race and religiously aggravated crime policy in West Yorkshire;
  - Increase the confidence of Black Minority Ethnic communities in the prosecution of racially aggravated crime;
  - Increase public awareness (key stakeholders) of CPS decision making processes in cases with a race dimension;
  - Reduce the number of unsuccessful outcomes that are directly attributed to the failures in the Criminal Justice Process.

## 4.2 Terms of Reference

The terms of reference for the panel were established in May/June 2004 as follows:

- “To widen the understanding of the decision making processes, which the CPS makes in the area of Race Hate Crime.
- To review and randomly scrutinise randomly selected finalised race and religiously aggravated case files.
- To identify issues, common themes, trends in the decision making process, looking in particular at the impact of decision making on communities of interest.
- To make reports and recommendations to the CPS Area Board in connection with issues arising from the review and scrutiny of case files.
- To increase CPSWY area performance on Race Hate Crime by acting as a critical friend in the area of Race and religious Hate Crime training, development and delivery.”

In November 2004 at the request of the Panel a further term of reference was added:

- “To be a vehicle for panel members to work in conjunction with the CPS to disseminate information, raise awareness and understanding of the handling of race/religious hate crime to the diverse communities of West Yorkshire which will contribute to raising BME confidence in the Criminal Justice System.”

In interviews the Race Group panel members, the Independent External Facilitator and CPS panel members suggested that the role of the Panel was one of improving transparency and accountability. Comments made include:

*“With the scrutiny panel set up we can actually challenge where we think things have not been done correctly”*

*“CPS has become openly accountable starting to choose the cases we would choose rather than CPS dictating which cases we should look at.”*

*“A process which is open, transparent and quite thorough which enables community representatives and CPS lawyers to look together at how race cases have been handled in the area.”*

One race group panel member also referred to a role in feeding back to the CPS a community perspective and a CPS member pointed to the Panel as an opportunity to learn from the community. Another CPS panel member also saw the panel as “a sort of casework quality assurance check” The police representative saw the panel’s role as to consider why race hate cases have failed, increase awareness of the issues involved and

*“increase awareness of the processes that criminal justice authorities have to go through to bring a prosecution and hopefully as a result to allow changes to be made to improve quality and improve public confidence”.*

### **4.3 Composition of the Panel**

The de facto composition of the Panel is:

- One representative from each of the Race and Hate Crime Organisations in West Yorkshire namely: Leeds Racial Harassment Project, Bradford Hate Crimes Alliance, Calderdale Racial Harassment Multi-agency Project, Wakefield Racial Harassment Group, and Kirklees Race Equality Council
- An Independent External Facilitator who also chairs the Panel
- The Chief Crown Prosecutor
- Two senior race specialist lawyers
- A police representative
- The Area Diversity advisor

This structure does not seem to be formally set out in the standing orders, although there is various documentation relating to the rationale for the Independent External Facilitator and the police representative, and for their respective roles.

#### **4.3.1 Representatives of the Race and Hate Crime Organisations**

It is understood that each of the Race and Hate Crime organisations was asked to suggest a representative, who was subject to security checks before being appointed to the panel. Standing Orders provide that, in the event that a prospective panel member fails the security clearance, they are informed and an alternative representative from their organisation sought.

The aim of the CPS was to convene a panel of representatives who were strongly associated with looking at the interests of victims of race crime and who were also effective voices within the BME communities. The invitations went to relevant organisations in each of the five districts of West Yorkshire and the organisations were asked to nominate individuals. The CPS did not want to be too involved in the selection process in case “it ceases to have conviction with the public, the accusation that the members of the panel were hand picked by CPS.” The Race Group panel members interviewed were generally happy with the resulting representation as a start for the Panel. Two problems had been encountered in representation. The first was that in one district that had been some difficulties in finding an appropriate panel member from the Race Hate Crime Organisation because of difficulties with security clearance. The other was in the replacement of the Kirklees representative who resigned from the Panel. There were problems in asking the organisation to nominate another representative and, although some efforts have been made to find a replacement representative, the Kirklees post has remained vacant for most of a year. One comment made at interview has been:

*“I think the CPS should by now have found an alternative (for Kirklees). We have had two panel meetings without a representative, there will be a further one and it has been nearly a year which is not ideal. We need some clear proposal from CPS as to what to do. This is an area of ambiguity when these kind of issues raise up. It is CPS*

*convened panel, not independently convened. So the responsibility lies with CPS to find the replacement.”*

Two race group representatives thought that now that the Panel has been in existence for a while, there should be a more democratic process for appointment of panel members which might then represent the community more widely. One non- panel community representative interviewed reiterated this saying:

*“There should be an open transparent process of selection of representatives, they should report back. The person doing it should have the confidence of the majority of the BME community.”*

Another considered that the Panel could not be truly representative of the BME community in West Yorkshire without a Black representative and the police representative, while recognising the difficulties of representing the wide range of small minorities, suggested that there could be a bias towards South Asian men. These comments resonate with the good practice established in local government scrutiny that panel representation should be truly inclusive, drawing in all stakeholders (Section 3). One race group representative suggested that:

*“The panel needs to be as diverse as possible. It does surprise me that there is no Black representative on the panel. If there were a representative from that community it would do more to promote race confidence, and that’s a good thing”.*

Two panel members both suggested the production of a job description, invitation of applications and an interview process for future appointment of panel members.

Although both Race Group and CPS Panel members were generally happy with the Race Group representatives on the panel, two comments were made concerning the advantage of widening the membership. The CCP suggested that a background in criminal law would be advantageous.



*“It would probably not harm if a panel member representing the community were to be someone with a deep and incisive knowledge of criminal law, criminal prosecution, criminal procedure. That would not be a bad idea. It is about being able to challenge at a level of understanding rather than a layman’s level”.*

One of the race group representatives said:

*“It would have been good to have somebody who had a completely different point of view, acting as devil’s advocate and raising the discussion a bit more.... It goes back to that issue of widening the membership out.”*

This would be in line with good practice established by local government scrutiny which emphasises appropriate skills and knowledge (Section 3).

One of the non panel community representatives suggested that the Race Group Panel representatives should stay as at present but that they should recruit an advisor to the panel with legal knowledge to assist them in considering CPS processes and provide a view which is independent of the police and CPS.

Another non-panel community representative interviewed considered that there should be as a general rule back up panel members who could stand in for the normal panel member if he was not able to attend to ensure that each community was represented on all occasions. This would also help to maintain continuity if representatives left the panel for any reason.

Panel members from the Race and Hate Crime organisations and the facilitator are required to sign a confidentiality undertaking in regard to individual case information and compliance with the Data Protection Act 1998, to avoid unauthorised disclosure to the public of information which might harm confidence in the scrutiny process. A lesson has been learned that great care is needed around the issue of confidentiality. Problems were experienced in the summer of 2005 where a panel member in good faith took actions which breached confidentiality, misrepresented the views of the

panel and caused potential disrepute for the panel. The panel member resigned as a result of the disagreement. There were particular issues because panel members are required by Standing Orders to voice their concerns over issues that may need further inquiry or clarification through the Chair who will raise them with the appropriate agency. Panel members are to consult the CPS on correspondence and seek to constructively raise concerns and avoid undermining public confidence in the scrutiny process. While remaining panel members were in agreement that the member concerned had lost the trust of the panel, some members recognised a conflict between the need to feed back to their organisations and the community, and the confidentiality requirement, and a need for greater clarity in what could be passed on. At the December 2005 panel, therefore, it was agreed that there should be an Aide Memoire for panel members. One panel member expressed disappointment that this had not appeared by the time of the interviews in March 2006.

In addition, arising from a panel suggestion, members also sign a Declaration of Interest Form undertaking to disclose any personal involvement in any case under scrutiny and to then withdraw from discussion. (There has been one instance of this at the 5 April meeting). The Declaration of Interest Form also requires disclosure of panel members' involvement in any criminal investigation/prosecution which could bring their membership of the panel into disrepute and an undertaking to refrain from use of panel membership to further personal pecuniary interests. The two forms were developed in conjunction with the CPS Head of Data Protection.

Panel members who leave their parent organisations should resign from the panel and, subject to panel approval, nominate a replacement. This has happened in respect of one of the districts, where, however, there were some problems in finding a suitable candidate because of security clearance problems. New panel members are to attend CPS Race and Religiously Aggravated Crime training and induction on the scrutiny process. A new member's first attendance at the panel will be as an observer.

