

# Racial Equality in Prisons

A formal investigation by the  
Commission for Racial Equality  
into HM Prison Service  
of England and Wales

Part 2

COMMISSION FOR  
RACIAL EQUALITY



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## **FOREWORD**

Agencies within the criminal justice system have to set themselves the highest standards as a priority in the way they work. Custodial care on the part of HM Prison Service did not only fail to achieve that goal: it was carried out in ways that were unlawful, both in specific instances and in general.

It is the conclusion of this formal investigation by the Commission for Racial Equality that the Service committed acts of unlawful racial discrimination. This happened against individual members of staff and individual prisoners. It also occurred in respect of the overall standards of delivery for the job it was created to perform, the care of prisoners, and in its employment practices.

This report brings together evidence from those areas of our investigation other than the circumstances leading to the murder of Zahid Mubarek. A report on those matters was published in July 2003. The evidence ranges from acts of intimidation and gross racial harassment to what may appear to some to be small matters but which can be of great significance of prisoners: whether or not a prison shop stocks particular items or a meal fits a particular diet.

Small or large all these failings contradicted the commitment by HM Prison Service to care for those in its employment or custody according to clear standards of decency and respect. They were wrong in themselves; were barriers in the way of the proper functioning of the Service and prevented it from securing the most positive possible attitudes on the part of prisoners to turning their backs on crime.

The events we examined and upon which we have exercised judgement took place up to the summer and autumn of 2000 in and around three establishments, HMP Brixton, HMP Parc and YOI Feltham.

We are assured by HM Prison Service that much progress has been made in the three years since the end of the period covered by our investigation.

We are not in a position to judge upon the extent of that progress but we are pleased to announce that an agreement has been reached between the Service and the Commission. An agreed action plan has been drawn up for changes and developments in the way HM Prison Service will work. This provides for monitoring and reporting systems which will make public the evidence as to what problems persist and what changes have been achieved.

As this process unfolds, it will be possible for the Service itself, ourselves and the public at large to see exactly what progress is being made and how effective it is in

delivering a changed and improved custodial practice, one that delivers race equality outcomes for its staff and those in its care and which, as a result, can play a more successful part in reducing crime across society.

Since HM Prison Service has been prepared to commit itself to such a process it has not been necessary for us to consider whether or not to serve a Non-Discrimination Notice upon the Service.

The Commissioners nominated to conduct this investigation have therefore suspended consideration of such a Notice. The Commission will only need to return to the issue if HM Prison Service fails to live up to its commitments.

**Ray Singh, CBE**

Chair of the panel of Nominated Commissioners

### **The Nominated Commissioners**

The panel of Commissioners nominated by the Commission for Racial Equality to conduct the formal investigation into HM Prison Service of England and Wales was Ray Singh, Kamaljeet Jandu and Patrick Passley. Beverley Bernard was a member of the panel when it was first constituted in 2000 but resigned from it in February 2003 when she stood down as Acting Chair of the Commission.

### **Names**

Individuals have been anonymised wherever possible in the preparation of this report. Reference is made to the office rather than the individual holding the office when identifying particular actions or statements. The report speaks of, for example, ‘the Governor’ without indicating a particular individual who held the office at a particular time, unless that is absolutely necessary to explain the point being made.

Aside from Zahid Mubarek and Robert Stewart, only two individuals who were employees of HM Prison Service or inmates in its establishments have been named.

One is **Mr Alexander**. His successful case proving unlawful racial discrimination in his treatment as a prisoner by HM Prison Service in the 1980s stimulated the production of its 1991 Race Relations Manual. Had the provisions of that Manual been followed, this investigation would have been unnecessary.

The second is **Claudius Johnson**. His Employment Tribunal cases in the decade after that Manual was promulgated led directly to this investigation. Behind the two findings of unlawful racial discrimination against the Service, lay years of wrongful treatment of a fine employee.

Our intention in conducting this investigation, and in working to see that out of it comes a clear, publicly accountable action programme on the part of HM Prison Service, is to ensure that such things do not happen again.

### **Quotations**

In the text of a quotation ‘...’ is used to indicate that a phrase or phrases not relevant to the meaning of the text has been dropped. Where words are included between square brackets as in ‘[the officer]’ this is to indicate that a name or some other identifying term not necessary to the purpose of the quotation has been replaced or that an explanation as to the meaning of a term has been inserted.

### **Terminology**

Where the term ‘black’ is used in this report to describe a person’s ethnic origin it covers those staff or prisoners who have ticked one of the ‘Black’ boxes (Black Caribbean; Black African or Black Other) in ethnic monitoring forms.





## **SUMMARY**

Under sections 48 to 52 of the Race Relations Act, the Commission for Racial Equality is empowered to conduct formal investigations into possible unlawful racial discrimination.

This investigation into HM Prison Service of England and Wales was launched in November 2000. It concluded in November 2003 with findings that the Service committed acts of unlawful racial discrimination during the periods covered by the investigation's terms of reference which ran up to November 2000.

The Commission has the power to impose a Non-discrimination Notice upon a respondent found to have breached the Act in this way. The Notice would require the respondent to do what would be necessary to ensure that it delivered a standard of service and employment practice which fulfilled the provisions of the law. The Commission has suspended consideration of such a Notice on the basis that HM Prison Service has committed itself to fulfil an Action Plan equivalent to what would have been required of it had a Notice been served.

The investigation uncovered the following areas of failure across the operations of HM Prison Service in regard to the three prisons examined: HMP Brixton, HMP Parc and YOI Feltham:

### **1: The general atmosphere in prisons**

- Prison 'cultures' among prison staff meant race equality procedures could be ignored, staff operated in a discriminatory way, and racist attitudes and behaviour were tolerated.
- Racist abuse and harassment and the presence of racist graffiti were persistent features of prison life for many staff and prisoners.
- Action in response to such expressions of racism was generally limited to dealing with the immediate problem rather than rooting out its causes.

### **2: Treatment of prison staff**

- Ethnic minority staff had to work in an atmosphere of racist taunting and intimidation.
- The onus was on ethnic minority staff to make formal complaints about discrimination and harassment.
- These complaints were often not taken seriously and not properly investigated.
- Ethnic minority staff who spoke up about these matters were subsequently victimised.

- Senior managers failed to ensure that perpetrators of acts of racial discrimination, harassment and victimisation were disciplined.
- Senior managers failed to act on Employment Tribunal findings even when a commitment to action had been made by HM Prison Service.
- Senior managers failed to deal proactively or systematically with the problem of racial discrimination against staff.

### **3: Treatment of prisoners**

- Prisoners have written to the Commission alleging a wide range of racial discrimination.
- Complaints of racial discrimination raised within the prison by prisoners were often not investigated.
- Prison officers and prison management failed to deal with racist abuse between prisoners or to protect prisoners from racist harassment.
- HM Prison Service management failed to implement its own policies in relation to racial discrimination, abuse and harassment.

### **4: Access to goods, facilities or services**

- Meals provided for prisoners and goods available in prison shops often did not meet the needs of ethnic minority prisoners.
- Policies were in place but were not actually followed. Inadequate monitoring by prison managements meant that decisions about provision were often at the discretion of individual staff.
- The faith needs of non-Christian religions, particularly Muslims (most of whom were members of ethnic minority groups), were not adequately met.
- Arrangements for access to goods, facilities or services, while appearing to be the same for all prisoners, in practice indirectly discriminated against members of ethnic minority groups.
- Prisoners with low literacy skills had difficulty adapting to prison life and accessing prison services. In the case of Irish Travellers, this is compounded by prejudice and discrimination, leading to high levels of self-harm.

### **5: Control of the use of discretion**

- Prison staff exercised considerable discretion in carrying out their duties.
- This exercise of discretion was not adequately managed or monitored by prison managements.
- This exercise of discretion led to differential treatment of prisoners.
- Decisions made by individual prison staff may have been made on the basis of negative stereotypes.
- Remarks in a prisoner's written record that were made on the basis of stereotypes may influence future decisions about a prisoner's treatment.
- In one example of discrimination in the use of discretion, black prisoners appear to have been more likely to be targeted for 'suspicion' drugs testing than white prisoners.
- The extent to which this might have been due to racial discrimination was not been adequately investigated by HM Prison Service.

- In an extreme example of uncontrolled officer use of discretion, ethnic minority prisoners were significantly over-represented among prisoners punished under an unauthorised regime at Brixton known as ‘reflections’.
- The practice of ‘unofficial bang-ups’ (locking a prisoner in their cell as a punishment) was common in many prisons, as were other unauthorised forms of punishment such as banning prisoners from using the prison gym.
- Evidence suggested that prisoners on whom such unauthorised punishments were imposed were more likely to be from ethnic minority than white backgrounds.

#### **6: Prison transfers and allocations**

- Decisions about who to transfer were made by individual prison staff, who may have discriminated against ethnic minority prisoners in exercising these discretionary powers.
- HM Prison Service was not monitoring transfers by ethnicity.
- Prisoners were transferred after making a complaint, particularly, many prisoners felt, a race complaint.
- Prison staff transferred racist prisoners rather than tackle their racist behaviour.
- Victims of racist abuse or harassment were transferred to prisons with a reputation for harsh regimes; these transfers were therefore seen as a punishment by the prisoners concerned.

#### **7: Discipline for prisoners**

- Prison statistics clearly suggested a consistent over-representation of black male prisoners in the prison disciplinary system.
- Prisons have been required since 1991 to monitor the area of disciplinary charges, but have failed to do so effectively.
- Failure to keep consistent and comprehensive records meant that prisons could too easily explain away any apparent discrimination on a case by case basis.
- Where records did show a consistent pattern of apparent discrimination, prisons failed to investigate the causes or take any action.

#### **8: Incentives and Earned Privileges scheme**

- Individual staff exercised considerable discretion in the operation of the IEP scheme, leaving it open to the possibility of discrimination.
- There were disproportionate numbers of black prisoners on the basic IEP level at Brixton and Feltham.
- There was inadequate managerial supervision and monitoring of the scheme.

#### **9: Access to work**

- Allocation to prison jobs (or in some cases work outside prison) tended to be at the discretion of individual officers, and was a long-standing source of complaint by black prisoners.
- Black and Asian prisoners were consistently under-represented in work parties at HMP Brixton and YOI Feltham.

### **10: Race complaints by prisoners**

- Procedures for making race complaints were complex and off-putting. Many prisoners were not aware of or did not understand the procedures.
- Some prison staff discouraged or prevented prisoners from making race complaints.
- Lack of confidentiality also discouraged prisoners from making race complaints.
- When complaints were made, prison staff attempted to resolve them informally – usually not to the satisfaction of the prisoner complaining.
- Recording of race complaints and monitoring of race complaints by prison managements was poor or non-existent.

### **11: Investigation of race complaints**

- Investigations into race complaints were generally of poor quality.
- Investigators often applied unreasonable standards of proof.
- Investigators hardly ever upheld race complaints.
- Investigators of race complaints rarely received adequate training.
- Investigations were poorly supervised and monitored by senior management.
- There was a general failure to examine the issue of race in complaints that were not in themselves race complaints.

### **12: Correcting bad practice and spreading good practice**

- HM Prison Service did not effectively disseminate good practice in general, and on race issues in particular. Such guidance as was available on race issues was *ad hoc* rather than part of a strategic approach.
- Staff frequently claimed they are unaware of correct procedures, while managers failed to exercise control and leadership.
- Delivery and take up of training on race issues was inadequate.

### **13: Protection from victimisation**

- Prisoners who made race complaints were punished or victimised for making the complaint.
- A complaint by a black prisoner over racial abuse by a staff member triggered a series of complaints and investigations in which the issue of victimisation, which the prisoner saw as central to the complaints, was not effectively examined.
- The investigations and the disciplinary action against staff which ensued were inadequate.

### **14: Management systems and procedures**

- On key occasions, senior managers in HM Prison Service were unaware of problems on the ground
- Staff were able to breach fundamental safety requirements and sabotage prison systems but go unpunished
- Basic race equality practices – such as providing a diversity of goods in prison shops – were never made the kind of management priority which

would guarantee successful delivery of the stated objectives of HM Prison Service

### **Findings**

The Commissioners made a range of findings of fact and findings in respect of problems of relevance to race equality. In addition they made a number of specific findings that HM Prison Service had committed acts of unlawful racial discrimination contrary to the Race Relations Act 1976.

These individual findings are complemented by three general findings of unlawful racial discrimination.

One finding, already published, covered the chain of events paving the way for the murder of Zahid Mubarek.

In addition, the Commissioners made two general findings, one in respect of the failure to provide prisoners from ethnic minority backgrounds with equivalent protection from racial violence and the other in respect of the Service's general failure to provide race equality in its employment or custodial practices.

The findings are printed in full at page 194.



## **BACKGROUND**

### **Reasons for the investigation**

Under sections 48 to 52 of the Race Relations Act 1976, the Commission for Racial Equality (the Commission) has the power to conduct formal investigations into organisations or bodies. To conduct an investigation, the Commission must have grounds to believe that the organisation concerned has committed an act or acts of discrimination contrary to the Race Relations Act.

#### *Problems at HMP Brixton*

The Commission began to consider the possibility of a formal investigation into HM Prison Service in the spring of 2000, based on evidence of problems in one particular establishment, HMP Brixton. The evidence was of unlawful racial discrimination and victimisation suffered over several years by a prison officer at HMP Brixton.

The Commission had represented the prison officer, Claude Johnson, in three complaints to the employment tribunal, the first of which was made in 1993. The decision on this case exposed what the employment tribunal called ‘a campaign of appalling treatment’ which amounted to unlawful racial discrimination and victimisation (*C A Johnson v Armitage, Marsden and HM Prison Service, 1995*).

The second case, brought in 1994, was settled in 1996 on terms that should have enabled Mr Johnson to resume work in a non-racist environment. However, in 1998 Mr Johnson submitted a third case to the employment tribunal. On 17 March 2000, the tribunal upheld this complaint as discrimination by way of victimisation.

The cases raised concerns for the Commission about the treatment of prison staff and prisoners at HMP Brixton. In particular, the Commission was disturbed by what appeared to be a complete failure and unwillingness by prison managers to learn anything from the initial, highly critical tribunal decision or to comply with the terms of the 1996 settlement, to which they had formally agreed.

The Commission had also received a number of other applications from HM Prison Service staff for assistance with complaints of racial discrimination against the Service, including another complaint relating to employment practices at HMP Brixton.

### *A wider base for investigation*

To make sure that an investigation did not just focus on an old London prison with a high ethnic minority percentage in its prisoner population and in its staff, the Commission also considered the example of a new prison in Wales, HMP/YOI Parc.

In 1999, the Chief Inspector of Prisons had undertaken an inspection of Parc following 'sensationalist reports about the prison' as well as a number of suicides. The report revealed that the prison 'contained prisoners who were clearly racist' and that other prisoners felt staff were not dealing with the problems of racism and racist incidents within the prison (*HMCIP, Parc, 1999*).

The issue of racism in prisons was also tragically highlighted at this time by the death in March 2000 of a young Asian prisoner, Zahid Mubarek, following an attack on him by a white prisoner in the prison cell they were sharing at Feltham Young Offender Institution and Remand Centre.

### *The decision to investigate*

In July 2000, the Commission decided that there was sufficient evidence from tribunal cases and other sources to justify a formal investigation into HM Prison Service.

The Commission does not embark lightly on formal investigations. Its purpose in doing so is to secure the most effective action to remove discrimination from, and ensure racial equality in, the operations of an organisation. Generally, if those objectives can be secured without the need for this kind of law enforcement action but through partnership work or other actions, then the Commission will not use its enforcement powers. In this case it was felt that a formal investigation was an appropriate part of the action needed to secure a decisive improvement in the work for racial equality across HM Prison Service.

In August 2000, the Commission wrote to the Director General of HM Prison Service saying that it was minded to embark on a formal investigation. HM Prison Service made written and oral representations to the Commission in October, outlining its strategy for change and the progress it believed it was making in support of its view that a formal investigation was unnecessary.

On 31 October, HM Prison Service published a summary of what it described as a 'highly critical' report on HMP Brixton by its own Race Equality Adviser (*Prison Service Press Release 86N/00*). The full confidential report was sent to the Commission.

On 1 November 2000, the jury at Kingston Crown Court convicted Robert Stewart of the murder of Zahid Mubarek, his cell mate in HMYOI Feltham. The jury rejected



a plea of diminished responsibility. The prosecution had argued that the killing was motivated by Zahid Mubarek's race among other things.

Following Robert Stewart's conviction, the Commission decided to add the situation at Feltham and the circumstances leading to the murder of Zahid Mubarek to the grounds for belief and terms of reference for its investigation into the Service.

On 2 November, the Director General of HM Prison Service wrote to the Commission. The letter effectively withdrew the earlier objections the Service had expressed to the formal investigation. The Director General wrote:

Whilst I continue to believe that there has been much progress in the area of race relations in the past two years, I am not satisfied that the culture is changing at sufficient speed. I now believe that a formal investigation, led by the CRE, would assist in accelerating and maintaining progress towards eradicating the institutional racism and pockets of malicious and blatant racism which exist in the Service.

The Commission decided to proceed immediately with the investigation and on 17 November 2000 the Commission Chairman issued a statement:

Commissioners are deeply concerned at some incidents of proven racial discrimination in the Prison Service. This is why we are taking the exceptional and serious step of launching a formal investigation. The decision follows serious concerns about the murder of Zahid Mubarek whilst in prison custody and the belief that the murder was racially aggravated; and the circumstances surrounding the treatment of Claude Johnson, a prison officer serving at HMP Brixton. It is unacceptable to allow racist bullying, harassment, violence and murder to continue unchecked in our prisons – whether between inmates, inmates and staff or amongst the staff themselves.

## **Scope of the investigation**

### *The way prisons operate*

The failure of an organisation to provide race equality in the way it works, or who it employs, is often an indication that other things are also seriously wrong. Conversely, race equality cannot be achieved in a badly managed HM Prison Service within which individual prison establishments offer impoverished regimes and tolerate bad staff practices. In order to effectively pursue its terms of reference, the Commission investigation therefore needed to range widely over a number of problems it encountered in the way the Service as a whole and individual prisons were working.

This approach is supported by a High Court ruling in 1980 in the case of *Home Office v Commission for Racial Equality*. The court ruled that, so long as the investigation could be supported in terms of the Commission's duty outlined in the Race Relations Act to promote good race relations, a formal investigation could proceed even though the activities that would be investigated were outside the scope of the sections of the Race Relations Act 1976 dealing with unlawful discrimination.

This investigation was therefore not limited to those aspects of the prison regime which might immediately appear to fall within the scope of the 1976 Act. In order to arrive at conclusions on the best way forward for HM Prison Service to improve its race equality performance, the investigation needed to look at underlying factors in the way the Service and individual prisons operated.

### *The Race Relations (Amendment) Act 2000*

On 2 April 2001, during the course of the investigation, the provisions on discrimination in the Race Relations (Amendment) Act 2000 came into force. These provisions brought all aspects of the prison regime conclusively within the scope of the Race Relations Act, and provided further support for the Commission's general approach, but it was not open to Nominated Commissioners to make findings of unlawful discrimination under the new provisions as the period covered by our Terms of Reference ended before these new provisions came into force.

The Race Relations (Amendment) Act 2000 also lays a duty on the Home Secretary, and, through the Home Secretary, on HM Prison Service, to 'have due regard to the need to: eliminate unlawful racial discrimination; promote equality of opportunity; and good relations between persons of different racial groups'. This duty provided a further focus for the investigation and the recommendations arising from it.

### *Objectives and themes of the investigation*

The main thrust of the investigation and the consideration of evidence was to examine the affairs of the three prisons (Brixton, Feltham and Parc) and the

circumstances leading to the murder of Zahid Mubarek, with a view to seeing whether unlawful racial discrimination was taking place both in the treatment of prisoners and of staff, and examining why it might be happening in view of the Service's strongly stated and long-lasting race relations policies.

The investigation also examined the functioning of HM Prison Service management structure to see why obvious problems in the three prisons were not corrected; why those that were not obvious were not brought out into the open; and whether those at the most senior levels of the Service management knew what was happening, and, if they did not, what steps they took to overcome such a weakness once the problems became obvious.

The investigation aimed also to consider the contribution that HM Prison Service can make to improving race equality and race relations generally, both within the prison system and in society more widely.

## **The investigation process**

As indicated by the terms of reference, the investigation focused on events and circumstances in three prison establishments: HMP Brixton, HMYOI Feltham and HMP/YOI Parc. The investigation consisted of:

- direct observation during several visits to all three prisons by members of the investigation team
- interviews with staff and prisoners at all three prisons
- questionnaires circulated among prisoners and staff in the three prisons
- documentary evidence from committee minutes, exchanges of correspondence, files of internal investigation reports into prison incidents, and other prison records
- interviews with and documentary evidence provided by other bodies working in the prison, such as Boards of Visitors (now termed Independent Monitoring Boards)
- interviews with, and documentary evidence provided by, Prison Service managers and other headquarters teams
- evidence from reports published by HM Chief Inspector of Prisons
- written and oral evidence from a wide cross section of those working in, or knowledgeable about, the Prison Service
- visits to other prisons for the purposes of comparison, and
- other documentary evidence relating to prisons such as research reports and statistical surveys.

No finding of discrimination may be arrived at by the Commission until the body being investigated has been given the opportunity to make representations to the Commission.

The Commission presented its provisional findings accompanied by a draft report on the evidence to HM Prison Service on 9 December 2002. The Service responded with representations about the findings and the report on 31 March 2003.

Part 1 of the Commission's report, dealing with the circumstances surrounding the murder of Zahid Mubarek at HMYOI Feltham, was published in July 2003 (*A formal investigation by the Commission for Racial Equality into HM Prison Service of England and Wales, Part 1: The murder of Zahid Mubarek, CRE, July 2003*). The present document constitutes the second and final part of the Commission's report of its formal investigation into HM Prison Service.

## **HM Prison Service policies on race equality**

HM Prison Service started the 1990s with a policy on race equality far better than most. It was based on the proposition that, in order to achieve the declared aim of eliminating racial discrimination, problems needed to be monitored, programmes to achieve solutions implemented and, if they did not deliver, further action triggered. Despite this policy on paper, the Service ended the decade facing a Commission investigation and with any reputation it may have had for race equality under strong challenge.

### *The 1991 Prison Service Race Relations Manual*

The 1991 Prison Service Race Relations Manual was welcomed at the time by the Commission as

the most detailed and comprehensive racial equality policy and set of procedures of any agency within the criminal justice system.

The manual's purpose was to set out HM Prison Service's policies and the practical implications of those policies. It provided a straightforward way of auditing what was going on in each prison establishment and constructing action plans for improvement. It included

detailed descriptions of the policies in 14 areas of prison life; audit documents to allow prisons to assess their implementation of these policies; and action planning advice. (*Prison Service Race Relations Manual 1991, page 6*)

The aim was to prevent discrimination and deliver equality of opportunity through organised, deliberate and prioritised action programmes, regularly checked and updated – as opposed to waiting for individual problems to force themselves onto the agenda before they were addressed. It advised on how, if the first range of actions was revealed by subsequent monitoring not to have succeeded, further and more developed actions should be undertaken.

The manual was also designed to enable staff to see what their own responsibilities were and what they could and should be doing in their own area of work. One of the longest sections in the manual covered a description of staff responsibilities. It contained instructions on a number of specific issues, ranging from the need to apply disciplinary measures fairly, to the responsibilities of staff in dealing with offensive or discriminatory behaviour either by prisoners or other staff.

### *Joint Commission/HM Prison Service project*

Following circulation of the manual, discussion between the Commission and HM Prison Service centred on the need to find a way of checking on implementation and

progress which got behind the checklists and tick boxes so often used by large and dispersed public sector organisations. In 1993, a joint development project was agreed to look in detail at how race relations were *managed* in a limited number of establishments rather than at the outcomes that were being achieved. This was the first time there had been such collaboration between the Commission and a criminal justice agency.

The project team conducted its surveys in 1994 and produced its report in 1995 (*Management of Race Relations in Prison Establishments, CRE/Prison Service, 1995*). The report found that good practice was only 'patchy'. It made a number of recommendations, ranging from 'minor steps, which could nevertheless make a substantial difference, to strategic steps which will require a modest investment of resources' (page 9).

HM Prison Service then set up pilot projects in four prisons (including HMP Brixton and YOI Feltham) to try out the recommendations from the joint report and others from academic research conducted into the management of racial incidents in prisons (*Reported and Unreported Racial Incidents in Prisons, Oxford Centre for Criminological Research, Occasional Paper No 14, 1994*).

#### *Prison Service Order 2800*

The work of these pilot projects was said by HM Prison Service to have been used to change the 1991 manual into what is the present policy document on race relations, Prison Service Order 2800, which was issued in 1997 and revised in some limited aspects in 2000. This was the policy statement in force during the period covered by the Commission investigation of YOI Feltham and HMP Parc and the important, later years for the period covering HMP Brixton.

The 1997 document differed significantly from the 1991 Manual. Where as the latter held its focus on achieving improved outcomes, the 1997 Order took a different approach: it focused on the processes. Certain steps (having a Race Relations Management Team in place, its photographs displayed on notice boards) were laid down as 'mandatory', other steps, such as what areas of the treatment of prisoners should be monitored were described as 'recommended'. The Order required the fulfilment of over 30 'mandatory' steps but none of these required staff to achieve any improved outcome.

#### *The gap between policy and practice*

In 1998, the National Association for the Care and Resettlement of Offenders (NACRO) carried out a study into the attitudes and experiences of prisoners and staff using surveys and focus groups.

One purpose was to examine what impact PSO 2800 might have had on race relations since it was issued in 1997. Of the staff sample, 78% said they had not been

trained in its provisions, although 70% of the sample said they had received some race relations training in their initial officer training.

The study recorded negative remarks of some staff in focus groups, and negative experiences of individual prisoners – and generally greater levels of dissatisfaction among ethnic minority prisoners – in its surveys. It concluded that these results

do not come as a surprise, they confirm the experience of NACRO staff and many others who have regular contact with prisons around the country... It is shocking that after 20 years of policy and practice, a minority of prison staff can still demonstrate the kind of attitudes expressed in this report. (*Race and Prisons: A snapshot survey, NACRO, 2000, page 48*)

Also in 1998, HM Prison Service commissioned four focus groups of ethnic minority staff and one of white managers to explore the experiences and perceptions of staff on race equality issues. The conclusions the facilitators came to included:

it appears that some managers in prison establishments and HQ do not set an example of good practice in equal opportunities. There is no apparent culture for challenging inappropriate behaviours. Some managers may as a result engage in inappropriate behaviours themselves or may tolerate low level harassment. (*Report of the provision of facilitation for focus groups of ethnic minority staff in the Prison Service, MaST Consultancy Services, for HM Prison Service, August 1998, page 15*)

The availability of this and other evidence – surveys and research, tribunal findings, HMCIP reports, coroners' verdicts and recommendations – indicates that HM Prison Service leadership could not, with any justification, have pleaded ignorance of the realities on the ground. Nor could prison staff have pleaded ignorance of what was the right thing to do, given the high profile of race equality policies within the Service. Both elements were a constant factor of prison life right up to the moment when this formal investigation commenced.

A major underlying question for this Commission investigation was therefore: why did HM Prison Service's race equality policies not lead to race equality achievements?

## Challenges facing the prison system

HM Prison Service is one of the most complex organisations of any in our society. The daily life of tens of thousands of human beings is compressed into the space of some 140 establishments. In such an environment, not only is there great complexity of function and purpose, but the impact of specific problems that are not attended to can become severe and generalised. Getting race relations right and delivering successful race equality practices in such a context is never going to be easy.

In 2001 the government published a white paper *Criminal Justice: The Way Ahead*. This clearly stated that the role of prisons is not just to lock up convicted offenders, but also to help them lead law-abiding lives after release. A major focus of prison is to prevent re-offending. The white paper stated:

This requires decent, humane regimes and adequate and appropriate training and employment programmes. Conditions in some prisons are very poor and must be improved. (*Criminal Justice: The Way Ahead, CM 5074, 2001, paragraph 2.87*)

Yet in achieving this objective – an objective in which race equality plays a key part – HM Prison Service faced a number of challenges which, if anything have grown more severe in the most recent years:

- Sheer weight of numbers. The prison population continues to rise, growing from 44,246 in 1993 to over 74,000 by October 2003.
- A diverse prisoner population. An increasing proportion of those in prison are serving longer sentences, while at the other end of the prison spectrum, an increasing proportion of those in prison are there on remand – that is, held in prison awaiting or during trial, and therefore unconvicted.
- Increasing numbers of prisoners with a significant mental health problem (due largely to the introduction of care in the community and the movement of large numbers of mentally disturbed patients out of hospital wards). The Director General told this investigation that the number of prisoners with a significant mental health problem has risen by seven times in the course of the 1990s. Some 5,000 prisoners at any one time are suffering from severe and lasting mental illnesses.
- An increasing proportion of prisoners from ethnic minority backgrounds, part of the increase arising from the presence of more foreign nationals in prisons in England and Wales, but most to do with trends in arrests and convictions of people living in Britain.
- An increasing number of prisoners who have been convicted of racially aggravated crimes of violence or harassment introduced in the Crime and Disorder Act 1998.
- A rapid increase in the number of women in prison. Prisons for women were not within the scope of this investigation but it is worth noting that ethnic minorities are even more over-represented among female than among male prisoners.



- A growing proportion of foreign nationals in prisons – rising from 8% of the total prison population in 1999 to 13% in 2003.
- Funding and resource restrictions. The inexorable rise in the prison population has occurred against a backdrop of increasing pressures on public funding. Although the government's spending review in 2000 gave more funding to HM Prison Service, much of this was devoted to increasing prison capacity – and to secure the additional funding the Service 'agreed to find cash savings equivalent to 1% of our spending each year' (*Director General, letter to Commission, 17 April 2001*).

Many who spoke to us during the course of this investigation said that, within the resource restrictions HM Prison Service has been facing, the pressure of numbers means that a period of custody may well entail conditions of custody for prisoners so poor that they leave prison more likely to re-offend than before they were sentenced. As the Director General himself said in 2002:

At worst, we cannot treat people with dignity or decency, or sometimes even keep them alive. (*May 2002 speech at a Downing Street seminar, reported in Prison Service Journal, September 2002, pages 30-35*)

## Over-representation of ethnic minority groups in the prison population

The table below gives the ethnic breakdown for the overall prison population in England and Wales since the inception of HM Prison Service as an Agency in 1993. The figures are published by the Home Office. The first available figures from 1985 are included to show the full extent of historical change. Across the period there has been a steady upward drift in the proportion of the prison population coming from ethnic minority groups, particular those which are black.

Table 1: Prison population in England and Wales by ethnic group

	Total	White	Black	S/ Asian	Chinese/Other
<b>1985</b>	47,503	39,383 <b>85.75%</b>	3,662 <b>7.97%</b>	1,052 <b>2.29%</b>	1,009 <b>2.19%</b> <sup>1</sup>
<b>1993</b>	44,246	36,955 <b>83.52</b>	5,013 <b>11.32</b>	1,356 <b>3.06</b>	926 <b>2.09</b>
<b>1999</b>					
<i>Dec 31</i>	62,055	50,297 <b>81.05</b>	7,664 <b>12.35</b>	1,801 <b>2.90</b>	2,264 <b>3.64</b>
<b>2000</b>					
<i>Dec 31</i>	61,617	48,832 <b>79.25</b>	8,300 <b>13.47</b>	1,842 <b>2.98</b>	2,605 <b>4.22</b>
<b>2001</b>					
<i>Dec 31</i>	66,049	51,533 <b>78.02</b>	9,775 <b>14.79</b>	1,998 <b>3.02</b>	2,687 <b>4.06</b>
<b>2002</b>					
<i>Jan 31</i>	67,870	52,970 <b>78.04</b>	10,049 <b>14.80</b>	2,049 <b>3.01</b>	2,747 <b>4.04</b>
<i>June 30</i>	71,218	54,988 <b>77.21</b>	11,022 <b>15.47</b>	2,198 <b>3.08</b>	2,947 <b>4.13</b>
<i>Dec 31</i>	69,612	52,368 <b>75.22</b>	11,603 <b>16.66</b>	2,289 <b>3.28</b>	3,287 <b>4.72</b>

Source: the annual series of *Prison Statistics England and Wales* and monthly prison population statistics published by the Home Office.

Two things stand out from this array of figures, one internal to the prison population and the other to do with the way imprisonment impacts upon different ethnic groups.

First, there is an increase in the black proportion in the most recent period. This is most expressed by comparing the prison population at the end of December in 1999 and 2002. The total black, Asian and Chinese and Other population grew from 11,729 to 17,179 or by 46.46%. Taking percentage rates of growth the overall prison population grew by 12.17% in those 36 months, while the black group alone grew by 51.39%.

### *Social implications*

The general trend over the past three decades has been for any rise in the prison population as a whole to be accompanied by an increase in the proportion of the

<sup>1</sup> For this year the figure is taken from Table 4 in Home Office Statistical Bulletin 17/86, *The Ethnic Origin of Prisoners*. The categories used were different to those developed later and included 4.45% registering as 'Other (including not recorded and refusal)'.

population coming from ethnic minorities and most significantly from the black group. The over-representation of the black group in the prison population has for several years been at a level which has a significant impact on the experience of the black male group in society at large.

The table below gives the number in prison per 100,000 in the population at large for males in each identified ethnic group in prison otherwise termed the incarceration rate.

Table 2: Incarceration rates by ethnicity

	White	Black	BICar	BIAf	BI0th	S A	Ind	Pak	B/desh	Chi/Oth	Ch	Other	A	Other
96	146	1,162	1,278	750	1,158	121	80	206	81	325	36	786		293
97	176	1,249	1,249	1,416	730	150	86	278	101	390	33	883		386
98	185	1,245	1,425	682	1,296	168	89	330	144	375	24	972		972
99	184	1,265	1,395	713	1,399	147	93	260	74	424	44	914		358
00	188	1,615	1,704	1,274	1,695	199	126	329	183	882	135	1,399		950

Source: *Prison Statistics England and Wales*, year by year.

A variety of factors lie behind these different incarceration rates. These include:

- Differentials in the operation of law enforcement, such as a greater likelihood of being targeted by the police for arrest or of getting a longer sentence for a similar offence.
- Differentials in the type of crime people from different ethnic groups are likely to commit, perhaps because of different occupational, residential or other significant lifestyle patterns.
- Broad questions of different social backgrounds – for example, ethnic minority groups are more likely to be found among those living in the poor inner cities where the social factors lying behind higher rates of offending will be more likely to operate.
- Self-fulfilling predictions on the part of law enforcement agencies: if the police consider black members of the public to be more likely to commit certain kinds of crime than white individuals – or vice versa – they are more likely to look for suspects from those groups and so more likely to find individuals from those groups who are involved.

### *Avoiding stereotypes*

One consequence of the over-representation of the black group is that the social structure of the black group in prison needs to be approached with some care. It is a statistical fact that those excluded from school are more likely to end up in prison than those not. It is also the case that the black male group is both over-represented among those excluded from school and among those sent to prison. It does not follow, though, that members of the black male group in prison are predominantly school excludées or that black prisoners are more likely to be school excludées than

their white colleagues. The evidence shows that, in fact, the black group in prison is more likely than the white group to have stayed at school and to have acquired educational qualifications and slightly more likely to have been in work just before imprisonment.<sup>2</sup>

To a significant degree, the high incarceration rate for the black group reflects greater police attention driven by ethnic identity rather than social circumstances. In society at large, it is the suspect's blackness which attracts primary police attention, as opposed to the manifestation of aspects of social exclusion (styles of dress, speech, residence, etc) which attracts police attention to particular individuals in the white group. It would, therefore, be particularly wrong to see the black group in prison as necessarily reflecting the social indices of a socially excluded group as compared to a socially included white group. In fact, it is the white group of prisoners who more predominantly reflect the socially excluded sections of the white population in society at large, and therefore carry into prison some of the consequential problems such as high rates of illiteracy.

This high incarceration rate may also contribute to the way in which the black male group in prison experiences an inversion of some of the social experiences imposed on the black group outside prison. Outside, it is more likely to face compulsory mental health treatments, inside it is less likely than the white group to fail to cope mentally with imprisonment and much less likely to commit suicide. It is more likely to want to be educated and trained and less likely to try to escape, though it faces a higher rate of guilty verdicts in disciplinary hearings.

The statistics also show that, for all its media image as the group most likely to commit crime, particularly violent crime, it is less likely to re-offend than the white group and less likely to have been in hospital as a result of a fight prior to imprisonment. The group which reports as being the least likely of all to have been in hospital as a result of fight outside prison, the Asian group, is also the one most likely to report being assaulted in prison. These are long term patterns which, so far as statistics or research reports are available, appear to have been largely in place ever since a significant number of black and Asian prisoners began to appear in Welsh and English prisons in the 1970s.