#### **4.3.2 The Independent External Facilitator**

The role of the Independent External Facilitator (IEF) was created to assist the smooth operation of the Panel. CPSWY recognised a history of suspicion and mistrust

regarding the motives of CJS agencies who initiate forums for participation. It was considered that an environment of trust, transparency and confidence, where all members are enabled to participate fully, with questioning and discussion encouraged would be achieved by the appointment of an independent facilitator. The Chief Crown Prosecutor said:

*“I think that was very important. In terms of him being a bridge between us and the panel members so that in terms of transparency there is a process which ensures that there is no undue influence by CPS”*

The Race Group representatives generally approved of the principle of the IEF, one saying that the appointment of the IEF prevented the panel being seen as “another quango set up by the establishment”, another that it was a good idea and a third that the IEF was seen as truly independent. The police representative thought that the concept was good.

The Independent External Facilitator was appointed by the CPS and selected as an individual with a track record in Equalities within West Yorkshire both in the public sector and at community level. The appointee had also previous experience of working with CPSWY on a series of equality and diversity related initiatives. CPSWY felt that this person had the trust of the CPS and would be acceptable to the communities of interest. The current independent external facilitator is Mr Ebrahim Dockrat. While the Race group panel members were all happy with the person appointed and his fulfilment of the role, two members suggested that the process of appointment could have involved some consultation. One said, however, that there was not a problem with the appointment process if it was to aid the quick establishment of the panel. The CPS “sorted it out in advance so that it could hit the ground running. And to that extent a little light autocracy doesn’t go amiss”.

The establishment of the IEF and the quality of chairmanship shown thus fulfil the chairmanship requirement suggested in local authority good scrutiny practice (Section 3). The key functions of the Independent Facilitator are documented as:

- The Facilitator should make an effort to put participants at ease so that the process does not intimidate either CPS or agency representatives. This also involves making sure that members, especially CPS personnel, do not use jargon and that necessary technical/legal terms are explained.
- The Facilitator should ask panel members to introduce themselves at the start of each meeting.
- In advance of each meeting, the CPS Management Team and Facilitator shall meet to discuss and agree the start of each meeting, the amount of time allocated to each case file, asking questions, discussion of findings, agreeing next steps etc. The Facilitator's role is one of helping the scrutiny panel to stick to these key processes.
- The Facilitator should be sympathetic to participants who want to comment on issues there and then but this should not detract from the set programme of work.
- The Facilitator should stress the need for members to prioritise scrutiny work, to read the information provided and come fully prepared for each meeting.
- The Facilitator should follow through recommendations and action points raised during the meetings with the CPS Management.

The Independent External Facilitator said in interview that he regarded his role as partly to advise in the set up process in order to “to come up with a balance in process between what the CPS wanted and where other people thought they were making a worthwhile contribution.” It was necessary to strike a balance between the perception of scrutiny in relation to local government which was familiar to panel members and the scrutiny process proposed by CPS. The IEF felt his role was also to facilitate the meetings, to resolve issues that might arise and to promote the scrutiny concept externally. Although the IEF chairs the panel meetings, he does not regard himself formally as a Chair and recognised some lack of clarity in the remit with regard to a chairman's usual responsibilities. For example as a chair he would expect to pursue issue of minutes and implementation of action points from the minutes whereas as a facilitator he felt this to be beyond his role.

### 4.3.3 Police Representative

At the Induction Day, it was agreed that the CJS should invite members of other agencies to join the panel to provide information of new developments or to clarify areas of concern. In April 2005 the panel first included a representative of the Police but it is unclear whether other agencies were invited.

As laid down in the current Standing Orders, the role of the West Yorkshire Police representative at panel meetings is to clarify issues relating to police procedures and practices that may arise during the scrutiny practice and to provide a public accountability function. Standing Orders provide that:

*“West Yorkshire Police will also provide both the CPS and panel members with a briefing note. The note will highlight how they have communicated the issues raised within the CPS Scrutiny Panel within their organisation. This method of feedback will contribute to enabling the West Yorkshire Criminal Justice Agencies to work towards continual improvement, raising standards and confidence in the Criminal Justice System”.*

The evaluators have seen no evidence of such briefing notes. The police representative interviewed understood his role to be:

*“To provide answers and guidance to any questions that might arise regarding police practices, that will assist the panel to understand the whole process, the police being the start of the prosecution process. Any issues raised by the panel can be addressed before we get to the CPS scrutiny side”.*

He expressed some disquiet however about the way the police representative related to the panel. Unlike the CPS lawyers, who examine the case files and are able to consider the handling of the cases in advance of the panel meetings, the police representative sees the file for the first time at the panel and may feel at a disadvantage. He commented “I am asked to answer questions on behalf of the police

for activities that I am not in possession of the full facts". There was an issue in relation to the remit of the CPS Scrutiny Panel in regard to police scrutiny:

*"If I am there to advice and guidance on police processes that is one thing but to actually provide scrutiny for police activity that is a different thing".*

If scrutiny of police processes with regard to individual cases were to continue then files should be made available to the police before the panel meetings. The lack of clarity in the position of the police representative resulted in a lack of formal avenues for feed back of issues raised by the panel to the police and of the resulting reaction of the police to the panel. The police representative commented that he fed back information out of goodwill but "but I question whether it is a police job to report back to the panel". The police have their own scrutiny panels which consider police handling of cases to which CPS lawyers are invited. It is recognised that the police and CPS processes are part of one criminal justice process. The suggestion was therefore made that there could be "a joint police CPS scrutiny panel jointly operated, or even wider, an LCJB panel maybe done through WYRIG from the cradle to the grave for particular cases".

The issue of the extent of scrutiny of the police at CPS panel meetings was also raised by one of the race group representatives who said:

*"My understanding was that this was a CPS Scrutiny Panel but we are starting to scrutinise issues about the police. It is important but sometimes takes us away from what we are supposed to be looking at. It needs to be either scrutiny about the police and CPS or just about the CPS capacity. I think the police need to be at the meeting but it is picking up the core issues..... (rather than) the small things in their own casework or how it has been put together".*

There are some potential internal police issues about the appropriate police representation on the panel. The police representative has been from Community

Safety but some of the issues raised at the panel relate more to criminal justice processes which might be more appropriately handles by the CJS Department.

#### 4.3.4 CPS Representation

The CPS representation includes the Chief Crown Prosecutor (CCP), two senior race specialist lawyers and the Area Diversity advisor but this does not appear to be formally defined. On 23 November the CCP suggested Heads of Eastern and Western CPS areas should be invited to attend and in the April meeting one area head attended as well as two other CPS lawyers. However, subsequent meetings in July and December 2005 were attended by only two CPS lawyers.

The personal involvement of the Chief Crown Prosecutor is regarded by the CPS panel members as vitally important to the success of the panel. The CCP himself takes a personal responsibility for the quality of casework in the area and sees his participation as enabling the panel to:

*“Actually witness me at first hand personally taking responsibility, demonstrating my commitment to change and improvement. .... I bring to this some certainty that it is not some kind of mere cosmetic exercise. It is a real engagement where I accept responsibility and do something about learning lessons from cases that have not been handled very well”.*

A CPS lawyer said:

*“I think the personal commitment of the CCP is the thing that is the enabler. If we had a CCP who was paying lip service to the panel it would just be window dressing”.*

This was seen not only in his attendance at panel meetings but in his enabling taking forward the concerns of the panel, for example in empowering a race specialist lawyer to cross managerial boundaries to deal direct with lawyers whose cases have been reviewed. According to a CPS lawyer, the CCP's

*“personal stance on it means every single lawyer in CPS West Yorkshire understands that this is an important area of our work. All casework is important but within that is a priority area that we need to get right given particularly the demographics of West Yorkshire and the political situation”.*

This has been recognised by one race group panel members and by the police representative. The race representative said that the input of the CCP was important because at this level the views of the panel could affect decisions:

*“If all the other CPS are going to do this they need to include the top person or it will be a talking shop.”*

The police representative said:

*“the Chief Crown Prosecutor involved in it which really shows the level of importance that the organisation attaches to that”.*

However two interviewees expressed some reservations concerning the role taken by the CCP in the panel, suggesting that panel members should sometimes be allowed more opportunity to contribute.