#### *Appropriate programmes to reduce offending behaviour*

These issues pose complex problems for those preparing resettlement and offending behaviour programmes in prisons. For the black group, for instance, there will be some who are trapped by the concatenation of socially excluding forces and conditions and for whom one approach will be appropriate, but for many others

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<sup>2</sup> *The National Prison Survey 1991: Main Findings, Home Office Research Study 128, 1992, page 20:* 'White prisoners were much more likely to have truanted after the age of 11 than other ethnic groups. A third of whites said they had mostly played truant compared to only 19% of black Caribbeans.' On page 21 it says that 52% of black Caribbeans and 50% of whites were 'working just prior to imprisonment'.

within the black group such an approach would be patronising, alienating and self-defeating. Approaching black prisoners on the basis of a stereotyped understanding of their behaviour and social position will not only be self-defeating but probably also damaging. This is particularly important because, while the black group may be more likely to have been in work before entering prison, the nature of discrimination in the job market means that when they come out of prison, carrying a 'record' on their CV, they may find it harder than their white counterparts to get work, a home, and so on.

The way prison statistics are provided does not make it possible to calculate the total number of black males who may have passed through prison at some time over the period covered by the above tables. The figures do not take account of repeat offending. It is also, of course, a very crude figure, lumping together those who were in prison only on remand, those whose sentences were short and those in prison for many years.

They are, though, adequate enough to make the general point. Relative under-achievement in the education system, discrimination in the labour market, demonisation by the long-standing racial stereotype of the dangerous black male, conspire together to marginalise this group and deny it an equal opportunity in accessing success in British society. The addition of a period in a prison, which gives a 'record', but may fail to help individuals to equip themselves with the attitudes and skills they need to find a positive place in life and avoid re-offending, forms a crucial part of the cycle of disadvantage and exclusion which impacts upon this group particularly powerfully. Significant work to address re-offending rates across the prison population will have a hugely positive impact on the black male group in society at large by helping to break this cycle of exclusion. Conversely, significant reductions in the number of black prisoners re-offending will have a disproportionately positive impact on over-all reoffending rates.

## **HMP Brixton**

The three establishments covered by the investigation were HMP Brixton, HMP/YOI Parc and HMYOI Feltham.

Brixton prison first opened in 1822 as the Surrey House of Corrections. For the period covered by our investigation, it was the local prison for central/south London. It was classed as a category B prison (the security classification – ranging from category A, maximum security, to category D, open prison) and had an operational capacity of just over 800 prisoners, the exact figure fluctuating according to factors such as repairs and renovations, staffing levels, etc. It held a number of sentenced prisoners but was mainly a remand centre: if convicted and sentenced to custody, many prisoners would then be moved to other prisons to serve their sentence.

### *Ethnic origin of prisoners and staff*

Many within its walls are local to south and south-west London but it also has a large number of foreign nationals. The proportion of prisoners of black or Asian ethnic origin ran at between 43% and 48% in the final years covered by our investigation. Many of these were foreign nationals. Foreign nationals held in the prison in the summer of 2000 formed 30% of the total population, and half of these were black or Asian. A significant number of these prisoners were held on remand awaiting extradition proceedings. Unlike other prisoners, they could not be moved from Brixton.

Brixton had a higher percentage of ethnic minority staff than most other prisons – 11% of all prison officers at Brixton were black or Asian in the middle of 2000, along with one senior officer and one governor grade staff member. Nevertheless, this did not reflect the proportions of those groups in the London population, and the proportions reduced rapidly as one moved up the grading hierarchy.

### *Chronic problems*

The Chief Inspector of Prisons commented on the particular problems faced by local prisons such as Brixton. These prisons

contain a very wide mixture of prisoners – remand, convicted but unsentenced, life, long, medium and short sentenced, mentally disordered, and, in some, women, young offenders and children. They are massively overcrowded with an average throughput in excess of four times their prison population every year. On top of this, they are not resourced to provide full, purposeful and active regimes for each prisoner, with the result that too many of them are left locked in their cells for far too long. (*HMCIP Thematic Review: Suicide is Everyone's Concern, 1999, page 4*)

In written evidence to us, the Chief Inspector said Brixton

has long been regarded as a dumping ground, with a reputation for being massively overcrowded. It has a tradition of providing atrocious physical conditions for prisoners, especially in health care, and an almost total lack of constructive activity. (*HMCIP, written evidence, 21 February 2001*)

A general issue in our consideration of matters at Brixton was the degree of chaos and lack of obvious direction in the regime, particularly in the latter half of the 1990s. Reporting on a visit to the prison in October 1999, the Deputy Director General commented:

The most overriding impression from my visit was of inefficient use of staff, a slightly dirty and unkempt appearance in many places and chaotic routines which did not work effectively. (*Covering letter to Governor of visit report, 1 November 1999*)

During our familiarisation visit to the prison (23 January 2001), the Governor said there were three problems which stood out at Brixton:

- very high levels of staff sickness absence, which meant that often more than 30% of staff were off sick on any one day
- lack of understanding of procedures or total lack of any written procedures, leading to inconsistent and sometimes poor working practices
- poor administrative systems and records.

#### *Resistance to change*

Many observers – including senior prison managers – noted the entrenched staff culture at Brixton.

Following his visit to Brixton in October 1999, the Deputy Director General reported that the Deputy Governor ‘characterised the problems within the prison as being caused by a staff culture which resisted change’ (*as above*). HM Prison Service’s London Area Manager wrote, in a letter to the Governor of Brixton in November 1999, about ‘a history of prevarication in the establishment and resistance to even the most minor form of change’ (*Area Manager London to Governor Brixton, 18 November 1999*). A month earlier he had warned:

At the heart of the Brixton issue, not unlike other establishments, is the whole business of staff culture change. There is a worrying lack of appreciation among many staff as to how outdated and unacceptable working practices and work focus are. (*Area Manager London to Governor Brixton, 26 October 1999*)

One principal officer, who first came to Brixton in August 1999 having previously worked at two other prisons, described the consequences of this long lasting culture:

Brixton, dare I say, has been in the past a backward establishment... You've had people working here all their service, and that can be anything up to 32 years, that's unhealthy to start with. They've got entrenched views and tunnel vision and they haven't had experience of other establishments and everything that they know is Brixton... The fact that people have been here all their service is totally unhealthy. That's the biggest problem. Trying to change the culture when you've come in from outside and you've got experience, is very difficult. (*Commission interview*)

#### *Attitudes to race equality*

During their first few days on site, our investigators had problems getting hold of the correct keys for the office they had been assigned to. This was reminiscent of the experience of HM Prison Service's own Race Relations Adviser when she arrived at the prison in 2000 to carry out an investigation ordered by the Director General. Her report says:

It was plain that some senior managers did not welcome the investigation and obvious that staff and prisoners had not been advised in advance of our presence or the reasons for it. (*Assessment of Race Relations at HMP Brixton, RESPOND, October 2000, page 9*)

The interviews we conducted with staff, the evidence from the documentary record and the texts of the interviews conducted for the RESPOND investigation all point in one direction – a number of staff at Brixton were uncomfortable with the issue of race equality and resented criticism on that front, either because they opposed the core message, or simply did not understand what it was all about.

Combined with the entrenched staff culture, this too often led to a closing of ranks in the face of criticism or change. The Governor commented to the RESPOND investigation that previous action in favour of race equality had had a negative impact upon attitudes in Brixton:

The person who was the perpetrator is now seen as the victim and has a great deal of sympathy from staff around the prison. (*RESPOND interview*)

A senior manager at Brixton, interviewed for our investigation, spoke of 'resentment' among some staff and commented that 'staff morale in terms of race relations and equal opportunities is very confused'. A Principal Officer also interviewed for our investigation argued: 'there's a bandwagon going through and people will jump on it' (*Commission interviews*). Another senior manager was asked by the RESPOND interviewers whether certain terms were in his view acceptable and replied:

Paki? I would choose 'acceptable' in my view.



Asked about wider race issues, he said among other things:

They play locally what is called the race card, ie if they are criticised justifiably, and I stress justifiably, they say that they are being harassed and that they are being harassed because of their race. So it means that as a manager you are walking on eggshells when you are dealing with an ethnic minority group ...

What surprises me and amazes me is that counsel representing the Treasury Solicitors indicate to me that the Tribunal invariably are always in favour of people of an ethnic minority and will not listen to the true facts of the situation and will automatically find in [their] favour ... If you want to check with counsel concerned that is a fact ...

I believe at times there may be some difficulties with some staff from certain ethnic groups, particularly Afro-Caribbean who tend to be somewhat aggressive in the way that they approach people, but I interpret this as part of their culture and take account of that and make allowances for that ...

In our Health Care Centre well over 50% of our employees are of non-Caucasian origin and that does not include Indians, because I look on Indians as being Caucasian because they are from the same racial stock as you and I

...

In the work place context, if the people are of the racial origins who the humour is directed at, and unless they are aware that it is a joke, they may take exception to it ... (*RESPOND interview*)

### *Lack of leadership*

The Area Manager raised the issue of management authority following a visit to Brixton in January 2000. Reporting on a meeting with the prison's senior management team, he wrote:

We had a detailed discussion about the undisputed fact that the staff culture at Brixton held senior managers in very low regard. We explored as to why this particular cultural feature had developed and how we might set about changing it. The consensus view was that management had not provided the visible leadership and assertiveness that many staff expected and was seen as indecisive and disinterested in the work that staff did. (*Area Manager London to Governor Brixton, 8 February 2000*)

Management frequently had a poor grip on what went on in the prison, and poor management processes simply allowed issues to fade away without being dealt with. One example is how the prison responded to issues raised in a 1996 HMCIP inspection report. An internal report on the prison's action plan noted two entries

under race relations. For the recommendation that the identity of the Race Relations Liaison Officer 'should be publicised throughout the prison' (*HMCIP Brixton 1996 paragraph 4.12*) the document noted 'This will be implemented'. For the second recommendation, that 'Greater efforts should be made to establish links with the local ethnic minority communities' (*as above, paragraph 4.14*) it stated: 'Noted. This will be done' (*items 10.35 and 10.36 in Memorandum from Planning Manager to Governor, 29 April 1996*). The subsequent progress report dropped any mention of the second recommendation entirely and on the first said merely 'SO [senior officer] ---- now established RRLO' which sidesteps the specific point of the recommendation (*Progress Report on the Recommendations by Principal Officer Operations/Projects, 11 November 1997, item 10.35*).

#### *Failure to mainstream race equality*

The Commission investigation of Brixton covers the period from 1991 to July 2000 in order to consider the background to the complaints brought over the decade by Claude Johnson. The evidence from the treatment of Claude Johnson suggests that problems persisted at Brixton throughout the decade so far as race issues are concerned. Yet in other respects the prison was seen in the mid-1990s as something of a model. The 1996 HMCIP inspection report, for example, stated that: 'Overall we found a well managed, well ordered and more caring establishment' (*HMCIP Brixton 1996, paragraph 9.01*).

However, the 1996 report did not follow up on any of the race equality issues covered in the 1990 report. In the 1996 report, the section 'Race Relations' contained four paragraphs covering less than one page in a 100 page report. There was no attempt to refer back to the points made on race in the 1990 report or to examine the ethnic monitoring statistics the prison was supposed to be collecting and analysing. (For example, the 1990 report had identified possible 'racial bias in favour of white inmates in selection for some of the best jobs in the prison', *HMCIP Brixton 1990, paragraph 3.51*.) What the 1996 report did have to say about race issues suggested underlying problems: the fact that several prisoners claimed not to know who the Race Relations Liaison Officer was (*HMCIP Brixton 1996, paragraph 4.12*); and the prison's failure to recruit staff from local ethnic minority communities (*paragraph 4.13*).

Most senior managers at Brixton tended to conflate race equality action with multicultural activities. One Governor of Brixton during the 1990s presented our investigation with a substantial dossier on his work at the prison, outlining the 'many positive initiatives throughout the 1990s to develop this multicultural environment in which both prisoners and staff took part' (*The Development of a Multicultural Environment in Brixton Prison 1991-1997, 2001, page 5*). These included celebrations of religious festivals, visits by cultural groups, a black studies course offered by the education department, and a multicultural week held in July 1996. Yet, in spite of these good intentions and considerable efforts, the Governor was

criticised by the employment tribunal regarding the complaints brought by Claude Johnson.

This example indicates that cultural actions can act as a cover for the continuation of deeper problems, if not carried through as part of a comprehensive programme also designed to root out discrimination at each and every level. The absence of such a pro-active approach as late as 2000 was, perhaps inadvertently, highlighted by a senior manager in the course of the RESPOND investigation:

When I came here I was told that our race relations audit was good, so I thought we have got plenty of other problems to be getting on with and that's, maybe, not one of them. (*RESPOND interview*)

#### *Inadequate monitoring and record keeping*

Managers could remain unaware of the true picture on race issues within the prison because of the lack of monitoring systems and generally poor record keeping – failures which soon became clear to our investigators. For example, Prison Service Order 2800, which was issued in 1997, followed 'wide consultation' and 'testing [of] revised race relations procedures' in several prisons (*quoted from the Acknowledgements in the Order*). One of these was HMP Brixton. We were therefore interested to see how Brixton might meet up to the requirements of PSO 2800. However, we could see little evidence in the documentary records available to us of any actual testing at Brixton of methods or approaches relevant to the order.

#### *The RESPOND report*

The report on HM Prison Service's own investigation in 2000 into race relations at Brixton describes the problems at the prison:

From the outset the team noted a marked contrast between the openness of some staff and the reluctance of others to talk about the issue of race...

Most [managers] believed that relationships between all grades and groups were good in all aspects including race... The team does not agree. Evidence shows that discrimination and harassment exists at Brixton and that systems are not in place to investigate it or eradicate it...

Many minority ethnic staff alleged that they had been victims of harassment by their white peers and managers, citing acts of bullying, inappropriate use of language and discrimination on grounds of both race and gender...

Minority ethnic prisoners spoke of harassment and discrimination by staff and their lack of confidence in the grievance procedures available to them. This is born out by the number of complaints that are raised and not resolved.

We found no evidence to suggest that any complaint was followed by a thorough investigation...

During the investigation evidence was found of a regime known as 'Reflections'<sup>3</sup>. Prisoners were placed on this regime without due process and without the knowledge of senior managers... Records of its use indicate that it was used disproportionately against prisoners from minority ethnic groups...

It was apparent that a lack of clear leadership and formal systems rendered the administration incapable of addressing poor performance and misconduct.

*(Assessment of Race Relations at HMP Brixton, RESPOND, October 2000)*

#### *Comparison with other prisons*

It should not necessarily be assumed that the situation at Brixton was unusual compared to other establishments. A chaplain at Brixton wrote to us, when we were first considering our investigation:

I have been at Brixton for two years and I have certainly not found it to be any worse than any other prison... One of our minority faith chaplains recently visited another London prison and was so traumatised by his treatment by officers there that he initially vowed never to go back. *(Letter to the Commission, 3 November 2000)*

One black staff member we interviewed was very positive about the contrast between Brixton and the prison he had worked in previously. At that establishment it had been 'racism of the highest order... what I went through there I wouldn't wish on my enemy' *(Commission interview)*.

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<sup>3</sup> See page 102 for discussion of 'Reflections'

## **HMP/YOI Parc**

Opened in November 1997, Parc (near Bridgend in South Wales) was a category B local prison with an operational capacity of around 900 adult prisoners (convicted only) and young offenders (convicted and remand). It was run on contract to HM Prison Service by Securicor Custodial Services.

### *Ethnic origin of prisoners and staff*

The ethnic monitoring statistics provided by the prison for the period covered by our investigation show that the proportion of black and Asian prisoners fluctuated between 3.4% and 5%. This percentage rose when Parc was sent overcrowding drafts from prisons in London and the English Midlands and then fell as the prisoners involved were re-allocated back to prisons in England.

The national origin of British prisoners was not monitored formally but the results of race relations questionnaires administered by Parc indicate that around 20% of the prisoners might have described themselves as 'English'. Throughout the Parc documents there is a degree of confusion over who exactly is meant by the term 'English'. Usually it appears to mean 'white English' but sometimes it covers anyone transferred from a prison in England including black and Asian prisoners. It is important to note that expressions of racism in Parc were made both against those who were black or Asian, whether from England or Wales, and against those who were white English. White Welsh prisoners also reported racist abuse and harassment directed against them when they were held in prisons in England.

On the staff side, out of 300 staff, five were black or Asian at the time of our visits in the spring of 2001. This number had fallen in the autumn of 2001 to just two.

### *Significant problems of racism*

In his written evidence to us the Chief Inspector characterised Parc in the following way:

It had a very bad start with race hate attitudes able and allowed to flourish in an environment in which new and inexperienced staff were finding their feet with experienced prisoners. The blatant nationalism in the attitude of Welsh staff to English prisoners, particularly overcrowding drafts of young prisoners from Feltham, could not be ignored. (*HMCIP written evidence, 21 February 2001*)

Just a few months after it opened, an operational assessment of Parc by the Area Manager for Wales and West (not dated but faxed internally within the prison system on 24 April 1998) noted:

It has been clear for some weeks that there is a serious race relations problem. Local white YOs [young offenders] have been openly aggressive towards black prisoners, particularly transferees from Feltham. There is no evidence that Securicor has developed a strategy to address this.

That report was written just three weeks before a serious clash between white and black young offenders at the prison in May 1998. At a Parc Race Relations Committee meeting held in October 1998, one contributor observed that the prison was 'getting a reputation for racism amongst other prisons and a real effort must be made to alter this' (*Parc Race Relations Committee Meeting minutes, 19 October 1998, page 3*).

Nevertheless the report of the first full inspection of Parc, carried out in May 1999, again voiced serious concerns:

I am concerned about the undercurrent of racism and homophobia that is mentioned. The racism is both Anglo-Welsh and white-ethnic minority. (*HMCIP Parc 1999, Preface, page 4*)

We observed numerous examples of sexism and racism that were not challenged by staff... Numerous prisoners told us that racism had been reported to staff but it had not been tackled. (*As above, paragraph 6.29*)

The report noted that the prison had 'a good race relations policy statement... which was widely displayed throughout the prison' but observed:

'Making the words of the policy statement a reality for Parc prison would continue to be a significant challenge for [the Director] and his staff.' (*As above, paragraph 3.20*)

Three months after this inspection, HM Prison Service's Standards Audit Unit gave the prison a 'deficient' rating on race relations. Its report noted problems with the recording and investigation of racial incidents and complaints and said the Race Relations Management Team appeared to lack knowledge regarding race relations policy (*Standards and Security Audit Report, Parc, 1999*).

The Deputy Director General visited the prison in October 1999 and noted in his report of the tour:

There was genuinely racist behaviour by staff and for many supervisors and managers little recognition that racism was a problem. (*Deputy Director General, report on a visit to Parc, dated 29 October 1999*)

A short unannounced inspection by HMCIP took place in September 2000. The report of that inspection noted a range of improvements at the prison, but it

commented that ‘the majority of those in the segregation unit were young offenders who had been involved in inter-national fights’ (*HMCIP Parc 2000, page 4*).

### *An impoverished regime*

In its first annual report (1997-1998), the Board of Visitors for Parc noted:

Prisoners spent their days milling around with many justifiable complaints. They were bored and looking for trouble... The prison was disorganised and prison custody officers were put under a great deal of pressure. Their inexperience was palpable and they appeared to have little support from higher grades. (*Board of Visitors HMP and YOI Parc Annual Report 1997-1998, page 9*)

Although the prison was a new, purpose-built establishment, its physical condition was poor. Upkeep was not good. Aside from our own observation when we visited Parc in the spring of 2001, this was apparent from comments made to us and evidence in the documentation. For example, in an interview with us, the Chair of the Board of Visitors described the health care unit as ‘absolutely filthy’ having been ‘horrified at [its] condition’ during a recent visit (*Commission interview*).

The Deputy Director General’s report of his October 1999 visit was critical of many general aspects of the prison. Though he found the place clean,

The majority of prisoners appear to be locked up for most of the day... The amount of time that prisoners were out of cell was very limited... It was clear that many staff would choose to leave if they could find reasonably paid work with better conditions in the neighbourhood... I was surprised how few classrooms there were for such a large prison. (*Deputy Director General, report on a visit to Parc, dated 29 October 1999*)

The combination of all these factors clearly enabled ‘a degree of racism’ that the Board of Visitors found ‘shocking and disturbing’ (*Board of Visitors HMP and YOI Parc Annual Report 1997-1998, page 16*) to flourish unchecked.

### *Managerial failures*

The final report of a combined Standards and Security Audit in August 1999 was highly critical of the way the prison was being run:

Across the range of modules examined, we have found a number of unfinished strategy documents, incomplete or absent monitoring systems, poor or missing audit trails and, in some areas, a lack of clear written instructions... There is a clear need for visible and ongoing staff management and leadership to support staff and develop their confidence. (*Standards and Security Audit Report, Parc 1999, paragraphs 6.3 and 6.4*)

### *Racist prisoners*

Some action was taken to deal with prisoners engaging in racist activity. In two cases at the turn of 1999, significant punishments were given to two prisoners, one who gestured with a nazi salute to other prisoners and another who called another prisoner a 'black bastard and a coon' (*Parc adjudication report, 26 January 2000*). When the Standards Audit Unit revisited Parc in May 2000 they gave the establishment an 'acceptable' rating for race relations and noted:

We consider that the establishment has made efforts to improve the implementation of race relations policy, which has contributed to a safer environment for the prisoners... The anti-bullying strategy, suicide awareness and the race relations policy are co-ordinated from the same office and this has enabled staff to target their responses to any incident more effectively. (*Parc Standards Audit Unit report, May 2000, module 18*)

However, in that same month came another case of punishment of white racist prisoners, showing that problems of racism within the prison persisted.



## **HMYOI Feltham**

A fuller description of Feltham is given in Part 1 of this investigation report (*A formal investigation by the Commission for Racial Equality into HM Prison Service of England and Wales, Part 1: The murder of Zahid Mubarek, CRE, 2003, pages 24 to 32*). The main points are summarised below.

Feltham was the Young Offender Institution for the whole Greater London region during the period covered by our investigation. Towards the end of that period, the prison was divided into two distinct parts, Feltham A for juveniles aged 15 to 17, and Feltham B for young offenders aged 18 to 21. In early 2000, it had an operational capacity of just over 800 prisoners.

Most prisoners were on remand rather than serving sentences, and generally stayed for only short periods, so the prison population was characterised by an inherent instability. Upwards of half of the population were black or Asian during the investigation period and the ethnic minority percentage among staff rose to around 10%.

Feltham received what can only be described as devastatingly bad inspection reports by HMCIP in 1996 and 1998. The criticisms continued with subsequent inspections in 1999 and 2000. All the reports present a dreary litany of dirt, unwashed clothes, cancelled association times, filthy toilets, underwear not changed for seven days, showers that did not work for months on end, unremitting racist and other abuse from cell windows, and a high level of assaults between prisoners or prisoners and staff and of attempted suicides. In his written evidence to us the Chief Inspector said of Feltham:

General conditions and the impoverishment of the regime for young prisoners are appalling. (*HMCIP written evidence, 21 February 2001*)

In the words of the 1998 inspection report, staff were ‘overwhelmed’ (*HMCIP Feltham 1998, Preface, page 5*). There was a high turnover among senior managers while at officer level the prison had difficulty recruiting and keeping experienced staff.

Race equality practice in the prison was poor, characterised by a lack of cohesive systems, no active promotion of race relations, lack of management oversight, and evidence of racist attitudes and behaviour among some staff (see *Feltham Murder Report Part 2, HM Prison Service, paragraphs C8, C9, C11, and C15, and findings H4a, H7c, H8a, and H8e*).



## **THE AREAS OF FAILURE**

The purpose of our investigation has been to ensure that HM Prison Service works to deliver race equality outcomes across all its functions. It has not been to single out individual incidents or problems, though these may have been the route to making findings of unlawful racial discrimination. We have made a range of such findings but we have organised them, and the supporting evidence, in the way we consider will be most helpful to those involved in running HM Prison Service and its various functions.

When we examined the circumstances leading to the murder of Zahid Mubarek we identified a series of failure areas in which practice laid out in HM Prison Service guidance was not followed or followed inadequately or in which problems in custodial practice were not addressed.

In that scenario, these failure areas acted like open gates through which a problem prisoner, Robert Stewart, was able to pass unhindered to the point at which the murder happened. In this section of our report, we offer a similar series of failure areas in which managers responsible for key functions or areas of work failed to ensure that good practice was developed and sustained. The consequences were therefore either a failure to deliver race equality outcomes or, more seriously on occasion, a toleration of unlawful discrimination.

The areas we have identified are not comprehensive – more could have been identified had more prisons been examined or more evidence been available from the three we investigated. But this approach is indicative of the way a management of an organisation dedicated to securing race equality outcomes needs to conduct its work. It is an approach which is directly encouraged by the requirements of the Race Relations (Amendment) Act 2000 which will work to focus management attention on outcomes rather than processes. The Race Impact Assessments which the Service will carry out as a result of the amended Race Relations Act and the agreement with the Commission which concludes this investigation, will direct the Service's attention to areas of potential problem and failure and require management action to put things right at an early stage.



## **Failure area 1: The general atmosphere in prisons**

### *Key points:*

- Prison ‘cultures’ among prison staff meant race equality procedures could be ignored, staff operated in a discriminatory way, and racist attitudes and behaviour were tolerated.
- Racist abuse and harassment and the presence of racist graffiti were persistent features of prison life for many staff and prisoners.
- Action in response to such expressions of racism was generally limited to dealing with the immediate problem rather than rooting out its causes.

### *The influence of prison 'cultures'*

Prisoners, prison staff and prison managers had long been aware that prison staff often developed their own 'cultures' – ways of working and behaving that did not conform to official policies and practices. One recent study (*The Prison Officer, Alison Lieblich and David Price, Prison Service Journal, 2001*) noted that:

- the uniformed grades in a prison might develop their own ways of working that were not adequately supervised or in line with proper practice
- the exercise of discretion could lead to discrimination
- procedures laid down in Prison Service Orders and documents could be ignored.

For many officers, the 'culture' provided a justification in their own minds for failing to abide by the standards required of them. The implications of this for race equality range from failure to implement race equality procedures (for example, recording and investigating racist incidents), through discriminatory practices (for example, stereotyping in the way prison jobs are allocated), to tolerance of racist attitudes and the use of racist language.

The racist influences that existed within these prison 'cultures' were spelt out by the Director General in a speech in 2002:

The Service I joined 20 years ago was undoubtedly routinely racist. Language and humour which you would never consider tolerating today was prevalent in all the establishments in which I worked. More importantly and more damagingly, gross offensive stereotypes about minority groups were the order of the day. Afro-Caribbean prisoners in particular were routinely described as unco-operative, as loud, as excitable... (*Director General, Perrie Lecture, 14 June 2002*)

Having been out of HM Prison Service for a while, he said of his return in 1997:

It seemed to me from having visited a few prisons, that violence and overt racism seemed to have been very much reduced. Wise counsel to me was 'don't be so sure' and it was certainly the case that while racism was not as evident as previously, like violence against prisoners, it had simply gone a little underground. (*As above*)

And he linked this to the investigation at Brixton by the RESPOND team which he said had

uncovered and exposed an appalling failure to challenge even the most overt racism. When I spoke at a full staff meeting at Brixton at about the time of [that] report I gave examples of the appalling behaviour which [it] exposed and of the way prisoners and staff had been treated, of the humiliation that black staff had to suffer. But staff and management still denied that anything was wrong – confirming the reality that, for much of the Service, despite all

those exemplary policies, [there was] little effect on the daily experience of black and Asian prisoners on our landings right across the Service. (*As above*)

### *Racial abuse and harassment*

Racist attitudes were often very obvious in prisons during the period covered by our terms of reference. Graffiti put up by prisoners – and in some cases by staff – along with the persistent racist taunting engaged in by some staff and prisoners created a background against which overt racial abuse and harassment became a persistent, unchanging feature of life for many staff and prisoners throughout their time working for HM Prison Service or in its custody.

We circulated a questionnaire among prisoners in the three prisons covered by the investigation. A total of 487 prisoners returned completed forms, 66 of them black and Asian, 365 white and 56 identifying themselves as from some ‘other’ group. The results showed that black and Asian prisoners were more likely to feel they were disadvantaged over issues such as cell allocation, privileges, meals and so on. A significant proportion of prisoners from all groups had witnessed acts of abuse or harassment, though there were differences in how this issue was regarded. Among black and Asian prisoners, less than half (47%) stated that bullying or racial harassment was not a problem. The percentage for whites was 65%. In answer to a question about how often they experienced racial harassment, 21% of black and Asian respondents said they did so on a daily, weekly or monthly basis, but only 6% of white respondents said the same.

Prisoners shouting racist abuse from their cell windows was considered to be a fact of life in prisons. For example, the Governor of Feltham admitted in late 1999 ‘that the racist abuse from the windows showed how much racist abuse took place’ (*Minutes, Feltham RRMT, 15 November 1999, paragraph 10d*). Yet management did not devise any effective measures to deal with this, to the extent that the report of an HMCIP inspection in October 2000 referred to ‘unremitting shouting out of windows’ (*HMCIP Feltham 2000, paragraph 1.37*):

It is instructive to stand for a few minutes outside the house units... and listen to the intense abuse, insults and examples of provocation... Staff and managers recognise the malign influence that this was bringing to bear on some of the young people but there was little sign of a determination to bring the practice under control. (*As above, paragraph 1.29*)

### *Racist attitudes among prisoners*

In Parc, several of the prisoners had highly visible racist tattoos on their bodies or their heads. A racist incident reporting form in May 2000 contained a note from the RRLO saying:

Racist problems on B2 [B2 wing]. Inmates had been shaving their heads with razors and generally causing racist behaviour. (*Parc Racist Incident Reporting Form, comment dated 16 May 2000*)

Parc managers warned on several occasions of the way in which some of the adult racist prisoners were 'organised'. Outgoing mail from Parc often carried KKK (Ku Klux Klan) and RVS (Rhondda Valley Skins) graffiti. In one day alone in early 2000 'six letters containing racial statements' from prisoners in one block in Parc had been opened by officers (*Minutes, Parc RRMT, 13 January 2000, paragraph 2*). Officers could see that there was a network of prisoners with racist views exchanging letters across the prisons in Wales and beyond and were concerned enough to wish to refer some matters to the police. We saw some samples of the mail which prisoners had attempted to send out from Parc and other mail which had arrived at the prison. It would be hard to find more obscenely racist material.

#### *Failure to tackle racist behaviour*

We were able to see the above letters because, by the time of our investigation, Parc had developed a stronger policy on mail intended to intercept and block racist material.

However, there was often little sign of a pro-active approach on the part of staff toward stopping racist behaviour. A report on a black prisoner (dated 11 March 2000) noted that he had applied for a transfer to a different jail:

He states that he is being driven to boiling point. That he can't go to visits without racial abuse being shouted at him from A Block.

However the 'recommendations' in the report contained no reference to dealing with the abuse. Instead, they sought to get the prisoner transferred out of Parc.

In a report on an incident in October 2000, the RRLO noted that a black prisoner had been the target of racist abuse from white prisoners from nearby cells after the night lock up, and concluded:

It may be better in future if we placed the abusers on report under the rule of racist abuse. I do recommend to officers to do this as this will help in stopping this 'behind doors' type of abuse. (*Parc RRLO report on incident on 14 October 2000, report not dated*)

That such a suggestion is made says much for the quality of the action taken by staff to deal with racist behaviour until then.

The significance of any degree of organisation among prisoners prepared to engaged in racist harassment or intimidation of other prisoners or staff is that it makes the



process far more frightening and difficult for victims to complain about. One member of staff at Parc vividly described to us the atmosphere in the prison:

We were having lots of problems with racism in the place... On one occasion this black guy was chased around by a group of white boys and he jumped off the balcony on the third floor. I don't know how he survived that one. The problem is we had no control at that time and that's where we failed. You had a lot of them white guys with prejudice and that's where we were going wrong. At that time they were moving victims and not the perpetrators. (*Commission interview*)

In its representations over our draft report, HM Prison Service said that there was no record of such an incident in files kept 'from 1999' while of 'all key staff' no one could recall it.

When we returned to Parc in October 2001, there was evidence of a better approach. The records showed that staff were aware of the racist attitudes of some individual prisoners, and there was a security watch list established on criteria such as the prisoner's original offence or information received while they were in the establishment, including letters they had written. The RRLO would visit those involved in such letters and explain why they were unacceptable. This however appeared to be the only action taken to get these prisoners to address their prejudices. The emphasis was on stopping expressions of racism rather than tackling the root of the problem in any systematic way.

#### *Racist attitudes among staff*

The Children's Society, which was involved in Feltham through its National Remand Review Initiative, noted in its written evidence to us several instances of racial name-calling by staff:

A 16-year-old we were working with was described by a senior officer as a 'smelly dirty Arab'. Another child was called a 'Turkish bastard'. In a conversation with one senior officer, a project worker was told that 'as a woman you will find it difficult working in Feltham as the majority of boys are black and West Indian boys have no respect for women'. In another conversation with a different senior officer we were told that 'when there was a specific sex offenders unit in Feltham the majority of inmates were black and that this was to be expected'. However the senior officer felt very comfortable saying this, as if he was perfectly within his rights<sup>4</sup>. (*Children's Society written evidence, 22 February 2001*)

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<sup>4</sup> In its representations over our draft report, HM Prison Service said that the Senior Officer who had used the phrase was warned that if it was used again they would be subject to disciplinary action.

The issue of language used by staff was not new to Feltham. The minutes of a meeting of the RRMT in June 2000 recorded that: 'Terms such as half-caste and coloured were still being used' (*Minutes, Feltham RRMT, 20 June 2000, paragraph 7*). Two years previously, an RRMT meeting had discussed 'racial remarks' by staff (*Minutes, Feltham RRMT, 18 August 1998, item 4*) while at a Board of Visitors meeting, a member had 'reported being called "coloured" and [noted] that officers did not appear to know that the correct term was "black"' (*Minutes, Feltham BoV, 11 February 1998, item 6 b vi*).

These entries over a period of two and a half years in the minutes of the bodies responsible for monitoring race relations practice or the treatment of prisoners, show that management failed to act decisively to eradicate racist language on the part of staff. This failure effectively condoned such behaviour. The Chair of the Board of Visitors at Feltham told us about two members of staff about whom a number of complaints of racial abuse had been made by prisoners:

Nothing was done about them for a period of time but when the CRE investigation was announced one was withdrawn from the unit. They have now been put back and allegations have begun again. I find it hard to go on the unit where these particular staff work, I feel uncomfortable. They should not be there.

*Question:* Are these two members of staff long standing?

*Answer:* Yes, one very long. The other is pretty long standing.

*(Commission interview)*

### *Racist graffiti*

Racist graffiti was a persistent problem at Parc. For instance, minutes of RRMT meetings in October 1998, November 1999 and February 2000 refer to racist graffiti in the cells on the Admissions unit.

In May 2000, the report of an investigation into a complaint by a prisoner that he feared a racist attack noted that he 'may be experiencing some racist abuse, indeed his cell notice board was smothered in racist graffiti' (*Parc investigation report, 18 May 2000*).

One prisoner we interviewed spoke of the problem continuing in the spring of 2001:

You see graffiti, KKK, Combat 18 on the walls. Unless it is showed to officers they won't be aware of it. When they see it, it should be covered. I don't know how they miss it... NF posters with a swastika would be confiscated, but if it is written they don't take that off. (*Commission interview*)

When the Commission investigation team visited Parc in February 2001, we found racist graffiti that had been painted over but was still readable through the paint,

with 'RVS' and 'KKK' quite obvious at a glance. In March 2001, Parc added a 'graffiti audit' to the checklist for the daily 'locks, bolts and bars' check carried out by prison staff after the RRLO told the RRMT he would 'target' the issue. However, during our revisit in October 2001, we saw racist graffiti in the toilets of the amenity block, and were informed by a black prisoner that it had been there for a week (see page 153 for a discussion of that investigation).

Graffiti should have been fully removed, the culprits identified as far as possible, appropriately disciplined if persistent culprits and, as far as was possible, positively diverted from the idea that such behaviour was acceptable. The attention at Parc instead appeared to have been more on dealing with the problem when it occurred rather than rooting it out.

Such action as is recorded in the documentation from Parc did not prove enough to discourage possible perpetrators or in fully removing the results of their activities. The problem persisted even as one or two perpetrators were picked up by the disciplinary system. For example, when a black prisoner's mother complained to the prison management that her son's cell notice board had NF and nazi signs on it, the investigation report noted:

All efforts have been made to paint over the graffiti but as the board is made of cork the symbols, which have been carved quite deeply, are showing through. (*Parc investigation report, 21 February 2001*)

HMP Brixton has experienced an ongoing problem with racist graffiti by staff (as opposed to prisoners). In January 1998, a prison officer reported to the RRLO that he had used the staff toilet in the visits area and saw on the door the words 'Preserve wildlife, Pickle a Nigger'. The officer's note to the RRLO added: 'I found these words highly offensive, so removed them' (*Memorandum to Brixton RRLO, 3 January 1998*). Nearly two years later, the same graffiti appeared in the staff toilets in A Wing (*RRLO letter to Deputy Governor, 2 November 1999*).

In December 2000, racist graffiti again appeared in the A Wing staff toilets. This time the words used were 'KKK for ever in Brixton'. The racial incident reporting form contained the following entry from the Governor:

I inspected the area and saw four items of racist graffiti. I have had a full staff meeting to stress how unacceptable this is. (*Brixton Racial Incident Reporting Form, entry dated 7 December 2000*)

#### *Racist influences from outside the prison*

Racism inside prisons is not simply a matter of the attitude of prisoners or of staff. Influences from outside the prison can also affect the atmosphere in the prison.