*“I think (CCP) should allow the group to proceed. This is less so now than the early days when instead of allowing people to identify the issues, because he had read them the night before he volunteers the issues, jumps the gun.”*

*“I am happy with the people on the panel but it came across to me that the panel was being led by (the CCP).”*

The CPS lawyers on the panel have a primary role in preparing the cases for presentation, presenting the cases to the panel and facilitating discussion. One said:



*“I don’t see my role as leading the panel into any particular decision, I see my role as explaining what is happening in a neutral way”.*

The senior lawyer, who has the casework lead for race cases in West Yorkshire (Race Champion), also has a role in feeding back to CPS lawyers, both in one to one feedback to lawyers whose cases have been reviewed and in preparation of briefing notes for dissemination throughout CPSWY.

Panel members have recognised the commitment of the CPS to the panel. The CPS race specialist lawyers make a large contribution to the panel. Preparation of case files, attendance at the panel, one to one feedback to lawyers and preparation of briefing notes all require a heavy time commitment. Panel members have commented:

*“The standard of the preparation and the effort that goes into preparing the panel does show that level of commitment”*

*“I welcome both (the panel lawyer’s) input they do a good input in terms of taking us through the files and are not at all defensive of CPS.”*

#### **4.3.5 Other Representation**

CPS lawyers have suggested that a useful addition to the panel might be an independent, non CPS lawyer who would have the level of understanding required to question CPS processes at an expert level. One suggestion was for a BME defence solicitor, possibly someone from the local Law Society or from the Lord Chancellor’s Department. The focus group lawyers suggested a non CPS criminal lawyer.

#### **4.4 Management of the Panel**

CPSWY is responsible for the management of the scrutiny process in the following ways:

- Supporting and advising panel members

- Liaison with senior management and the Independent External Facilitator regarding the agreed flow of business
- Input with senior management into shaping and defining the approach to the scrutiny process
- Taking forward in conjunction with senior management the policy and performance issues which arise as a result of the scrutiny process.
- Ensuring that evidence based assurance is provided to the CCP as to the effective promulgation of feedback to area lawyers and DCWs.
- Providing administrative support.

The Scrutiny Panel is subject to agreed Standing Orders developed after the July meeting and the difficulty with the Kirklees representative to avoid “grey” areas in its operation. The CPS convenes all panel meetings and keeps panel members updated on issues which impact on its working.

The Scrutiny Panel was originally provided by the early position paper to convene twice each year but this was increased to four times at the Induction Day, to enable members to monitor trends and issues more effectively. It has since been increased to six times (in Standing Orders developed after the July meeting, agreed December 2005). One race group representative said that bimonthly meetings were necessary, quarterly meetings having too long between them and not permitting review of enough cases. The Independent External Facilitator said in interview that he had suggested that although there would be six meetings, only four would be panels with review of cases and the other two would be to consider other business. This would concern how the panel could build more effective mechanisms to achieve the aims CPSWY intended in instigating the panel. These were to improve CPS accountability, decision making, handling of racial cases, to raise BME confidence in the CJS and to engage the community in the CJS. He said “We need to look more closely at these issues with the group to see how can we do that. That is where you start broadening the role of the group”. This proposal was raised at the April meeting of the panel and in discussion with the Area Diversity Advisor after that panel. The minimum quorum is representatives of three districts and the Independent Facilitator (agreed 13 July meeting).

#### **4.5 Induction and Training of Panel Members**

As was seen in section 3, local government scrutiny best practice identified that panel members must have appropriate skills and knowledge. CPSWY recognised that panel members from the Race and Hate Crime organisations and the Independent External Facilitator were unlikely to have had legal training or to be familiar with CPS procedures. It was therefore necessary to build capacity among the panel members to ensure the effective working of the panel. A Training Induction Package was devised to cover the CPS Code, the role of the CPS, monitoring, legal understanding of cases with a racial dimension, key CPS decision making processes, the impact of charging and of the “No witness, no justice” principle. At an Induction Day in November 2004 CPS lawyers presented a summary of CPS structure, processes, national and area policy standards and a case study file.

This training was essentially the race training received by CPS lawyers. The rationale behind using this was that the CPS:

*“wanted the panel to understand that they were seeing us as we were and that there were no hidden messages being given out to our lawyers that we were not prepared to share with them. And the only way to do that was to have them present when we were telling our lawyers how to handle race cases.” (CPS panel lawyer)*

However, the result was that some of the race group representatives felt that, while it was interesting, much of the training was not relevant to them and was difficult to take in. According to two race group representatives:

*“Some of it was good. A little bit of it was quite heavy, focussing very much on legal issues. I am not sure that we needed to have all that. Speaking for myself two days after we had had that I don’t think I would have remembered all the legal points that were made”*

*“An overview would have been better for us, we did not really need to go into the law in such depth. I kind of lost the plot by the afternoon.”*

Others felt that it was useful and suitable but could have been spread over two days to make it easier to absorb the quantity of information. One said:

*“The induction was excellent. The overview of the training was very good indeed. Learned quite a lot from it.”*

Standing Orders provide that new panel members are to attend CPS Race and Religiously Aggravated Crime training and induction on the scrutiny process. The one new panel member who joined the panel during the evaluation had not received this training after two panel meetings although arrangements were then being made to provide this. The result of this delay was that he felt at a disadvantage and said “I think my involvement is going to be quite limited until I become more aware of the issues”. Overall the CPSWY recognition of the need for initial training was a positive step but the content and timing requires reconsideration for the induction of future new members.

Following on from the initial induction, the panel has at times identified a need for further information to assist them in their work and some thought at interview that there should be ongoing training. At the Induction Day it was suggested that panel members should visit the Leeds Bridewell and CPS offices to enable them to have a greater understanding of how CPS works. There would also be a live demonstration of COMPASS. Also at the Induction Day, a number of questions were asked by members and requests have been made at panel meetings for various reports and statistics. If the panel members feel that additional material is necessary to carry out their work, then it is the interests of the CPS to ensure that reasonable requests for such information are met and it is important for the confidence in the CPS of the panel members that this is done as quickly as possible.

In the interviews it was suggested by the IEF that ongoing training could “help to put the work of the panel in the wider context of race legislation, race and religiously aggravated crime etc.” This might have benefits in developing greater cohesion in the

group as well as informing its work. Ongoing training has been recognised as good practice in local government scrutiny (Section 3).



## 5. Panel Operating Procedures and Implementation

### 5.1. Panel meetings

The panel began a month later than planned, in November 2004. After the Induction Day on 17 November there have been six panel meetings in November 2004, April, July and December 2005 and February and April 2006.

Representatives of the Race and Hate Crime organisations have attended all the meetings as provided by the defined quorum (Table 1), although the April 2006 meeting had to finish early as one member had to leave, making the panel inquorate. Wakefield has attended all the meetings, Bradford missed one, Calderdale missed two and Leeds missed three. Kirklees attended the four up to the resignation of their representative but a new representative has not yet been appointed. The personnel representing their organisations have been consistent except for Leeds where the representative has changed for the last two meetings.

**Table 1 Attendance of Race Organisations**

	Kirklees	Leeds	Bradford	Wakefield	Calderdale
Induction Day	Yes	No	Yes	Yes	Yes
23 Nov	Yes	No	Yes	Yes	Yes
5 April	Yes	Yes	Yes	Yes	No
13 July	Yes	Yes	Yes	Yes	No
20 Dec	No	No	Yes	Yes	Yes
24 Feb	No	Yes	Yes	Yes	Yes
26 April	No	Yes	No	Yes	Yes

The Independent Facilitator and CPS Area Diversity Advisor have attended all meetings and the Chief Crown Prosecutor all except the Induction Meeting (Table 2). There are two regular CPS lawyer attendees and others from time to time. There has

been a police representative at three of the five meetings since the police were invited to participate, although two individuals have attended.

**Table 2 Attendance CPS & Police**

	Independent Facilitator	W Yorks Police	Chief Crown Prosecutor	CPS Ross	CPS Hussain	CPS other
Induction Day	Yes	-	No	Yes	Yes	Yes
23 Nov	Yes	-	Yes	Yes	Yes	No
5 April	Yes	Yes	Yes	Yes	Yes	Yes
13 July	Yes	No	Yes	Yes	No	Yes
20 Dec	Yes	Yes	Yes	Yes	Yes	No
24 Feb	Yes	Yes	Yes	Yes	Yes	No
26 April	Yes	No	Yes	Yes	Yes	No

The February and April 2006 meetings were observed not only by the evaluators but also by representatives from other CPS areas interested in introducing a similar panel

## **5.2. Case Study Selection and Method of Review**

CPSWY devoted considerable attention at the time of the setting up to the question of how cases should be selected for consideration by the Scrutiny Panel and how the review should be carried out. It was thought essential to get the process right in order that panel members would have confidence in the Scrutiny process and that community distrust of the panel as insincere and a publicity exercise would be countered. For both processes a set of options was presented to the Panel at the Induction Day and the preferred option selected. The variety of options was intended to allow participants and the community to “buy into” and accept the process.