In addition to the racist letters being sent to prisoners, Parc staff faced particular dilemmas about videos that prisoners wanted to watch. In February 2000, an officer confiscated a video of the film *Romper Stomper*. The officer said of the film: ‘I know [it] to be an extremely racist video’ (*Parc Racist Incident Reporting Form, 18 February 2000*)<sup>5</sup> and added on the form:

Memorandum sent to Houseblock Managers to alert them to possibilities of such material being present on playlist in future.

However, in March 2000, a video of the film *The Best of Three* was found on one block and removed as unsuitable by an officer ‘as it contained racist material’ (*Minutes, Parc RRMT, 13 April 2000, item 3*).

But the documents show that Parc staff were not aware of the possible danger the film posed in a prison containing many active and potentially violent racists. They were not provided with specific advice by anyone on videos and the suitability of their content. Nor did staff or managers at Parc seek advice at area or headquarters level. Indeed the film, despite the earlier circular to Houseblock Managers was only stopped by accident. A night officer chanced to have a cousin fascinated by martial arts at whose home he had seen the film and spotted the film in the prison. A manager reporting this noted: ‘I am unsure who is involved in the selection of the videos.’ (*Parc memorandum S/Us Manager, 15 March 2000*)

Two years before, the Home Office had published research findings on the impact of such films on young offenders. The study concluded, in essence, that viewing violent films increased the chances that offenders with a predisposition to violence would commit a violent act.<sup>6</sup> The researchers commented:

In the community, restricting access of aggressively predisposed individuals to violent material is virtually impossible. However, this is not the case for those young offenders who have been placed in Young Offender Institutions where staff can exercise discretion over what the residents may watch ... The general issue of the availability of unsuitable media entertainment seems to be a subject that has not been adequately thought through in most secure environments. (*Amanda Pennell and Kevin Browne, ‘Young Offenders Susceptibility to Violent Media Entertainment: Implications for secure institutions’, Prison Service Journal, No. 120, November 1998, page 26*)

Despite this officially sponsored research showing the potential damage such films could do, prisons were left individually to sort out which videos or TV films would

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<sup>5</sup> See also the discussion of this film in Part 1 of this report, *A formal investigation by the Commission for Racial Equality into HM Prison Service of England and Wales: The murder of Zahid Mubarek, CRE, 2003, pages 131-134.*

<sup>6</sup> See ‘Young Offenders Susceptibility to Violent Media Entertainment: Implications for secure institutions’, Amanda Pennell and Kevin Browne, *Prison Service Journal*, No. 120, November 1998, pages 23-27, and Home Office Research and Statistics Directorate, Research Findings No 65, *The effects of video violence on young offenders*, Kevin Browne and Amanda Pennell, 1998.

make suitable viewing – something which, in practical terms, was very difficult for them to do.

The core point is simple: there was research evidence as to the effect this sort of material could have on a certain kind of prisoner; the evidence had been widely publicised in prison management circles, yet no appropriate management action was taken as a result either in individual prisons or across the Service as a whole. The action which could have been taken would have been to provide guidance as to the kind of material it would be sensible to keep away from these prisoners, a practice of alerting staff when such material was apparent and the development of other programmes to challenge the racist ideas such prisoners might feel these films or videos validated.

This would not have required a blanket previewing of all TV or video material but a proportionate and sensible approach, including ensuring that staff worried about an item in one prison could alert colleagues through the headquarters as to the dangers involved in the item and a proactive approach by officials at the headquarters end. This proposition is linked to two others: that HM Prison Service did take such action to some degree in respect of sex offenders (as in the case of policies to restrict obscene and offensive materials displayed in cells) and that, while there are sex offender programmes which might counter the effect of such materials there were no such programmes for racist offenders. HM Prison Service's failure to provide appropriate guidance demonstrated the weak priority given to developing good practice in general and on race issues in particular.



## **Failure area 2: Treatment of prison staff**

### *Key points*

- Ethnic minority staff had to work in an atmosphere of racist taunting and intimidation.
- The onus was on ethnic minority staff to make formal complaints about discrimination and harassment.
- These complaints were often not taken seriously and not properly investigated.
- Ethnic minority staff who spoke up about these matters were subsequently victimised.
- Senior managers failed to ensure that perpetrators of acts of racial discrimination, harassment and victimisation were disciplined.
- Senior managers failed to act on Employment Tribunal findings even when a commitment to action had been made by HM Prison Service.
- Senior managers failed to deal proactively or systematically with the problem of racial discrimination against staff.

### *An atmosphere of intimidation*

The records from all three prisons covered by this investigation contain evidence of complaints made by staff members over a range of issues. Some concerned issues to do with promotion and study opportunities for staff. Some arose from racist taunting of ethnic minority staff members where managers failed to deal with the problem. Others reflect persistent discriminatory actions by middle managers and other staff against ethnic minority staff.

As we have already seen, in none of the three establishments did the senior management ensure a working atmosphere where racist abuse was adequately countered. Yet, there were plenty of indications in the documentary evidence that managers at senior levels understood the atmosphere for ethnic minority staff to be one in which those staff members were fearful of complaining.

One example can be found in the wording of the prison instructions and orders in force in Brixton at the time of our investigation. The Governor issued a number of relevant orders in November and December 2000 and a Standard Operating Procedure statement on 'The Management of Race Relations' in December 2000. A Governor's Order on including a standard race relations objective in the PPRRs for individual members of staff was issued on 20 November 2000:

Everyone has a responsibility to ensure that their language and their behaviour does not give offence or cause distress... Managers at all levels have a special responsibility to ensure that any such behaviour is challenged immediately and to give a lead by their own personal example. Staff who witness inappropriate behaviour need to have the courage to report it and to give evidence to any inquiry that follows. (*HMP Brixton, Governor's Order 50/2000*)

The wording of that final sentence indicates what the Governor understood to be the atmosphere in the prison at the time. The Governor's Order on 'How to Report a Racial Incident' offered a comprehensive explanation of the steps to be taken and included a final paragraph stating:

Staff or prisoners who fear they may be victimised in any way as a result of reporting a racial incident should ask to see the RRLO who will advise them of what action management will take to ensure their freedom from victimisation. (*HMP Brixton, Governor's Order 56/2000*)

There was, however, no strategy in place to deal with or prevent victimisation. This reflects a serious weakness in the prison's procedures, since fear of victimisation was itself a primary barrier to complaints by staff.

A further indication of the atmosphere in Brixton comes from the Race Relations Annual Checklist for Brixton, which was completed in January 2001 by the



Governor (in the absence of the RRLO who was on leave). Question 25 of the Prison Service-wide form asks: 'How many racial incidents have been recorded in the past 12 months?' It offers three options: prisoner on prisoner, prisoner on staff and staff on prisoner. The Brixton Governor added an explanatory note:

*Question 25.* I have added the category 'staff on staff' which is a significant number at Brixton and an important category to monitor.

He gave the following figures:

Prisoner on prisoner	1
Prisoner on staff	25
Staff on prisoner	5
Staff on staff	8

#### *Discrimination against Claude Johnson*

The experience of Claude Johnson, a prison officer at Brixton prison, was among the grounds cited by the Commission for launching its formal investigation into HM Prison Service.

Claude Johnson started working at HMP Brixton in 1989 as an auxiliary officer (now known as an operational support grade member of staff; OSGs are not full prison officers but do many of the jobs the public would think of as the work of an officer, such as night patrols). In March 1993, he brought the first of what became three employment tribunal cases. The final settlement of the remedies in his final case took place in the autumn of 2001 while this investigation was underway.

This was a saga of much fortitude and a determination to exercise a simple right: that of being allowed to do his job properly. Because of his refusal to accept the denial of that right, it was also a story of much pain, anguish and eventual mental collapse for a fine employee, one whom HM Prison Service should have valued and supported rather than allowed to be destroyed.

#### *Early experiences of prison staff's racist attitudes*

Mr Johnson served 11 years in the Army attaining the rank of Sergeant and leaving the service with his performance assessed as 'Exemplary', the highest of five possible ratings. After a couple of different jobs, he joined HM Prison Service as a temporary auxiliary officer on 3 July 1989 and was made permanent in September of that year.

He was referred to by white officers as ‘boy’ or ‘chalky’ and objected.<sup>7</sup> In November 1989, he witnessed an attack on a black woman colleague auxiliary officer by four white visitors to the prison. The other officers in view of the assault – all white – did not assist her and disappeared. They later told Mr Johnson that the auxiliary ‘was a troublemaker’.

In mid-1991, Mr Johnson witnessed some prison officers roughly handling a black prisoner. He told a white colleague of what he had seen and his concerns about it only to find that, the following day, he was shunned by other white officers. Increasing problems then followed for him, culminating in a dispute after he had been detailed to come in for night work but then sent home on the basis that there was no work for him to do.

#### *Failure to investigate complaints*

At each stage in the process, senior officers and staff failed to set about investigating complaints from Mr Johnson.

Some of his complaints were to do with discrimination in the provision of overtime. The 1995 tribunal finding noted:

The Tribunal finds that what is plain from the evidence presented is that the applicant – and other black officers – received far less overtime than their white equivalents during this period [in 1992]. (*1995 finding, paragraph 11*)

It is clear from this evidence – which HM Prison Service did not at any time seek to refute or to investigate – that Mr Johnson was far from being the only black staff member to face problems of racial discrimination.

#### *Poor handling of formal complaints*

Over a period of a year and a half Mr Johnson was subjected to a campaign by certain white officers in which he:

- lost significant overtime earnings
- was the target of malicious reports of misconduct
- was given an unjustified adverse appraisal.

The 1995 tribunal noted that the line manager completing the appraisal had observed that Mr Johnson ‘invites ostracism’. The tribunal commented:

The tribunal is satisfied that this [observation] would not have been made if a state of affairs had not existed whereby [Mr Johnson] was ostracised. (*1995 finding, paragraph 28*)

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<sup>7</sup> The details we cite of Mr Johnson’s treatment are taken from the employment tribunal findings in cases number 18510/93/LS (18 August 1995) and 2304188/98 (17 March 2000) and the employment appeal tribunal decision of 27 November 1996.

An incident in which Mr Johnson was detailed to a job which did not exist (going to the prison's back gate to let in a vehicle when no vehicle was arriving) finally led him to put in a formal complaint to the Governor. This triggered an investigation by the Residential Governor in the latter months of 1992. The tribunal commented of this manager:

It is clear from [his] evidence that he had not the first idea of how to investigate a complaint of race discrimination, although the [HM Prison Service] has a manual dealing with this... it appeared clear to the tribunal that [he] had decided that it was all in [Mr Johnson's] mind. He told the tribunal that he considered that [Mr Johnson] was obsessed with his colour and in the penultimate paragraph of his report he concludes: 'It would appear that every mishap, mistake or failure to communicate with him was a racist act. Even where he has been quite rightly disciplined for failing to comply with the rules [it] is put down to discrimination by Mr Johnson. It is a convenient excuse for all his woes.' (1995 finding, paragraphs 13, 15)

At this point, the tribunal observed that, in fact, Mr Johnson had never been disciplined. The tribunal concluded:

[The Residential Governor] did not investigate; he merely accepted the [other] officers' comments. He concluded that it was all in [Mr Johnson's] mind. It was a travesty of an investigation. (1995 finding, paragraph 16)

#### *Failure to act on 1995 tribunal findings*

Unusually for race discrimination cases the tribunal awarded what are termed 'aggravated damages' in Mr Johnson's favour against HM Prison Service, saying that the sum they awarded would have been larger had not the Governor of Brixton told the tribunal that he would be 'introducing new procedures that should ensure that such treatment should not happen again' (1995 finding, paragraphs 38 and 40).

The tribunal also decided that, in addition to awarding damages against HM Prison Service itself, it should award damages against two named prison officers who had been cited as respondents in the case by Mr Johnson because of what they had done to him. The tribunal explained:

In many discrimination cases, employers take responsibility for their employees' actions, but it seems to the tribunal that where individuals are found to have committed unlawful acts of discrimination, they should be liable for their acts and not rely on their employers to bear complete responsibility. (1995 finding, paragraph 41)

It awarded sums of £500 against each of the two officers, clearly intending that this should send a message to other staff at Brixton who might be tempted to behave in similarly discriminatory ways.

In theory, Mr Johnson had secured a commitment from the Governor that action would be taken to ensure that things changed and to encourage individual staff colleagues to treat him properly. In practice, the outcome was different. The prison itself paid the damages awarded against the two officers and there is no evidence that a serious process of change was attempted.

When examining the documents from the prison for the period around the time of that first tribunal hearing and decision, we were struck by an almost complete absence of discussion or indeed mentions of his case, particularly when it came to the learning process the Governor promised. Indeed, a senior manager who joined the prison's staff in 1995 and became both Deputy Governor and a respondent in Mr Johnson's final case, told us that the decision in the first case had never been referred to in any induction, discussion or training that he had received when he joined the prison.

One of the individual officers who was a respondent in that first case claimed to us in an interview that, up to the time of the interview in March 2001, he had not been informed of or trained in any race relations policy. No senior officer or manager had spoken to him about the tribunal decision and he had never seen a copy of the decision.

The Governor told us in an interview that HM Prison Service had decided to pay the financial penalties awarded against the two officers because 'they had been acting in an official capacity'. He claimed that the tribunal findings were discussed with the two officers, and at the prison's senior management and middle management meetings as well as at the race relations committee. However, he admits:

I concluded that formal action under the terms of the Code of Discipline should not be taken against either officer and informed the Area Manager of my decision. (*Commission interview 6 April 2001 added to by letter on 23 May 2002*)

After tribunal findings of discrimination, the Commission seeks to carry through follow-up work with employers to get changes introduced to prevent a recurrence. The Commission staff member involved in that work at Brixton after the 1995 tribunal findings told this inquiry:

The Governor and the Race Relations Management Team refused to accept that Mr Johnson had suffered discrimination. They felt their defence had been mishandled by the Treasury Solicitor and they should not have lost the case. My insistence that in my experience tribunals rarely upheld cases which lacked merit cut no ice. In circumstances where the Governor and others were in denial, there would have been little scope for effective follow-up steps and I was not surprised to learn of further unlawful treatment of Mr Johnson. (*Commission interview*)

### *Victimisation*

Mr Johnson had filed another complaint of racial discrimination in 1994, before his first case had concluded in the tribunal. This case concerned allegations of victimisation. Mr Johnson did not seek damages and HM Prison Service agreed to settle on terms which required the Brixton management to ensure that steps were taken ‘to implement the decision and the formal recommendations’ of the first tribunal finding (*Settlement agreement dated 23 July 1996*).

Mr Johnson returned to work in September 1996. By that time a meeting of managers to consider his case had decided to withdraw privileges he had previously enjoyed (time off to study for a degree). The letter telling him of this was the first communication he received from management after his return to work.

One of the managers involved in that decision admitted that ‘we didn’t devise a strategy to stop it [the racial discrimination experienced by Mr Johnson] happening again’ (*Commission interview*). This manager was also a respondent in Mr Johnson’s final case, when he complained of discrimination by way of victimisation.

In upholding this final complaint, the tribunal noted that the Governor had ‘failed’ to give ‘firm and explicit instructions to staff that no-one was to harass or victimise [Mr Johnson]’ (*2000 finding, paragraph 16*). The tribunal said:

On his return to work [Mr Johnson] was shunned and ostracised by many other prison officers and auxiliaries. There were also members of the auxiliary staff who undermined him and patronised him, even though they were much less experienced than he was. These were auxiliaries who were members of families already represented in the prison staff. (*2000 finding, paragraph 21*)

One of the ways in which Mr Johnson was persecuted at Brixton in the period after September 1996 was that his pay statement – addressed to him personally in a sealed envelope – had either been stolen (which happened regularly) or had been opened (which happened twice). The tribunal noted that HM Prison Service gave ‘no evidence that any other member of staff suffered these failures to receive pay statements’:

We are bound to conclude that [Mr Johnson’s] pay statements went missing because they were being deliberately withheld from him by another member of the staff... He complained in writing and verbally. There was no investigation. (*2000 finding, paragraph 34*)

Matters came to a head when Mr Johnson protested against being detailed to work under the management of an officer who had been involved in the discrimination

that led to his first complaint to the employment tribunal. Mr Johnson was told to accept the detail but when he continued to protest, his manager

became angry and told [Mr Johnson] that he was paranoid, bloody useless and would lose certain privileges. [Mr Johnson] responded that this was 'unfair'. (2000 finding, paragraph 42)

There followed a series of exchanges between the manager and Mr Johnson, some in the corridor in the presence of prisoners and other staff, with Mr Johnson seeking to have his objection to working under the particular officer discussed and the manager becoming increasingly intemperate. The tribunal said:

[Mr Johnson] reiterated his objection and said that he was being treated in this way because of the incident of an inmate being assaulted and he had not been left alone since then. Governor ---- replied: 'What do you expect when you rat on your mates?' [Mr Johnson] replied: 'I am not ratting on anyone. It is something you are not supposed to do. If I see it happen again, I will report it again.' The response of Governor ---- was, in [Mr Johnson's] words to us, that he 'boiled over'. (2000 finding, paragraph 44)

### *Managerial failures*

In its overall comment, the tribunal said:

It should have been obvious to the governors that Mr Johnson would encounter on his return to work the very conduct of ostracism and insult which did in fact befall him. (2000 finding, paragraph 70)

In the settlement of Mr Johnson's second complaint to the employment tribunal, HM Prison Service had agreed to take steps to ensure that such discrimination would not take place. As the tribunal commented:

Mr Johnson's return to work could only be successfully effected if it was proactively managed, in full awareness of the risks and difficulties for him. (2000 finding, paragraph 70)

In contrast, the attitude of senior managers at Brixton was as much part of the problem as it should have been part of the solution. Middle and senior management were failing to give proper leadership to staff whose behaviour fell into an easily observable pattern over several years, while several key middle managers at Brixton were at this time behaving completely inappropriately, indulging in racist abuse and harassment and then exploiting their positions of authority to persecute those who were trying to put things right.

When these things were brought to the attention of more senior managers, these managers saw the protesters and not the perpetrators as the problem:

Although there were some overt actions of governors which appeared sympathetic to Mr Johnson, the underlying and substantive attitude of them was that he was the author of his own misfortune and the trouble that he had caused to them was undeserved. That attitude has persisted into the hearing before this tribunal... (2000 finding, paragraph 70)

Indeed, the attitude taken to Mr Johnson by prison staff and managers – that he was a troublemaker with a chip on his shoulder – runs in line with the persistent description used across HM Prison Service and over several decades about black prisoners and black staff. To them, his complaining was the problem, not what he was complaining about.

#### *Failure to discipline staff involved*

None of the staff and managers who share responsibility for the various discriminatory actions suffered by Mr Johnson were ever disciplined.

In an interview with us, the Area Manager commented on his decision not to pursue any further action against the Deputy Governor at Brixton. The Area Manager described what the tribunal had had to say about him as ‘actually really rather serious’ but decided not to start Code of Discipline procedures because ‘I found I couldn’t find out any more’ (*Commission interview*). Despite a well-argued and reasonably detailed finding by an employment tribunal that was not challenged by appeal, HM Prison Service still could not see its way to a disciplinary process over the same individual and issue.

#### *Failing in the employer’s duty of care to staff*

When the 1995 tribunal announced its decision it did so orally in court. The Chair of the tribunal said:

We wish to place on record our views of the applicant. We found Mr Johnson to be truthful. We note that he was impeccably polite to the tribunal. He is an upright man who is fair to everyone in his dealings. He has been subjected to sustained hostility. His complaints were ignored or inadequately dealt with. We are impressed with his forbearance. He is the kind of person the Prison Service should welcome with open arms. (*Statement by employment tribunal Chair, 7 July 1995*)

At no point did HM Prison Service management, locally or at headquarters, apologise to Mr Johnson for the way he had been treated – even though the Employment Appeal Tribunal in 1996 commented that ‘the greatest mitigation [for the wrong committed] would have been an apology which was never offered’.

Instead of nurturing and encouraging individuals like Mr Johnson, the senior management in the prison protected, and in crucial ways encouraged, a

discriminatory culture which meant that blame descended on the members of staff who were challenging wrong-doing rather than on the perpetrators. This, in turn, imposed particular burdens upon ethnic minority staff.

*Particular issues for ethnic minority staff at Parc prison*

In Bridgend, the location for Parc prison, the visible ethnic minority percentage in the local population is low. Members of the staff at Parc who are black or Asian could be open to racial intimidation outside the prison, as well as inside. One ethnic minority staff member who complained of racist treatment by a prisoner was described in a Parc incident report as having ‘had problems of a racist nature with [a particular prisoner] both inside and outside Parc’ (*RRLO report, 18 June 2000*). The staff member concerned told the Commission:

It was a daily occurrence that people would call out names to me. They would just have a go at me and you can’t do anything about it. I actually told the manager and he told me that it was probably the way I see the situation and that, if I found it difficult, I should find another job. (*Commission interview*)

However, another member of staff noted in a Security Incident Report dated 19 June 2000 that their staff colleague and their family had suffered racial abuse at the hands of a white prisoner with a record of racism. Additionally, in a file note on 17 June, another officer reported racial abuse by another white prisoner against this same member of staff. Two days later, a further officer in Parc noted in another memorandum that this second prisoner

is remanded for the alleged racist attack in Newport where a man was murdered outside the hospital. It does not state this on his actual warrant but in the court paperwork attached. Obviously you will need to be aware of this. (*Parc memorandum, 19 June 2000*)

Compared to areas of urban England, in south Wales the black and Asian presence in the local communities is not large, but the area has a serious problem of racially aggravated assaults and harassment. Given the distribution of the ethnic minority population and the concentration of Wales’ four prisons along its south coast counties, the perpetrators of serious racist assaults or murders in south Wales are likely to be in Parc at some stage in their prison career, likely to have a reputation preceding them and may even recognise a black or Asian member of staff from within the local community. As the quote above shows, management in Parc did not recognise that this gave an added importance to their duty of care toward their ethnic minority staff.

The fact of the racism of the prisoner involved was not noted in the SIR referred to above. On this specific issue HM Prison Service commented on our draft report that ‘The lack of a box specifically for racism in no way prevents staff from citing it as an issue or reason for the SIR’. Such a comment disappoints and puts in context the



repeated claims by the Service in its representations to us on our finding in respect of this member of staff's experience that the recording exercises 'clearly demonstrate a proactive approach by staff'.

The incident for which the prisoner concerned was on remand was the killing of Jan Passalbessy on 12 June 2000 in the grounds of a hospital in Newport, South Wales. It is difficult to see how someone presented with even the barest evidence about such an assault could have reasonably seen the prisoner as representing a 'low probability of consequences' especially if the prison management concerned really was 'clearly demonstrating a proactive approach' on such matters as the Service claimed to us, particularly when it was made clear in the report that the killing was being seen as racially motivated.

HM Prison Service in its representations on our draft report said on this point that 'the fact that the same prisoner was subsequently involved in a fight does not prove this assessment wrong. All prisoners represent some degree of risk. Correctly filled in Consequence Codes can only ever indicate the probability of danger, not its certainty.' We find this statement puzzling and unhelpful when it comes to assisting staff in learning how to follow a 'proactive active approach' on race issues. Clearly the assessment was wrong and the form should have had a tick box for 'racism'. More appropriate understanding of the possible danger the prisoner represented, plus an indication of the kind of danger he might represent (racial abuse/intimidation), could have enabled the member of staff filling in the form to better alert their colleagues.

In their representations on our draft report, HM Prison Service commented that 'It is quite possible to make all reasonable efforts to provide a safe system of work, yet ultimately fail to protect [the member of staff] from race harassment. The proactive response by Parc to the single complaint received from [the member of staff] was certainly reasonable and was designed to help protect [the member of staff] from race harassment in the course of his employment.' The complaint noted by the Service was one recorded in the RRLO's log in May 1999. This identified the fact that he 'was called racist names from the windows of B2' and noted that numbers were placed outside cell windows in an attempt to find which prisoners were shouting abuse from their windows. The Service argued that the actions taken in respect of this member of staff's experiences 'clearly demonstrate a proactive approach by staff to promote race equality in the workplace'.

We do not accept that this was the case. HM Prison Service made this claim in respect of several instances of recording the problem, but recording a complaint does not deal with the harassment proactively. Both in respect of the evidence directly concerning this member of staff, and in that concerning some of the complaints by individual prisoners and in the discussion of the issue of transfers and allocations there is a common theme of a degree of knowledge by the local managers of the problem but that this knowledge only led to limited action which did not deal effectively with the problem.

As we found on the general issue of transfers and allocations, the management at Parc did not have an effective programme of action to challenge the racism of an influential group of inmates who were able to continue racist abuse and intimidation over a long period of time.

#### *Discriminatory recruitment practices*

The 2000 tribunal finding in the case of Claude Johnson refers to the way in which some of the harassment he experienced was perpetrated by relatives of staff he had been in dispute with in his first years in the prison. One prison officer told us, in relation to recruitment practices at the prison:

It's generally family after family. That's the way it has worked here for many years. (*Commission interview*)

A governor grade member of staff admitted in 2000 that 'decisions about jobs' were often made 'on the basis of getting a few managers together' – something he said he had 'seen here happen all the time' (*RESPOND interview*).

We examined the records of an internal recruitment/promotion exercise for senior officer vacancies at Brixton prison (for which the interviews took place at the end of January 2001). Recruitment to HM Prison Service is being devolved to local prisons and this is seen as being one way in which prisons like Brixton can achieve a fairer ethnic balance in their staff.

In the run up to the exercise, the equal opportunities officers at Brixton had received a number of complaints about the internal recruitment/promotion process at the prison. The Deputy Governor accepted that the practice followed in the exercise we reviewed was poor but said it was the usual approach for internal promotion exercises (*letter, 22 February 2001*).

The exercise – in which four of the 12 candidates were black or Asian and one of the five successful candidates was black – did not follow basic equal opportunity practices. Vacancies were advertised internally in the prison but there was no formal application process requiring standard information from candidates measuring their skills, training or experience against job descriptions and person specifications. The selection panel had not set criteria against which to assess candidates and make their choices. No standard questions were prepared. The panel consisted of two people, one of whom was replaced between the two days. No proper notes of responses to questions were made during the interviews.

In another example, a black operational support grade member of staff at Brixton from January 1997 to April 1999 applied in January 1999 for a permanent posting as some vacancies were available. He was told that the then recruitment exercise had been cancelled and two days later was informed that his then current one year

contract would not be renewed. His last day at work was 5 April. In the *South London Press* on 23 April there was an advertisement for an OSG vacancy at Brixton. He made an application to the employment tribunal alleging unfair dismissal and racial discrimination which was settled in the autumn of 2000.

*Placing the onus on the victim to complain*

Claude Johnson was ostracised and isolated by prison staff and managers when he complained about his treatment at the hands of fellow officers. Another case from Brixton demonstrates that his experience was far from unique and that management was not proactive in dealing with harassment.

In December 1999, a sheet of HM Prison Service memorandum paper with the phrase 'You loud mouth Paki go home!' written on it was pushed under the door of the Brixton healthcare centre pharmacy. The pharmacist was Asian; the other two staff in the pharmacy at the time were also from ethnic minority groups.

The pharmacist immediately showed the note to the Clinical Director at the healthcare centre who asked for a written complaint upon which to act. The pharmacist told the eventual internal prison investigation that she had been reluctant to put a complaint in writing 'as I am not used to this environment, I had come from a hospital' (*HMP Brixton investigation report 2 May 2000*).

The Clinical Director raised the matter within the healthcare team but maintained that the matter could not be investigated without a written statement from the pharmacist. In a letter to the RRLO on 28 March 2000, he said:

I have discussed this with the Governor, who advised me to bring the matter to your attention for advice.

This meant that the Governor was abdicating responsibility for giving the correct leadership in dealing with a matter for which there was adequate evidence to trigger an investigation – the written note – irrespective of whether or not the supposed target of the note was prepared to make a written complaint. This put the onus on the individual ethnic minority member of staff to initiate any process, personalised the process and increased the likelihood of victimisation. It also delayed matters, making the discovery of the culprit less likely.

The RRLO's reply was to the point:

This incident should be investigated as thoroughly as is possible regardless of the fact that ---- has failed to commit to paper. Ultimately we must investigate all racial incidents to demonstrate our commitment to the race relations policy statement. (*RRLO memorandum, 17 April 2000*)

The investigation then conducted by the Clinical Director was meant to have been concluded by 8 May but the report was not delivered until 7 December 2000. Despite the help of a handwriting expert at HM Prison Service headquarters, the investigation said it was unable to identify who had written the note and it appears that this was seen as the end of the matter.

During an ethnic minority staff support meeting on 13 November 2000, the pharmacist told those present about her concerns over the way the issue of the December note was investigated. According to the note in the Brixton Equal Opportunities Log she then told the Deputy EO Officer:

the matter had not been taken seriously and as a result no one had been brought to task over it. (*Brixton Equal Opportunities Complaints Log entry 2/00*)

In the initial recording process, the note had been described in personnel records merely as an offensive letter; its obvious racist content was not remarked upon.

The pharmacist told the RESPOND team inquiry in May 2000:

When it did happen to me, I did get a lot of nurses of black origin and Asian origin coming up to me and saying they encountered it as well. (*RESPOND interview*)

A reasonable management would have taken the initiative in dealing with such an abusive and threatening note. 'It is clear,' HM Prison Service told us in its representations on our draft report, 'that once Ms ---- had stated that she was not prepared to make a written statement regarding the incident, management at Brixton were unsure of how to proceed as there were no clear national guidelines covering this at the time.' This highlights the way in which the victim of the abuse had not had the confidence to press ahead with a formal complaint but gave no indication of any steps the management in the prison had taken to build that employee's confidence and enable them to feel secure in their place of employment. It also accepted that headquarters had no practice of ensuring individual prison managements rose to such a simple challenge.

Indeed the anonymous note was not unusual in Brixton. One woman governor grade member of staff who was Head of Operations at the time of the RESPOND inquiry told that team:

My personal experiences at work tell me there is no equal opportunities at Brixton... I received an extremely obnoxious letter, unsigned, through my door claiming to be from an officer from my wing. I went to other governors about it who laughed and thought it was amusing and told me just to ignore it. They felt it was just a normal thing that happens at Brixton to anybody that is new. I've had officers call me witless in front of prisoners... An officer picked me up by the lapels and swore at me because I agreed for a

prisoner, who happened to be Asian and a sex offender who had been threatened by other prisoners on the wing, to be moved to another wing... I started to keep a diary because so much was happening... I have never made a formal complaint... because I am brand new and you think they think I can't cope... (*RESPOND interview*)

*Failure to deal proactively or systematically with the problem*

During the time when we were investigating issues at HMP Brixton, a black operational support grade member of staff made a complaint about remarks made by a senior officer in her presence in February 2001. Among the remarks were the following:

All I want to be is an Englishman in my own country... Britain is no longer a white man's home. (*Brixton investigation report, Brixton, February 2001*)

The internal inquiry found that the senior officer had already been given a written warning at the start of the year which stated:

You must be particularly careful not to say anything while at work that might give offence to any member of staff, prisoner or visitor... Currently at Brixton there is a very high level of sensitivity about issues of sexism and racism and you must be particularly careful to avoid comments that could give rise to offence on these grounds, bearing in mind those current high levels of sensitivity to these areas. (*As above*)

The wording of this warning helps us understand the deep frustration which was clearly evident on the part of black and Asian members of staff at the prison. The need for proper conduct is predicated on 'high levels of sensitivity' – perhaps because of our investigation - rather than on the straight fact that such behaviour is wrong.



### **Failure area 3: Treatment of prisoners**

#### *Key points*

- Prisoners have written to the Commission alleging a wide range of racial discrimination.
- Complaints of racial discrimination raised within the prison by prisoners were often not investigated.
- Prison officers and prison management failed to deal with racist abuse between prisoners or to protect prisoners from racist harassment.
- HM Prison management failed to implement its own policies in relation to racial discrimination, abuse and harassment.

### *Complaints from prisoners to the Commission*

Complaints under the Race Relations Act are difficult for individual prisoners to pursue. Gaining conclusive evidence is hard, even when it is clear something has gone badly wrong. The exercise of discretion by prison staff may create a fertile ground for discrimination, but it also makes it hard to distinguish discrimination from general bad practice.

The Commission's records contain many examples of prisoners seeking to raise complaints over their treatment. Many of them are over issues which could have been within the scope of the 1976 Act, but none led to successful litigation. The Commission's database contains no record of any successful County Court case since the case taken by Mr Alexander in 1983.

Among the complaints in the Commission's archives are letters from prisoners alleging matters such as:

- officers removing black power posters, posters of Malcolm X, etc
- unwarranted damaging entries in history sheets or other parts of a prisoner's files
- unwarranted punishments for things like 'being disrespectful to an officer'
- threats of, or actual, wing transfers – or more usually prison transfers – following complaints
- refusal of access to faith needs (such as celebrating special events in the faith calendar or access to a visiting minister)
- use of racist language to prisoners
- denial of access to Asian TV and video programmes, either by straight refusal to facilitate or by constant failure to ensure that the video/television system is working.

In a few cases, the letters were accompanied by petitions of complaint about generally racist treatment by staff signed by several prisoners (one such petition in 1999 came with 29 signatures).

In their complaints to the Commission, prisoners have tended to focus on what they perceive the staff have done to them, rather than on what the staff have not done for them. It is restrictions, punishments or harassment they complain about, not failure to provide a safe environment free from racial harassment by other prisoners, or the weakness of offending behaviour programmes from the point of view of ethnic minority prisoners.

This is not to say that these issues are not of great importance to individual prisoners, rather that most prisoners would not be aware of what they may legitimately complain about under the Race Relations Act. The Race Relations (Amendment) Act 2000, which came into force in April 2001, increases the scope of



the Act by clarifying the reach of its prohibition on racial discrimination when it comes to the activities of HM Prison Service.

### *Problems proving racial discrimination*

Even when issues did obviously fall within the scope of the Act as originally passed in 1976, there were considerable evidential barriers for individuals trying to take cases.

An example was a case from Brixton recorded in the Race Relations Log as case 34/99. A black prisoner was demoted from 'enhanced' to 'standard' within the Incentives and Earned Privileges scheme and was removed from his job as a painter by a prison officer who claimed he had been 'loud and abusive' on 11 September 1999. The RRLO asked what this had entailed. The officer concerned said that the prisoner had called her a number of derogatory names. However the senior officer on the wing at the time said that the prisoner 'was not abusive'. Another officer on the same wing told the RRLO that another prisoner, this time white, had been punished for involvement in a fight where weapons were used, but was allowed to remain as a painter.

The RRLO then recorded his conclusion:

I believe that the treatment levied against ---- was unfair. I cannot prove racial motivation but equally cannot totally dismiss it. (*Brixton Race Relations Log, case 34/99*)

### *Abuse from other prisoners*

We have already seen how an atmosphere of racist graffiti and abuse was tolerated in prisons. Clearly, some individuals might be minded to try to ignore abuse from other prisoners, either because they were determined not to show weakness or because they were afraid of reprisals. Others might just have felt that no one was going to help them so there was no point in complaining – a view particularly likely among those who felt that staff used some of the same language and/or shared some of the same attitudes. Again, others may just have engaged in seeking to give it back, looking for revenge or whatever. None of these responses should have obscured the fact that the behaviour was wrong and that failure by management to take realistic, practicable steps to bring it to a halt could have been a breach of the law.

The failure of prison management to stop, or reduce to an unavoidable minimum, the graffiti and abuse could have a devastating impact on vulnerable individuals. There are a number of cases in the records at HMP Parc over several years where the responses from staff indicate there had been a consistent tendency to look for ways to handle the problem on a individual basis, rather than seeking to develop a proactive and strong approach to the general issue of racist behaviour. The approach taken by staff ranged from the complacent (not recognising the impact that this

behaviour was having on some prisoners) and the overwhelmed (a view that the racism was inevitable and cannot be stopped).

In one case, a Board of Visitors application form for a prison transfer records that the prisoner concerned was

the only black person on wing. He has received abuse and threats... seems very vulnerable and isolated. Spoke to two PCOs [prison custody officer] who say he can apply to be transferred. (*BoV application form, 20 July 1998*)

Rather than dealing with the problem, the solution is to transfer the prisoner to another prison.

In a request/complaint form dated 18 August 1999, an Asian prisoner at Parc noted in the section 'What action would you like taken?':

I would like the racist problem in this jail stamped out. We are nearly in the year 2000 and people in this jail are acting as if they are still in the 1960s.

Detailing his complaint, the prisoner wrote of:

Racial abuse from inmates, threats, things thrown at me, reported incidents, nothing done about it.  
Nothing done about racial abuse, no help given, nobody punished or told off about it, and [it] is still going on.  
Inmates giving constant abuse in front of officers, officers doing nothing about it...

As the prisoner was released in the middle of September the complaints do not appear to have been followed up with any detailed assessment of the Parc performance in dealing with the problems he faced.