The proposed options for Case File Selection were:

- a. CPS selects the last five finalised cases from the areas Bradford, Dewsbury, Leeds, Calderdale, Kirklees, the process being observed by the Independent Facilitator.
- b. A member of the panel selects the case files in conjunction with the CPS administrator (Area Secretariat).



- c. Panel members select case files on the basis of random number selection, the selection being observed by the Independent Facilitator.

At the induction day panel members agreed option b. Each panel member from the five Race and Hate Crime Organisations in turn randomly selects cases via the CPS computer Case Management System, together with the CPS Administrator (Area Secretariat) and one of the panel CPS lawyers. Race group representatives appreciated the value of this approach:

*“We have the opportunity, each of the 5 districts to choose the case files using the COMPASS system. That is a nice transparent way of being in the driving seat.”*

However one race group representative suggested that a random selection may miss important questions and that this should be supplemented by selection by CPS lawyers of cases to illustrate particular issues.

The options presented by CPS for Case File Review were:

- a. Members to be presented with a copy of the CPS casework, Quality Assurance Guidance Pack Version 1.0 and view the assessment criteria presented.
- b. Members to be presented with a copy of the CPSWY draft monitoring proforma and asked to consider which option is applicable for each of the criteria listed.

At the Induction Day, it was agreed to use the monitoring pro-forma with the proviso that its fitness would be reviewed.

### **5.3. Presentation of case files**

The procedure is therefore that the CPS ensures that the cases are presented in an accessible and sequential format. All case material is provided except where there is sensitive information (involving informants or the security services). CPS informs members if information is withheld. It was recognised at the 23 November meeting that it was important that the fullest possible information is provided and CPS are

committed to being as transparent as possible in this. Panel members do not have access to the files until the meeting because confidentiality issues do not permit the files to leave CPS offices. The panel agreed and current Standing Orders provide that members of the panel will be guided through the case by a CPS Prosecutor to enable members to understand CPS processes and legal procedures. Members identify issues for concern and clarification with CPS and Police representatives. After discussion by the group, and under direction of the IEF, members complete a monitoring pro-forma. The pro-formas are collated by the Panel Secretary. The pro-forma was designed to provide a consistent audit trail of the scrutiny process and to counteract potential community concerns that the panel could be a “talking shop” without real substance and without impact on decision making.

Initially the preparation of the case files was done by an administrative team under guidance from the CPS panel lawyers. It was recognised that there were some resulting problems. For example CPS lawyers “found on occasion ..... there were one or two documents which perhaps should have been included but perhaps someone had not realised were significant”. Later the CPS panel lawyers had more input to the file preparation:

*“For instance at the last panel meeting we were more involved in what documents were copied and in what order. Prior to that (the CPS lawyers) had come to the files later in the day so that we had not been able to change how they had been copied or presented.” (CPS panel lawyer)*

Race group representatives found early problems in following the files but these had been solved by various modifications. According to one of the representatives:

*“When we started it used to be very difficult for us as lay members of the panel to sometimes pinpoint documents within the system. As we went along, CPS has been very accommodating in taking our views on board. Last time the presentation of the cases was absolutely brilliant. That has been a process over the last few meetings. Now we see exactly what it is all about.”*

Three race group representatives were not entirely happy with the panel's review of the case files, feeling that the panel could not be entirely independent as it relied heavily on CPS lawyers to guide members through the cases because of time constraints and limited legal knowledge of panel members. In the time available it was not possible for panel members to read thoroughly the files. Comments made include:

*"I forever got the feeling I was being led through each case rather than being able to say this was an area that concerns me"*

*"To be a true independent auditor I should get those files and sit by myself and work through them and then ask questions. By doing it in the course of a meeting we have not seen them before we have to be led by (CPS lawyers). There are pages we never see. We are trusting them to lead us to the right places."*

The problem was not that the race group panel members do not trust CPS but that they felt that they could not entirely be confident that they had fulfilled the role appointed for the panel. One said:

*"While I don't think I ever questioned the integrity of (CCP) and anyone else who took us through, it didn't provide the relevant evidence to say that we had been doing our role fully."*

While it was accepted that the panel members were not and could not be legal experts, the point was made that since part of the point of the panel was to introduce an alternative perspective to the legal one, a heavy reliance on lawyer guidance through the file would not provide the opportunity to pick up on issues which the lawyers might not have considered.

One CPS lawyer also felt that it would be better if the panel members were able to read the papers for themselves.

*“The danger in not letting people read them to their personal satisfaction is that they feel that they are being railroaded or guided in a particular way and that is not our wish at all.”*

While panel members recognise the restriction that confidentiality puts upon sending out the files to members before the meetings, it was suggested that files could be made available in CPSWY offices perhaps a week before the meeting for members to read. It was however recognised that this would be a further demand on the time of panel members which might not be met by all. At interview the CCP and one of the lawyers felt that this could be a possible way of proceeding. If implemented this might help to improve panel ownership by members, good practice advocated in local government scrutiny (Section 3).

#### **5.4. The process of case review**

The number of cases to be considered at each panel is not defined in Standing Orders. At the Induction Day, it was agreed that because of the complexity of the cases and the amount of reading necessary, each panel would consider two cases although the first meeting would additionally consider the case tabled at the Induction Day. At the meeting on 23 November, it was agreed to consider four cases next time and this was carried out. At the July meeting, five cases were considered, with no documented explanation of the increase, and five cases have been selected for consideration at subsequent panels.

Local authority good practice has suggested a need for realism in scrutiny workload (Section 3). Two panel members felt that the review of the case files was rushed. Comments made were:

*“Probably do less cases and spend more time on them, that’s what my views would be. As we get more expert it might be OK to do 5 cases but at present 3 or 4 would be better.”*

*“I felt that the scrutiny of cases was at a speed which was uncomfortable for a lot of panel members. .... The CPS lawyers*

*have years of experience. How can panel members understand with only hours training?"*

The focus group lawyers expressed some reservations as to whether the time spent on each case is long enough for the panel to understand all the CPS decision making issues as well as identify race concerns to be fed back to CPS.

## **5.5. Conduct of meetings**

Generally the race group representatives were happy with the way meetings were conducted. Comments included:

*"We discuss virtually everything, the cases and what is happening in the criminal justice system generally. It is a two way process. I am pretty sure that we learn a lot from CPS and CPS learn a lot from us."*

*"I think between us the non lawyers we were all confident that we could express what we wanted to say."*

The lawyers also felt happy with the meetings generally. A comment was:

*"We have developed well as a group. We give each other space, we listen to each other."*

## **5.6. Minutes**

Minutes are produced by the CPS Diversity Advisor for each panel meeting recording an outline of salient themes and issues but omitting detail from cases considered which would prejudice confidentiality. All panel members were generally happy with the content of the minutes although there were some comments about their timing, with some being issued a considerable time after the meetings. This has been recognised by the CPS. The CCP said:

*“Sometimes the minutes have come out too late. I think there is an issue about managing the minutes.”*

There was more concern about action points from the minutes not always being carried out, although this was mentioned mainly in relation to one meeting. However, the evaluator’s review of the minutes of all the meetings had showed that previous action taken had not been always reported back, even if it had taken place. Interview comments included:

*“The last one the actions had not been taken, about 4 or 5 actions. It was the first time that had happened. .... If you have meetings every couple of months you would expect something to happen”*

*“The thing I would say is that when we meet once a quarter the action points are not followed up. If we leave them for one meeting that is 6 months”.*

The latter individual felt that this had potential to undermine the effectiveness of the panel.

*“How do you measure the contribution of the panel? It can only be measured by saying as a result of the panel we have been able to do this and this or we have brought about the following change. The change comes in the form of action points. If they fail or delay in following up the action points it begs the question is it just paying lip service. I am not questioning their commitment, the time and effort put in to the meetings and preparation but they are letting themselves down by not perhaps paying equal attention to following up.”*

The CCP has now taken action to ensure that there is a CPS officer responsible for ensuring that the minutes come out to time and are properly actioned. The minutes of the February meeting, distributed in April, for the first time included a separate list of action points to improve clarity.

## 5.7. Briefing notes

After each meeting, the CPS should produce a briefing note highlighting issues raised through the scrutiny process. The primary purpose of this document is to communicate the issues raised by the Scrutiny Panel to CPS lawyers. This document is therefore sent to all CPS staff by email and considered at team discussions. In addition the briefing notes are also sent to CPS Race Group Representatives and the IEF. CPS has admitted that because of time constraints, the briefing notes sometimes do not appear until just before the next meeting.

In the view of the CCP the briefing notes:

*“have had a positive impact in awakening lawyers to their responsibilities in making sure there is good evidence where there is evidence missing that the police get it to be realistic in how they pitch these cases and prosecute them. These are sensitive cases which we need to get right. If we don't get them right we erode confidence. I think it has caused a lot of our lawyers, where they are not sure, to look to consult specialists of the kind who are members of the committee so that they can be sure that the decisions they are making are good decisions”*

The CPS panel lawyers agreed that “It has made people aware that cases are looked at and they want to make sure they do it right.”

In addition one of the panel lawyers said:

*“I think most of our BME non legal staff take an interest in what is happening in the panel. I have had conversations with BME non legal staff who are aware of the panel and have read the briefing notes quite thoroughly. I see that as a positive, they are aware of the*

*emphasis the organisation is putting on these things because beyond anything else they are members of the BME community”*

All the CPS lawyers taking part in the focus group were aware of the briefing notes. One said however that there could be problems in finding time to read emails which were not immediately relevant to current work.

*“When it comes to emails, when I receive a 10 page document, I think, right, I will read that when I have time”.*

It was agreed that this was a universal issue but it was commented that steps had been taken to reinforce the message of the briefing notes and ensure that they were brought to the attention of staff. According to two members of the focus group:

*“What managers are now encouraged to do is to bring it to team meeting agendas and try to condense it, summarise it, the key issues that arise.”*

*“What we have found is if we (CPS managers) digest it, pick out the salient points and discuss those at the team meetings”.*

Favourable reaction was expressed to the most recent briefing note which had identified key general issues before describing the case review in detail. The focus group lawyers were all aware of some of the major issues emerging from the scrutiny review.

Focus group lawyers also identified other benefits:

*“I think what the feedback does is to emphasise your decision making in the context of race issues. There are extra thought processes to go through. Are there cultural reasons why I might not compel that witness? Those are the sort of issues we need to know about. If the feedback deals with those it is going to be of value.”*



*“It is sharing best practice as well. Rather than reinventing the wheel, if you know what issues you are going to come up against, particular problems, cultural issues...It is sharing experience.”*

*“I think it is very positive. It makes you think I must remember for next time.”*

However there was one area where it was thought that the content of briefing notes could be improved. The group thought the briefing notes should be more specifically related to race issues as they affect CPS decision making. There should be more emphasis on cultural issues of which CPS should be aware when dealing with race hate crimes and the reasons why particular cultural issues are important.

*“I think the reports do not always say enough about the cultural aspects. The reports say the decision here was right or could be made earlier but it does not say why.” (Focus group lawyer)*

Another comment made related to the timing of the briefing notes. The Scrutiny Panel reviews cases in the quarter since the last panel but at that time, being finalised cases, considerable time might have elapsed since the case lawyer worked on the case. A group lawyer commented:

*“It might have been at the beginning of the review quarter, they might be quite old cases, it might have been a year or more ago.”*

It was therefore felt that if the feedback was not then received by the lawyer concerned until nearly the time of the next panel, he/she might have problems remembering the details of the case. One comment at the focus group was:

*“It would help if we got the feedback a bit quicker. It may be several months after a case has been finalised, it may be difficult to remember about the case.”*

Although the briefing notes are distributed to all panel members as well as non-panel CPS lawyers, the interviews found that some of the Race Group representatives failed to remember the briefing notes. Part of the reason for this must be that a decision was made by the CPS lawyer concerned not to issue notes after the December meeting because for many of the cases there were ongoing investigations into the case handling. This meant that at the time of the interviews in March there had been no briefing notes since those concerning the July meeting of the previous year.

The use of a briefing note designed for CPS lawyers as a general aide memoire for the panel has some potential disadvantages apparent to the evaluators, although none of the panel members in fact mentioned these at interview. The briefing notes are full of abbreviations and jargon, clear, no doubt, to lawyers but probably mystifying to some panel members. This importance of this point depends on the reasons for the race group panel members seeing these notes. The race group panel members varied in their perceptions of these reasons and the way that they use, or expect to use, the briefing notes. One panel member who did remember seeing the notes thought they were useful to the panel members in providing an overview of the issues. Another felt that briefing notes were of potential assistance to the race group representatives in their feedback to their parent organisations. The IEF felt that they were of value in providing evidence to panel members that the CPS were taking action on the views of the panel. He also considered that even when investigation into cases has not been finalised, a written report should be made of progress to date. He felt that a verbal progress report at panel meetings was not sufficient to prevent panel members thinking that CPS had simply forgotten to produce the briefing note, or did not regard it as important. He said:

*“It should be written. ... A verbal feedback when people attend these meetings, people question whether what they are being true or whether they just forgot.”*

## 5.8. Feedback to lawyers whose cases have been reviewed

While the briefing notes may be delayed, the CPS lawyer concerned, immediately after a panel, makes a point of contacting lawyers whose cases have been reviewed. She said:

*“What I do absolutely make sure that I do, immediately after a panel I have one to one conversations with any lawyer where there is a learning point. Because that is really vital. That affects our future casework. So if a lawyer has made a complete hash of something they find out about it within a couple of days. Probably if it is a good thing they also find out about it within a couple of days. I make an effort either to physically see someone or to ring them up, depending what it is.”*

However the CCP identified that “There is a tension for us between feedback and blame.” And therefore, CPS prefers to identify general learning points rather than blame individuals. Response from lawyers who have received feedback has been mixed, partly because the issues are seldom entirely black and white but capable of different interpretations. According to a CPS panel lawyer, some lawyers

*“have been accepting and reasonable and see what’s being said and taken away. Others are more challenging in their response”.*

She considered that the real issue is to make sure that:

*“lawyers, even if they don’t agree with the ultimate decision, they accept it, they understand the rationale behind it and that they are aware that if they are in a similar situation in the future they need to be careful and consult with a manager before going ahead”*

Two of the lawyers taking part in the focus group had had cases reviewed by the panel and received positive feedback via their line managers. One had also received feedback from a panel lawyer. They and the other focus group lawyers were happy with the idea of individual feedback, comments including:

*“If you are going to have accountability you have got to know what you have done right and what you have done wrong.”*

*“I think if you have made a mistake and someone explains to you in a way that is digestible it’s very positive.”*

### **5.9. Other feedback to CPS lawyers**

On 20 December there was a proposal of a forum to look at the impact of the panel on the work of prosecutors and a suggestion that panel members should attend meetings of District Crown Prosecutors and their teams. The proposal was that panel members should give an overview of key issues and trends observed while going through the scrutiny process. It is not clear whether progress has been made with this plan.

The Scrutiny Panel lawyers felt that they had learned from the race group representatives, one commenting:

*“What the race scrutiny panel members bring to the table for me is that they widen my horizons. Make me think about things that I don’t necessarily think about even though I am a member of the BME community. I find that a real positive.”*

She therefore felt that it would be of benefit to other CPS lawyers to have contact with the panel and suggested that it would be useful for them to attend the panel on an occasional basis as observers. The value of this was appreciated by the focus group lawyers, although there were some concerns about practicality in view of workload issues. One of the focus group lawyers said:

*“My feeling is that it would be extremely useful but to fit it in might be difficult. The reality is if we did this we would also fit in what we were supposed to be doing anyway. It would inevitably mean more work.”*

### **5.10. Feedback to parent race hate organisations and the community**

Panel members agreed at the Induction Day that they would not disseminate minutes but rather the trends and issues that had been raised. At that meeting, a Race and Hate Crime organisation representative suggested that panel members should give presentations to the organisations regarding the role and function of the panel. The panel and CPS welcomed the suggestion but it is not clear whether presentations took place. There is an emphasis in the minutes of 23 November on need for agencies to learn from one another and messages to go back to the community to raise confidence.