A month after he arrived at the prison his situation was noted at the RRMT. He arrived with a group of other prisoners:

These prisoners transferred in have suffered some racial abuse since being located on A block. The majority have grouped together and have coped with the transfer. However ---- appears to be isolated from any group and is feeling the isolation. Staff are also very concerned about him ... [A staff member] stated that we should endeavour to get ---- back to [the prison he came from] ....(*Minutes RRMT 10 June 1999*)

In its representations to us over our draft report, HM Prison Service said that this was 'evidence that the prison was aware of the situation and it was being discussed and resolutions being sought.' It added that 'The fact that this came up at the June meeting two months before the prisoner's formal complaint indicates that the prison

had an effective policy for identifying problems related to racial issues on the wing.’ The difficulty we are faced with by such a reply is that it asserts knowledge of the problem as if that was sufficient. It does not demonstrate adequacy of action to resolve that problem and do so within HMP Parc, which for us must be the key matter.

*Failure to protect prisoners from racist harassment*

The compact signed between the prison and prisoners when they arrived at Parc declared that the establishment ‘is opposed to any display of racist prejudice’ and ‘any form of harassment will be regarded as a serious disciplinary offence’. However it only committed the prison to provide ‘clean, safe... accommodation’; the prison does not pledge itself to house prisoners in an environment free from racist harassment.

In one case at Parc, a black prisoner was placed on report for refusing to attend work in the industries unit after receiving threats and abuse there. The prisoner’s statement said:

I was getting verbal abuse... There were adults throwing little nuts and bolts at me... I put in two applications, one for education and one for a wing job. I even went to see the careers man. Also I told an officer what was going on for two reasons. One, because I’ve done almost two years and I’ve only got six weeks left, so I am trying to avoid any trouble. And the second reason is I like my face the way it is and I think I’ve a right to avoid any situation where 20 racists are going to alter my features forcibly.

So I told an officer who told the industries supervisor who assured everyone they would keep an eye on me. So I went back down... Two days later I was pressed up against a wall getting told what they do to ‘niggas’: ‘We hang you lot.’ One of them said: ‘Where’s the noose?’ More appropriately for me, where the hell were the supervisors who were supposed to be keeping an eye on me?

Some other black boy comes down there and gets the same treatment. He writes a statement and gives it to the officer who brings it to me to sign... I’m thinking it’s all been sorted out... Instead, the next day, the officer tells me I have to go to work... I’m not saying I don’t want to work. I’m just not strolling into a place where I’m looking over my shoulder every five seconds... I think I’ve got a right to that.

*(Parc prisoner statement to internal inquiry, 18 February 1999)*

He was placed on report with the charge being: ‘you refused a direct order’. The industries supervisor told the investigation that:

no adult inmates had approached [the prisoner] after staff had been informed about the situation and that they had not seen or heard any racist remarks directed towards [the prisoner] at any time previous. (*Parc investigation report, no date*)

However the investigator found that a member of industries staff had previously submitted a Security Information Report about a white prisoner who

has incited racist remarks and comments openly to prisoners in industries. He has targeted YOs and has produced an air of oppression... He is very open about his racist comments... He is proactive and a ring leader. I have my suspicion that he has put pressure on ethnic minorities in industries. (*Parc SIR, 22 February 1999*)

The prisoner had complained of a persistent pattern of persecution of a particularly nasty kind. The evidence now was that the supervisor had ignored or failed to notice it. Yet the investigator did not return to the industries supervisor and question him further.

A relevant point is that the Industries workshop at Parc was singled out by the SAU team which visited the prison in June 1999 as especially worrying from a security point of view. It was then closed for risk assessments after which extensive modifications were ordered to allow for better control over prisoners. It was shut down for a nine month period. The Deputy Director General visited Parc on 27 October 1999 and noted in his report:

The activity area was bizarre. It seemed to beggar belief that either the private sector contractor or we, in analysing the bid, had thought it was sensible to run several different workshops within a single building with no adequate partitions between the different workshops. It had proved a recipe for lack of control, risk to security and, having seen the layout and design of the place, this was not surprising. (*Deputy Director General, report on visit to Parc, dated 29 October 1999*)

The Inspectorate also strongly recommended that the workshop be closed. In their representations to us, the Prison Service accepted that the basic design of the industries building 'made it extremely difficult to monitor issues such as bullying'. It is a matter of considerable concern that a brand new prison should have had such a fundamental flaw in its design.

A number of complaints forms and Board of Visitors applications filled in by black and Asian prisoners at Parc made much the same point as that made by the complainant in this case – indeed in some cases the prisoners directly stated that they would not obey an order for a cell transfer to a part of the prison where they understood there were many white racists. In May 2000, one black prisoner was put on report for 'refusing a lawful order'. He said that in the segregation unit he had

been ‘called “nigger” by some inmates now on B2’ where he had been ordered to move to (*General application form, dated 26 May 2000*). In a case two months earlier, a black prisoner explained in a request/complaint form:

I even asked to stay in segregation rather than move to A2... On 5/2/00 I was on adjudication for refusing to move to A2. I explained my reasons to the Governor which is that I was racially abused by inmates on A2.  
(*Request/complaint form issued 1 March 2000*)

#### *Failure to ensure prisoners’ safety*

In May 2000, a black young offender complained that white prisoners in the segregation block were shouting racist abuse at him and other black prisoners who had just been brought from Portland to Parc. He was told ‘that Parc does not tolerate racist abuse and that the perpetrators will be adjudicated upon’. He was also told ‘that if he felt he was coming under assault then he should bang himself up in his cell and press the call’ (*Parc RRLO report, 7 May 2000*). That report noted of the prisoner’s cell: ‘there was racist graffiti openly displayed’. Clearly, the black prisoner was not responsible for this.

In the event, the white perpetrators were not adjudicated on (adjudications must be carried out with 48 hours of the relevant incident and the Parc staff ran out of time) but they were ‘spoken to’ by a senior officer. When asked three weeks later what had been said to them, one of the white prisoners replied that he had been told: ‘Any more trouble and I will ship you to a prison where there are more black inmates’ (*Parc RRLO report, 25 May 2000*). The report writer did not cavil at this suggestion or argue that the officer would never have said any such thing.

The incident shows that the prison management accepted the likelihood of assault on prisoners on racial grounds. The advice given also suggests that the prison would not have adequate staff available on landings to deal with trouble as it arose, making the prison an unsafe place for certain prisoners.

Another case graphically illustrates this point. On several days in August 2000, a prisoner (he registered his ethnic origin as ‘white-other’ but was referred to by white racist prisoners as ‘black’) had racist hate mail pushed under his door<sup>8</sup>. The prisoner had arrived in Parc in June and was immediately subjected to what he described as ‘a catalogue of incidents all racially motivated by a hard core of right wing antagonists hell bent on causing as much racial unrest as they possibly can ... Ethnic minority non-indigenous inmates are singled out for a torrent of vile, disgusting pictures, news clippings and verbal abuse.’ (*Prisoner statement to Parc management, September 2000*)

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<sup>8</sup> Two years earlier a Parc incident report on 12 November 1998 noted of a black prisoner that ‘he had problems with racist material being put under his cell door’.

The material pushed under his cell door consisted of Hitler pictures and newspaper cuttings about racist incidents, including one headed 'Racist Hell' Jail Ordeal. The *South Wales Echo* story covered the case of four black prisoners who had sued the Home Secretary for negligence alleging failure by HM Prison Service to protect them from racist abuse and assault while they were on remand in HMP Swansea awaiting trial on charges that were eventually dropped<sup>9</sup>. The words 'Nigga your next' had been written on the cutting along with 'RVS' (Rhondda Valley Skins):

## 'RACIST HELL' JAIL ORDEAL

FOUR West Indians who said their time in jail was "a living hell" of racist abuse failed to win damages yesterday. The men had claimed more than £1million over offensive remarks from staff and other inmates at Swansea prison.

But their action against the Home Secretary was thrown out by the High Court.

Marnon Thomas, Nigel Johnson, Hopeton Falcolner and Patrick Campbell had claimed the Home Secretary had

By NICK SERVINO

been negligent and guilty of misfeasance—a wrongful act—in public office, said Mr Justice Buckley.

The judge admitted the four probably had suffered racist remarks and there had been an assault. But he said this was not enough to prove negligence.

The allegations arose from a period in 1994 when the men were on remand in custody at Swansea. They were

waiting to be tried on false imprisonment charges, which were eventually dropped.

On 11 December Marnon Thomas was hit on the head with a snooker cue by another inmate. The other three were hurt during the rumpus that followed.

They all accused the prison's duty governor of negligence for allowing the fracas to take place.

And they claimed that prison officers turned a blind eye to — and even joined in —

racist abuse and assaults.

The judge said: "The claimants probably were on the receiving end of some racial remarks from some other inmates."

"I also have no doubt they were extremely annoyed and upset by the assault and the injuries they undoubtedly received."

But he ruled that the decision to allow the four to mix with other prisoners had been reasonable and was not negligent.

A month later, while the target of that intimidation was cleaning in the servery area, a white prisoner spat on the floor. The prisoner doing the cleaning told the white prisoner to wipe it up. The white prisoner attacked him and was joined in the assault by another white prisoner. As staff restrained him, the white prisoner shouted racist insults. Later, when the white prisoner was interviewed by the RRLO and two other officers, he said:

I don't need this 'shit'. At this point [the prisoner] walked out of the interview. (*Report of interview conducted on 19 September, dated 25 September 2000*)

There was no indication that any action was taken against the prisoner for this.

Immediately after the servery incident, the prisoner was taken to the segregation block. While he was being escorted there

Many calls were heard coming from A2 and A4 namely 'Zeig Heil' and 'Black Bastard' ... (*Parc RRLO report 29 September 2000*)

<sup>9</sup> In the High Court, Mr Justice Buckley said on 31 July 2000 in finding against their claim that 'Overall, and it may be some comfort to the claimants, I do not believe that they have wholly invented their allegations as was suggested on behalf of the Home Office.'

The prisoner was relocated onto A2 after a short stay in segregation.

In its representations to us HM Prison Service noted this particular report in the following terms: ‘Such formal recognition and openness about Parc’s racial problems was an essential part of its commitment to preventing racial abuse and assault’ but did not include any indication that action was taken over it. The issue for this investigation has not been whether or not the Parc management knew of the existence of racism in the prison population, they most certainly did, but whether they put that knowledge to good use or not.

That areas of the prison were not safe seemed to be taken for granted at Parc. A member of the Board of Visitors reported in August 2000:

When on C Block he observed that there was only one officer on duty with four inmates out of the cells. He asked if the officer could open a cell door to enable him to talk to a prisoner and was told that there were not enough officers there but if he wanted to take the risk he could. (*Minutes, Parc BoV, 8 August 2000, item 2.10*)

This state of affairs at Parc could clearly have an impact on ethnic minority prisoners. In a prison with a significant problem of violent white racist prisoners, ethnic minority prisoners were vulnerable to assault from them. Instead of developing pro-active programmes of work to counter this problem, the management of the establishment let the situation drift over several years.

#### *Failure to identify indirect discrimination*

In January 2000, an Asian prisoner at Feltham complained through the Imam that:

- although he is a Muslim he was offered a pork chop
- his application form for Home Detention Curfew had been lost
- an officer had accused him of using drugs but had refused to allow a drugs test so he could prove his innocence<sup>10</sup>
- after complaining he had been scheduled for transfer to another prison.

An entry in the Racial Incidents Log records:

R/complaint form submitted stating several complaints that he had been treated unfairly, including racial complaints. There was some justification in his complaints but not racially motivated. (*Feltham Racial Incidents Log, 1 February 2000*)

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<sup>10</sup> On this particular point HM Prison Service responded in its representations on our draft report with the following remark: ‘There is no record of any officer refusing [the prisoner] a drugs test so that he could prove his innocence. However it has not been possible to locate the voluntary drug testing register for the period of time [the prisoner] was on Mallard Unit.’

Motivation is not relevant to some of the issues raised by the prisoner. Failure to provide a proper halal diet need not be motivated by racist attitudes in order to amount to indirect racial discrimination. If it was so motivated it would be direct discrimination.

This distinction is often not grasped by staff in general, or even investigators. Many staff sought to reduce issues of race to matters of motivation or maliciousness and consequently failed to properly understand or investigate complaints by prisoners.

*Failure to investigate incidents and implement policies*

An Asian prisoner came to Feltham on 19 January 2000. Four days later, he and another prisoner, also Asian, were attacked by two white prisoners while watching television in a room where prisoners should have been supervised by staff. No staff were present in the room at the time of the assault though a full complement was on duty in the unit. His jaw was broken in the attack. The prisoner told police subsequently that he was racially insulted at the time of the assault, but he told both the prison authorities and the police that he did not want the attack treated as a racial assault.

Transferred to hospital on 23 January, he had surgery not only for his immediate injuries but also for Crohn's disease, a serious intestinal condition.

The two assailants were both immediately identified to prison staff. A bullying incident report form, written up on the day of the attack, includes clear statements from the two Asian prisoners who were attacked. During his convalescence in hospital the prisoner was told by prison staff that the Governor was dealing with the case. Later a Principal Officer told him there was no evidence. The two assailants were never disciplined.

Eventually the issue came to the attention of the Feltham Imam, who took a statement from the prisoner and forwarded it to the Governor in December of that year. When the case was then referred to the police (just ten days short of a year after the assault), the police investigators considered they had enough evidence to charge both assailants with actual bodily harm.

The Governor's reply to the Imam said:

The two prisoners named by [the victim] as responsible for the assault were not placed on report by staff. I believe this is because staff did not witness the incident. It is also the case that the matter was not referred to the police at the time and it is not clear if [the victim] was ever asked if he wished the matter to be referred...

I am disappointed that these matters have taken so long to be investigated properly and that [the victim] has been told in the past that 'it was being dealt with'. I am not aware that [the victim] has ever raised the issues via the



request/complaint system or through the Board of Visitors with either myself or my predecessors and I am grateful to you for bringing it to my attention to enable some action to be taken.

*(Feltham Governor to Imam, 23 January 2001)*

Such an approach did not adequately recognise the difficulty any such victim would be in when seeking to use complaint procedures. To suggest that the reason why matters were not followed up properly in the first place was because staff did not witness the initial assault is to ignore the proactive implications of the establishment's official policy on incidents and bullying. The Feltham 'Anti-Bullying Strategy and Guidelines' says:

Anyone who is given information on bullying must act on it and ensure that the matter is fully investigated and recorded ... *(Anti-bullying policy, 2000, page 10)*

At no point in his letter to the Imam, nor in any other document we have seen, did the Governor propose to take disciplinary action for the initial failure to investigate the incident, or any other action to ensure that such a failure was not repeated.



## **Failure area 4: Access to goods, facilities or services**

### *Key points*

- Meals provided for prisoners and goods available in prison shops often did not meet the needs of ethnic minority prisoners.
- Policies were in place but were not actually followed. Inadequate monitoring by prison managements meant that decisions about provision were often at the discretion of individual staff.
- The faith needs of non-Christian religions, particularly Muslims (most of whom were members of ethnic minority groups), were not adequately met.
- Arrangements for access to goods, facilities or services, while appearing to be the same for all prisoners, in practice indirectly discriminated against members of ethnic minority groups.
- Prisoners with low literacy skills had difficulty adapting to prison life and accessing prison services. In the case of Irish Travellers, this is compounded by prejudice and discrimination, leading to high levels of self-harm.

## *Introduction*

Section 20 of the Race Relations Act makes direct or indirect discrimination in the provision of goods, facilities and services unlawful. This means, for instance, that it is not only unlawful to refuse a service to someone because they are Asian, but also that it is unlawful to refuse a service to a Muslim where doing so effectively means that Asians cannot then avail themselves of the service. An example would be the failure to provide halal food. Though there are some white Muslims in prisons, the overwhelming majority of Muslims are Asian or black and the proportion of Asians who are Muslims is high.

In addition to the considerable potential for unlawful discrimination in the provision by HM Prison Service of goods, facilities and services to prisoners, there are also wider matters of good race relations within prisons. Dissatisfaction and resentment about practices that are perceived to discriminate against ethnic minority prisoners will affect prisoners' attitudes towards other aspects of the prison regime.

For example, given that a number of very important aspects of a prisoner's life are determined by their religion (such as their food, and who they can turn to with trust to discuss private matters or get help with a letter to their family – the prison chaplain or imam, for example), a failure on the part of staff to respond positively to particular faiths can be damaging both to the immediate relationship between the establishment and the prisoner, and to any prospect of a prisoner developing well during their time in custody.

## *Meals*

Anyone reading the minutes of a wing or unit meeting involving prisoners will see that food usually headed the list of prisoners' concerns. NACRO's 'snapshot survey' of race issues in prisons found that there were 'clear differences across ethnic groups with black and Asian prisoners less likely to be satisfied with prison food' (*Race in prisons: a snapshot survey, NACRO, May 2000, page 27*).

The potential controversies here were the variety of food on offer and its acceptability for prisoners from different faiths or different cultural backgrounds. Ethnic minority prisoners were more likely to be disadvantaged than white prisoners because they were more likely to have particular dietary requirements as a result of their faith, or to favour different kinds of foods because of their cultural background.

HM Prison Service had long accepted that it should provide such foods, for example by providing Caribbean-style cooking or food suitable to the requirements of particular religious groups. Achieving that aim appeared to be a very different matter, despite Prison Service Standards and individual prison Orders covering the provision of meals. Where such foods were provided they might not have been accompanied by the same level of choice and variety that was available to prisoners from other groups.

There have been a considerable number of complaints over the years about failures to provide halal ('lawful') food for Muslims. Halal food must be stored, cooked, handled and served separately from contaminating foodstuffs such as pork or pork products. The Prison Service's Muslim Adviser, on a visit to Brixton in March 2000, was alarmed to find that the 'catering manager felt that there was no need for separate utensils or knives' (*letter from Muslim Adviser to Governor of HMP Brixton, 4 April 2000*).

At Parc in early 2000, a prisoner complained that while non-Muslims were offered a choice of meals, Muslim prisoners were offered only one set item. The Parc Director subsequently issued an order that 'where a choice of meals is available... which is religiously appropriate, the choice *must* be offered' (*Parc Director's Orders, Residential No. 2.19.2000, 9 June 2000*). However, the order did not require that such a choice must actually be available or that there should be a choice within the options provided under the halal heading, where as there would have been a choice of non-halal foods available to other prisoners.

As the period covered by our investigation was drawing to a close, a number of prisoners were switching over to a 'pre-select' menu system where prisoners choose the meal they want in advance from a menu card circulated in advance. This was seen as a way of resolving problems created by the need for different diets. HM Prison Service's Catering Manual (*Prison Service Order 5000, issued 23 July 2001*) states that 'There will be a multi-choice, pre-select menu' (*paragraph 3.2.2*) but does not specify that more than one choice among the range of choices should be suitable for Muslims. Despite offering considerable detail on 'Variations in diet' (*section 3.23*, the bulk of which covers the dietary needs of Muslims), the possible 'variations' are left to the 'responsibility of catering managers' in the individual prisons (*paragraph 3.17.1*). In theory, the system can genuinely cater for diversity of needs, but in practice whether or not the outcome is achieved depends on the desire to do so.

Extracts from the minutes of the Feltham RRMT point up the gulf between the stated aim and the actual outcome. In December 1999, the minutes record that the Deputy Governor 'felt that as 50% of the prisoners were from ethnic minority backgrounds, the food served by the kitchen should reflect this' (*Minutes, Feltham RRMT, 21 December 1999, item 9*). Two months later, a member reported that 'during conversations many prisoners had complained that the food was not what was eaten in their ethnic group' (*Minutes, Feltham RRMT, 15 February 2000, paragraph 8*).

There are other, less obvious, ways in which HM Prison Service's provision of meals might amount to indirect discrimination. A staff member at Feltham noted that when it came to breakfast 'some of the black kids just eat the cereal dry' (*Commission interview*). The breakfast at Feltham, as in other prisons, comes in a pack distributed the night before and is based on cereal and milk. Whereas only a small percentage of many white ethnic groups experience lactose intolerance, this

can be up to 90% for some Asian groups and around three-quarters for black groups. A breakfast based on milk is clearly not necessarily appropriate for members of many ethnic minority groups. In all the material we saw from the three prisons there was no evidence of any discussion of this issue, nor of any indications from HM Prison Service headquarters as to how it should be dealt with..

The discriminatory impacts of prison practices were also demonstrated by the once-common charge of ‘diet abuse’, under which prison staff could return a prisoner to the basic prison diet if the prisoner failed to eat the agreed diet set out for them. In 1998 at Brixton, a Muslim Asian prisoner complained that his pork-free diet had been stopped on the grounds of ‘diet abuse’, leaving him unable to eat a diet that met his faith requirements and so having to go without eating a full meal. Placing such prisoners on a basic diet in punishment for an alleged offence clearly had wider implications for them than just denying a prisoner food that he finds a bit more pleasurable to eat than basic prison fare.

### *Prison shops*

The Director General, in a speech to the 1998 annual conference for prison RRLOs, said: ‘Making sure that prison shops fully meet the needs of the ethnic minority [prison] population may seem mundane but can make an enormous difference’ (*quoted in Race Relations Newsletter, Issue 2, May 1999, page 19*). Stocking an appropriate range of goods was an objective that could be achieved regardless of other problems that prisons might have faced, such as overcrowding. To fail to stock such goods could also involve the prison in an act of indirect discrimination which might be unlawful under the Race Relations Act. Yet Prison Service Order 2800 on race relations did not make this a ‘mandatory’ requirement, saying only that prison shops ‘should make every effort to stock food, toiletry and other items for which there is a demand from ethnic minority prisoners’ (*PSO 2800, paragraph 5.8.1*).

The discretionary nature of canteen (or prison shop) provision makes it largely dependent on the attitudes of staff. The documentary record shows a long history of different objections by staff over these issues. The 1995 employment tribunal finding in the case of Claude Johnson, who worked in the canteen in Brixton in 1990-1991, found he ‘tried to extend the range of the shop by obtaining special goods for prisoners from the ethnic minorities’, but the officer-in-charge told him ‘that he would not get them and thought it was a waste of time’ (*Johnson tribunal finding 1995, paragraph 5*). As late as 2000, the Security Department at Feltham was objecting to the sale of baby oil and cocoa butter (favoured for skin care by many black prisoners) ‘because of the difficulty in restraining prisoners who used such products’ (*Minutes, Feltham RRMT, 18 April 2000, paragraph 3h*).

An ‘appropriate products’ list was circulated by HM Prison Service headquarters in 1999 on the back of a letter from the Director General, but failed to reach the relevant staff in a significant number of establishments – sparking an investigation into the issue of correspondence between headquarters and individual prisons, but

not into whether ‘appropriate products’ were actually being stocked. The items objected to by the Feltham Security Department had been included in the list of recommended items circulated in 1999.

This emphasised that the point was not simply to have the list, but to monitor whether or not it was being fulfilled. No effective attempt was made by HM Prison Service headquarters was made to ensure that the existing agreed range of products was available in each prison and take remedial steps if it was not. (Again, when arrangements for canteens in many prisons were contracted out by HM Prison Service, specific provisions were put into the contracts but then not adequately policed.)

Apart from the fact that prison shops stock goods suitable for the majority of (white) prisoners but may not stock the goods that ethnic minority prisoners require, the system has less obvious discriminatory impacts.

In the mid-1990s, the introduction of Incentives and Earned Privileges (IEP) schemes ended the practice of ‘handing in’. Under this, relatives and friends of a prisoner were allowed to hand in a range of basic items such as toiletries. With the introduction of IEP, such things had to be paid for by prisoners out of their prison earnings. The idea was to control access to such in order to reward good behaviour and dissuade bad behaviour. This, however, could disadvantage ethnic minority prisoners because their needs do not fit the ‘norm’ that the prison shops catered for. Similarly, black prisoners tended to be over-represented on the ‘basic’ IEP level where prisoners had the least amount to spend in the shop or on items they were allowed to purchase by mail order. Such prisoners were worst affected by the need to have to buy at the prison shop the goods that they required.

Ethnic minority prisoners have also claimed that the mark-up put on items for ethnic minority prisoners was higher than that for other items – a double disadvantage for black prisoners who were less likely than white prisoners to gain access to paid work in the prison (see *Failure area 9: Access to work*), and therefore had less money to spend.

If, in addition, specialised items to meet ethnic minority needs had to be ordered, there may have been further disadvantage. Periods of intense overcrowding also entailed significant prisoner movement on ‘overcrowding drafts’ (or ‘churn’ in prison jargon).

A prisoner who ordered a particular item may have found that they were moved on before the item arrived. If it was ethnic minority items more than any others which had to be ordered in this way, and if ethnic minority prisoners were more likely to be moved on than others (see *Failure area 6: Prison transfers and allocations*), then, again, ethnic minority prisoners were doubly disadvantaged by a system that might appear on the surface to have applied equally to all prisoners.

### *Faith needs*

Such indirect discrimination against ethnic minority prisoners could be clearly seen in the provision for prisoners' faith needs. In September 2000, 60% of prisoners identified themselves as Christians, 7% were Muslims, while Buddhists, Hindus, Sikhs and Jews each represented less than 1% of the total (*Religion in Prisons 1999 and 2000, England and Wales, Farid Guessous, Nick Hooper and Uma Moorthy, Home Office Statistical Bulletin 15/01, 2001*). Among Muslim men, 42% were Asian and 34% black. Failure to meet the faith needs of Muslims in prisons therefore has a disproportionate impact on ethnic minority prisoners as opposed to white prisoners.

A particular position was laid out for Anglican Christianity in the Prison Act and the Prison Rules which it is now recognised is out of date. During the period covered by our investigation, non-Christian faith groups were served by visiting ministers in facilities provided as the individual prison saw fit.

Visiting ministers had less opportunity to engage in pastoral work than a full time chaplain. In 2000, the Director General commented on the

ridiculous situation... in some prisons where there are only two or three members of a particular Christian faith but we have ministers with 20 or 25 hours while the imam, with a much larger faith group, has only three or four [hours]. (*Speech to RRLOs' annual conference 15 November 2000, printed in Race Relations Newsletter, Issue 7, March 2001, page 4*)

In written evidence to the Commission, the Commission on British Muslims and Islamophobia commented:

There are still many prisons where there is no appropriate religious and spiritual provision for Muslim prisoners (for example the use of a suitable prayer room or ensuring that Friday prayers take place at the permitted time and day). (*Written evidence, 4 April 2001*)

Similar points were made by HM Prison Service's Muslim Adviser (first appointed in October 1999) after he had visited some 100 prisons:

Many rooms designated for prayers are inadequate in terms of size and clean areas... Most ritual washing facilities are inadequate in terms of design or location. (*Muslim Religious Provision in HM Prison Service, Prison Service Journal, September 2001, page 20*)

The Director General, in the speech quoted above, stated: 'We are going to redistribute resources to make it fair.' The first full-time imam took up office in May 2001 at Dovegate, with three other prisons – among them Brixton – expressing an interest in the idea.



Once again, however, the gulf between the stated policy and the practice in prisons was wide. The 1991 Race Relations Manual stated that:

Practice of a chosen faith should be available to all inmates... Inconvenience is no excuse for failing to make these arrangements. (*Race Relations Manual 1991, paragraph 6.5*)

Yet inconvenience is precisely the excuse that continued to be used, for example over the timing of Friday prayers for Muslims, where two problems arose.

On the one hand, Muslims in some establishments were unable to attend their obligatory Friday prayers on the grounds that staff were not available to take them to the prayer room, often because officers said the timing of prayers conflicted with the timing of their meal breaks. Instances of this were seen in Feltham and in Parc.

A prisoner's religion could also lead to discrimination in other areas of prison life. In Brixton, a Muslim male prisoner complained of being body-searched by female staff, as the RRLO recorded:

On 23 June 1999 I received a racial incident reporting form from a Muslim prisoner complaining that after he expressed his wish only to be searched by male staff, female staff on G wing insisted on regularly searching him, often after he had performed his ablutions. I investigated the allegations and was horrified to discover that once he was identified male staff stood around and observed whilst female staff conducted the search. I strongly believe that this prisoner was in fact the victim of discrimination by a number of G wing staff as a direct result of his desire to practice his religion whilst in custody. (*Memo to Governor, 23 August 1999*)

Three days later the Governor issued an instruction on such body searches to 'clarify the situation' (*HMP Brixton Staff Information Notice 58/99, 26 August 1999*). An indication of the success of this instruction – and the inadequacy of managerial control of such issues – can perhaps be gleaned from a letter written by the Area Manager for London a year later to all Governors in his area, on 'Searches of the person: Religious headgear and other sensitive issues':

Please do not assume, even when you have written instructions in place, that staff are conforming with these instructions. They need to be re-enforced by management checks. (*Area Manager London to all London Governors, 18 August 2000*)

After a male Prison Officer required a Muslim female visitor to lift her veil so he could identify her when she visited HMP Brixton on 27 May 2000, there was a much more effective inquiry as to what happened, but the result was still that no one was punished for the breach of the policy laid down by the Prison Service. The officer claimed that no female staff were available at the time, a claim which was not true.

A Senior Officer told the husband he could make a complaint about the incident but refused to tell him the name of the officer concerned. The subsequent inquiry decided that the Senior Officer who did this ‘acted inappropriately in not reporting the racial incident and also in not giving [the prisoner the relevant Officer’s] name, thereby impeding him making any written complaint’ (*Final Report of Investigation, 29 November 2000, paragraph 9.5 iv*).

In the event, another member of staff, who was a member of the RRMT, complained about the matter. They had become aware of the incident as they were responsible for escorting the prisoner to and from the visits area.

The security summary for officers made clear:

Muslim women should always be searched out of the sight of men. (*Security Summary appended to the Directory and Guide on Religious Practices in HM Prisons, page 127*)

The officer responsible went on sick leave as soon as an investigation into the incident was ordered and then retired early just before a disciplinary hearing was due to be held. The investigation did not make any reference to the earlier pattern of behaviour by staff in regard to Muslim prisoners. As the officer who failed to report was not disciplined for that omission and the officer who committed the act retired early, no one was in the end disciplined.

Personal privacy is an issue for practicing Muslims, as well as privacy across the sex divide. One consequence of this for Muslim prisoners is the requirement for screens for cell toilets and in shower rooms. Prison showers generally did not have individual cubicles for security reasons. Vanity screens adequate to meet Muslim requirements, but not so large as to prevent staff observing possible bullying, could have been installed.

Parc had been designed and built with a cell size and provision above that available in most public sector prisons. All cells there were required to ‘have a WC in a screened compartment’ (*Schedule D, Section 6, paragraph 1.1 Parc CSA*). But the bulk of prison accommodation was not constructed with such facilities in mind, hence the disturbing reports of conditions in doubled up cells and cells designed in the past for two but now provided with a toilet.

Vanity screens came up at Brixton. The Senior Management Team minutes for its December 2000 meeting heard

The provision of screens for showers so that Muslims could use them with some privacy was a continuing problem at Brixton. Muslims had a right to shower with some privacy. (*Minutes, Brixton SMT 6 December 2000, paragraph 2ii*)

Estimates for the cost of these screens were asked for, but at the SMT of 14 February 2001 it was noted that they still had not been drawn up (*item 2.3*) and at the meeting on 14 March there was still no movement (*matters arising, point iii*). At the 11 April 2001 SMT, the issue was raised again as a request for funding had gone to the Area Manager:

there were two items to be addressed, the requirement for washing facilities in the Chapel consisting of running water and a shower tray, and the provision of a vanity screen on one shower on each wing.

*Coping in prison with low literacy skills: the case of Irish Travellers*

In the discussion of race equality practice in the Prison Service, the full diversity of groups was often ignored. Problems faced by white ethnic minority groups were, for instance, overlooked.

Travellers were not apparent in any ethnic monitoring system in HM Prison Service. In society at large their circumstances are highly marginalised and the prejudice against them, so far as public opinion is concerned, is overwhelming and the discrimination they experience persistent and harsh. They find it hard to cope in prison, and a number of prison suicide victims have been members of this group.

Very low literacy levels among Travellers compound the difficulty they face in adapting to prison life. As the Irish Commission for Prisoners Overseas (ICPO) and the Brent Irish Advisory Service (BIAS) told the Commission, this literacy problem meant that Travellers

did not make applications and complaints. Sometimes the staff did not recognise when Travellers were speaking Gamon [the Travellers' language] or they couldn't understand those with strong accents and just told them to go away. (*Note of oral evidence session with ICPO and BIAS*)

The ICPO also reported one case of an Irish Traveller prisoner at Feltham who, the agency said,

was not allowed to apply for any jobs – either in the kitchen or even sweeping the wings – because he is a Traveller. He has found out from other Travellers that they are discriminated against within the prison system when it comes to jobs on the grounds of hygiene and trustworthiness. (*ICPO written evidence, 8 November 2001*)

In evidence to us, BIAS said that its experience from involvement with Irish foreign national groups at two prisons in London (Brixton and Wandsworth) had revealed a wide range of issues:

Everything from name calling, spitting in food, denial of access to regular showers, certain types of employment, loss of association etc. (*BIAS written evidence*)

The BIAS submission added:

Many Travellers have a limited education and few literacy skills. This creates big problems in following regulations, knowing rights and accessing services, leading in turn to misunderstandings, confusion and frequent adjudications. Younger Travellers BIAS is working with will have between 25 and 50 adjudications within the first two to three years of sentence. (*As above*)

Illiteracy is one of the great unmentionables in modern British society. It is also one of the aspects of an individual's capacities which marks off those in prison from the rest of the population. But it is not just a problem which is hidden, it is one that often takes great care to hide itself. It has been a factor behind a number of the problems we observed in the prisons we investigated. Since the end of the period we investigated great emphasis has been placed by HM Prison Service on work to teach basic literacy skills to those prisoners without them. In the period covered by our investigation there were inadequate efforts to deliver the other side of that coin: transforming its own practices so that those with low reading skills can cope with imprisonment.

There were some signs of attempts to improve practice. The Chief Inspector noted of Feltham in 1999 that Reception had 'no information booklets available nor were any arrangements made to cater for the needs of ... those who were unable to read' (*HMCIP Feltham 1999, paragraph 1.1140*). His report in 2000 noted that 'Staff in Induction read every slide of the PowerPoint presentation to help the young prisoners who could not read' (*HMCIP Feltham 2000, paragraph 2.10*).

However, the Orders and other instructions prepared to guide staff at Reception or in Induction (the procedures designed to enable a new prisoner to fit in to the prison they have arrived at, how that establishment works and what they may need to do if problems arise) placed a reliance on reading skills. They offered only limited or confusing advice and instruction to staff as to how to handle or assist those with low reading skills.

They did not meet the clear requirements of the Prison Rules which state

In the case of a prisoner who cannot read, or appears to have difficulty in understanding the information so provided, the Governor, or an officer deputed by him, shall so explain it to him that he can understand his rights and obligations. (*Prison Rules, Rule 10 (2)*)

HM Prison Service formally recognised that there was a relationship between the ability to receive written information and the way in which an individual may or may not be able to cope with the immediate impact of imprisonment. Practice on the ground however did not live up to that recognition.

During the period covered by our investigation, HM Prison Service had extensive, though dated, guidance to staff on the use of prison libraries for prisoners. The relevant Order, PSO 6710, contained the important statement:

The prison library must cater for the informational, cultural, occupational and recreational needs of *all* prisoners. (PSO 6710, Appendix 4, *A framework for assessing the quality of the library service in prison*. Our emphasis, CRE)

Attention in this respect however centred on differences in cultural background or physical ability and less on the greater problem in the prison context: low reading skills. Commenting on the library in Brixton, the Area Manager at one point said that

particularly with such a poor regime, notwithstanding the number of prisoners who may not be able to read, it is important for there to be books available to help people to pass the time constructively. (*Area Manager London to Governor Brixton, 25 April 2000, paragraph 15*)

Constructive engagement of those who could not read through the development of in-cell television was stalled in the mid 1990s by the idea that it was in some way an unjustifiable luxury. In comparison to the amount of management thinking that was devoted to the issue of libraries and written materials, that devoted to television was consequently limited. The relevant Instruction on television (*PSI 58/1998*) covered issues to do with practicalities such as the provision of sets and not a policy as to the use of television as part of a constructive regime.

Feltham long had an Irish Traveller element in its population as had Brixton and a number of other London prisons. The documentary record shows that the Chief Inspector and internal discussions in the prison only occasionally recognised the problems this group faced:

There was a lack of awareness of the cultural needs of specific groups of young people, such as travelling people. Staff in the Education Department did not know whether or not there were travellers in their classes. (*HMCIP Feltham 1996, paragraph 4.08*)

At the weekend two boys (brothers) had requested Rule 43 after stating that they had been beaten up in Reception. F213s showed they had received injuries. They were Irish travellers and said the attackers were black and said it was a racist attack. Governor ---- had spoken with the boys and felt that even though it could be seen as racist (black boys against white) the two boys were both softly spoken and yet tall and probably presented as easy targets,

but also in view of their size, a challenge. (*Minutes, Feltham RRMT, 18 August 1998, Item 4*)

Traveller lifestyles will amplify the negative impact of prison as they are not used to the tight regulation of an institutional existence where regulations, discipline, timekeeping and boundaries influence every aspect of a person's life. The shock effect of imprisonment is greater for them than for other groups.

In its evidence, BIAS told us it was 'working with three young Travellers who have attempted suicide' and noted that prison psychiatric assessments 'rarely take cultural background into consideration':

One was told he needed an IQ test as there were huge problems in communicating with him. He was illiterate and spoke Gamon, the Travellers' language, but relevant professionals were totally unaware of this. Another Traveller was put forward for psychiatric assessment because he spoke 'some kind of gibberish'. Again, this was Gamon. (*BIAS written evidence*)

This discrimination could have tragic consequences. In October 2000 in Brixton, an Irish prisoner, Derek Fegan, was found hanged in a cell in the prison's segregation unit. Prison staff later told the Coroner's Inquest that they could not understand him because of his accent and so could not comprehend his pleas for help. His widow said that this evidence particularly angered her as Mr Fegan had been born in London, spent much of his life in England and did not speak with a marked accent (*Press release from Derek Fegan campaign, 3 June 2001*).

In a Parliamentary answer in 2002, it was stated that there had been 14 self-inflicted deaths in Brixton from the beginning of 1996 up to 25 June 2002 and that 'four of the 14 were Irish citizens and a further three of Irish extraction' (*House of Commons Hansard, 8 July 2002, Column 748*). That would mean that half of the suicides in the prison at least were of people of Irish background. At the time the answer was given, out of a Brixton population of 752 just 30 prisoners were 'Irish nationals'.

A previous Parliamentary answer had established that over the same period of time there had been 10 self-inflicted deaths by Irish citizens in Prison Service custody meaning that 40% of them had taken place in Brixton (*House of Commons Hansard 8 May 2002, column 238*). There was no record as to how many deaths were of prisoners of 'Irish extraction'.

As a small indication of one aspect of the context, the RESPOND report on Brixton cited responses from a small survey it carried out. Figure 15.3.1(b), Ethnicity of prisoners claiming to have received verbal abuse from staff, revealed that 22.2% of those saying they had been abused were 'Portuguese and Irish prisoners'.

The representations from HM Prison Service over this part of our draft report demonstrated a misunderstanding of the issues raised. First, it argued that 'it is not

clear that Irish Travellers are unique' in the prison population in being illiterate. That other minority groups may also be disadvantaged by illiteracy emphasises the importance of dealing with the problem, rather than challenging the interpretation of it we have put forward.

Second, HM Prison Service argued that its staff 'are accustomed to dealing with prisoners who have reading difficulties' and that it 'does not accept that an inability to read will prevent prisoners generally, or Irish Travellers in particular, from understanding the regime'. This was belied by the evidence.

Third, it said that 'it is not believed that the CRE provide any evidence to show how the Prison Service **disadvantaged Irish Travellers with regards to requiring them to be literate**' (emphasis in the original). No such suggestion was or is made. What is being said is that HM Prison Service failed to provide services in ways that were accessible to those with low reading skills. For instance, to illustrate, the Feltham BOV noted in their 1999-2000 annual report that

Many of Feltham's population have trouble reading and writing and the Board accepts that application forms may not be their most effective form of communication. This is an important issue at Feltham. (*Feltham BoV Annual Report 2000, page 10*)

And, when in 2000 the Ombudsman, looked at the reasons why so few complaints were coming through to his office he concluded that, among other things,

The formal system's reliance upon written complaints may be a disincentive (*Listening to Young Prisoners: A review of complaints procedures in YOIs by the Prisons Ombudsman, February 2001, page 10*)





## **Failure area 5: Control of the use of discretion**

### *Key points*

- Prison staff exercised considerable discretion in carrying out their duties.
- This exercise of discretion was not adequately managed or monitored by prison managements.
- This exercise of discretion led to differential treatment of prisoners.
- Decisions made by individual prison staff may have been made on the basis of negative stereotypes.
- Remarks in a prisoner's written record that were made on the basis of stereotypes may influence future decisions about a prisoner's treatment.
- In one example of discrimination in the use of discretion, black prisoners appear to have been more likely to be targeted for 'suspicion' drugs testing than white prisoners.
- The extent to which this might have been due to racial discrimination was not been adequately investigated by HM Prison Service.
- In an extreme example of uncontrolled officer use of discretion, ethnic minority prisoners were significantly over-represented among prisoners punished under an unauthorised regime at Brixton known as 'reflections'.
- The practice of 'unofficial bang-ups' (locking a prisoner in their cell as a punishment) was common in many prisons, as were other unauthorised forms of punishment such as banning prisoners from using the prison gym.
- Evidence suggested that prisoners on whom such unauthorised punishments were imposed were more likely to be from ethnic minority than white backgrounds.

### *The potential for discrimination*

It is a general rule that where a system contains greater potential for discretion in decision taking by individual managers or individual staff, then there is greater potential for inconsistent and even discriminatory outcomes, whether intended or not.

For a service which, on the surface, appears bound by a surfeit of rules and instructions, HM Prison Service is in reality one where a great deal of variability in treatment and conditions operates.

First, there is much that prison staff need to do which is left unsaid. Despite the statutory Prison Rules approved by Parliament and an array of HM Prison Service Instructions, Orders and guidance, several key areas of decision-taking on the part of prison staff have not been covered for periods of many years at a time by orders or instructions – such as, in 2000 when Zahid Mubarek was murdered by his cell mate in Feltham, decisions about cell sharing.

Secondly, though the rules, orders and instructions might not cover such key aspects of prison operations, there is nevertheless a blizzard of paper which descends on prison managers, a quantity so large that no-one can be expected to keep up with it. The 1997 Prison Service Review – an internal review of the Service's management practices – concluded that there were low levels of compliance with central instructions and that this was both common and unsurprising.

Thirdly, the rules, regulations, instructions and objectives which did exist contained contradictory requirements. They could not all be implemented at the same time, sometimes because there just was not enough time for the staff to engage in it all, or because the requirement to do one thing prevented staff doing another.

Fourthly, the system of management which has operated across the Service has in the past pushed the locus of decision-taking on these conflicting priorities or requirements down the line in a way which has encouraged unaccountable irresponsibility: that is, lower grades in the structure have to take decisions on which rule or requirement to ignore in ways that go beyond the authority they have been endowed with.

In a report of their research into the exercise of power by prison officers, Alison Liebling and David Price note:

Somehow prison officers must choose which rules they do enforce, which rules they do not, and which rules they 'bend' and when. In short officers must use their discretion...

Officers are faced with a situation where they... know that the total enforcement of the rules is impossible (there are too many rules) and highly

undesirable (the prison would not function, prisoners would become frustrated, other officers would resist, etc); and so must choose which rules should be enforced and which should not, and to what extent.

*(The Prison Officer, Alison Liebling and David Price, PSJ, 2001, pages 115-132)*

This exercise of an officer's discretion is at the heart of the development of good relationships between prisoners and staff. The sensible exercise of discretion is the glue which keeps human relationships together in controlled environments like that of a prison. The inappropriate and inconsistent use of discretion, however, leads directly to discrimination and unfairness.

To give just one instance of differential treatment of prisoners, patterns of segregation in residence, work and discipline have persisted over many years at Feltham. Just how well embedded these patterns are is demonstrated by the final note in the minute of the last meeting of the Feltham RRMT which we examined, that of 25 September 2001. Coming after several years of on and off discussions in which the issue of the apparent differentials were discussed, item 13 read simply:

Any other business

Mallard: No black prisoners on servery and cleaners

Use of force: High number of black prisoners

Adjudications: High number of black prisoners

### *The role of management*

Liebling and Price comment that they 'found little evidence of any explicit principles guiding the exercise of discretion' (*As above, page 135*). Management, they said, must provide the 'vision' or 'bigger picture' which 'gives officers the values or principles to apply when making exceptions to rules and practices and the confidence to make those exceptions' (*As above, page 143*).

In the context of the kind of negative 'cultures' in the three prisons we investigated, the lack of such a 'bigger picture' (due to managerial failures and lack of control) could generate an inconsistency that was damaging and discriminatory rather than a flexibility that was purposeful, positive and productive. Such inconsistency in action and decision-taking was, according to the Chief Inspector of Prisons, 'the strongest possible evidence of lack of managerial supervision of standards' (*Chief Inspector, written evidence*).

### *Consequences for prisoners*

Inconsistencies and the inappropriate use of discretion could have several consequences relevant to our investigation:

- Prisoners could be treated quite differently in one prison compared with another.

- Where the distribution between prisoners from different ethnic groups varied, this could then lead to different ethnic groups among the overall prison population experiencing different conditions of imprisonment which might not be justifiable.
- When prisoners moved from prison to prison they could experience sharp differences of treatment which could not be justified on any rational grounds and this could reinforce perceptions of discrimination.
- The general practice created a culture of unaccountability because the explanation ‘we do it like that here’ on the one hand justified refusing reasonable requests from prisoners for proper consideration, and on the other hand justified staff refusing to follow good practice and proper standards of delivery established centrally.
- Prisoners from different groups could be treated differently on the basis of stereotypes because the monitoring, management, training and assessment systems did not all direct staff toward consistent treatment of individuals on the basis of their individual circumstances and characteristics.

### *Negative stereotypes*

Negative stereotypes long played a particular role in the approaches of staff towards black prisoners. The stereotype of noisy, lazy, ‘lippy’ and dangerous haunts the black prisoner over some three decades, despite research conducted and published within the prison system from the mid-1970s onwards showing that it was mistaken and lead to incorrect behaviour on the part of staff.

Feltham did not effectively analyse its general ethnic monitoring data until 1999 when one of the prison’s psychologists began processing the figures to look for background patterns. She found a ‘consistent pattern’ (*Commission interview*) in the placement of black offenders on Waite (the anti-bullying unit in the prison):

I would tie that into the fact that they keep putting black people on there because of their presentation, their perceiving them as more aggressive and threatening and not having respect... I did a questionnaire on anti-authoritarian attitudes and the pattern is that black offenders have the most anti-uniformed-authority attitudes [compared to] the white and Asian offenders, so it makes sense they are more of a discipline problem for uniformed officers. (*Commission interview*)

The RRLO at Feltham told us:

I think we are certainly not picking up some of the sophisticated white prisoners who are bullies... Black lads on association as a group can be quite noisy, they play dominoes and those sorts of things and the white bully can be a lot more devious and a lot harder for staff to actually identify... We were concerned about the very devious white prisoner who is a bully. What

we are doing is seeing a load of black lads who are more identifiable and picking them up. (*Commission interview*)

The Feltham governor admitted to us that black prisoners coming to Feltham risked being seen as a 'gang' if they supported each other – as might happen in situations where one or other of them was being bullied, felt isolated or just when prisoners from a similar area or interest came together – while white prisoners joining together in the same way might simply be seen as a 'group' (*Commission interview*).

Awareness training as part of a comprehensive approach to race relations training for prison staff would help challenge these perceptions. Monitoring would detect patterns of bias: for example, monitoring of disciplinary processes in prisons should combine ethnic origin with seriousness of issue and punishment in order to test effectively for variables influenced by negative stereotypes.

Negative stereotypes can consciously or unconsciously dominate decision taking and determine different outcomes. In such contexts, only effective monitoring, carefully analysed, will reveal the underlying discriminatory patterns.

#### *Report writing*

The first comprehensive attempt by the Prison Service to deal with race relations practice, the 1991 Race Relations Manual, under the heading 'Written Reports', warned against 'using derogatory terms or stereotypes in written assessments' and said that:

Any derogatory or stereotypical remarks found in written reports should be brought to the attention of the Governor... The role of the RRMT will be to ensure an oversight of the content of written reports. (*Race Relations Manual, 1991, pages 86-7*)

The Prisons Ombudsman has stressed the importance of 'objective and accurate' report writing in the context of the heavy reliance placed on a prisoner's written records:

Those making decisions about a prisoner's management will refer closely to what other people have written, sometimes years later. Information is replicated from one document to another, with little consideration being given to the accuracy of the initial report or whether it remains appropriate to refer to it. (*Prisons and Probation Ombudsman, Annual Report 2001-2002, page 36, web version*)

Subjectivity of judgement about individuals means that stereotypes could come to play a dominating role in such reporting. Past entries based on negative stereotypes could still influence the treatment of a prisoner many years later. Yet despite the reference in the 1991 Race Relations Manual to the role of the RRMT in overseeing

the content of written reports, there did not appear to be any effective proactive measures being taken to check on the use of stereotypes and racial bias by staff.

*Targeting prisoners for 'suspicion' drug testing*

Throughout our investigation, concerns were expressed to us that there was a general tendency for black prisoners to be more likely to be targeted for 'suspicion' drugs testing – tests held because staff suspect that an individual or group may have some involvement in drugs, as opposed to random testing that might affect any prisoner and was carried out using computer software designed to give truly random choices.

Given that decisions to test prisoners were not just taken at the discretion of staff but are also based on the 'suspicions' of staff rather than any objective evidence, there is clearly considerable potential for the abuse of power. Careful monitoring and supervision were therefore essential.

At Feltham, the RRMT was told at its meeting on 15 February 2000 that there was black over-representation in 'on suspicion' testing. The following meeting was told:

Since the number had been monitored, it was now more in proportion with the population. (*Minutes, Feltham RRMT, 18 April 2000*)

However, a year later the RRMT was told:

There continued to be a trend for more black prisoners to be tested 'on suspicion' than white prisoners. (*Minutes, Feltham RRMT, 17 April 2001*)

The Governor told us:

We now know that we tested twice as many black people as white people, although the positive rate was slightly higher for white prisoners. (*Commission interview*)

New procedures had been introduced for deciding who to do suspicion tests on. These required two Security Information Reports advising such a test should be done. Only eight such tests were carried out in the first month of the new approach, a figure well down on previous months. However, of the eight prisoners tested in this way, six were black (*Minutes, Feltham RRMT, 17 July 2001*).

*'Reflections' at HMP Brixton*

The RESPOND report on Brixton uncovered an unauthorised and illegal punishment regime known as 'reflections', under which individual prisoners were confined to their cells to 'reflect' on their behaviour, in some cases for up to three days. The decisions to do this were taken by staff at the level of Prison Officer, the basic grade of uniformed staff. The report noted:

Examples of the type of behaviour which subjected prisoners to periods of reflections included: alleged diet abuse; taking rice instead of chips; going to the canteen queue instead of exercise or association; dragging their heels and verbal abuse of staff. (*Assessment of Race Relations at HMP Brixton, RESPOND, October 2000, page 69*)

The RESPOND inquiry calculated from the wing observation books on G Wing, the remand wing, to which it claimed the practice was restricted, that a total of 78 prisoners had been subjected to 'reflections' between January 1998 and May 2000. Of these, 17 (22%) were white, 49 (63%) were 'ethnic minority' and 12 (15%) were of unknown ethnicity (*as above, page 70*). These may not have been large numbers but they were enough to demonstrate the power of the officers, and enough to demonstrate the disproportionate numbers of such prisoners who were from ethnic minority groups.

One officer told us that the practice of 'reflections' had been going on for years, but also made clear that senior managers were aware of what was going on:

We had always done it. Nobody told us any different. When the Governor was there we did it, the SOs, the POs... the SOs on the wing knew exactly what was going on... Surely one of them must have known it was illegal? (*Commission interview*)

One Principal Officer at Brixton told us:

As a new officer, if your prisoner's being troublesome, you've got several things that you can do: place them on report if they're being openly aggressive or if they're assaulting anyone then obviously they're restrained. But you always take advice off your Principal Officer. I always remember the fact that the Wing PO said: 'Bang him up', and that followed me... Nothing was actually set down for me to follow... I'd had no formal training, I was acting on my initiative... I was under no guidelines that I couldn't lock a prisoner up if he was being disruptive. (*Commission interview*)

This staff member, who worked on C wing, said of an incident he was involved in:

Nothing to do with 'reflections'. I authorised a prisoner that was being disruptive on a landing to be locked up, it wasn't anything to do with 'reflections'.

Additionally we noted during our consideration of one series of investigations into a prisoner's complaint in HMP Brixton a remark by the Governor about the circumstances in the prison in the first half of 2000:

At that time staff were under the (mistaken) impression that they were empowered to lock prisoners in their cells if they behaved badly ... this practice was widespread at Brixton at the time. (*Governor's letter, 8 January 2001*)

A former member of Brixton staff who was on the Inspectorate's team at Brixton in June 2000 told us of 'reflections':

We saw a notice board mentioning it. We hadn't heard of it. Staff on one wing had made it almost official and felt aggrieved as other wings were doing it, but less officially. 'Reflections' wasn't documented, it was one of those things you stumble across. (*Commission interview*)

Following the disclosures in the RESPOND report, the Area Manager commissioned an investigation into 'reflections' but then cancelled it on the grounds that there had previously been no clear instruction about the confinement of prisoners to their cells. There does not appear to have been an inquiry into how the practice continued without managers bringing it to an end or Area Managers learning of it and intervening.

Indeed, the practice of 'unofficial bang-ups' (as opposed to 'cellular confinement', an officially sanctioned and recorded punishment which required the authorisation of an adjudication hearing by a Governor) was a feature of prison life in a number of prisons. Prisons where it did not appear to have happened were characterised by strong management leadership and a positive approach to a proactive regime, for example through an active Personal Officer scheme.

Inevitably, unsupervised ways of punishing prisoners were not monitored. Judging by the over-representation of black prisoners in the disciplinary process, we have little doubt that they were also over-represented in these unauthorised procedures. Statistics are provided by *Prison Statistics England and Wales* an annual series published by National Statistics. The report for 1997 noted: 'Cellular/room confinement is particularly likely to be given to black prisoners' (*paragraph 8.10*). Exactly the same point appears in the publication at the same paragraph for each of the three years that followed. The accompanying statistics showed:

Table: Number of cellular confinements awarded at adjudications per 100 male prisoners by ethnic group

	White	Black	Black rate as a percentage of the white
1997	22	36	163.6
1998	20	31	155
1999	20	29	145
2000	19	32	168.4

Source: *Prison Statistics England and Wales* for relevant years



### *Other unauthorised forms of punishment*

Locking prisoners in their cells was not the only form of unauthorised punishment engaged in by staff at HMP Brixton. Staff in charge of the prison gym also took a free rein with disciplinary action of their own.

In 2000, an Asian prisoner was suspected by a PE instructor of dealing in drugs, supposedly on the basis that he had found drugs on the floor of the gym near where the prisoner had been. The instructor required the prisoner to undergo a drug test, which proved negative, and banned him from the gym for 28 days. The prisoner attempted to return to the gym after two months but was then told by another instructor never to use the gym.

The prisoner eventually complained in September 2000. Following an investigation, the Deputy Governor wrote to the prisoner saying:

I am clear that you are due an apology for the fact that PE staff sought to ban you from the gymnasium without going through any formal disciplinary process. They understand now that they did not have authority to do that.  
(*Memorandum from Brixton Deputy Governor, 2 October 2000*)

The investigator and the Deputy Governor responded to the prisoner's claim that this action had been racially motivated as follows:

I cannot identify any basis for the suggestion that the roots of this issue are racially motivated. (*Brixton, Simple inquiry report, 22 September 2000*)

It appears that both officers concerned acted as they did because they believed that you might be involved in drugs. We have found no evidence to suggest that they were motivated by anything else. (*Memorandum from Brixton Deputy Governor 2 October 2000*)

In fact, they had found none because they had not looked for any. The prisoner was banned from the gym after he had tested negative in the drugs test imposed on him by the first instructor. The perpetuation of that ban by the second officer looks vindictive. To suggest that it was the practice of these two members of staff to impose bans from the gym on *any* prisoner found negative in a drugs test is clearly absurd. The investigator did not press such points nor seek to see whether or not the second officer had ever behaved like that to anyone else. Instead, the investigator sought to close off the affair as quickly as possible. There is no indication either that the investigator sought to discover in what other ways the instructors were using such unauthorised punishments against other individual prisoners.

Attempts by gym staff to ban prisoners caused problems elsewhere – one case at Parc led to a comment on a racist incident reporting form:

Who has given the gym staff the authority to stop prisoners going into the gym? (*Parc Racist Incident Reporting Form, 24 October 2000*)

The exercise of the power to punish prisoners was supposedly controlled by strict procedural requirements. Those controls were not always present and sometimes were unclear. The danger of discrimination against minority groups was greatly increased whenever such discretionary powers were available in these unsupervised and unaccountable ways.

With the exception of the 'reflections' process at Brixton, there were no statistics we could see that would enable us to examine the degree to which such unauthorised or questionable punishment procedures might impact more upon ethnic minority prisoners than upon others. However, in a number of the instances for which there was evidence, the individual prisoners affected were of ethnic minority backgrounds.

## **Failure area 6: Prison transfers and allocations**

### *Key points*

- Decisions about who to transfer were made by individual prison staff, who may have discriminated against ethnic minority prisoners in exercising these discretionary powers.
- The Prison Service was not monitoring transfers by ethnicity.
- Prisoners were transferred after making a complaint, particularly, many prisoners felt, a race complaint.
- Prison staff transferred racist prisoners rather than tackle their racist behaviour.
- Victims of racist abuse or harassment were transferred to prisons with a reputation for harsh regimes; these transfers are therefore seen as a punishment by the prisoners concerned.

### *The potential for discrimination in making decisions over transfers*

During this investigation prisoners frequently raised concerns about the way in which they were moved from one prison to another or between wings or units within the same prison.

Obviously, there were legitimate reasons for moving prisoners, such as:

- for reasons of control and discipline – for example, to break up dangerous networks which may have developed within a prison population
- as part of the sentence planning for individual prisoners as they progress through their time in custody
- for reasons of personal choice on the part of individual prisoners – for example, to be nearer their home area, or to take up a particular course not available in their current establishment.

Frequently, however, prisoners had to be moved to different prisons as part of the general management of the overall prison population (described in the Service as ‘overcrowding drafts’). In these cases, although the numbers required for transfer were ordered centrally from Prison Service headquarters, the choice of individual prisoners to be moved was up to staff on the wings. As a Principal Officer at Brixton told us:

It’s the Senior Officer’s job. I would say we need to move 20 prisoners off and how they deal with it is down to them. (*Commission interview*)

Clearly, prison staff making these decisions were likely to select for transfer those prisoners whose faces, for whatever reason, did not fit. There was anecdotal evidence of racial discrimination. It was said to us, for example, that black prisoners from Feltham were more likely than their white counterparts to be drafted out to prisons such as Portland in Dorset which had reputations for having harsher regimes.

### *Lack of monitoring of prison transfers*

We were not able to investigate this issue in the way we would have liked because the necessary records were not kept. HM Prison Service did not collect ethnic data on transfers between prisons. Since such movements were required by HM Prison Service headquarters as part of the central functions of the Service, it is extraordinary that such statistics were not collected.

With regard to transfers between wings within prisons, researchers at two prisons (*HMP Buckley Hall and HMP Moorlands: unpublished research by Partners of Prisoners/Portsmouth University*) included in their research questionnaire a simple question to find out how long a prisoner had been in the prison and how frequently they had been given a wing or cell transfer while there. Such a question could have been included in the surveys used within prisons by prison managements or by the

Inspectorate. The aggregated results broken down by ethnicity would have helped clarify the extent of discrimination in the process of transfers within prisons. The researchers concluded of Buckley Hall that 'The wing and cell turnover of prisoners from minority ethnic groups does seem high' (Page 23, unpublished report on Buckley Hall, September 2000, PoPs/Portsmouth University action research project). They made a similar judgement in respect to their findings at Moorlands.<sup>11</sup>

#### *Transfers as a result of making a complaint*

Given the amount of discretion in the system, transfers within or between prisons could clearly be used as a punishment or to victimise those who complain.

The Director General told us that the problem of prisoners who complained of being moved was 'exaggerated ... Nonetheless he was sure that this sometimes occurred' (Commission interview). However the assumption among prisoners that they were more likely to be 'shipped out' if they complained was deeply rooted. At HMP Brixton, several prisoners said they were afraid of being transferred, either from Brixton or within Brixton, if they made a complaint, particularly a race complaint.

In January 2000, an A wing prisoner and his cell mate complained to an officer about another officer who had been making racist remarks to them for some time. Later that day they were told that they would be moved to the fourth landing on the wing, which was a 'basic' regime landing. When they objected, they were put on report for 'disobeying a lawful order' and were sent to the segregation unit. The Brixton Head of Residence, while upholding the charges that they had disobeyed a lawful order, noted:

In his evidence, the officer agreed that he had said that the prisoner should be moved because he had made a complaint, but he also explained that he made that decision (in conjunction with the Senior Officer) to remove any possibility of friction between the officer accused of racism, and [the prisoner] and his cell mate ... That said, it is emphatically not the policy in the prison to move people because they have made a complaint. (Brixton Head of Residence in a draft letter to the prisoner's solicitor, January 2000)

The previous year, the Brixton RRLO recorded the case of a prisoner who was a witness to an alleged racist incident involving another prisoner and a member of staff:

[The prisoner] believes he has been transferred under the guises of an overcrowding draft as a result of his obvious willingness to be a witness against staff. (Brixton RRLO Log 20/99)

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<sup>11</sup> One article in HM Prison Service's *Race Relations Newsletter* recognised the problem: 'Cell allocation is largely decided by wing managers in individual establishments and as such, the process is still open to discrimination' (Research: Lessons to be learned, *Race Relations Newsletter*, Issue 1, November 1998).

An internal HM Prison Service review in 2000 implied that the use of transfer as a means of discouraging race complaints was so commonplace as to amount effectively to a ‘policy’:

Many sources have suggested that the policy of transferring complainants – in some cases no doubt as a way of protecting them – is a significant factor in discouraging inmates from registering complaints and has been used as a means of discouraging prisoners from making complaints. Transfers may be between wings or to another establishment. Either way the inmate loses his familiar surroundings and may lose his privileges. (*Handling Racist Incidents, a discussion paper, attached to papers for the Director General’s Advisory Group on Race meeting on 16 March 2000, paragraph 30*)

*Transferring racist prisoners rather than tackling their racist attitudes*

Prisoners who engaged in racist behaviour toward staff or other prisoners might be transferred elsewhere rather than punished and/or assisted to change their ways through anti-bullying and other programmes. This practice of unloading problem prisoners on to other prisons reflected the general failure of HM Prison Service as a whole to deal with racism and to adequately protect the potential victims of racist prisoners consigned to their care.

The futility of constantly moving prisoners as a punishment for their behaviour is obvious when one sees, for example, the same individual racist prisoners reappearing at Parc after being shunted from one establishment to another as their misbehaviour continued. This was brought out in the minutes of a question-and-answer session between the Controller at HMP Parc (the Home Office official responsible for ensuring that the privately run prison operated according to HM Prison Service rules and procedures) and the Board of Visitors:

**Question:** Is the prison still moving young offenders out for bullying?

**Answer:** Yes.

**Question:** Do you find that the same young offenders who have been moved for bullying are returning to the prison as a result of re-offending behaviour?

**Answer:** Yes.

(*Minutes, Parc BoV, 1 June 1999, item 3.1.2*)

An entry in the Parc ‘Governor’s journal’ a year earlier had raised the same issue:

The events of yesterday on B block were further deepened by intelligence of racist behaviour from known offenders. Some are YOs who have previously been transferred for similar behaviour... [The Deputy] Controller has obtained the support of [the] Area Manager’s office to transfer early next week those who are refusing to live in a multiracial society. We must ensure they do not return as has happened in the past. (*Parc Governor’s Journal, 10 August 1998*)

Instead of developing a proper anti-racist programme through disciplinary action and a strategy of educational and other actions, Parc on several occasions adopted the approach of ‘shipping out’ racist prisoners when incidents occurred. Sending racist prisoners around from prison to prison might have solved one prison’s problems temporarily, but it did nothing for the Service overall, or for the prisoners. A problem which originated in one establishment became a problem for the estate as a whole, and one that the estate as a whole did not adequately address.

A minute from the Parc RRMT meeting of 10 June 1999 adds to this point, suggesting the idea of transferring white racist prisoners to prisons where ethnic minority prisoners were present in substantial numbers:

[The RRLO] stated that there was a problem on A2 with not allowing blacks on to that Unit. Prisoner ---- who has returned back to HMP Parc could be the source of the problem if he is located on A Block. ---- stated that again no SIRs have been received from staff off A2 stating that there is a problem. ---- stated that if ---- is the cause and we have evidence to prove this, he should perhaps be transferred to a London prison where he will be in the minority.

#### *An incident at HMP Parc in May 1998*

In the middle of May 1998 there was a fight in one of the exercise yards at Parc between white and black prisoners. In previous months there had been a growing problem in the prison with racism, as extracts from the Governor’s journal make clear:

There are real problems with racism and the unit appears to be ‘bubbling’, staff only just have control! (*Parc Governor’s Journal, 11 February 1998*)

Nine black prisoners received during the day, ex-Feltham, were racially abused and threatened. (*Parc Governor’s Journal, 19 March 1998*)

And on 26 March the Journal noted that three black prisoners ‘very much the victims’ in a ‘fracas’ on B Block and ‘subjected to abuse by others on the wing’ had been moved ‘for their own protection’. On 30 March it noted:

Eight Black inmates locked themselves in a cell on B4 as a result of continuing racial taunts. It was decided to move ten of the leading lights to E2 and tomorrow to move population to create a better mix more conducive to racial harmony.<sup>12</sup>

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<sup>12</sup> What this may have meant is not clear. One staff member told us that around the time of the May 1998 incident, they were ‘first told to put black prisoners on one wing. I said I don’t think that is a good idea. I had a House Block to run. Segregation was not the way to do it...’ (*Commission interview*)

The documents make it clear the Service was well aware of this potentially unstable situation at Parc. On 28 April 1998, the Director General came on a visit. His staff prepared letters for him to be sent to the Director at the prison, saying in the covering note for the drafts which were sent around senior management colleagues in London, that, whatever changes were made in the texts, they ‘must retain the message that there are matters requiring immediate and urgent attention because of the potential effect to the stability of the prison’ (*memorandum concerning the visit by Director General to Parc Prison on 28 April 1998, dated 29 April*).

However, racism at the prison seemed to be taken for granted by both prisoners and staff, as the incident report on the fight itself makes clear:

Amongst the YOI population racism seemed endemic and both English and Welsh prisoners and the black and white prisoners we interviewed seemed to accept this. Staff confirmed this was the case. (*May Incident Report, paragraph 16*)

One of the prisoners involved described to us what happened:

All the Welsh inmates were at one end of the exercise yard and you had about eight inmates from Feltham which was both black and white as well as Asian at one end. They didn’t like the English at all, whether you were black or white. One Welsh inmate went into the middle of the exercise yard and did a Nazi kind of Heil Hitler type thing and everything started from there...

Then we were locked up for 24 hours. We were being fed at the door – as we were thought to be seen as troublemakers – for I think about three or four days, and then they just came to my door one morning and said you’re going to Portland...

When we got to Portland they proceeded to give us a little speech: ‘We’ve heard you’ve been causing trouble in Parc, well this prison doesn’t take any shit,’ they said... Portland is a discipline jail. (*Commission interview*)

When we asked the prison for confirmation of the names of those transferred, a list was sent by the Parc Head of Residence with the added comment:

This transfer was affected in a deliberate attempt to prevent them from being subjected to further abuse. (*Document dated 5 April 2001, from Parc Head of Residence*)

When we visited HMP Parc in October 2001, the Director told us:

If a prisoner went from here to Portland, it would be viewed by them as a punishment. (*Report of Commission visit to Parc, 22 October 2001*)



This view of Portland is backed up by the report of an HMCIP inspection in December 2000 which noted that the induction unit was 'not a safe place for new arrivals' (*HMCIP Portland 2000, paragraph 2.59*) and that:

Young prisoners and staff told us of ongoing discrimination, racism and perceived racism being practised by some staff, young offenders and juveniles. (*As above, paragraph 2.136*)

The document sent by the Parc Head of Residence about the exercise yard incident also listed 11 named as 'instigators of events' and added:

We have established that no formal disciplinary action was taken against them in respect of the incident on the yard. Although no formal charges were laid, some of the perceived instigators were transferred to other establishments. (*Document dated 5 April 2001, from Parc Head of Residence*)

Several months after the incident, it was still a topic of discussion at the RRMT:

The incident... meant that 11 YOs were transferred to another prison, but it was felt we must now put a strategy in place to deal with racial abuse as and when it happens, *rather than relying on transferring prisoners.* (*Parc RRMT minutes, 24 November 1998, paragraph 4; our italics*)

This was seven months after the Area Manager had noted in a report, prepared a month before the May 1998 incident and copied to HM Prison Service Director General, that:

It has been clear for some weeks that there is a serious race relations problem [at Parc]. Local, white YOs have been openly aggressive towards black prisoners, particularly transferees from Feltham. There is no evidence that Securicor has developed a strategy to address this. (*Area Manager Wales to - cc Director General, not dated but fax date at top of pages is 24 April 1998*)

The HM Prison Service internal report into the incident put it this way:

There was a hardcore element of extreme right wing racist views expressed by a number of Welsh extremist YOs... None of the staff involved felt adequately prepared or trained for such racist attitudes nor knew how to deal with it. Both the Chairman of the BoV and 'B' Houseblock manager, herself black, stated they had never previously experienced such deep rooted racist attitudes and behaviour.

Both YO's and staff at Parc are in need of adequate race relations training and development. The Race Relations Committee and RRLO seemed non-existent entities.

Throughout the establishment we experienced a young and willing staff who were eager to make things happen and who desperately wanted the prison to be a success. However success does not materialise from hope alone and we experienced a general lack of basic jailcraft ...

Information was available which indicated that this incident or something similar was about to happen ... Whilst the injection by Prison Service HQ of a large number of black Young Offenders from distant locations added to the instability of an already unstable establishment, we believe that this particular incident could, and should, have been prevented. (*May Incident Report, paragraphs 16,17,18, 42*)

During the months that followed there was evidence that HM Prison Service on a number of occasions did not send black prisoners from prisons in England to Parc who would otherwise have gone there because it considered this to be a suitable way of avoiding further such clashes.

The internal report on the incident itself said:

YO's, especially black YO's from the London area, should not be sent to Parc prison until the Director has convinced the Area Manager, that staff at Parc have been adequately trained to deal with such diverse cultures and that an effective Race Relations strategy is in place. This restriction should be time bound.

However, on 26 January 1999 a letter was sent in the name of Acting Area Manager for Wales and the West to other Area Managers in the Service headed *Parc Prison - Population Mix*. It opened by making the point that Parc was built to enable 'the majority of Welsh prisoners to serve at least the bulk of their sentence in Wales'. The letter also explained that Parc needed to be kept full from HM Prison Service's point of view as the Service was paying for the spaces whether or not they were taken up. When Parc had spare room 'overcrowding drafts' were sent from other prisons, usually ones in England. It then added:

Accommodating pockets of English prisoners in any of the Welsh gaols invariably causes difficulties for the prisons and the prisoners alike and [the Director] has just, with my agreement, refused a further draft because of signs of disharmony among the natives.

Therefore we should only resort to filling vacancies with prisoners from outside Wales after being fully satisfied there are not Welsh prisoners, or prisoners with discharged plans to Wales, serving their sentence in England.

PMU regularly seek to assure my office that we already do that, I am not convinced.

As late as October 2000, the Area Manager noted in a report on a visit he made to Parc:

YO Transfers: Evidence that receipt of drafts of YOs from England adds to fights and assaults, with risk of penalty points<sup>13</sup>. You will raise at area meeting need for OCAs to work more closely to ensure allocations of YOs to Parc. Director. I will alert PMU to the especially disruptive effects of such transfers. (*Area Manager Wales 27 October 2000 Visit Report Parc, dated 30 October 2000, item 9*)

And two months after that the Board of Visitors heard from the Director:

the number of assaults, adjudications and incidents of 'use of force' have reduced significantly. It is thought that this is significant with the reduction of YOs brought to Parc on an overcrowding draft ... (*Minutes, Parc BoV 12 December 2000, item 3.2*)

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<sup>13</sup> As a privately managed establishment, HMP Parc paid a penalty back to HM Prison Service every time there was a recorded assault in the prison.



## **Failure area 7: Discipline for prisoners**

### *Key points*

- Prison statistics clearly suggested a consistent over-representation of black male prisoners in the prison disciplinary system.
- Prisons have been required since 1991 to monitor the area of disciplinary charges, but have failed to do so effectively.
- Failure to keep consistent and comprehensive records meant that prisons could too easily explain away any apparent discrimination on a case by case basis.
- Where records did show a consistent pattern of apparent discrimination, prisons failed to investigate the causes or take any action.

### *Discrimination against black male prisoners*

Prison statistics for England and Wales since 1997 consistently show that black male prisoners were more likely (per 100 prisoners) to be charged with disciplinary offences than white male prisoners; once charged were more likely to be found guilty than white prisoners (particularly for offences involving violence or ‘disrespect’); and once found guilty received more punishments per offence than white prisoners, even for similar types of offence. According to the official analysis, ‘The difference does not seem to be explained by age or criminal offence, both of which are connected with behaviour in custody’ (*Prison Statistics England and Wales, 1997, paragraph 8.12*).

Ethnicity is clearly a factor. One cause may have been the influence of the negative stereotypes that affected the attitudes of some staff, and lead to more adjudications against black prisoners. Another may have been that some of the charges available to prison officers were vague and open to misuse, as the Howard League argued in evidence to us:

Minority ethnic prisoners may be labelled as security risks for ‘associating’ with drug dealers, when in practice it is hard to avoid doing so. (*Howard League for Penal Reform, written evidence*)

### *Lack of monitoring or action*

Given the consistent disproportionality in these figures, HM Prison Service must have been aware for several years of the clear overall disproportionality in the impact of disciplinary processes in prisons on some ethnic groups. However it failed to examine why this was the case, or consider what remedial action might have been required, for example to deal with the wrongful use of discretion by staff. The 1991 Race Relations Manual was clear about the need to monitor this whole area:

Monitoring of the ethnic origin of inmates placed on report, of the charges laid and of the outcome of adjudications (both findings and punishments)... should be maintained and considered at regular intervals by the RRMT, the Governing Governor and the Chairman of the BoV.