At interview there was similarity in the way that representatives fed back issues from the panel to their organisations. All fed back verbally at varying intervals to their board/group meetings. In addition one made visits to Race Hate Crime Reporting Centres to explain issues and “reassure them that things do happen, that cases are scrutinised and recommendations are made”. Another provided information to reporting centres at training sessions and a third used experience on the panel to advise on procedure when new cases were handled by the race organisation. The organisations’ reported reactions varied from “very positive” to “not a lot”.

One of the non panel community representatives interviewed, a member of one of the hate crime organisations represented, did not perceive that he had learned from the panel more about the CPS decision making process with regard to race/religious hate crime. He said:

*“when we ask for explanations we always get it’s legal, it’s very complex, we can’t explain it. People like me, I am a non practising barrister so you can’t pull the wool over our eyes you know.”*

He was aware of only one issue arising from the Panel discussions and felt unhappy with the panel. On a positive note however, he said “on a good note the CPS panel seems to be better organised than the police one.



## 6. Principal Issues

The issues raised by the panel meetings fall into two broad groups. The first group concerns those relating to matters which could occur in relation to any case handled by CPS. The second group relate to the handling of specifically racially aggravated cases.

### 6.1 General matters

The IEF expressed surprise that there were so many errors identified in the case handling.

*“Very few cases that have come to the panel have been left untouched that we have failed to find something wrong with. That is my main learning point. You have an expectation that the crown is thorough and infallible and clearly they are not.”*

However CPS lawyers felt that some very good decision making had been seen in some cases and did not find evidence of problems more than what might be found on any random selection of case files. The CCP said:

*“We have learned that a number of the problems that are present on all our case load are present in our race cases.”*

Specific issues identified include

- Inconsistency in file endorsement
- Mishandling of paper (endorsements becoming detached and lost)

One race group representative was particularly concerned about this saying:

*“It is not going to give anybody any confidence if you were to go back and say we are missing part of the paperwork. It is about dealing with*

*casework papers in a professional manner which can then be looked at in terms of transparency and accountability. So that is an issue that I have.”*

- Delays in handling of cases
- Problems in connection with the double/triple listing practice of the courts
- Problems in relation to use of Summons which bypasses the pre-charge advice procedure
- Ineffective case management
- Failure to identify the need for further evidence
- Issues in relation to the police investigation

## **6.2 Matters specific to racially aggravated cases**

The panel had not seen evidence of any discriminatory practice on the part of CPS. The CCP said “I have detected no prejudice whatsoever on the part of any lawyer in decision making.” This he did not find surprising because:

*“Different parts of CPS nationally have had some real hard accusations thrown at them over time and we had criticism from the CRE, the Denman report. That has caused the organisation to take hard stock of where it wants to be. We have also put a lot of emphasis in terms of race cases to ensure that people are effectively trained and supervised”*

One race group representative said:

*“In all the cases we have dealt with I don’t think I have picked on any where there were racial overtones or undertones in the decision making.”*

Another said that the panel had showed that CPS were now taking race cases seriously whereas before it had been perceived that they did not.



### 6.2.1. Specific Issues Identified

Some issues have been identified:

#### 6.2.1.1. Prosecuting evidentially weak cases

The IEF and the police representative both identified at interview that use has been made of racially aggravated charges where there has been insufficient evidence and the police representative suggested that the CPS policy on race was too inflexible. The reason was thought to be that CPS lawyers were so worried about the sensitivity issues in race cases that they lost sight of the primary evidential rule. In the words of one of the lawyers “I think our lawyers are so aware of the sensitivity of racially aggravated cases that they apply the test the wrong way round sometimes.”

The CCP said:

*“The biggest message for me, particularly from the feedback that we get from our colleagues on the panel , we are not doing ourselves and we are not doing the communities any favour by running cases which don’t really have a serious prospect of success. The idea that the community wants us to run cases whether weak or strong is ridiculous. It is quite clear the message to me is that people want us to deal very robustly and effectively with racially aggravated offences but they want us to take strong cases and by taking strong cases they want a marker to be put down that racist behaviour will not be tolerated. I’ve picked up the fear that if we run evidentially weak cases that go nowhere we build up a tolerance. That is something that we have learned”*

He added:

*“The worst thing we could do is to overcharge only to drop the charge down later which we have had to do on a number of*

*occasions because we have charged cases which are not evidentially strong enough. What that does is it raises expectations which have to be dashed and that does not build confidence. We have learned that.”*

This was also recognised by the CPS lawyers on the panel. One said:

*“We are independent prosecutors. In getting the test the wrong way round we are failing in our duty and we are failing in our objective in delivering value for money- devoting resources to cases which don't really need that resource deployed and therefore taking away resources from cases where perhaps we could get a better result, if we had more resources to put into them”*

#### **6.2.1.2. The importance of context**

Arising from a case of a domestic incident with a racial feature, the need was identified to take a holistic and common sense approach, considering other forms of intervention which might be more appropriate than prosecution. In addition the geographic context might be important as in a case taking place in an area with a high BNP profile.

#### **6.2.1.3. The need for appropriate feedback to the victim**

One panel member particularly pointed to the inappropriate language of feedback to some victims. He said:

*“There are issues about feedback to the victim when the cases have been either dropped or a lesser charge applied. It is all about language. The letter that is sent out should be jargon free. It is about trying to adapt so that members of the public understand, accessible and readable information for the victim”*

#### **6.2.1.4. The need for more prosecution of racially aggravated cases**

This was identified by one race group representative who said:

*“There are not enough cases being prosecuted. Whether it is because the evidence is quite weak or because the jury has not appreciated the racially aggravated factor. It is about applying the right charge to the case and getting the magistrates, judges and juries to understand that.”*

There is an obvious problem here in that prosecution of more cases would be counter productive if the evidence was not sound.



# 7. Potential Impact

## 7.1 Potential for Impact on CPS

Generally, Panel members are happy that CPS have the intention of implementing changes to case handling as a result of the Panel review and the evaluators have observed at least some implementation. Thus the need for a responsive agency identified in local authority good practice (see Section 3) is being met at least to a degree.

### 7.1.1 Accountability

Generally those interviewed had at least qualified positive views concerning the potential of the Scrutiny Panel to influence CPS accountability. Comments made by race group representatives suggested that the potential was there but there were some reservations about the extent to which messages were passed down to CPS lawyers in general. These comments included:

*“It is better than no mechanism. From the feedback you get from (CPS panel members) I would say that it is effective. But it depends on the people on it. Every process is as good as the people concerned.”*

*“I think that it is a panel that can effectively influence policy making and drive forward the CPS..... Whether it is powerful enough is a difficult question.”*

*“It could be but I don't think it is at the moment.”*

The IEF felt that “It makes a contribution to making the CPS more accountable. It has the potential to do a lot more”. The police representative thought that the panel demonstrates the CPS desire to be accountable but questioned whether the five race

group representatives were representative of the community and therefore whether the panel made CPS accountable to the community.

The CPS focus group lawyers generally thought that the panel could be effective in this way but some questioned the degree to which the messages from the panel were conveyed to the community. Comments included:

*“This is at a more local level, accountable to the community which we serve and on that basis I think it has quite a big effect because it looks at individual cases rather than ticks in boxes.”*

*“It is in the hands of the members of the committee to go back to their own contacts and say we have looked at cases, these were the conclusions that were reached, these guys are serious about being accountable; we need that message to get out.”*

### **7.1.2 Decision making**

CPS lawyers were generally confident that the scrutiny panel was impacting on CPS decision making although one said:

*“We will never make decisions that the panel agree with always and we will never make decisions that the police always agree with.”*

The feeling was that the briefing notes would be effective in promoting good practice and that:

*“Word gets round even if people do not bother to read the circulars that come round, inevitably they will talk to each other. It is bound to have an effect.”*

Another CPS lawyer said:

*“It makes you more careful doesn’t it because everybody knows that if it’s a racial case you might end up there. That can only be a good thing.”*

The lawyers did point out however that the scrutiny panel had to be seen in the context of the drive for improvement in case work handling which was being implemented across all cases, not only those concerning race.

The IEF was similarly positive saying:

*“It makes a contribution because never have they before opened up to scrutiny and panel members have reviewed their decisions and fed back. It will cascade across the organisation.”*

The race group representatives had more reservations although they agreed that the potential is there. A positive comment referred to the input of the panel members in providing a fresh view of cases. Others saw the potential “Assuming that CPS take forward the views of the panel” and also referred to the limitations of the panel in being unable to influence active cases but only contribute to learning which might benefit future ones.