If, for any ethnic group, the proportion of inmates charged, the proportion of guilty findings or the level of punishment are higher than for other ethnic groups, the Governor and the BoV must consider whether there is discrimination by those bringing and adjudicating on disciplinary charges. Any imbalance of this kind must be investigated by the RRMT as a matter of priority.  
(*Race Relations Manual 1991, page 79*)

We saw no evidence of the kind of comprehensive monitoring approach outlined in the 1991 manual actually in operation in either of the three prisons we investigated and could not see evidence of it elsewhere in any of the reports we have seen.

In August 2002, the European Court of Human Rights found against the then system of imposing ‘added days’ on prisoners as a punishment. In response, HM Prison Service had to release several hundred prisoners. We asked for their ethnic origin, only to be told that to find this would require ‘disproportionate effort’ – a sad indicator of how, over a decade after the publication of the 1991 manual, the Service was still not fully up to speed on something it had formally recognised as important well ahead of many other organisations.

#### *Inadequate records*

In the three establishments we investigated, examining the issue of discipline was inhibited by the inadequacy of the records for the period covered by our terms of reference.

The Parc Controller told us that her ‘recent’ records in the spring of 2001 indicated that out of 58 adjudications where charges were dismissed, 40 odd were white and 12 were ethnic minority prisoners – which meant that some 20 % of dismissed adjudications were ethnic minority prisoners, a percentage well above their presence in the prison population (*Commission interview*).

That black and Asian inmates were over-represented in dismissed adjudications indicates that somewhere down the line they were being wrongly placed on report, something which ought to have raised alarm bells if there had been a proper monitoring system in place.

Brixton management did not have enough statistics, or did not present those that it had in a form that enabled it to see whether there was evidence of significant differentials between the experiences of different ethnic groups. The possibility of problems was something which came up time and again, but this was nearly always on a one off basis. In the absence of authoritative statistics presenting trends and patterns over time, apparent discrimination could be explained away on a case by case basis.

For example, in the late spring of 1998, the RRLO produced figures on adjudications in response to concerns that there was a rising trend in black or Asian prisoners being put on report. The figures showed that the black and Asian percentage among those put on report had been:

November 1997	25%
December 1997	39.6%
January 1998	51.9%
February 1998	55.8%

March 1998	35%
April 1998	35.4%

The RRLO commented: ‘I am unable to find a conclusive link to substantiate a reason for these changes’ (*RRLO report on adjudications 1997/8, undated*).

In another example, a black prisoner at Brixton complained that he had not had ‘added days’ remitted (days added to a prisoner’s sentence for disciplinary reasons could have been remitted after a period of good behaviour) whereas a white prisoner, in what he felt were comparable circumstances, had had them remitted. The Governor responded:

Different cases are decided by different Governor grades. Thus it is inevitable that there will be variations between the proportions of additional days that are remitted in individual cases. Unfortunately all applications for remission of added days are considered individually and there is no comprehensive master list of all those who have applied, although the rules require us to keep such a list... (*Governor of Brixton, letter to the Commission, 8 November 2001*)

*Failure to act on the evidence of records*

At Feltham, ethnic monitoring reports did contain basic figures on the prison disciplinary system, but their implications appear to have been ignored. For example, the figures for May 1996 show that 72 charges were laid against a total of 141 black unconvicted prisoners, while 51 were laid against a total of 167 white unconvicted prisoners. For Asian prisoners, the disproportion was even more striking – 17 in the group and 12 charges. This was not a one off problem: there are several other months in which there were similar imbalances.

Indeed, the problem persisted up to 2000. In January 2000, for example, the disciplinary process was said on the cover sheet of the report to be ‘fairly applied’ but the figures for the unconvicted population gave:

ethnic group	charges	total in group
White	46	101
Black	74	112
Asian	25	11
Other	12	11

In February 2000, discipline was also said to be ‘fairly applied’ but the figures showed a similar disproportion.

Figures for 2000 and 2001 also showed persistent patterns of disproportionate use of ‘cellular confinement’ (locking a prisoner in his cell for an alleged breach of rules). According to the official prison statistics for England and Wales,



Cellular/room confinement is particularly likely to be given to black prisoners. (*Prison Statistics England and Wales, 1997, paragraph 8.10*)

Prisoners could also be sent as a punishment to the segregation unit. At Feltham, for the period from December 1995 to May 2001 percentage figures were available for 48 months. For these, there were only three months in which black prisoners were not over-represented on Waite (the segregation unit), and usually the over-representation was substantial.

Objectively, this could have arisen because black prisoners might have been more likely to commit the offences for which being sent to the segregation unit was a warranted punishment, or because they might have been more likely to be caught for such offences, or because they might have been more likely to be punished for offences in this way than white prisoners. The Feltham Murder Inquiry into the death of Zahid Mubarek found evidence of the latter problem:

There are several instances of two prisoners fighting, one white and one ethnic minority. The white prisoner is left on the unit with the minority ethnic prisoner taken to the segregation unit. (*Feltham Murder Report 2, Findings H12c*)

The Feltham Murder Report also noted that, for the forms covering control and restraint procedures for which the prisoner's ethnicity was entered (on many forms, this section had not been completed):

the ratio of ethnic minority prisoners to white prisoners being subjected to control and restraint was 2 to 1...The inquiry team consider the statistics of minority ethnic prisoners being twice as likely to be subject to control and restraint procedures as surprising. With an equal make up of the prison population, one would expect the ratio to be roughly the same. (*Feltham Murder Report 2, Findings H12b, e*)

The evidence shows that these patterns were strongly rooted in the way Feltham operated, but although from time to time the issue was discussed in the RRMT at Feltham, no apparent action was taken.



## **Failure area 8: Incentives and Earned Privileges scheme**

### *Key points*

- Individual staff exercised considerable discretion in the operation of the IEP scheme, leaving it open to the possibility of discrimination.
- There were disproportionate numbers of black prisoners on the basic IEP level at Brixton and Feltham.
- There was inadequate managerial supervision and monitoring of the scheme.

### *The IEP scheme*

The Incentives and Earned Privileges (IEP) scheme is one of the cornerstones of modern prison practice. It makes access to some ‘privileges’ dependent upon consistent good behaviour on the part of prisoners.

The IEP scheme categorises prisoners into three levels: basic, standard and enhanced. The higher up the levels one moves, the more one is able to earn, the more use one is able to make of one’s earnings and the more likely it is that things like in-cell television will be provided.

However, even those on the lowest, basic, level are meant to experience a daily regime which meets the basic standards laid down by HM Prison Service. They are meant to be able to take part in offending behaviour programmes or in education courses, for instance.

The original formal intention was to combine ways of securing better ‘order’ in prisons with ways of engaging prisoners positively in purposeful activity. The relevant Prison Service Order states that IEP is not part of the prison discipline system: ‘it is essential that the basic regime does not become a form of segregation or punishment’ (*PSO 4000, paragraph 1.2.2*).

However, prisoners see the ‘basic’ regime as a punishment, as an evaluation of the scheme in five prisons, published in 1997, made clear:

The word standard is important as it implies that this is the expected level of privileges to which most prisoners will be entitled. This means that basic (below the norm) is seen as a punishment – not as ‘the minimum level of entitlement’. Standard is seen as ‘the minimum acceptable level’. Basic is (and is seen as/used as) punishment, rather than as the first stage in a progression. (*An Evaluation of Incentives and Earned Privileges: Final Report to the Prison Service, by Alison Liebling, Grant Muir, Gerry Rose and Anthony Bottoms, Institute of Criminology, Cambridge University, July 1997, Volume 1, page 50*)

As the authors say:

Life for staff and prisoners on basic regime units was often unpleasant... Prisoners on these units tended to behave extremely badly ‘in protest’... There was little difference between basic regime units and segregation units in this respect. (*As above, pages 51, 54*)

### *The potential for discrimination*

During the period covered by our investigation, the IEP scheme operated very

differently from prison to prison, from wing to wing within prisons and from officer to officer. The 1997 evaluation report found that:

The thresholds at which behaviour was deemed 'good' or 'bad' varied significantly... We were surprised at... the relatively low managerial level of supervision of the scheme... The responsibility for up or down movement lay initially with the landing staff... IEP gave staff a new power. Staff were not trained in the use of this new power... (*As above, pages 14, 49, 55, 61*)

Unfortunately, the 1997 study did not look to see whether or not black prisoners were treated disproportionately by the IEP decision-taking processes. The study added:

The basic premise of IEP depended upon staff making decisions well and fairly; but, in practice, the policy did give some staff, in effect, a licence for the inappropriate use of discretion, and even licence to act in a petty way. (*As above, page 149*)

#### *Evidence of discrimination*

Concern over possible discrimination in the application of the IEP scheme led to the Area Manager for North London and East Anglia conducting a special monitoring exercise for the Prison Service Race Relations Group. The percentages of different ethnic groups in the three levels of IEP in each of the area's prisons on 29 June 1999 was analysed. The Progress Report for the group meeting on 13 July 1999 noted: 'the figures for Hollesley Bay, the Mount and Wayland give some cause for concern'.

At Hollesley Bay, 16.7% of Asian and 9.1% of black prisoners were on basic as against 6.3% for white prisoners. At The Mount, 32.8% of black prisoners were on enhanced as against 46.6% of white prisoners and at Wayland the comparable figures were 27.2% and 38.1%.

#### *IEP in HMP Brixton*

Brixton ran an Incentives and Earned Privileges scheme under a Standard Operating Procedure (SOP) which explained that the scheme's aims would be achieved by making sure that the privileges are realistic and achievable, by having effective audit systems, by

ensuring that the decision-making system is seen to be fair by prisoners, and by providing a system of appeals (*SOP 28/01 item 1.2*).

Most Brixton prisoners were expected to be on the standard level. Prisoners arriving in Brixton from another establishment would carry their IEP status with them, new prisoners would be put on standard to begin with. They would then move up or

down depending on their behaviour. The SOP explained the process for moving down a level:

When a prisoner misbehaves staff report a red entry [a note made in red ink] in the history sheets. When he receives three red entries within 28 days he is placed on a written warning. If within a further 28 days he receives a further red entry he is referred to the IEP Board. The IEP Board may place the prisoner on a lower privilege level. If the prisoner maintains an acceptable level of behaviour he will remain on the privilege level... (*SOP 28/01, item 9.1*)

The SOP listed a number of things that might add up to misbehaviour, such as ‘being in the wrong cell or the wrong landing’ (*SOP 28/01, item 9.3*). The system contained considerable room for discretion on the part of individual officers. This was emphasised in the SOP:

When a member of staff witnesses misbehaviour from a prisoner he or she must consider whether an informal warning should be give. Not all misbehaviour merits a red entry and staff will need to use their judgement in each case. Sometimes a routine entry will be made which may later support a pattern of poor behaviour but will not count as a red entry. (*SOP 28/01, item 9.6*)

A complaint by a prisoner in 1999 indicated that the exercise of such ‘judgement’ led to inconsistencies that ethnic minority prisoners in particular perceived as unfair. The prisoner, who was black, had complained about being removed from the enhanced level and put on basic after a prison officer decided he had been making excessive use of the phone. The RRLO noted in a memo to the Deputy Governor that:

[the prisoner] stated he had no wish to proceed in relation to any complaint against [the officer] as he strongly suspects that he will later be made to pay...

Whilst I have difficulty proving racial discrimination in relation to [the prisoner’s] removal from the enhanced tier of the incentive-based regime, I can identify inconsistencies when comparing the treatment meted out to [him] with the treatment affording to other prisoners who have found themselves the subject of similar circumstances. (*RRLO memorandum to Deputy Governor, 2 November 1999*)

In January 2001, the RRMT discussed prisoner’s concerns about the scheme:

Inmates are concerned that there are no guidelines as to what constitutes a red entry. Without this clarity inmates feel that they are receiving entries for relatively minor instances, eg failing to greet an officer with good morning,

also that there appears to be no mechanism in place to appeal... (*RRMT, 18 January 2001 minutes, item 3*)

In February 2001, the RRLO produced a report on the ethnic origin of those subjected to red entries under the IEP scheme. The report used the data from all the red entries for all prisoner records in the establishment, the prisoner ethnic origin data on the computerised database system and the staff ethnic origin data from the prison's personnel system. The RRLO said:

Relatively early on I became somewhat concerned in relation to some of the entries recorded by staff against prisoners. I can only realistically describe some as childish or perhaps inappropriate, eg 'did fail to attend church service after making application', 'did fail to attend Muslim service', 'did go to the gymnasium without permission', 'did leave television on whilst out of cell'...

I submit that a number of areas suggest that ethnic minority prisoners are somewhat disproportionately given red entries generally and, in particular areas, specifically. This is particularly evident in relation to 'absents himself from any place he is required to be or is present at any place he is not authorised to be'. Being off the landing, socialising with other prisoners represents the major element of this and is dominated by the black Caribbean group. I submit that much of this is cultural and not, as suggested by some staff, only as a means to distribute drugs and other unauthorised articles.

Some staff clearly accept the ideology and are, consequently, reasonably tolerant that this group seem to have a particularly high desire to socialise, often loudly. Particularly low or non tolerance on the part of staff I attribute to the culture of staff or perhaps the mindset. I believe that generally speaking the culture or mindset of staff in this establishment is determined primarily by the area of work, secondly, by the collective ideology of colleagues and latterly by management or management failure. This is an area to be considered carefully as it represents much of the ill feeling expressed by black prisoners in particular in relation to red entries.

The prisoners subject to the restrictions of a basic regime as a result of red entries throughout this establishment are all black Caribbean and make up 50% of those on written warnings under the IEP scheme. I do not accept this to be a reflection of an establishment that purports to be fair. IEP boards are used as the vehicle to decide who will be the subject of a basic regime or a written warning. I have been unfortunate enough to witness a number of IEP boards and can confirm that the prisoner's point of view is not recognised or accurately documented and consequently submit severe bias.

*(HM Prison Brixton Report on red entries within the IEP scheme in relation to ethnicity, February 2001)*

The Governor put the RRLO's report on the agenda for a race relations core management team meeting and told us that:

There is prima facie some evidence of racial bias deliberately or otherwise in the way the system operates... It is an issue of some concern. (*Commission interview*)

But in November of that year, the core RRMT team heard that:

There are still disproportionate numbers of ethnic minority prisoners on basic. (*Minutes, Brixton RR Core MT, 8 November 2001, item 2*)

#### *IEP in YOI Feltham*

One of the background patterns observable in figures from Feltham was a tendency for black prisoners to be on the basic IEP regime. For example, the Feltham RRMT heard in August 2001:

18 prisoners throughout the establishment were on basic with 15 of them being black... 160 prisoners were on enhanced level of which 60 were black... Osprey Wing is being depicted as the bad boys wing. The unit is seen to have no facilities, a basic wing and has a disproportionately high percentage of black prisoners. (*Minutes, Feltham RRMT, 21 August 2001*)

In the HMCIP report from the previous October, there was a passing mention that 'of the residents on Osprey Unit, 67% were young black men' (*HMCIP Feltham 2000, paragraph 2.52*) but the inspections as a whole made little attempt to probe this data.

#### *Lack of monitoring*

As with most other areas of practice where wide discretion was available to staff, there was ineffective ethnic monitoring of the decisions and actions taken. It is not possible to see the distribution of prisoners by ethnic origin across the three levels of IEP in each of the prisons covered by our investigation for the whole of the periods laid down in our terms of reference. At Brixton, the RRLO's analysis offers a picture of aspects of the working of the scheme soon after the end of the period covered by our investigation. We see no reason to suppose that the situation existing before then was any better.

#### *Management failures*

At Brixton, a review of prisoners' IEP status was meant to take place once a month, but an undated audit of the IEP system conducted by a Brixton principal officer noted:



In the majority of cases entries are entered into the history sheets stating that a review had taken place... [but] ... There is no documentation (specific form) to substantiate that a review takes place whilst a prisoner is on the basic level. (*HMP Brixton Incentives and Earned Privileges (Self-audit)*, page 5)

The comment makes it clear that the way the system worked at that time did not provide a manager with the necessary detail to judge the work of officers making the decisions. Consequently managers were failing to ensure that those beneath them were doing their jobs in the way that procedures required – a point raised by the 1998 HMCIP inspection report:

Officers could move young prisoners to the basic regime without any management checks, making the system open to abuse. (*HMCIP Report 1998, paragraph 1.41*)

As with other areas where staff low down the operational line were able to exercise wide discretion when it came to the use of their powers, there was clearly considerable potential for discrimination. The supervision of that discretion, either through the provision of effective good practice guidance in the first place, or the exercise of proper managerial control when the procedures were up and running, was very poor – yet the impact of the IEP scheme upon the life of individual prisoners was considerable.



## **Failure area 9: Access to work**

### *Key points*

- Allocation to prison jobs (or in some cases work outside prison) tended to be at the discretion of individual officers, and was a long-standing source of complaint by black prisoners.
- Black and Asian prisoners were consistently under-represented in work parties at HMP Brixton and YOI Feltham.

### *Complaints of ethnic differences in work allocations*

Access to work has been one of the most consistent, long standing grievances raised over the years by black prisoners. Complaints have concerned not just the basic issue of whether black prisoners had the opportunity to work to the same degree as other prisoners, but also whether they had equal access to the more favoured areas of work.

The fact that allocation to work parties was usually subject to individual officer intervention and discretion may account for differences. Another factor may be the way in which the distribution of access to work or to particular kinds of work was influenced by other aspects of the regime in which there were ethnic differentials (such as the impact of the discipline system, itself the subject of considerable officer discretion).

According to HM Prison Service's annual checklist results on race relations, access to work for prisoners was one of the areas where almost all prisons did monitor. The monitoring though was of variable quality and it is not always possible to use the results effectively as the baseline for comparisons may not be clear. Not all prisoners were required to work and work might not be available for all those who did wish to or were expected to work. The pool from which those who are given work, and the ethnic balance within it, may therefore be hard to determine, making the end results difficult to interpret.

### *Differences at Brixton*

Statistics at Brixton show there was a constant tendency for black and Asian prisoners to be under-represented in work parties. For example, figures for the period from May 1997 to May 1998 show that in each month, the percentage of the workforce who were white exceeded the percentage of the prison population who were white, while the percentage of the workforce who were from ethnic minority groups was less (in some months substantially less) than the percentage of the prison population who were from ethnic minority groups.

The 2000 RESPOND report noted that:

Whilst 46.2% of the prisoner population is from minority ethnic communities, only 35% of the prisoners in employment come from those groups... Prisoners applied for work via a Labour Board which, until recently, selected through nominations from wing staff. As no data was available regarding the prisoners who refused work or applications for work that were turned down by the Labour Board, no firm conclusion can be drawn, although it appeared from the raw data that ethnic minority prisoners were discriminated against in the selection for work procedures. (*Assessment of Race Relations at HMP Brixton, 11 October 2000, page 31*)

In the wake of this report, a new procedure for selecting prisoners for work parties was introduced. The direct role of individual officers in choosing who could join the work party they were responsible for was replaced by a separate allocations system. The new work allocation board was introduced in November 2000 and the change was obvious.

Figures for work allocations were examined. [Head of Activities] said generally having the system since November had largely corrected the imbalance which was encouraging. (*Minutes, Brixton RRMT, 17 May 2001, item 4b*)

However, the minutes of the Brixton senior management team meeting for 20 June 2001 contained a reminder of how hard one has to work for lasting change:

It was noted that the percentage for the ethnic minority workforce had again declined. (*SMT minutes, 20 June 2001, item 3n*)

Regular and consistent monitoring is essential in order to understand the patterns which, given the limited numbers involved, for instance in individual work parties, might only become apparent on a comparative basis over time. This was still not being done in the summer of 2001:

[The Governor] would like the system to be made more efficient. A discussion followed about how to improve the system as the figures were always for the month before and not for the previous several months in order to make a comparison. (*Minutes, Brixton RRMT, 16 August 2001, item 3*)

#### *Differences at YOI Feltham*

Disproportional representation on work parties at Feltham was raised in the HMCIP reports and over the years by the Board of Visitors. It was occasionally commented on in the RRMT.

For much of the period of our investigation, the RRLO prepared detailed monitoring sheets showing the numbers assigned to each of the work parties in the prison. In most of them the numbers were small so statistical analysis would have been complex. However, one simple way of bringing out the imbalances would have been to compare the number of times in any one month that a particular ethnic group was absent from a work party. The Asian and 'other' groups were too small for this to be meaningful, but a sensible comparison between the black and white groups could have been made. The number of work parties varied slightly from month to month but ran at between 18 and 21.

In 1996, there was no white representation in just one work party in January and one in October, while the number of work parties in each month in which there were no black prisoners varied between two and six. In 1997, white prisoners were absent

from three work parties in March and one in November, while black prisoners were absent from at least three work parties every month (and in one month, from eight).

In the period from October 1999 to May 2001, the number of work parties in each month without any white prisoners was running at one or two in all but four months, when it was zero. On occasion, however, the black absence was even stronger than in 1996. It usually ran at two, three or four, but between July and November 2000 it hit six twice, seven twice, and then nine.

One factor in these differences might have been that some work parties drew their prisoners directly and exclusively from certain units. As some of these units were filled in ways which made them predominantly populated by one ethnic group or another, that meant that the work parties followed this imbalance. For example, the 'vulnerable' group was directed to work parties in which they would be separate from other prisoners – a recycling unit which processed waste material from Heathrow Airport and the prison laundry – but these were also favoured work areas and the 'vulnerable' group was consistently nearly all white or Asian.

These patterns of allocation could become self-fulfilling, as a comment at the Feltham RRMT demonstrates:

... some inmates had the concept that some jobs were for white inmates and some for black and they did not apply for jobs where they would be isolated. (*Minutes, Feltham RRMT, 15 November 1999, item 6*)

Efforts were made to address this particular problem – but the fact that they were not entirely successful reinforces the point that such efforts must be ongoing and consistent if underlying patterns of disproportionality are to be changed:

The situation in respect of work parties had improved as [the] Job Centre was aware of the previous situation and had worked hard to address inequalities. The number of red bands [prisoners allowed to move around certain areas of the establishment freely] from ethnic minority backgrounds had increased. Some work parties were still linked to units. (*Minutes, Feltham RRMT, 19 December 2000, item 8*)

## **Failure area 10: Race complaints by prisoners**

### *Key points*

- Procedures for making race complaints were complex and off-putting. Many prisoners were not aware of or did not understand the procedures.
- Some prison staff discouraged or prevent prisoners from making race complaints.
- Lack of confidentiality also discouraged prisoners from making race complaints.
- When complaints were made, prison staff attempted to resolve them informally – usually not to the satisfaction of the prisoner complaining.
- Recording of race complaints and monitoring of race complaints by prison managements was poor or non-existent.

### *Prison complaints procedures*

More than any other people in society, prisoners are under the control of the very people they may need to complain about. It is therefore of great importance that prisoners are confident that they will be treated fairly if they make a complaint. They must feel that they can air grievances without being punished or victimised. They must see their own and others' grievances being properly addressed and, where the grievance is shown to be justified, see action being taken to put it right.

The prison system offers various avenues for complaints by prisoners, starting with the 'informal' one of simply talking to an officer – something that many prisoners find difficult to do if they wish to complain about the actions or behaviour of another officer.

During the periods covered by our investigation, prisoners who wished to make a formal race complaint could use a request/complaint form. Such forms went to a prison secretariat where any race complaints were identified and passed on to the RRLO, whose job it was to bring them to the attention of the Governor. The Governor then made a formal decision as to what level of investigation was required. This could range from a fact finding exercise known as a 'simple inquiry' to a full investigation under the Code of Discipline and Conduct.

Normally prisoners had to ask prison staff for a request/complaint form, and then hand it in to staff – both of which requirements would have discouraged some prisoners from making a formal complaint. However, a new system for request/complaint forms was being piloted in five prisons (including Feltham) while our investigation was under way (*New Prisoners' Complaints Procedures: Instructions for Pilots, October 2000*). Changes included:

- forms to be freely available with no requirement to seek permission from staff before being provided with one
- locked boxes into which completed forms could be put
- the inclusion on the form of a specific question about any possible racial element to the complaint.

Alternatively, rather than filling out a request/complaint form, prisoners could fill out a racial incident reporting form which went directly to the RRLO. The RRLO then forwarded the complaint to the Governor with an accompanying memorandum setting out the RRLO's initial view of the complaint and a recommendation as to the level of the investigation the complaint might require. In the same way as for request/complaint forms, it would be the Governor's responsibility to decide on the level of investigation.

A prisoner might also make an application to the Board of Visitors, which could then assist the prisoner in pursuing their complaint.



Some attempts have been made to open up additional avenues for complaints. Prisoners told us that they phoned relatives and got them to make complaints on their behalf. At Parc, a dedicated phone line was set up in 1999 for visitors wishing to report problems encountered by prisoners they visit, and a confidential phone line for prisoners was set up in June 2000.

*Lack of knowledge about the system*

One reason for failing to take a complaint forward might have been lack of knowledge on the part of prisoners of how to go about it. The process was complex and off-putting, and for many prisoners it might not have been sufficient simply to put up notices about it. Indeed, a Chief Inspector's report for Feltham noted:

Notice boards containing information [on Swallow Unit] ... were located in this area [the corridor at the entrance to the wing]. However, young prisoners were not permitted to read the notices as they were not allowed to congregate in that area. (*HMCIP Feltham 2000, paragraph 2.69*)

Understanding or using the complaints procedure was a particular problem for those who could not adequately read or write. Their numbers in prison were large. Even for those whose literacy was somewhat better, the task of pursuing a complaint was not easy. It was obvious to us from reviewing the documentary evidence that prisoners relied on other prisoners to help them with forms – one individual's handwriting often appeared on complaint forms from different prisoners. At YOI Huntercombe, the BoV representatives we met during a comparative visit in July 2001 said the complaint forms were difficult for prisoners to complete even with the assistance of the BoV members.

Prisoners may also not have been aware that they could complain to the RRLO – or even that their prison had an RRLO. The most recent race relations survey of prisoners at HMP Parc at the time of our visits to the prison showed that half the prisoners who responded (the response was 207 out of a population of 651) did not know there was an RRLO at Parc.

The BOV was also little used for race complaints. The annual report of the Parc BoV for 1999-2000 noted:

Few incidents of, or complaints about, matters relating to race relations were reported to the Board during the reporting period. In contrast, race relations at HMP/YOI Parc have made the local and national press on many occasions. (*Paragraphs 8.4.1 and 8.4.2*)

The very small number of race complaints made to the Parc BoV indicates that prisoners did not see it as a viable channel for such issues. One reason for this may have been that until 2001 it did not have any black or Asian members.

### *Recording of race complaints*

PSO 2800 lays out as ‘mandatory’ requirements that:

- Racial incidents (‘including minor incidents which have been resolved informally’, *paragraph 6.3.1*) and complaints of racial discrimination must be reported to the RRLO.
- The RRLO must maintain a record of all such complaints and track their progress ‘so that the Governor and the RRMT can be kept closely informed’ (*paragraph 6.4.1*).

Under-reporting of racial incidents and race complaints was, however, endemic. At YOI Feltham, the Feltham Murder Inquiry found that for a period at least six months prior to the murder of Zahid Mubarek,

a total of 40 incidents were recorded as being racist incidents of some kind. These range from prisoners calling staff racist names and vice versa to staff commenting that assaults prisoner on prisoner appeared to be racially motivated. Of these 40 incidents NONE had been reported to the RRLO or recorded in the log. (*Feltham Murder Report 2, Finding H8b*)

Our own examination of the wing observation books for each residential unit at Feltham going back to 1996 revealed a significant number of incidents which were recorded as being racist in some way or another but were not reported in the racial incidents log.

At HMP Brixton, improvements in recording systems in the late 1990s led to larger numbers of complaints being recorded in 1999 and 2000 than for the two previous years. However, the rise was not been consistent. The Brixton Investigation and Audit Unit carried out a survey of race complaints made in 2000 and the first 10 months of 2001. This showed that there were one or two complaints a month up to September 2000 when the numbers started rising, reaching a peak of 12 in March 2001 before falling back again to one each in September and October 2001 (*Brixton, Data from Central Database for Investigations and Racial Incidents*, not dated).

At HMP Parc, the ‘RR Log’ listed 48 racial incidents between May 1999 and July 2000. Most concerned black or Asian prisoners complaining about treatment at the hands of white prisoners or members of staff. A number concerned white English prisoners complaining about treatment at the hands of white Welsh prisoners or staff. The log listed complaints ranging from name calling by prison staff, prisoners seen to make a nazi salute or say ‘KKK’, fighting between black and white prisoners, to a prisoner asking ‘How many black bastards on this wing?’

Parc Board of Visitors records cited only nine complaints with a racial element out of a total of 1,240 applications to the Board up to the spring of 2001 (*Minutes, Parc BoV 13 March 2001, paragraph 4.7*). Race was not highlighted in Parc’s request and complaints log, so it is not possible to judge to what extent the request and

complaints system was used by prisoners to make race complaints. However, an entry in the RRMT minutes for 19 October 1998 stated that, of 1,719 investigation and inquiry reports to that date since the prison opened, only 23 were race related.

Given the racist atmosphere many witnesses described, these figures clearly do not give a true indication of the problems, and suggest either that prisoners were reluctant to make race complaints, or that race complaints were not properly recorded, or both. A comment from one staff member at Parc interviewed during our investigation is illuminating:

Sometimes the black guys came to the health centre with head injuries and they won't tell you who's done it. (*Commission interview*)

*Attempting to resolve race complaints informally*

One prisoner we interviewed, repeated the widely held view that he 'would be on the next bus' if he complained. He said that in the prison he had later been moved to after his stay at Parc, a prisoner had to ask a wing officer for a complaints form. The officer would then seek to resolve it informally, rather than facilitate a written complaint. 'If they don't want it to go through, it won't go through,' he commented (*Commission interview*).

Other prisoners at Parc told us that they had difficulties in making complaints. Officers tried to persuade them to deal with matters informally rather than through written complaints and, to get a complaints form, they said, they had to ask their wing officers who usually wanted to know what the complaint was about before handing out a form.

Two general application forms we came across at Parc illustrate the point. An Asian prisoner had simply written on a form on 16 January 2001: 'Can I have a complaint form.' An officer had returned it, having scrawled on it in large capital letters: 'Why!!' Another general application form dated 16 November 2000 said, under the heading 'I wish to make the following request/inquiry': 'I would like a request & complaints form please'. An officer had written underneath 'You must state reason why?':

I wish to make the following request /inquiry

Can I have complant form ~~and~~ ~~it~~

Thank you

WHY!! P.T.O

Prisoner's signature \_\_\_\_\_ Date 16/1/01

The Parc BoV also told us directly: 'We are still not convinced that all our applications come to us.' (*Commission interview*)

There was also evidence at Feltham of a tendency for officers to seek informal resolution of complaints. From 1 August 1998 to 30 July 1999 every recorded race complaint in Feltham was dealt with informally. From August 1999 to July 2000, 90% of recorded complaints were dealt with informally. Prisoners had no confidence in this approach. A staff member at Feltham told us:

A Jamaican kid complained about somebody saying something racist to him. It was overt and he complained and they went into the office and they were asked to shake hands and say sorry, and the kid said to me that as soon as they went out of the office the inmate used the same word to him again. So he said I'm not going to bother complaining again. That was a common thing when I talked to inmates. (*Commission interview*)

Indeed, the replies to the Commission's April 2000 prisoner survey on race issues indicated that every prisoner who made an informal complaint on race issues was dissatisfied with the outcome.

#### *Staff resistance to race complaints*

Prisoners were also reluctant to make written complaints because of fears of what might happen to them. One prisoner's request/complaint form at Brixton in November 2000 started off:

I was pushed by officer ---- several times and later called a black runt and he said what you gonner do about it, call the black boys. This was over me putting complaint forms in. (*Brixton Request/Complaint form, 13 November 2000*)

In another instance, an investigation into a prisoner's complaint found that an officer had 'attempted to dissuade [him] from pursuing his complaint' (*ICU 68/2000 report*)

At Feltham, the Board of Visitors commented:

There was a feeling amongst prisoners that reporting a racial incident would mean that the matter would not be dealt with promptly, they would not be listened to and could result in a wing move and loss of their job. In these circumstances it could be difficult to encourage a prisoner to substantiate his allegation in writing. (*BoV Feltham, written evidence, 27 February 2001*)

The previous year, the Imam at Feltham had told a meeting of the RRMT that there were often delays in issuing forms – and indeed that when he sought to get a form

for a prisoner 'he had been refused a form' (*Minutes Feltham RRMT, 20 June 2000, paragraph 9*). Other members at the meeting spoke of:

reluctance by staff to issue complaint forms... prisoners did not complain as they had no confidence in the system (*As above, paragraph 9 and paragraph 3e*)

Senior HM Prison Service management were aware of this problem. The papers for the Director General's Advisory Group on Race in September 1999 noted that:

Prisoners see obstacles being put in the way of their making formal complaints about more serious matters, eg how they have been treated by wing staff: prisoners have to rely on wing staff agreeing to issue a complaint form.

These concerns led to a new system for dealing with prisoners' requests/complaints (see details above) but some of the changes designed to solve the problem were not, in practice, effective, as Brixton RRMT minutes from 2001 made clear:

Prisoners said some inmates are scared of making racist and victimisation complaints against officers because of reprisal. The racial incident box is very close to the wing desk thus making it inconvenient for inmates to use the box without being noticed. (*Minutes, Brixton RRMT, 15 March 2001, Departmental Report, A Wing*)

One reason why prisoners were scared was because they were not dealing with just one or two individuals who might want to take reprisals. There was a culture of staff solidarity against anyone who complained which provided shelter to those who were actively racist in their behaviour. The minutes of a staff/prisoner discussion at Brixton in 1998 noted:

Several inmates indicated that it was virtually impossible to make a complaint in G wing if the complaint was perceived to identify racial misconduct. The 'officers close ranks' syndrome becomes instantly apparent and the person making the complaint would very quickly become isolated, possibly even 'shipped out'. (*Minutes, Brixton G Wing Race Relations Sub-Group, 14 September 1998, Item 6*)

The Governor at Brixton told us:

Prison staff traditionally stick together against prisoners... It is less so than it used to be but it is still very strongly the case... It is interesting in some of our most recent investigations where we have had racist complaints made by staff against other staff, some of the staff are now prepared to give an honest account of events, even though it is dropping a colleague in it... I don't see

much sign of that happening when the complaint is made by a prisoner.  
(*Commission interview*)

The 2000 HMCIP report on Brixton spoke of:

the anxieties that prisoners expressed to us about the reporting process, including their being asked by staff to 'reflect' on whether they wanted to continue with the procedure. We discovered that this term referred to the use of an unofficial form of cellular confinement known locally as 'reflections'.  
(*HMCIP Brixton 2000, paragraph 3.20*)

Clearly, the use of an illegal punishment regime to deter those who wished to complain adds a sinister dimension to the barriers in the way of a prisoner exercising their right to make a complaint.

#### *Lack of confidentiality*

Matters were made worse by the fact that the arrangements for complaints did not ensure confidentiality and therefore deterred prisoners from making complaints:

Prisoners had access to separate race relations applications/complaints forms. A Notice to Prisoners asked that prisoners send completed forms to the Race Relations Liaison Officer in a sealed envelope, but envelopes were not provided and prisoners had to ask staff for one, thus declaring their intention to make such an application. Prisoners also had to ask officers to see a member of the Board of Visitors. (*HMCIP Brixton 2000, paragraph 3.34*)

At Feltham:

Each unit had a system whereby, at a particular time during the day, the young men could apply for legal aid, access to the Governor or to the Board of Visitors. These procedures usually required the young man to approach an officer stating what he wanted and why. In some cases, he had to complete a form. There was no confidentiality in this method and it did not encourage prisoners to make use of the system. (*HMCIP Feltham 1996, paragraph 10.76*)

This practice continued for race complaints until the end of 2000. One problem was highlighted by the Chair of the BoV at a meeting of the prison's senior management team:

Some prisoners are making allegations that officers are throwing away their BoV applications. (*Minutes, Feltham SMT, 29 June 2000, item, Oral Reports*)

Under the new system, introduced at the end of 2000, forms were meant to be available in the units with confidential post boxes for them to be placed in without staff on duty being able to read them. The impact this had is apparent from a report to the Board of Visitors early the next year:

... since the confidential access to the RRLO had started 20 applications had been made in the past two weeks. (*Minutes, Feltham BOV 14 February 2001, page 2*)

But there were still problems. In evidence to the Commission, the Children's Society noted:

We were on the units this week and I had to point out to officers that none [ie, forms] were available. (*Children's Society written evidence*)

When forms had to be requested as a matter of policy, there was always the possibility they would be refused. One member of staff told us they had witnessed precisely such an occasion:

For instance a prisoner asks any officer for a request/complaint form, the officer asks what the complaint concerns, the prisoner tells them and the officer says you can't have the form... Prisoners say they have submitted forms and they have seen them in the bin. (*Commission interview*)

#### *Staff attitudes and lack of training*

PSO 2800 makes an important general point about the way staff should respond to complaints. In making that point, the order shows that senior Prison Service managers were only too well aware of the attitude of many staff:

In particular, care must be taken not to be influenced by stereotyped views of the complainant or his or her alleged propensity to complain. Inmates are entitled to a reasoned response to any complaint and it is essential that this is based solely on the evidence gained during the investigation. (*PSO 2800, paragraph 6.8.3*)

PSO 2800 also offers a general provision stating that:

Staff must be consistent in their treatment of prisoners regardless of their ethnic background. (*PSO 2800, paragraph 6.12.3*)

Staff who tried to address this problem were aware of both a failure by other staff to pass on complaints in the right way and a reluctance by prisoners to make them:

Some racial incidents were not being reported to the RRLO and therefore not investigated... comments were put in the unit observation book but often there was no further action. The team considered that there was a question of the attitude of staff and some prisoners felt that it was not worth reporting racial incidents as no action was taken... ---- suggested that some staff did not know what constituted a racial incident. It was accepted that staff training was required. (*Minutes, Feltham RRMT, 15 February 2000, paragraph 6*)

According to the Annual Report of the Prison Service Race Relations Group for 1997-98, '20% of staff are not familiar with the meaning and definition of a racist incident' (*8th Annual Report of PSRRG 1997-98, paragraph 20*). This lack of awareness extended right up the prison hierarchy. In written evidence to us, NACRO said that during a series of one day race equality training courses it provided for all Governing Governors in 2000, 'it was alarming to note such a high level of uncertainty and lack of knowledge among the Service's most senior staff' (*NACRO, written evidence*).