### **7.1.3 Handling of racially aggravated crime**

All those interviewed were generally positive about the potential of the Scrutiny Panel to impact on handling of racially aggravated cases, most pointing to its role in improving the understanding of CPS lawyers of cultural issues. Comments made included:

*“It’s all to do with raising the profile and making sure that the lawyers get it right and all to do with making sure that our lawyers have the right skills.”*

*“As a lawyer working on a particular case you will not necessarily know about the tensions in a particular community, you are reliant on the police giving you that information. You can only work with the information that you have got. The people on the panel are likely to be much better informed.”*

*“There are problems where the actual crime has cultural aspects and we need to know how the culture works and there are others where ordinary problems arise for cultural reasons.”*

*“Yes definitely. CPS have realised that we in our five districts work at the grass roots level in relation to hate crime. Input from us is useful to their decision making”*

*“Any consultation on cases where the BME community are not happy with the result can only serve to give a better service in the future.”*

However some race group representatives felt that while it was likely to have an impact there was still some way to go. According to one of them:

*“At the moment it’s about opening up the new process and that process will take some time. It is a good way forward, to open these kinds of issues in terms of transparency.”*

In particular there was still concern about discontinued cases where CPS advice at pre-charge stage was to not proceed. One race group representative said:

*“there are still a great many where the project (race hate group) felt strongly that there was a race element but it was not taken forward. They would be the ones that would be worth looking into especially if they had been taken up by CPS but not with a race element.”*



The focus group lawyers felt that because the Scrutiny Panel is made up of representatives of the community, there could be more guidance from the panel on cultural issues that the CPS should be aware of when dealing with race hate crimes. For example it was mentioned that they would treat the fact that a relative of an offender from some particular ethnic groups was likely to be a “hostile” witness as a “cultural” issue. This was not CPS policy but a rule of thumb. Such an attitude could be seen as racist.

## **7.2 Impact on relationship between CPS and race organisations**

All those interviewed regarded the Scrutiny Panel as having a beneficial effect on the relationship between the CPS and the race organisations. One CPS lawyer felt, however, that the panel should not be seen in isolation but as one of a number of ways in which contacts were being cultivated, these also including the police scrutiny panels which CPS lawyers attend. Race group representatives and the IEF felt that they had learned from being on the panel about the workings of the CPS and CJS. They also referred to a strengthening of existing ties, the importance of the input of the CCP in giving confidence to the panel of the value of its work and improvements in communication and trust. One pointed to the panel as being part of an ongoing improvement process.

*“We are talking about secondments from CPS to our office so that they can get a flavour of having to deal with a race case, not at the prosecution side but at the support side and the effect that had on individuals.”*

Another however, while appreciating that more in depth partnership work was valuable, sounded a note of caution concerning resource issues for voluntary groups.

### 7.3 Raising BME confidence in the CJS

Few of those interviewed thought that the Scrutiny Panel could alone make much impact on BME confidence in either the CPS or the Criminal Justice System generally. Some were very negative in their views:

*“at the moment it is not likely.”*

*“It won’t make a jot of difference because those who think there’s no confidence are entrenched in their views and think there never will.”*

However most felt that the Scrutiny Panel could make a limited contribution to raising confidence along with other initiatives. A comment was:

*“if you are looking at increasing public confidence, it is a very commendable aim but the panel is one part of a wider strategy to increase public confidence.”*

The main limitation identified was the extent to which knowledge of the panel and its operation is fed back to the community. One race group representative felt that the wider community was aware of the panel saying:

*“The community centres and mosques are aware and it has been cascaded down to the grass roots level of the community. Quite a lot of the community members are aware of it”*

Other race group representatives were more sceptical, suggesting that the community knows very little about the Scrutiny Panel, or indeed about CPS and that an increase in confidence “is not going to happen because of one person from one organisation.”

The panel could have an effect “but it would involve a great deal of outreach work. The panel members are already doing some of that but only to groups that they work with.”

The focus group lawyers felt that the whole process appears to be a one-way process, that is, CPS lawyers being told whether the actions they took in particular cases were right or wrong. They were not sure what was happening at the 'other end' and therefore how the process could raise public confidence in CPS decision making. Comments included:

*“I can see the relationship between us and the panel. I am not sure of the relationship between the panel and the community. We get feedback from the panel but I am not sure how it turns into reassurance to the community.”*

*“I think it may raise confidence in the panel, the leaders, but it is how it is passed on to the man in the street, I can't see at all.”*

A panel lawyer said:

*“We CPS do not know what the panel members go and do with the information that they have. Some of them might be very good at passing on the messages, others might not..... I suspect that some are just feeding back to their boards but it would be better for us if they fed back wider.”*

The police representative said:

*“The biggest test is not whether people working in the field know about it but whether the greater public do”*

The question therefore arises how much members of the community outside the Panel know about the panel. The interviews with community representatives included two who were aware of the panel, at least one of whom was from one of the parent race hate crime organisations. On the other hand three community representatives interviewed had no knowledge of the Scrutiny Panel at all. One of these laid the responsibility squarely on the panel members to inform the community.

*“The group must appreciate that they have a responsibility to keep informed the communities that they are supposed to be representing and not just lip service for the CPS. .... The group has to see that their first responsibility is not to the CPS but to the communities that they are representing.”*

Since more than half the non-panel community representatives interviewed were not aware of the existence of the Scrutiny Panel it has not been clear to the evaluators the extent to which the panel processes and role are clear to those outside the CPS and immediate boards of the Race Representatives. This means that it is unlikely that the local authority good practice (See Section 3) of clarity of panel role to the public is being fulfilled.

Other than feedback through the race group panel representatives and their organisations, the extent of publicity about the Panel has been limited. The documentation describes plans for a launch of the Panel to provide greater public awareness about the commitment of CPSWY to issues of accountability and transparency in decision making. There was to be a press release to BME and mainstream press. CPSWY considered inviting the Director of Public Prosecutions to launch and endorse panel to an invited audience from West Yorkshire. It is not clear to the evaluators what form the launch took. The evaluators understand that the Panel has not been widely publicised since the launch because it was felt that the scheme was experimental and the results of the evaluation should first be seen. However local authority good practice (section 3) indicates a need for publicising the work of the panel as a pre-condition for effective scrutiny. Moreover, it was widely thought by those interviewed that now that the panel has been in existence for over a year, wider dissemination of information would be useful. For example the IEF said:

*“now they should consider developing a communications strategy to tell people more about it, particularly in the present climate. There has been dissemination to sister organisations like the police but not externally other than the immediate networks some of the reps belong to and I belong to.”*

A focus group lawyer said:

*“We should make it more widely known that there is such a thing as the race scrutiny panel. Make it clear that it has some degree of independence. It is not just a set up.”*

A community representative said:

*“I think there would be some advantage in having a higher profile and maybe raising awareness of what the panel is actually there to do.”*

He considered that besides publicizing through committees and places of worship, use could be made of the variety of free newspapers targeting particular BME groups. Another community representative suggested using information mornings similar to those that Joseph Rowntree have organised where local voluntary sector community groups come together and also suggested that the five race group representatives should “make a presentation in each of the areas as a collective group so that they can be seen.”

#### **7.4 Engaging the community in the CJS**

Few of those interviewed thought that the Panel as it stands could contribute more than a small amount to engaging the community in the Criminal Justice System. References were made to deep seated reasons why people do not engage, to people’s lack of knowledge and apathy. There was also a perception that, as the Panel members are not really representing the community, it cannot engage the community. Two race group representatives referred to a potential limited by the resources of the representatives on the panel. Comments made were:

*“To use people like us as an engagement panel, we can only give so much time. We only reach out to the people that we have around us. The partnership group, I pass information to them and it’s if they*

*pass information to the communities that they serve. Are we actually getting out to the wider community?"*

*"Most of the panel members are already engaged with the communities but if they are to widen that role where do they get the time?"*

It was suggested that there was scope for using the panel members as a route by which CPS could engage more with communities but that this would have resource implications for the race organisations. A proposal was made that "if they said we will allocate someone to your organisation to do that work so long as you guide them" it could be a way forward."

## 8. Conclusions and Recommendations

### 8.1 Conclusions

In establishing the Scrutiny Panel the CPSWY has broken new ground in improving accountability and transparency in the handling of racially aggravated cases and this can only work towards improvement in the relationship of CPS with the BME communities in the area. All those interviewed and taking part in the focus group generally viewed the Scrutiny Panel as a beneficial initiative and appreciated the motivation required by the CPSWY. As one of the focus group lawyers puts it:

*“Hopefully the message that goes out is that we are open, willing to engage in discussion with the community and willing to be answerable for our decisions.”*

Race group representatives and the IEF felt that they had learned from being on the panel about the workings of the CPS and CJS. They also referred to a strengthening of existing ties, the importance of the input of the CCP in giving confidence to the panel of the value of its work and improvements in communication and trust. Some mentioned the Panel as a platform upon which further relationships between the CPS and race-hate organisations could develop. Some of the comments made included:

*“The panel is a tremendous concept. It is a first step towards accountability in the decision making process. It shows a lot of initiative from CPS and a certain amount of bravery to lay themselves open to this kind of scrutiny. It is quite clearly a lead nationally which is good to see. I am pleased to be involved in it”*

*“The panel was a really bold step on the part of the CPS. It is as we understand the only panel of its kind in the country. It was a brave step.”*

*“It was a very bold step for the CPS to establish the panel.....I feel privileged to be part of it.”*

There has also been recognition nationally in the winning by CPSWY in April 2005 of an Equality and Diversity Recognition Award for Innovation in Community Engagement for the Scrutiny Panel. This has been followed by interest in the scrutiny panel by CPS in other areas of the country and resulted in representatives from other CPS areas attending panel meetings as observers on a number of occasions.

Most of those interviewed however recognised that after one year a start had been made but there was still scope for improvement. Comments made included:

*“I think it is step in the right direction. I think the process of how things are working is quite decent to start off with”*

*“Overall I would give it 8 out of 10. There is lots of scope to improve, build.”*

*“I have confidence that this is a good thing that is being done but because they have an award it doesn't mean they are perfect.”*

*“I am glad it came about. I would like to think that like a lot of good ideas and practices it evolves rather than stagnates.”*

## 8.2 Recommendations

### (a) Panel documentation

- CPS should ensure that standing orders are expanded to cover all important constitutional and operational issues.

### (b) Panel Membership and meetings.



- There could be a more democratic process for the appointment of panel members. Concerns raised by Panel members on this issue should be taken seriously.
- The CPS should ensure that panel membership is truly representative of all the BME groups in the county, including organisations or groups representing hard-to reach groups, faith groups and young people.
- Efforts could be made to seek a community group representative with legal training or an independent legal advisor, to sit on the panel, as an independent expert. This could be in the form of a non-CPS criminal lawyer.
- Other CPS lawyers may be invited to the Panel, as observers.
- Members of other criminal justice agencies may be invited to attend as observers; for example, local magistrates.
- As suggested by the IEF, the Panel could consider having additional meetings, to discuss general issues.
- Provision of ongoing training should be considered as panel members identify needs arising from their work or new developments in law or the criminal justice process.
- Appointment of deputy race representatives could be considered. These would stand in for regular representatives on leave or off sick in order to ensure representation of all five areas of West Yorkshire at all panel meetings. This would also help to maintain continuity of representation if panel members left the panel for any reason. It would also serve to widen knowledge of the workings of the panel.

(c) The Independent External Facilitator

- The role of the IEF should be clarified with regard to the executive functions of Chair.

(d) The role of the police representative

- The role of the police representative should be clarified with regard to the scrutiny of individual cases. If the role of the police representative is to

provide explanations of individual police case handling, the casework should be provided to the police in advance of panel meetings. If the police role is to advise on general issues only this should be made clear. The extent to which the police are expected to provide written feedback to the panel should also be clarified. Either standing orders should be amended or it should be ensured that the police accept such a responsibility.

(e) Panel operating procedures and meetings

Case Files:

- The CPS should consider making case files available to be consulted by Panel members on CPS premises, one week before meetings. This might increase Panel members ability to discuss issues more effectively and alleviate their fears of being led by the CPS. A more thorough reading of the files might provide the opportunity for race group representatives to introduce a more community-oriented perspective as opposed to primarily responding to a legal one.
- The Panel should not feel bound to consider a specific number of cases but review as many as can be thoroughly handled within the time available. It is envisaged that where panel members came to the meetings with some acquaintance with the cases to be discussed, the proceedings are more likely to be faster and more fruitful.

Minutes:

- It is important that the recent plan to ensure that minutes are produced and actioned promptly is implemented

Briefing Notes

- It is important that briefing notes are produced without delay so that cases are still fresh in lawyers' memories.

- The briefing notes could include more advice on cultural issues of which CPS should be aware when dealing with race hate crimes and the reasons why those cultural issues are important.
- From the viewpoint of race group panel members, where there are unresolved issues which preclude the production of a full briefing note, written feed back should be given to the panel members on progress to date.

(f) CPS case handling

- CPS should continue to take forward the issues identified by the panel on case handling, in order to improve CPS performance, maintain the credibility of the panel and raise public confidence in CPS prosecution of race-hate crimes

(g) Community engagement

The role of the race-hate organisations

- Race group representatives should continue to make active efforts to feedback to their parent organisations and investigate the potential for onward transmission of information to the community.

Publicity;

- Efforts should be made to publicise the Panel in the community and promote it as part of CPS community engagement strategy. If the panel is to impact significantly on BME confidence in the CJS and on community engagement, Panel members need to accept the responsibility for being proactive in promoting the Panel in their various organisations and in the wider society. CPS needs to build on the relationship it has developed with those panel members and consider how it can help those members to ‘spread the word’.

(h) Panel development

The suggestion by panel members that the Panel could evolve into a wider LCJB Panel, examining cases “from the cradle to the grave” may be considered.

(i) Evaluation

- The CPS should consider the possibility of a further evaluation of the Panel, to assess its impact on communities and other affected groups. As suggested by a panel member, the Panel “should be reviewed on a regular basis”.

## 9. Key points for replication

In order to replicate the CPSWY Scrutiny Panel in other CPS areas, or to the scrutiny of other types of casework such as domestic violence or homophobic crimes, the following points are considered by the evaluators as crucial:

- It is essential to built on pre-existing links with community organisation, groups and voluntary agencies or other interested parties whose work and connections in the community are seen as vital to the outcome of the Panel. The community representatives and agencies selected should have the trust of the BME communities and groups that they represent and be prepared to feed back issues arising from the panel to these communities and groups.
- It is essential also to include members from relevant criminal justice agencies
- Race group representatives will not generally be lawyers; hence, there will be a need for training in CPS processes and race policy.
- An independent person should be appointed to chair Panel meetings. The independent chair must be appointed democratically. There should be a job specification for the post, detailing skills and experiences that are relevant to the role, based on the aims and objectives of the Panel.
- It is vital that the CCP supports the panel fully, that S/he attends panel meetings and is prepared to take forward issues arising from the panel. For other panels, such as domestic violence or homophobic crime panels, persons of superior ranking with the power to influence policy decisions at executive level should be members of the panel. This is important in order to ensure that decisions taken at the Panel are taken forward and acted upon at executive levels in the relevant agencies.

- It is important to have a representative of the police as police issues are bound to arise in review of cases or incidents but care should be taken that the police role is clear to both the police representative and the panel.
- The Panel should strive to address issues from all possible angles and not focus, for example, on legal issues alone.
- In order to build the trust of the panel, any promises made at meetings must be implemented promptly. Failure to do so risks prejudicing the confidence of panel members.
- The number of cases handled at each review is not the most important factor but there needs to be a balance between review of a significant proportion of cases handled and the constraints of time. It is important that panel members feel that they have been given the opportunity to contribute the community perspective.
- Care is required in presentation of cases to ensure that, while of necessity CPS lawyers may need to explain the cases reviewed, CPS does not dominate the discussion but is open to allowing panel members to proceed in directions they perceive necessary.
- CPS will need to set in motion procedures to ensure that the issues raised by the panel are disseminated to lawyers. It is unlikely to be sufficient to issue briefing notes by email because pressures on lawyers' time may mean that they do not always read them. CPSWY has emphasised the lessons in the briefing notes at team meetings.
- It is important that feedback is made to the individual lawyers whose cases are reviewed. Most are likely to accept constructive criticism but it is important not to develop a culture of blame.

- Instigation of a Race Scrutiny Panel is unlikely to impact greatly on community confidence or engagement on its own but must be regarded as part of a wider strategy.





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