#### *Monitoring of complaints and the role of senior management*

There was an inherent structural problem in the system for handling race discrimination complaints. The complaints process focused on individual acts treated discretely. It reinforced a long standing tendency in the Service to focus upon 'malice' as an indicator of racial discrimination – for instance, a racial insult spoken as the act is committed. This may have been adequate for prisoners complaining of racist abuse or overt discrimination, but in other cases uncovering race discrimination required the ability to consider patterns of behaviour – that is, to make comparisons across individual experiences either between individuals or over a period of time. The inability to look at such patterns of behaviour made it easier for investigators to find that the evidence was inconclusive in individual cases.

The draft order covering the pilot scheme for changes to the requests and complaints procedure put an emphasis on senior managers monitoring complaints and learning lessons from them:

Use of the system to provide management information: Senior management must use the statistics on complaints as an indicator of where there are particular problem areas and take appropriate remedial action. (*New Prisoners' Complaints Procedures: Instructions for Pilots, October 2000, paragraph 61*)

As the Ombudsman commented when the new system was finally fully introduced:

A good complaints system is both a check against abuse and a management tool to drive performance. (*On the Case, Prisons and Probation Ombudsman, Issue 6, summer 2002, page 1*)



The real way of dealing with what lay behind complaints would have been through management action to discover what the problems were and management action to sort them out. Prisoners, like any other victims in such circumstances, would have been more likely to complain – hence the contradiction noted by the Ombudsman in several of his annual reports that the worst prisons provided him with the fewest complaints and the best provided him with the most.

A sense of the overall picture within a prison, whether or not prisoners had any trust in the complaints system and whether there was a worrying level of unreported complaints, could all have been obtained by conducting the kind of surveys recommended in PSO 2800. No such survey was conducted in Brixton from the date of the issuing of PSO 2800 up to the time our investigation was announced. Given the way in which race relations in the prison were a matter of constant public debate and attention, this was an extraordinary failing by the local management.

During the period covered by our terms of reference, there was also no evidence that the prison management used the complaints against members of staff as a guide to management intervention to help these officers improve the quality of their work. The names of some staff members came up repeatedly in complaints but there is no indication until 2001 that managers responded to this by giving strong and clear advice to these members of staff, even if they felt they did not have enough evidence for disciplinary action.

In the absence of a monitoring and assessment approach to complaints, it was inevitable that prisoners were reluctant to make complaints about officers. There needed to be a positive management regime which put the stress on proper and appropriate behaviour by staff and secure change in that direction if prisoners were to be prepared to make complaints and staff respond to them properly.

At Feltham, managers were also not carrying out the kind of checks which would have brought bad practice out into the open. The RRLO at Feltham told us:

Staff would actually put a comment in the observation book or the occurrence books and it wouldn't go any further... It is probably a failing within the Prison Service in general. (*Commission interview*)



## **Failure area 11: Investigation of race complaints**

### *Key points*

- Investigations into race complaints were generally of poor quality.
- Investigators often applied unreasonable standards of proof.
- Investigators hardly ever upheld race complaints.
- Investigators of race complaints rarely received adequate training.
- Investigations were poorly supervised and monitored by senior management.
- There was a general failure to examine the issue of race in complaints that were not in themselves race complaints.

*The quality of HM Prison Service investigations*

The quality of the investigations we reviewed was often very poor. Typically, investigation files on complaints by prisoners contained a series of brief, often just one page, interview transcripts giving questions put by the investigator and brief answers by the respondent. They can be of the following kind (the example is from a file from 2001):

Introduction: [Investigator] explains nature of complaint.

Q: Do you think you spoke to ---- any differently than you would to a white prisoner?

A: No, absolutely not...

Q: Have you at any time spoken to ---- differently from any other prisoner?

A: No.

Parc provided us with a 'Sample of 10 Racist Investigations' of which some were not specific incident investigations and some were attempts to look at specific incidents that scarcely merited being described as investigations.

The vast majority of the formal investigations for which we were able to examine the files in Brixton were not thorough, their standard varied and the guidance available was vague. The faults in procedure were many. In particular, the investigations focused on the specific allegations against the alleged perpetrator(s) to such an extent that they ignored the totality of the incident and the factors which may have contributed to it. This meant that the findings of the investigation could not give much guidance to managers when it came to ensuring that such things did not happen again.

One example, from January 1999, concerned a Muslim prisoner who complained about the way he was searched on entry to the prison. He claimed that he had been made to stand stripped for 15 minutes by an officer who told him: 'You do what I say, Islam'. As an argument developed, another officer intervened saying to his fellow officer: 'X, it's not worth it.' In his complaint, the prisoner cited the single first name he heard the officer use.

The officer on Reception who was then identified responded in a letter to the Principal Officer on Reception:

I have no recollection of any such incident occurring whilst I have been on duty in Reception and I am not certain if I was on duty on the date in question. Also there have been a number of other officers whose first name is X who have worked in Reception on a daily/part daily basis during the period up to Christmas due to staff shortages.

The Principal Officer then wrote to the Deputy Governor saying:

I have spoken with Mr X the only [first name] on the Reception group. He has no recollection of this incident. I have observed my staff on many occasions working in the strip search processing area. They do make the odd wisecrack to cajole prisoners along and to relieve tension but they never discriminate nor do they do anything to embarrass a prisoner.

The Deputy Governor then wrote on the request/complaint form:

I have discussed this situation with the RRLO and with the Principal Officer in charge of Reception. Neither are able to supply evidence which would lead me to a conclusion one way or the other. My inquiries have proved inconclusive and I cannot take the issue forward as a consequence.  
*(Request/complaint form, 12 January 1999)*

This appears to have been the sum total of the investigation which, inevitably, could not have helped the Deputy Governor arrive at any sort of conclusion. The Deputy Governor did not take up the obvious discrepancy between the statements of the officer and the Principal Officer over how many officers of that name there had been on Reception. Nor did they pursue the staff detail records, meant to be kept for up to seven years, to show who was where and when. This was investigation by complacency.

*'White carding'*

The style of questioning in investigations was often over-reliant on closed rather than open questions. Only rarely was any attempt made to probe. One list of written questions from an investigation contained 14 questions, nine of which were closed questions which were all replied to with a 'Yes' or 'No'. This was either a result of a complete lack of understanding of how to conduct an effective investigation or a capitulation to the practice insisted on by some members of staff of 'white carding'. Then strongly supported by the Prison Officers Association local officers in HMP Brixton and YOI Feltham, this involved an officer facing investigation for their action insisting on having all questions in advance in writing.

At Brixton, 'white carding' was frequently insisted on both by officers who were facing allegations and officers appearing as witnesses. It slowed down the investigation process and made it more difficult to ask probing questions. Those responsible for investigations at Brixton appeared to accept the practice and allowed it to close down the quality of the investigation process. The quality of written questions was generally poor and not of a kind that would elicit evidence of any value. The records of one investigation show that, of the 29 officers called for interview, 27 were allowed to insist on 'white carding'. Of these, 24 were witnesses.

### *Standard of proof*

Reading the files of several investigations it was difficult to avoid the conclusion that the investigator was seeking ways of letting an officer facing allegations off the hook rather than objectively chasing the truth.

The Prison Service Code of Conduct and Discipline laid down the standard of proof for investigations into complaints by prisoners against staff as being one of 'on the balance of probabilities' – the level required in employment tribunals – rather than 'beyond all reasonable doubt' as required in criminal trials.

Investigators at Brixton appeared to have been seeking proof beyond all reasonable doubt before concluding that a racist incident had occurred. One investigator in their final report found that an allegation made by a prisoner was 'highly likely' and 'probable' but still failed to make a finding of guilt against the member of staff involved, or indeed to make any recommendation for disciplinary action against the officer. When the Governor received the report, he did not challenge it on this basis but accepted its findings and made his final decisions on action to be taken based upon them.

Gaining proof of an allegation made by a prisoner against a member of staff was not going to be easy. Staff conducting investigations were more likely to take what fellow staff said at face value than they were to believe what prisoners said.

The problem of finding corroborating evidence was compounded at Brixton by the way investigators failed on occasion to call all the possible witnesses. In one case, the prisoner involved suggested witnesses who might be called but the investigator chose not to on the grounds that 'I judged they wouldn't add significantly to the investigation' (*Brixton investigation report, 2000*). There was no explanation in the investigation file or report to explain how this judgement was arrived at.

### *Delays*

Despite the short cuts investigators took, the length of time the investigations lasted was often unacceptable. In several cases, the investigation of relatively straightforward issues took many months. (At Brixton, for 13 complaints investigated between 14 April 2000 and 5 February 2001 for which there were sufficient records, the average time was 3.3 months.)

### *Lack of training for investigators*

Officers at HMP Parc involved in investigating incidents and complaints did not receive proper training. No-one there involved in investigations into racist incidents and race complaints appears to have had any such training until the beginning of 2001. Three key staff who regularly investigated racial incidents confirmed to the Commission investigation that they had not received training. One officer involved

in investigations requested training but was refused on the grounds that their rank was too low (*Commission interviews*).

The majority of those responsible for investigations at Brixton had not been trained as investigators and none of them had been trained in race complaints. They were therefore unlikely to be skilled in identifying the nature of the incidents they were being asked to investigate.

HM Prison Service policy was that:

Officers who carry out investigations or adjudicate following investigations should be given priority to attend the RRLO training course. (*PSO 2800, paragraph 6.5.1*)

No member of staff involved in a racial incident investigation at HMP Brixton had done that course, nor had any of those adjudicating complaints.

In practice at Brixton over a long period of time, there was no quality control over investigators when it came to race competence. The Governor at the prison was required to review investigation reports but said he himself had never been trained in investigations. He accepted that investigators were not always able to spot the race element in a complaint issue: 'if it's something subtle and particularly if it's something unintentional, something unintended, I suspect not' (*Commission interview*). He added:

Very few of the people who do investigations are trained... Some people are making it up as they go along. The rules and guidance are extremely vague and people are operating basically on the basis of common sense. (*Commission interview*)

#### *The role of the RRLO*

At Brixton, the one member of staff with some experience and expertise in the area of race, the RRLO, was never instructed to conduct an investigation as he was only a Senior Officer, the rank below Principal Officer.

A report on an internal HM Prison Service consultation on the role of RRLOs commented on this:

In the majority of establishments it would appear that the most serious incidents are currently investigated at governor grade level, with or without the RRLO as an advisor. Whoever is in charge of the investigation, the RRLO needs to be informed when it is complete... Most respondents believed that the RRLO was told of the outcome of formal investigations; a few were not sure that it happened in all cases; and four or five were convinced that it did not. (*Report on a consultation paper on the role of the*

*RRLO, paragraph 7.10, attached to the Director General's Advisory Group on Race, minutes, 6 July 2000)*

We found no evidence that, during the period covered by our investigation, the RRLO at Brixton was ever asked by the Governor to provide an assessment, give an opinion or offer advice on any of the investigations.

However, in fact the RRLO did conduct investigative activities on his own initiative, chasing up issues and getting wrongs put right on several occasions. In some cases he was asked by other senior staff (though not the Governor) to look into complaints. On one occasion, he received a letter from the Head of Residence about a complaint saying:

Please can you investigate this? The Dep[uty Governor] was unsure if you already knew about it. If not, please could you institute an inquiry in the usual way. (*Letter from Head of Residence to RRLO, 1 February 2000*)

His interventions secured an overturning of disciplinary decisions in several cases in 1999 and 2000.

#### *Failure to pursue the race aspect of complaints*

There was a general failure to pursue the issue of race. PSO 2800 reminded investigators that:

During any inquiry, staff will need to be sensitive to the possibility that a racist motivation may have caused, or contributed to, the incident which is under investigation. (*PSO 2800, paragraph 6.2.4*)

Yet in none of the complaints where we were able to examine investigation files or findings, was a race element found or alluded to in the investigation report.

#### *Ignoring the wider picture*

Having separate investigations into individual aspects of a prisoner's treatment meant that it was easy for pedantic investigators to ignore the wider picture.

Quality control over investigations at this level in HM Prison Service is in the hands of governing Governors. Quality control can come through a detailed analysis of the possible faults in each individual investigation, but it can also come through a monitoring of trends across a number of investigations which may well point to underlying problems a reading of individual reports might well miss. There is no evidence that this was ever done at Brixton.

The documentary record was not good enough to allow us to make a thorough comparison between different types of cases over a long period of time. A list of



concluded race complaint cases we were provided with from HMP Brixton showed that 20 cases, all against staff, had been logged between April and September 2000. As a result of these cases, one member of staff received an oral warning, one case was not heard as the officer involved had left the Service, one case was dismissed and the other 17, or 85% of the total, led to no penalty or charge. In contrast, a list of 18 investigations dealing with complaints where race was not involved between 1998 and 2000 showed that only three officers, or 17%, received no charge while the rest had penalties ranging from an oral warning to dismissal, which happened in four cases.

The Brixton RRLO told us in the spring of 2001:

I have never seen an officer successfully charged with being guilty of racism or discrimination in all my time here. (*Commission interview*)

#### *Failure to complete investigations*

The clear HM Prison Service policy was for investigations to be completed if at all possible. At Brixton, it was common practice that, once a prisoner was transferred, the investigation of their complaint lapsed. The same thing happened if they were released. The entries in the RRLO's log record that investigations ended because a prisoner had been moved on a significant number of occasions. This was part and parcel of an approach to complaints and their investigation which did not place them in the context of a management drive to improve standards overall.

#### *One example from HMP Parc*

During our revisit in October 2001, the Director told us there was 'little or no evidence' of racist graffiti. However, a black prisoner told us of graffiti in the toilets of the amenity block at Parc saying it had been there for a week. We saw the graffiti for ourselves and informed the Director. A follow up investigation required by the Director was conducted in a highly unsatisfactory way.

The investigation report consisted of a statement of finding by the senior manager responsible; transcripts of what were described as interviews with three prisoners, one with a prisoner who had informed us of the graffiti and two with prisoners assigned to cleaning duties in the block; copies of Weekly Search Register sheets for the relevant parts of Parc and copies of the reports from the Prisoner Activity Scheduling System reports indicating which prisoners had attended the amenities block at the relevant possible times.

There is always a danger in any checking system that routinism takes over and the checks become increasingly lax with boxes ticked column by column back in the office after a cursory walk around. This is quite clearly what has happened with the

weekly search registers<sup>14</sup>. In addition, according to the investigation report, the fabric checks take place at 8am, 1pm and 5pm but the record sheets only allow an 'am' and a 'pm' entry.

The transcripts of the interviews carried out with the two inmates on cleaning duties cited them as saying that they 'usually found [graffiti] on a daily basis in the afternoons after the YOs have been in the building' but that they had never reported this to the officers on duty. They were then told that, in future, they were to report any such finding.

The minutes of the interviews, conducted by the same managers, record identical questions and answers and the same start and finish times. The two transcripts are word perfect, the only differences being the names of the prisoners. In representations to us on our draft report HM Prison Service said: 'There is a very simple reason for this: the two prisoners were interviewed together.' This does not explain why two separate transcripts were produced not why it was thought to be an effective way of conducting an investigation to interview two crucial witnesses at the same time rather than separately. Staff do not appear to have been interviewed.

The final report of the investigation stated:

The investigation confirmed, as we thought, that the graffiti was only on display for a relatively brief period and would have been seen and cleaned during the course of the lunchtime fabric/security checks.

The problem with this is that the graffiti was observed in the afternoon and the transcript of the cleaner interviews speak of cleaning in the lunch time, not afternoon. We visited Parc on a Monday. The prisoners we interviewed were unlikely to have seen the graffiti on the Monday given the timing and their movements and we conclude that they saw the graffiti sometime during the previous week - as they themselves told us.

We sought to discover if the quality of the investigation had perhaps been determined by the absence of training for the manager responsible, and asked who at Parc had been trained on investigations. We were told that seven staff had been on an investigation techniques training course in June but the name of the individual

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<sup>14</sup> The problems we encountered in examining this issue were not unique. In a court case concerning a prisoner from HMP Full Sutton whose property had been lost or damaged the judgment noted: 'There is a quite remarkable similarity between the two statements and one does not need to be a professional proof reader to look at the statements and see the manner of their writing and their substance ... If it wasn't for the fact that a different font is used between the two statements (and this is something which could be done very easily on a computer) I would say that one statement is a cut and paste of the other. It may indeed be that. But I am not fooled. These two statements are written over two years after the events complained of ... it seems to me that the only point I can really rely on in the two statements is that neither officer actually remembers what happened. They don't even know who wrote the list of items. I can tell them by looking at the signatures on the bottom of the statements ...' (*Prison Service Newsletter*, June 2002, Edition 2, pages 12-13).

concerned with the investigation into the toilet graffiti was not among those listed (*Correspondence from Parc Senior Residential Manager (Youths), 13 November 2001*).



## **Failure area 12: Correcting bad practice and spreading good practice**

### *Key points*

- The Prison Service did not effectively disseminate good practice in general, and on race issues in particular. Such guidance as was available on race issues was *ad hoc* rather than part of a strategic approach.
- Staff frequently claimed they are unaware of correct procedures, while managers failed to exercise control and leadership.
- Delivery and take up of training on race issues was inadequate.

*Failure to learn from mistakes or successes*

Prison Service Order 1300 on Investigations issued in June 2000 outlined key 'issues to be identified in investigations which should normally be included in terms of reference'. These included:

- (ii) Highlighting weaknesses in procedures or performance, either locally or nationally, so that they can be remedied and action taken to prevent them recurring...
- (v) Commending points of good practice on aspects that were managed well and comment on good individual performance and positive actions.

It added:

The lessons learned from investigations must be referred to relevant parts of the Prison Service... in order to promote good practice, remedy deficiencies, support training and ensure the proper development of the Service. (*PSO 1300, paragraphs 1.4.2 and 1.18.3*)

These 'mandatory' requirements were, in theory, a good approach, but required the will and the resources to carry them out at individual prisons. We saw little evidence of this kind of approach being implemented within the three establishments across the period covered by our investigation.

In May 1997, the Service published the first of what was intended to be a regular series of a 'Good Practice Digest', entitled *Ten Good Practices: sharing good practice in the Prison Service*.

The first item of good practice in that first booklet was a report on the way Hull had appointed a Senior Youth Cohort Officer to be responsible for safeguarding the rights and promoting the welfare of young offenders, and had drawn up special child protection procedures in consultation with the local social services. The procedures were outlined in a Governor's Order (*HMP Hull, 04/96*) reprinted in full in the booklet.

Whether this proposal was followed in any other prisons we cannot say, but the January 2002 inspection report on Feltham noted:

We were particularly concerned that child protection systems were not in place and that there was no child protection log. (*HMCIP Feltham, January 2002, page 14-15*)

This history is perhaps emblematic of the way in which the staff in the Service often developed excellent instances of good practice only to see them disappear even in the establishment where they were first proposed.

### *Failure to spread good practice*

The Prison Service's Standards Audit Unit (SAU) has since 1996 carried out audits of standards of regimes in prisons. For race relations, of those prisons audited in any one year the percentage getting 'acceptable or better' was 85% in 1996/97; 56% in 1997/98; 77% in 1998/99; and 68% in 1999/2000 (*Standards Audit Unit Annual Report 1999-2000, page 10*).

Starting in June 1999, the SAU circulated establishments with a monthly list of the good practice points 'identified during recent audits' (*SAU Monthly Good Practice Bulletin, June 1999*). A covering letter with the first monthly list from the head of the unit explained:

It is our intention to spread across the Service the good practice we identify whilst auditing establishments. You might find it helpful when introducing or revising your own systems. (*Letter from Head of SAU, 3 June 1999*)

This process left the initiative in the hands of individual prisons. The SAU provided just headline details of the example of good practice that had caught its auditor's eye, not enough for anyone to pick it up and run with the idea straightaway. It provided the contact number of the prison which had marked up the achievement, requiring any prison that wished to improve to contact the relevant prison for further details.

Such a system had several inherent disadvantages if it was to be the driver for progress across the Service:

- The bank of good practice depended on what staff had taken the initiative to develop in differing prisons. It was not therefore subject to overall strategic direction. Important areas that HM Prison Service generally might have been failing upon would not be covered.
- The pool from which they could be drawn was only the prisons recently inspected by SAU teams, not the estate as a whole.
- The exploitation of this bank depended upon other prisons taking the initiative themselves to respond.
- If the good practice point was effective and did get picked up, then, theoretically at least, the prison with the good practice would be inundated with requests for help and explication.

This was a bottom up approach to spreading good practice. Only those who had understood the need to change, wish to do so and had the time to explore how it would best be done, would actually avail themselves of the opportunity. The end result was that the prison which really needed the help was unlikely to get it, while the prison which was expected to give it, might well not have been able to do so.

For example, a race relations item of good practice was recorded in the report for March 2000 from Pentonville:

The quality and content of the statistics produced monthly by the RRLO is noted as an example of good practice which could be disseminated throughout the Service. (*SAU Bulletin, March 2000*)

However, you do not disseminate information by passively suggesting it could be done. Monitoring systems remained poor in several establishments and we saw no evidence of proactive work from the centre to ensure change.

#### *Lack of a strategic approach to promoting good practice*

The items highlighted by the SAU also reflect the initiatives that it chanced upon, not those the Service staff might have been in need of. For instance, among the recommended good practice issues summarised in the reports from June 1999 to March 2000, were only two which, had they been picked up in YOI Feltham, might have played some part in breaking the chain of failures on the way to the murder of Zahid Mubarek (see *A formal investigation by the Commission for Racial Equality into HM Prison Service of England and Wales, Part 1: The murder of Zahid Mubarek*). They were that there was good practice on ‘The clear and precise audit trails for cell, area and fabric checks’ (*SAU Bulletin, June 1999*) and that ‘Pocket sized laminated copies of the meaning and definition of a racial incident with the Prison Service race relations policy on the reverse have been issued to all staff’ (*SAU Bulletin, February 2000*). These, though helpful in themselves, clearly did not add up to what was required in Feltham or elsewhere to deal with the problems that were manifest within them.

The difficulty seems to us to have been threefold.

First, HM Prison Service was deeply influenced by a kind of command culture which assumed that if someone had been told to do something then it would be done. Instead, it needed to develop a management culture which recognised that objectives had to be worked for and that managers and staff had roles to play in a process that entails not just instruction, but also support and guidance.

Second, the instructions, in this case the Prison Service Orders and their ‘mandatory’ provisions, concerned either basic procedural points (such as in PSO 2800, the requirement that staff be informed of the definition of a racist incident) or the broadest possible outcomes (that nobody uses racially offensive language), forming either end of the ‘what’ spectrum but not adequately addressing the ‘how’.

Third, this was all delivered on a ‘take it or leave it’ basis, with an implied threat of action – the threat contained within the description of certain steps as being ‘mandatory’ – that was not fulfilled, there being no apparent penalty for failure to deliver on a ‘mandatory’ provision.



The issues of concern to us varied from advice on broad general practices (for instance, how to conduct effective ethnic monitoring, analyse the data and use that material to guide policy decisions), to simple practical answers on specific questions (for instance, whether to show a particular video in a given prison).

These needs were usually predictable from the range of problems faced by staff across HM prison Service, and were apparent from audits, inspections or other sources, yet there was no strategic headquarters approach to identifying and tackling these issues and ensuring changed outcomes.

### *Staff pleading ignorance*

An outcome of several investigations that we have reviewed was a decision that an error had been made by the accused officer but that they could not be held responsible for it as no clear guidance or procedures had been in place at the time. The plea of ignorance as to correct procedure was a general defence for many of the failures to deliver good practice or abide by rules.

However, the Prison Service Code of Discipline states:

It is the duty and responsibility of every officer to familiarise himself with all Prison Service Standing Orders, Prison Service Instructions and Governor's Orders, particularly those which have been issued since their last tour of duty. (*Prison Service Code of Discipline*)

The presumption was that staff would seek to learn how to do their job, rather than wait to be instructed. Yet we were able to see that officers frequently chose to do what suited them rather than seek advice on what they should do from managers, while in turn managers did not exercise control and leadership. Officers and their managers were both equally culpable.

One officer who acted differently was victimised by some staff colleagues. They had intervened and complained when a prisoner she was responsible for was seriously disturbed by the treatment his wife was subjected to on a visit:

I haven't had a lot of training ... but I made the effort to find out because he was one of my prisoners at the time. If he's going to commit suicide I want to know why he's going to commit suicide and the madder I got the more slugging I got off the staff I work with. How dare you report another member of staff. I thought: easily, because I write it down on a piece of paper and give it to a governor. How dare you do that? I think that's what people are most scared about - the reprisals afterwards. (*Commission interview*)

### *Poor management control and support*

In a well run prison, learning about new items would not be left to the initiative of individual staff. It would also be a core function of the senior management's supervision of processes in the prison. Regular staff meetings, effective information bulletins, proper handover from one shift to another, targeting those in the staff who need to know about changed orders and practices or new individuals in the prison population – these should have been part and parcel of the internal life of an organisation which was confronting a complex task and making sure that all its constituent parts were capable of doing what they need to do.

Unfortunately, there were several barriers to achieving this in the prisons we investigated. The quantity of material from headquarters, not always very well thought out or co-ordinated, was one. In many prisons information was treated as a burden, not a necessary foundation for the work of individual officers.

A second barrier was the failure to develop effective internal management structures. A culture among some prison staff that 'we know best' was a third. As a result, staff might simply ignore what they were told.

One investigation report at Brixton, into the banning of a black prisoner from the gym, pointed the finger at 'poor management control and support' and concluded:

practice is dictated by custom and practice and the gulf between management and staff presents as wide, even mutually convenient.

It is worth noting that the above investigation report raised significant issues of management practice in the prison, yet we found no evidence that they were addressed in the follow up action by senior staff at the establishment. Instead, the Governor rejected recommendations for disciplinary action made in the report.

### *Failure to deliver training for staff*

Good training does not consist of going off on a one off course and then returning fully armed and capable. To be properly effective, particularly when it comes to the complexity of the human skills tasks which form such a crucial part of a prison officer's job, it should combine course work, line management and guided on-the-job learning. There is no task for which the basic skills parameters cannot be outlined and learned through a course, but there are many which also need practical, assisted experience before they are fully understood and acquired. This process must be both a continuing one and one which is regularly appraised against clearly outlined standards determined by the outcomes desired.

HM Prison Service has one of the largest training programmes of any employer, yet its staff lacked many of the skills they needed for the tasks they were confronted with. The contradiction the Service was caught in over the past few years has been

that, while training needs have become more obvious than ever, the constraints on staff time have made it more difficult to deliver the required programmes. The more the backlog built up, the bigger the difficulty became.

A strategic review of training in 2000 led a year later to an overarching 'Training and Development Strategy' issued on 16 November 2001. This was the first such strategy for HM Prison Service, a striking fact given the complexity of prison staff's tasks and the low level of skills they are given on first entry.

The document itself detailed the weaknesses which needed to be addressed, including:

- Unplanned and out of date training methods...
- Unmet training needs and training requirements...
- No established standards for training...
- No monitoring systems...
- On the job learning is unmanaged...
- Absence from normal duties for training places severe resource and operational constraints on establishments...
- We do not see learning as integral to our jobs...

*(Training and Development Strategy, 'Where are we now?' sections throughout the document, Prison Service, 2001)*

The absence of race or other equality dimensions from general training packages and modules was also striking. The POINT training manual for 2000 had for instance a module on 'Handling Stress' which listed 19 'work-related stressors' but did not include race, sexual or disability-based harassment/discrimination as one of them (*Tutor Note, page 13, updated 18 September 2000*). The accompanying Student Handout (*updated 1 June 1999*) also ignored race: all the excellent advice it offered mirrored exactly the experience of ethnic minority staff facing harassment or discrimination but it did not spell this out. The decade long saga of Claude Johnson's treatment by other members of staff and by managers at HMP Brixton, aside from any other cases, should have informed training materials such as these.

#### *Race relations training*

Standard 9 of PSO 2800 required training in race relations to be 'provided for all staff in the establishment, including civilian and auxiliary grades'. The Director General's introduction to an undated training pack on race relations issued in states: 'local training in race relations is mandatory for all staff every three years'.

Unfortunately, the pack repeated the get-out clause already contained in the order:

- Given... that there will often be pressure on training such as race relations to be squeezed out by training on subjects which are the priority of the moment, establishments will need to consider imaginative and innovative means of

ensuring that race relations training proceeds within those inevitable constraints. (*PSO 2800, paragraph 8.3.1*)

The pack advised that race relations training 'be delivered to an audience of no more than 16 people by trainers who have attended the specific training course run centrally'. However, the 'constraints' outlined above meant that training was frequently rushed through in order to meet targets and was consequently of poor quality. One Area Manager told us he had to take a Governor to task over the inappropriateness of attempting to deliver race awareness training to a full staff meeting of 150 people (*Commission interview*).

The training pack was a straightforward guide to some basic legal concepts, the way complaints might arise and be handled, and the meaning of equality of opportunity for prisoners. Some who have taken part in in-house training sessions using these materials told us that the quality of delivery was so poor as to negate any value that the training might have been intended to have.

Generally HM Prison Service training materials we have seen on race relations were inadequate. One example was a diversity training course being provided in 2002 for officers conducting investigations into race complaints. Here what was required was very precise assistance to governor grade staff in understanding how to unpick patterns of discrimination, deal with the particular evidential problems raised by complaints around race issues and get behind the surface appearance of events that might seem trivial to the perpetrators but could be devastating to the victims. Instead, the day long course, using drama scenarios to illustrate situations, largely replicated the basic awareness training approach. The danger, after the delivery of such a course, was that HM Prison Service could assume that investigators would be fully able to carry out effective investigations of race complaints, whereas the course would not in fact have prepared them for such work.

HM Prison Service's delivery of race relations training was also impeded by the fact that staff – including staff most in need of the training – were reluctant to attend it. At Brixton in 2001, the race relations core management team heard that recent training on race issues had 'been quite effective' but noted 'some are trying to avoid it' (*Brixton RR core MT minutes, 1 March 2001, item 3*). A review in 2000 of race relations training in HM Prison Service noted:

A significant concern was that, despite the Prison Service's policy that *all* staff should receive training in race relations and equal opportunities, in practice the onus for the training is often placed upon the individual. (*A review of existing training in race relations and outline of future strategy, October 2000, Focus Consultancy Ltd, pages 19*)

At Feltham, the Board of Visitors was told in April 2000 that:

Since 1997 to date the total training hours had been 32,415 but only 39 hours training had been provided on race relations. (*Feltham BoV Minutes, 12 April 2000*)

By that August, the Feltham BoV annual report claimed that 28.5% of staff had had some kind of race relations training (*Feltham BoV annual report, 1999/2000*). However, the figure for those who had had training was based more on new officers just into the job, who had taken a race module in their initial training, than on specific training done since they had joined Feltham:

Local training had not recently taken place but there was a high percentage of officers who had received race relations training as part of their basic training. (*Feltham RRMT minutes, 20 June 2000, item 4*)

HM Prison Service was also poor at measuring the effectiveness of its training. On the back of its strategic review of training in 2000, the Service outlined a number of objectives for change with milestones and performance measures listed. Among the milestones is to 'Develop [a] new race and diversity awareness programme'. In response to the general question 'How will this improve the Prison Service's performance?' it answers: 'Improve equality of opportunity' (*Training and Development Strategy: Where are we now? HM Prison Service 2001*). The connection between the two is distant and was a poor measure of effective delivery of proper training to staff. The absence of concrete race related performance measures meant that there was no incentive for prisons to deliver good quality race relations training to their staff.



## **Failure area 13: Protection from victimisation**

### *Key points*

- Prisoners who made race complaints were punished or victimised for making the complaint.
- A complaint by a black prisoner over racial abuse by a staff member triggered a series of complaints and investigations in which the issue of victimisation, which the prisoner saw as central to the complaints, was not effectively examined.
- The investigations and the disciplinary action against staff which ensued were inadequate.

### *Victimisation after making a complaint*

PSO 2800 states that ‘Governors must ensure that no form of victimisation or harassment’ of a prisoner who has made a race complaint takes place (PSO 2800, *paragraph 6.11.1*). However, prisoners frequently stated to us that they feared reprisals of one sort or another if they made a complaint. As a Principal Officer at HMP Brixton said, when asked how he thought staff were affected by complaints made against them:

They’ve been telling us they don’t like the fact that prisoners have made a complaint. It rubs a lot of them up the wrong way. (*Commission interview*)

The RRLO at Brixton told us:

If a prisoner complains about a member of staff, then you’ll usually find that 90% of the staff around are going to try to do things to get back at the prisoner for complaining about the member of staff in the first place. (*Commission interview*)

In its evidence to us, the Prisoners’ Advice Service stated it was ‘aware of a number of incidents where prisoners who have made complaints about racist treatment have received more punitive treatment as a result of making their complaint’ (*PAS, written evidence*).

The Prisons Ombudsman’s annual report for 2000/01 detailed one such complaint, made by a prisoner who had used a request/complaint form in response to the way the prison handled his legal correspondence. The prisoner, who was on an IEP enhanced regime, was then subjected to a drugs test, had his cell searched and was charged with possession of unauthorised articles. The Ombudsman commented:

Many prisoners still believe that some staff resent prisoners complaining and will get their own back if prisoners put in request/complaints. (*Prisons and Probation Ombudsman, Annual Report 2000/01, page 20*)

At Feltham, the imam more than once raised his ‘concerns that prisoners were being abused by staff and how did they complain without being further abused’ (*Minutes, Feltham BoV, 9 February 2000, Governor’s report as attachment*). The fear that staff might treat a prisoner differently if they were to complain was also raised in the 2000 HMCIP report on Feltham:

Cleaners, who had been longest on the wing, were asked why the prisoners did not complain. They said they would do anything to keep their enhanced status, as many perceived they would lose their jobs if they complained. (*HMCIP Feltham 2000, paragraph 2.20*)



A final, forceful illustration of the situation came when we spoke to the Chair of the Board of Visitors at Feltham. She told us of an incident which had happened eight days before our interview with her:

A boy made an allegation to me, the next thing he has been put on to basic. Why? The officer against whom he had made the complaint has written in the boy's flimsy that the boy said, 'Why are you walking on my prayer mat?' and alleged that he was being antagonistic. (*Commission interview*)

*Punishing prisoners for 'false and malicious accusations'*

The disciplinary offence of a prisoner 'making a false and malicious accusation against an officer' was removed in the mid 1990s. However, a number of staff continued to act as if it were still in force.

In this context it is worth examining the way in which HM Prison Services official policy on racist incidents has changed in the wake of the Stephen Lawrence Inquiry. In the original version of PSO 2800 as laid down in 1997 the definition of a 'racial incident' was 'any incident where any person dealing with, or witnessing, the incident alleges, or is of the opinion, that there is a racial element' (*paragraph 6.2.1*). This could prevent the individual prisoner from asserting that the incident of which they were a victim was a 'racial incident' and so triggering the formal procedures required under PSO 2800. The paragraph was amended on 14 February 2000 to say that all staff 'must be aware of the definition of a racist incident: any incident which is perceived to be racist by the victim or any other person' (*PSI 11/2000*).

This put the initiative in the hands of the prisoner rather than of staff. It and other changes helped to bring about an increase in the number of reported racial incidents:

	97/98	98/99	99/00	00/01	01/02
total reported incidents	430	890	1,986	3,179	4,532
prisoner on prisoner	169	293	661	985	1,534
prisoner on staff	169	379	716	1,120	1,651
staff on prisoner	92	218	509	1074	1,347

(*Source: Director General, written evidence, 13 March 2001, 23 July 2002 and 14 August 2002*)

However, the issue the changes were meant to address was the reluctance of prisoners to come forward with complaints, not that of the staff. Yet the largest number of complaints since the changes is, in each of the years, from staff about prisoners.

While ethnic minority staff have faced problems in raising race complaints about colleagues and have not always been fully supported in cases against prisoners, we are confident the explanation for this increase is not a sudden explosion of complaints from ethnic minority staff about prisoners. No-one has suggested that

white staff were in any way inhibited from making complaints about their treatment at the hands of black or Asian prisoners. It is likely that a significant factor in the large number of, and the significant rise in, complaints by staff about prisoners is white staff making the equivalent of 'a false and malicious accusation'. (We were however unable to definitively prove this, as, in the words of the Director General, 'The figures refer to the nature of the incident and are not broken down by the ethnicity of the individual who initiated the report'; *Director General, written responses, 10 September 2002.*)

Support for the hypothesis can, for instance, be found in the HMCIP report on Portland YOI in December 2000, which contrasted two things. On the one hand, a set of secure race relations complaints boxes had been put in each unit and the young prisoners were encouraged to put complaints in them, even if they were not written out on a proper form. By the time of the inspection, none had. On the other hand, new procedures on racial incidents had been issued to staff in January 2000 and by the time of the inspection 'there had been 42 racial incidents reports, most were from staff' (*HMCIP Portland 2000, paragraph 2.135*).

The very first case reported by the Ombudsman concerning racial discrimination came in his annual report for 1998/99. It concerned a complaint brought to him in 1998 by a prisoner who

had been found guilty of using threatening, abusive or insulting words or behaviour in that he accused the reporting officer of being racist... I was very concerned that charges had been brought in these circumstances... resorting to the disciplinary system to deal with allegations of racism or prejudice was entirely wrong and could only serve to undermine Prison Service policy in this area ...

... if allegations of racism, even if uttered in an abusive manner, are going to be treated seriously and investigated properly, this cannot be achieved where disciplinary procedures are immediately invoked... there is a clear risk that the officer to whom the 'abuse' is addressed may be the person least capable of determining whether the prisoner is raising a genuine grievance. (*Prisons Ombudsman, Annual Report 1998/99, pages 19-20*)

The Ombudsman returned to the issue when dealing with another case in 2000/01:

I was particularly concerned that an accusation that a member of staff is racist or acting in a racist manner, should ever give rise to a disciplinary charge without a proper investigation taking place... Sir William Macpherson's definition of a racist incident is 'any incident which is perceived to be racist by the victim or any other person'. The idea that such a perception should lead, without any inquiry, to a disciplinary charge is simply grotesque. (*Prisons and Probation Ombudsman, Annual Report 2000/01, page 38*)

In order at that time to have been able to make an admissible complaint to the Ombudsman, prisoners must already have exhausted internal HM Prison Service procedures. This meant that this prisoner would already have had his complaint against such treatment rejected by the Prisoner Complaints Unit at Service headquarters. In turn, this meant that investigators at headquarters level, as well as the area management and the prison Governor, had endorsed, rather than condemned, the action taken by staff.

As the Ombudsman noted in relation to the second case above, both the relevant guidance documents in the Service at that time (in this case the Request/Complaints Manual and PSO 2800) required an investigation if any complaint of racial discrimination was made. The provisions were laid down as 'mandatory'. It became obvious to us during our inquiries into Brixton, Feltham and Parc that, as soon as the issue of reporting such allegations became at all common, some officers responded to this by treating such oral complaints as punishable offences. These two cases show that officers who did this were supported by their governors, area managers and headquarters staff.

The Ombudsman recommended that the adjudication decision in this latter case be quashed and this was accepted by the Director General, but the broader policy approach was not. The Ombudsman told us in February 2001 that he was still told by the Director General that 'it must be open to an officer to make a proper judgement as to whether a prisoner is airing a genuine grievance or indulging in insulting behaviour' (*Prisons Ombudsman, written evidence*).

Nearly a year later, during the course of this investigation, we were told by the Deputy Director General that action had been taken on this issue. He said he had written a letter (in October 2001) to all Governing Governors jointly with the Director of High Security Prisons

to deal with a number of reported instances of prisoners being charged under the Prison Rules when their sole offence appears to have been calling a member of staff 'racist'. I wrote jointly to all Governing Governors to ensure that this charge was not being used as a way of discouraging prisoners from making legitimate complaints... (*Deputy Director General, letter to Commission, 20 December 2001*)

When this report was being finalised it was impossible to tell whether or not the October 2001 letter had already had an impact. The most recent Ombudsman annual report referred to a case which had arisen in 2001:

Cases where prisoners have been charged for alleging racism on the part of officers have caused me grave concern once again this year. Sad to say, the number of such cases we have been asked to investigate appears to have

increased. (*Prisons and Probation Ombudsman, Annual Report 2001-02, page 43, web version*)

*A series of incidents concerning one prisoner in HMP Brixton*

The issue outlined above concerned a general approach followed by many staff. We examined in detail the handling of one series of complaints by an individual prisoner in HMP Brixton where victimisation was a clear theme running through the events.

The chain of events began just before the ‘reflections’ practice in Brixton had been stopped after exposure by the RESPOND inquiry. Governor’s Order Number 36/00 was issued on 27 June stating that ‘any practice where prisoners who would otherwise be on association are locked up, are unauthorised and illegal and must stop immediately’.

The Prisoner complained of a number of incidents over a six month period including:

- lodging a Racial Incident Reporting Form alleging a background of racially offensive remarks by a member of staff who when asked on 7 June to help the prisoner deal with a short circuit in the A/C outlet in his cell, said ‘he hasn’t got time for that and why can’t I suffer it considering that we don’t have TV in Africa and he then walked away’. The following day he was moved to a different landing in the same wing. During the move, the officer and he exchanged more words and ‘the PO gave him permission to bang me up’.
- putting in another Racial Incident Reporting Form saying that that morning he had been taken by the second officer involved in his first complaint and was given a drug test. The form stated: ‘I said to him as you know I have been in Brixton for over four years. In the course of these four years I have had several VDT and MDT and the results have all been negative. Ironically just a week after [a] complaint about you and Mr ----, my VDT is now allegedly positive.’ He volunteered for a second test, which was carried out by a Senior Officer and was also stated to be positive.
- His status in the IEP hierarchy was then reviewed and he was reduced from enhanced to standard. The form added that the officer said to him: ‘Your black A is now mine, pack your kit and you are moving to a basic cell after lunch. He said while you’re here you would have enough time to reflect on if you want to proceed on your complaint.’ The following day, he was then taken from C Wing to G Wing – the latter having no in-cell TV and less access to the gym.
- The prisoner put in a Request/Complaint Form covering the handling of several work applications he had made after he was transferred to G Wing. He applied for a job as a painter immediately after he was transferred and was given security clearance for the work but was then told he was no longer needed. He applied for cleaning jobs and in one instance was helped by two members of staff to get the written application sorted out, but the job went to someone else and the paperwork disappeared. The five page complaint offered detailed allegations

about how on two occasions a cleaning vacancy appeared available for him to fill, but staff appointed white inmates instead.

- A further Request/Complaint Form alleged that, despite the Governor saying he should be allowed back to the gym, 'it appears some officers have got a personal problem with this'. The prisoner said he had been told that only prisoners who were Cleaners could attend early morning gym, but claimed that a white prisoner who was not a cleaner was able to attend. The prisoner said that the PEI said to him: 'All this fuss you've been causing and all the fxxxxxx special treatment you've been getting would not happen in my gym'.
- The prisoner put in a further Request/Complaints Form alleging that in late June or early July he had asked the Gym staff about the possibility of getting a Gym Orderly job but was told that, as he was not 'Compound Cleared'<sup>15</sup>, he was not eligible. The form alleged that a white lifer in a comparable situation so far as compound clearance was concerned had been appointed to such a job.

Over the months that followed, the prisoner continued to complain about actions by staff and of further steps taken against him when he complained about these things. Forms signed by other prisoners were also in his handwriting and it is clear that this prisoner helped a number of others with their complaints. The Governor commented to us that

Well educated, articulate, intelligent prisoners who push issues always get up the noses of prison staff ... they do find it hard to deal with somebody who knows the rules and pushes issues.

The RRLO sent a memorandum to the Deputy Governor saying that the prisoner had verbally complained to him about the action of gym staff. The RRLO added:

I was personally involved in an incident whilst working on B wing where a list had been taken the previous day for those prisoners who wished to attend the gymnasium. [the prisoner's] name was on this list and a discussion took place between gym staff and B wing staff who discussed the logistics of denying [the prisoner] access to the gym. I got involved and decided that irrespective of their personal grudges [the prisoner] would attend the gymnasium. I spoke to Governor ---- who confirmed that the Area Manger had directed that all the privileges that [the prisoner] had enjoyed on C wing would be restored, which included access to the gymnasium. (*RRLO Memorandum 7 September 2000*)

Some staff did not understand how the treatment of prisoners in this kind of context could be related to 'race'. One who was involved in one of the incidents as a witness told us:

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<sup>15</sup> Because of the way the main security wall at Brixton was built, those attending the large gym had to be security cleared to attend.

He has made a lot of enemies ... because every small thing that could be ... he would be telling you that he will call his lawyer ... So it could be it's not to do with race. (*Commission interview*)

The Area Manager said he felt the prisoner should be moved to another prison 'with better facilities and regime' (the prisoner turned down this offer) and added:

There is some danger if [the prisoner] continues on the Wing on which he is at the moment, of there being some instability within Brixton. (*Area Manager London to Governor Brixton, 16 August 2000*)

The point for us was the degree to which actions in response to such an approach by a prisoner – to complain when they face improper action by staff – may be triggered by complaints about racially discriminatory treatment and so fall into the category of actions covered by the provisions in the Race Relations Act dealing with unlawful victimisation.

### *The Investigations*

There were three HM Prison Service investigations that are relevant, two by governor grade members of staff from Brixton itself and one by an external team. Only the first of these investigations demonstrated any proper understanding of the issue of victimisation, however the actions it stimulated while it was on going and which it recommended in its report did not lead to an end to the problems faced by the prisoner.

#### *Investigation 1 – external investigators*

This brought in two external investigators, one a drug policy specialist. They looked into the prisoner's first round of allegations. They found that three members of staff, one of them a Senior Officer, 'had attempted to mislead the investigation team'; that officers 'on the balance of probabilities' had made 'racial' or 'intimidatory' remarks to the prisoner; that an officer had 'attempted to dissuade [him] from pursuing his complaint'; and that an officer had 'in malice' carried out a drug test on the prisoner one hour after that prisoner had informed the officer of his intention to complain about him (*ICU 68/2000 report, pages 6, 8*). Among their other findings were:

- ▶ SO ---- allowed/authorised Officer ---- to conduct a VT test on Prisoner ---- alone, despite ---- having recently made complaints about Officers ---- and ----.
- ▶ The result of both VTs were false positives, prisoner ----'s medication influenced the test outcomes. Officer ---- conducted the test without appropriate training though authorised by Senior Officers ---- and ----. The VDT test conducted by SO ---- was incorrectly judged as positive ... SO ---- was not formally trained, certified to undertake the test and SO ---- has stated

that he observed a trace line on the test card which should have told him the test was negative.

- ▶ The change of status that the prisoner suffered on the incentives and earned privileges were not restored to [him] until the intervention of the investigation team, this was despite the local VT co-ordinator advising managers of the unsafe tests ... The restoration of Prisoner ----'s status was unnecessarily and un helpfully delayed.
- ▶ The monitoring of MDT (as recommended by PSO 2800) and VDT tests and results are not subject to ethnic monitoring.
- ▶ All prisoners moved on 20 June 2000, in response to MCS recommendations, were of minority ethnic groups.
- ▶ PO ----- was in an acting capacity and did not have enough operational experience to effectively manage C Wing, despite winning some confidence from senior managers ... PO ----- was not briefed adequately prior to taking up his acting role as manager of C Wing.
- ▶ PO ---- condoned and directed that [the prisoner] was unlawfully confined to his cell. (*ICU 68/2000, page 4, 5*)

The investigators recommended disciplinary action against five members of staff.

### *Investigation 2*

This looked at the complaint by the prisoner over the way staff handled applications he made for the jobs of painter or cleaner on G Wing. These interviews did not probe the aspects of the allegations which touched upon possible interference in the applications by officers. In particular, two officers stated that the necessary paper work for an application to be a cleaner had been filled in and left in the office ready for processing by the incoming shift on the following day, but that the paper work then disappeared. Five of the seven interviews were done via written questions and the investigator simply accepted the answers without challenging them in any way, even when the answer did not directly respond to the point in the question, as in:

**Question:** Has [the other prisoner given the job] been cleared by security before he was given the job?

**Answer:** [The other prisoner] was used as a temporary cleaner.

*(Investigation of complaint BXB/00/718/R, completed 10 November 2000, page 12)*

The investigator concluded that one of the 'causes of the complaint', as their report put it, was 'lack of a formal system for appointment of prisoners to work on the Wing' (*as above, page 18*) This was a milder conclusion than the statement given to the investigator by the Governor during an interview that 'There was no system in

place. Staff can employ prisoners and sack them as they go along' (*as above, page 15*).

This lack of procedure was interpreted by the investigator as the problem. There is no evidence from the text of the report that the investigator tried to find any evidence of either discrimination or misconduct. None of the weaknesses and contradictions in the statements made by the different staff were explored. In contrast, the proposals for a proper system of allocation to work that the investigator put forward were comprehensive and sound.

### *Investigation 3*

The investigator interviewed a number of staff (including the RRLO who repeated the points he had made in his memorandum to the Deputy Governor) and two prisoners in addition to the complainant. The crux issue in this investigation had to be whether or not the gym staff were taking action against the prisoners because of the complaints he had made – in other words, was he being victimised.

One prisoner asked whether he could remember remarks made by a PEI to the complainant, responded by saying:

I can't remember nothing. I don't want to get involved in any rows. (*ICU 187/2000 interview dated 17 September 2000*)

The other prisoner asked about remarks said to have been made to the complainant by the same PEI and whether he felt they were made in an 'intimidating manner', replied: 'I can't say anything about that.' The record then reads:

**Question:** Are you telling me that you don't feel in a position to make a judgement in regard to that or that you don't wish to say anything in regard to that?

**Answer:** [The complainant] might have taken it as intimidating. I didn't because he wasn't talking to me. (*ICU 187/2000 interview dated 17 September 2000*)

In the investigator's conclusions this becomes:

---- was aware of something going on between [the PEI] and [the complainant], but he could not say whether [the complainant] was being talked to in an intimidating manner. (*ICU 187/2000 Report dated 7 November 2000*)

The witnesses to the exchanges between the PEI and the prisoner also included one member of staff who told that investigator that he had heard a remark made to the prisoner by the PEI about which the prisoner had complained:

**Question:** Did you at any time hear PEI ---- say to [the prisoner] something to the effect about 'all the fucking treatment you have been getting'?

**Answer:** I'm not sure but I think so, something along that line was said but



I'm not sure about the wording. (*ICU 187/2000 interview dated 25 September 2000*)

The investigator's report noted the staff member's evidence in his 'conclusions' but when he came to make 'recommendations' he stated that

The content of these [exchanges between the PEI and the prisoner] could not be substantiated by the evidence forthcoming, in the main, due to two prisoners who obviously did not want to get involved in any enquiry. (*ICU 187/2000 report, dated 7 November 2000*)

It is important to note that the investigator did not say the prisoners had rebutted the evidence of the complainant, rather that they were not prepared to come forward. But to sustain his conclusion that 'whilst believing the conversation took place, content, attitude and manner is not clarified', the investigator had at that point to ignore the clear evidence of the member of staff and so blame the problem on the reluctance of the prisoners.

It is ironic that in an investigation into complaints of victimisation coming from one prisoner, the investigator should explain his failure to gain evidence by the reluctance of other prisoners to act as witnesses.

#### *Actions taken by the Governor*

The Governor wrote to the prisoner in the wake of the second investigation saying his 'complaints have been investigated in detail' in the report 'which I have studied' and repeated that it had found no evidence of anything wrong (*Governor letter to prisoner, 21 November 2000*). He notified the prisoner of action he proposed to take to ensure more proper administration of allocation to prison work.

However, on the grounds that there had not been any local instructions in place at the time of the testing, the Governor decided not to follow up the recommendations in the external investigator's report that he charge the staff involved in the drug testing under the HM Prison Service disciplinary procedures. He told us that 'I haven't documented why I made the decisions' (*Commission interview*). The two officers with whom the prisoner originally clashed were charged with racially harassing him and the Principal Officer of C Wing with 'confining you to your cell without proper authorisation'. This was the issue over which he was charged under the discipline code. However, the Governor's decision was to award a 'formal disciplinary oral warning' on the grounds that

There are no, or there were at that time no, clear written protocols about what should be done. In this time there was widespread use of informal locking of prisoners in the cells which was not logged by the management of the prison ... I do understand that in the general context that this was not a particularly improper thing to do.

But he added:

I accept that your reasons for doing this were good, that is you wanted to avoid a worsening of an incident on the landing ... although I do not officially consider because the prisoner is argumentative, that is grounds for locking him in his cell. If that was the case, half the prison would be locked up most of the time.

In respect of Investigation 3, the Governor did not ask the investigator to return to the drawing board and do a proper investigation. He accepted the 'evidence of a general lack of clear and firm overall management of PE activity' (*Governor letter to prisoner, 21 November 2000*) and the need for a better approach in future, to which end he required senior staff to draft procedures and lay down requirements to the gym staff. When it came to disciplinary action however he amplified the investigator's points about prisoner reluctance to come forward:

There is insufficient evidence to take disciplinary proceedings against [the PEI] in this regard, particularly in view of the apparent disinclination of prisoner witnesses to become involved.

and:

There is no clear evidence of harassment, intimidation or racism on the part of staff.

Even on the basis of the evidence contained within the interviews gathered by the investigator combined with the memorandum from the RRLO, this judgement was not sustainable.

*The atmosphere of victimisation:*

The atmosphere was described by the RRLO:

If a prisoner complains about a member of staff, then you'll usually find that 90% of the staff around are going to try to do things to get back at the prisoner for complaining about the member of staff in the first place. I believe that the only reason that they had decided that he wasn't going to the gym was because he'd upset a member staff ... (*Commission interview*)

The RRLO said he had tried to have systems put in place to protect those who made complaints. Indeed the RRLO went so far as to assert that, in respect of this particular case, he felt that the Governor 'took such action as to ensure that there wouldn't be a result that was favourable to [the prisoner]' (*as above*).

That the anti-bullying policy did not feature in the minds of leading managers at that stage in the prison came out in an interview with a senior staff member:

**Question:** What's the current system in place to protect prisoners from victimisation after they've made a complaint?

**Answer:** If they're making a complaint against staff there isn't a set system ... I'm not familiar to be honest with the anti-bullying strategy that we have in place here. A difficulty at the moment is that we're all developing so much of our own areas that we haven't really got that much time. (*Commission interview*)

### *Conclusions*

HM Prison Service investigations into these various complaints by this prisoner were kept apart and so the chain of events in which decisions by staff bounced off earlier complaints by the prisoner was never actually examined. Victimisation, as defined by the Race Relations Act was never properly examined as a possibility.

The governor grade member of the Brixton staff who had carried out investigation 2, told us of the specific matter that he looked at:

I was investigating to find out if there was any racist element in it, which I didn't find. I was aware that he had made a complaint ... I wasn't taking that into consideration, I was just focusing on what I was asked to do.

**Question:** But does not [the prisoner] make reference to the fact that he thinks this treatment was because of him having made complaints before?

**Answer:** Yes, he said something like that but it is difficult for me to use that in this particular case because there is no concrete evidence. That was how he feels, but I haven't got any objective kind of thing to say this might be why the officers were dealing with him in that way. So I try for that not to influence what I was looking at. (*Commission interview*)

Looking at each matter individually in this way meant that a key reality was obscured. Indeed the final phrase of his statement above suggests that he carefully avoided looking around for evidence of the very thing that the prisoner was in fact complaining about.

The Governor accepted that

very few of the people who do investigations have been trained ... People are making it up as they go along ... The rules and guidance are extremely vague and people are operating on the basis of common sense basically ... the tradition is that you ask people a question and you record their answer - that's it. There is not a tradition of pressing people and I think most of the investigators are perhaps overcautious of the possible industrial relations ramifications and for that reason don't always push as hard perhaps on some questions as they should.

**Question:** Do you think the current investigators are currently qualified to judge whether a complaint has a race element?

**Answer:** It depends. If it is something gross, then I think most of them have, but if it something subtle and particularly if it's unintentional (if it's sort of institutional racism in practice) I suspect not.



## **Failure area 14: Management systems and procedures**

### *Key points*

- On key occasions senior managers in HM Prison Service were unaware of problems on the ground
- Staff were able to breach fundamental safety requirements and sabotage prison systems but go unpunished
- Basic race equality practices – such as providing a diversity of goods in prison shops – were never made the kind of management priority which would guarantee successful delivery of the stated objectives of HM Prison Service

*Poor management obstructed race equality success*

Good management practice in HM Prison Service is the doorway through which race equality policies must pass if they are ever to become race equality achievements. Good management practices are also required to ensure the delivery of general practices without which prisons cannot be safe places for those who might be vulnerable to racial abuse, harassment and violence.

These were fundamental principles which the Service did not deliver on in the period covered by our investigation despite the hard work and excellent intentions of many in the staff at all levels.

The tragedy of HM Prison Service in the latter 1990s is that a race relations approach focusing on outcomes and outlined in the 1991 Race Relations Manual was replaced by one in 1997 which focused down onto a limited number of procedures.

The management of procedures for dealing with race relations replaced the objective of the elimination of racial discrimination and was paralleled by a continuing separation out of the structures of race relations from the general structures of decision taking at all levels in the Service.

This was not the way in which some of the deep seated problems present in the Service could be tackled. The consequence was the chain of failures that culminated in the murder of Zahid Mubarek; the persistent failure to treat Claude Johnson properly; the continued lack of concern over obvious and strong inconsistencies in the way prisoners were treated and the toleration of an atmosphere in prison establishments in which staff did not act vigorously and decisively in the face of pervasive racist abuse.

Several of the individual instances where we have made findings of unlawful racial discrimination go to supporting these broad points:

- Failures took place at the level of handling individual matters within the individual prisons.
- Failures took place at the level of not putting to right what was wrong. Everything that was done wrong in Feltham during the chain of failures up to the murder of Zahid Mubarek had been the subject of some kind of criticism in a Chief Inspector's report or other evidence available to senior HM Prison Service management over the previous years.
- Failures took place when managers chose to be reactive and not proactive. They did not give advice to staff on many important matters, leaving staff to either blunder or to struggle to find their own solutions, as for instance with the issue of inciteful films and videos. Or they insisted that racial incidents could not be

investigated unless the victim – real or supposed – made a complaint even when clear evidence – such as an abusive note was available.

- Failures took place at the strategic policy level when practices were introduced without taking into account the consequences for ethnic minority prisoners as in the case of the Incentives and Earned Privileges schemes and the consequential restrictions on ‘handing in’; in the apparent inability of the Service to think through the influence of negative stereotypes of the black male prisoner in the disciplinary system or the effect of the high level of illiteracy on the ability of prisoners to access services.
- Failures took place at the level of priorities with race issues either ignored or downgraded in the managerial pecking order. This was both apparent in the way some areas of failure were tolerated (for instance the provision of adequate diversity in the goods sold in the prison ‘canteen’) and in the way inadequate provision was made for solutions (for instance the persistent inability the Service demonstrated when it came to giving adequate hours for the work of Race Relations Liaison Officers).
- Failures took place at the level of line management when staff were allowed to disobey instructions and Orders – or just simply fly in the face of common sense in the way they acted – and yet avoid any disciplinary consequences. We discussed one aspect of this in Part 1 when discussing the failure to discipline anyone responsible for any aspect of the circumstances which made the murder possible. There are other examples in this part of our report.

The latter point is of great importance in the context of the discussion of institutional racism. For some this has become a convenient way of the ticking the ‘must do race’ box on the management agenda paper.

The purpose in focusing on the responsibility of the institution as a whole to challenge the way it works and the outcomes it delivers when it comes to race equality is not to allow individual members of its staff off the hook of facing up to their accountability for failures. Rather it is to extend the range of failures we should be looking at and deepen our understanding of the way those failures can occur or the kind of consequences they can have and the thoroughness and the nature of the action required to put them right.

To this end, we have singled out three issues to highlight the nature of the failures of management in HM Prison Service in the period covered by our investigation: central and senior managers were not aware of what was happening on the ground; staff did not do what they should do or often did not do it when they knew; and senior managers failed to put an adequate priority on race equality matters, so allowing the first two problems to fester.

*Managers who did not know what was going on*

We do not underestimate the difficulties those responsible for the Service faced. The Director General told us:

I'm running a dispersed organisation ... One has to acknowledge that and give considerable discretion to the local manager, the Governor ... We try to get the balance right between what we prescribe and impose and where we leave things to local discretion ... I need to leave Governors with the discretion to adapt and use their own initiative. (*Commission interview*)

The point would be well taken by any manager of a large dispersed organisation running an array of functions and tasks as complex as those managed by HM Prison Service. Allowing sensible problem solving initiatives at a lower level against a background of general good practice and a desire to achieve and effective reporting systems which mean that those at the very top know what is going and can intervene to put things right are all part of a well run organisation.

An illustration of the way in which this was not the case in HM Prison Service came when the Director General was given the first reports of the Inspectorate's views on YOI Feltham in 1998. The Chief Inspector wrote on 7 December 1998 to the Home Secretary and this letter was the first intimation to the Director General of the seriousness of the Chief Inspector's criticisms. It also appears to have been the first indication that the Director General had of the seriousness of the situation in the prison. A successor told us:

What I inherited was a situation where we didn't have the management information, the management drive or grip for my predecessor to know about that. Indeed, I can remember being with [my predecessor] when he got [the Chief Inspector's] first very critical report on Feltham and it was a grave shock to him. (*Commission interview*)

What made this a most serious weakness was that the Chief Inspector's report in 1998 was not the first one to be highly critical of Feltham. That those at the top were surprised can only have been because they were not adequately reacting to the weaknesses revealed in the Chief Inspector's previous reports, neither by managing change programmes, nor by monitoring for progress.

The lack of knowledge was not just a matter having laid out a piece of guidance or having issued an order and then not knowing or not seeking to find out whether or not it had been carried out (as with the chain of Failure Areas in the Part 1 of our report), it was also a matter of basic ignorance as to what prison staff did on the ground.



Just exactly what, for instance, did Prison Officers do in the course of their work? HM Prison Service Management Board, the senior management forum in HM Prison Service discussed this question on several occasions in the summer of 1999, agreeing that:

There was a probably a need for a major review of the role of the Prison Officer ... There were clear implications for the delivery and organisation of Prison Officer training. (*Note of PSMB, 28 June 1999, page 2*)

A review along these lines was set in train later that year. The Board heard:

It was necessary to clarify the role of the Prison Officer ... ---- said that Alison Leibling's Prison Officer research work was very relevant. Other Board members agreed. (*Note of PSMB, 13 September 1999, page 2*)

This weakness ran through HM Prison Service to the level of the individual establishments. For instance, we have discussed the use of ethnic monitoring at various points in this report, pointing to weaknesses on many occasions. In its representations to us on our draft report HM Prison Service conceded that improvement was needed in this area:

The Service accepts that a number of its establishments have difficulty in analysing their data correctly. This has become more evident as work is underway to ensure compliance with the Race Relations (Amendment) Act 2000.

But it was a wider weaknesses than this. Systems were not only absent, managers not only did not know, they did not seem to want to know and that gave free rein to a negative staff culture. Addressing the Feltham Board of Visitors about the findings of the Chief Inspector in October 2000 at the prison, a representative from the Inspectorate said:

Much of the old 'Ashford' culture remained among staff and this made it difficult for the new staff to move forward. There was a lack of leadership ... (*BoV minutes, 8 November 2000, page 5*)

Ashford and Feltham merged in 1983 and so the persistence of this culture on the new institution 17 years later says something about a consistent failure by management to take control of what staff were doing and direct it properly. A parallel point had been made at the BoV meeting on 10 February 1999 by the Governor who

Recognised that there was a battle based on strategic management where the staff believed the regime was determined by the team not management. (*Feltham BoV, 10 February 1999, item 1h*)

*Staff did not carry out good practice*

This leads directly to consideration of the problem of staff simply resisting instructions. The lengthy history of victimisation of an individual prisoner recounted in Failure Area 13 included action by the PE staff in HMP Brixton refusing to implement an instruction that the prisoner concerned be allowed back into the prison gym. We asked the Governor about this:

I had some long and very heated discussions with the PE Department about all this and I remain unconvinced that they understand that PE is not their own personal gift. If you told me that they were still doing that, I would not be at all surprised. I have asked that an operating procedure be written on how prisoners get to PE and I have seen the draft of this and of course it avoids the issue of how you get selected, it just talks about how you physically get there. This is an on going battle that we are very far from winning. (*Commission interview*)

It is a scenario that is difficult to understand in a uniformed and disciplined service such as HM Prison Service. Our concerns about this were increased by the behaviour of staff in the same prison when it came to the alarm system to enable individual prisoners locked in their cells to alert staff to emergencies.

In November 1994, Christopher Edwards was murdered in Chelmsford prison by a dangerously mentally disturbed prisoner placed in the cell with him. An official inquiry report issued in June 1998 made a number of recommendations designed to ensure that such events did not happen again. Part of the evidence put before the inquiry was that the cell alarm had been tampered with and this might have had some impact upon the circumstances. The inquiry's report recommended action on this as one of seven areas it saw as being of particular concern.

A year later on 15 June 1999, HM Prison Service issued a statement saying that it had reported back to the inquiry panel on action it had taken over the seven areas. The news release stated:

We have addressed each of these in turn as follows: ...

**Effectiveness and potential abuse by staff of the cell call alarm system**

Improvements to these systems which make tampering much more difficult have been designed and are being installed as funding permits. Regular management checks of all cell call alarm systems are being introduced.

While one might accept that resource restrictions could slow down the introduction of new equipment, the managerial changes talked of could kick in overnight. Almost exactly a year later the Inspectorate found systematic tampering with cell alarms across the establishment at Brixton - and no management system was in place either to check on the bells, uncover the staff action rendering them useless or ensure that disciplinary action was taken against all those responsible.

The Chief Inspector's report of the inspection of Brixton in June 2000 said:

We were extremely concerned to find that, although the indicator lights worked, all audible cell call bells were out of action. One officer said they had been cut off for several months. We attempted to switch them on in the main landing office on G1 but without success and later discovered that they had been sabotaged, the wires on each landing having been cut. Upon further investigation we found the problem was endemic throughout the prison as they had been pinned or taped off in all but B and D wings. Officers on each wing concerned had been fraudulently signing daily Locks, Bolts and Bars records for the whole period the cell call bells had been switched off. (*HMCIP Brixton 2000, paragraph 2.53*)

Parallel published evidence on Feltham for consecutive inspection reports covered both deliberately slow responses by officers and alarms being cut off. According to prisoners in 1996:

Staff were slow to respond to cell bells, prisoners were concerned about the implications of this in relation to suicide attempts (we observed occasions when staff were slow to respond)... We observed a cell bell ringing. Staff made no move to deal with it and when asked why, they said that the juvenile in the cell was not somebody they were really concerned about and consequently they would leave answering the bell for a while! ... (*HMCIP Feltham 1996, paragraph 2.01; paragraph 3.68*)

On three separate occasions we found the cell call bell system for [the reception holding rooms] had been switched off. (*HMCIP Feltham 1998, paragraph 1.17*)

When the cell call systems [in the Segregation Unit] were checked, it was found that the audible alarm had been switched off by staff. (*HMCIP Feltham 2000, paragraph 2.104*)

This latter record was despite the fact that the Feltham Governor had issued an Order on 2 July 1999 saying:

It is a major design fault at Feltham that cell call systems can be muted by switches in wing offices. The new refurbishment will remove that system and replace it with an auditable cell call system ... Staff will be aware that one of the things I pay particular attention to on visiting wing offices is whether the cell call system is muted or not ... muting or cancelling cell call systems is absolutely prohibited. There should now be no member of staff in Feltham who is unaware of my position on this ... There will be automatic disciplinary action if, on a night visit cell calls are discovered muted (*Feltham Governor's Order 55/1999*)

We asked HM Prison Service how many prison staff at HMP Brixton were in any way disciplined for the sabotage of cell bells as uncovered by the Inspectorate or for the persistent falsification of the records which had showed that they were working? The answer to this was given to us as ‘none’.

*A Service which did not prioritise race properly*

An example of this was the provision of suitable goods in prison shops (or canteens in the terminology of most prisons at the time). We referred on page 84 to the fact that a letter went from the Director General to all prisons in 1999 providing those running prison shops with a list of the toiletries and foods they should be making available for ethnic minority prisoners. This was supported by a list of suppliers. However even this approach did not get the letter to every relevant officer and the problem persisted.

Three points arise from what happened.

First, over the following two years HM Prison Services statistics indicate that the situation deteriorated. Each year the Service produced a race relations annual report first of the Prison Service Race Relations Group and then of the Director General’s Advisory Group on Race. These showed that in answer to the question as to whether a prison canteen or shop was providing goods to meet ethnic minority needs those answering ‘Yes’ had been 94% in 1992-93; 85% in 1993-94; 88% in 1994-95; 88% in 1995-96; 88% in 1996-97; 84% in 1997-98. The year the Director General’s letter went out showed a steady percentage: 1998-99 at 90% and 1999-2000 still 90%. The following year however it fell back to 81%, the lowest percentage in a decade.

Second, there is the obvious point that this cannot have been a big problem to resolve. The number of products involved was relatively small. The number of establishments concerned limited, never more than 140.

Third, we could see no evidence that any part of the managerial processes of HM Prison Service properly sought to tackle the issue. The annual report for the year when the letter was dispatched said it had ‘prompted a number of enquiries so we hope that progress on this issue will finally be achieved’ (*PSRRG 9<sup>th</sup> Annual Report Section 10*). The problem instead persisted.

While we were conducting this investigation the list was re-issued in the Service’s *Diversity in Focus Newsletter* which commented editorially:

Prisons have indicated that they have experienced problems in terms of obtaining special products for ethnic minority prisoners. This has been a problem going back a number of years and has not got any worse as a result of contracting out. In the past establishments were left on their own to

develop local initiatives. (*Diversity in Focus Newsletter, Issue 1, October 2002, page 10*)

Such a scenario points to what might be called an institutional incompetence when it comes to race equality practice which persistently obstructed the proper delivery of policies which the Service said were a matter of priority and which were also a matter of the legal rights of prisoners. It can only have persisted because senior managers did not see it as a matter worthy of adequate consideration on their part.

The reminders to HM Prison Service senior managers of what they needed to do in order to ensure the delivery of good race equality practice were many and constant. Some were given by the Courts. One Employment Tribunal finding issued in 1998 concerned a case brought by a member of HM Prison Service staff over discrimination in HMP Wandsworth. The Tribunal found

that the applicant was the butt of jokes and he was an object of derision by ---- and others. ---- was confident in the thought that he could engage in a physical assault against the applicant with no justification whatsoever knowing there would be no comeback.

The Tribunal added in an important general comment of ‘the Governor in charge’:

His claim that he was committed to the equal opportunities policy was not fully translated into action lower down the chain of command. We consider that senior officers pay lip service to the Equal Opportunities policy. There was a marked lack of awareness of the fundamental principles of such a policy, as was apparent from the responses of the various witnesses. We consider it important to make this observation because we appreciate the difficulties that Governors in charge experience when faced with allegations of discrimination about matters of which they would have no direct personal knowledge.

We consider that, in a structured and disciplined environment like a prison establishment, it is possible for acts of petty as well as serious racial harassment to take place unless active steps are taken to give a clear signal and direction that such behaviour will not be tolerated. A paper commitment to equal treatment is not enough. (*B Amadi v HM Prison Service, 1998*)

This cogent statement of a core problem for the Service did not become the wake up call it should have. HM Prison Service had no system of making the lessons of such Tribunal cases known to all Governors. Findings like the one above were not distributed to all relevant managers across the Service.

What is worrying is that this clear reminder of the need for a management to treat the matter of race equality as a priority and act upon it proactively was far from the only one during the period we investigated.

### *The case for race equality work*

In contrast to these management failures, improved race equality outcomes within an organisation like HM Prison Service would have meant better performance generally. For example, if prison managers had taken steps to ensure that racial harassment and abuse was dealt with, then, to achieve any such reduction, general negligence in the care of prisoners would have had to have been tackled and reduced.

Put simply: race equality practice needed to sit within each of its functions as a driver for improvement. But for it to be that, the approach to race equality needed to be one that did not limit matters to the installation of a process (the establishment of a committee, production of a poster or the gathering of columns of statistics). Instead it should have focused on the purpose: the elimination of discrimination and the promotion of equality of opportunity and good race relations and, in turn, the benefits such changes would bring.

A powerful example of the force of this argument was, we consider, provided by the chain of events we described in Part 1 of our report: the areas of failure in good practice which opened the way for the murder of Zahid Mubarek. Each of these involved an aspect of the treatment of prisoners where, as a result of bad, or absent, practice, all prisoners were potentially at risk with ethnic minority prisoners being a special category within that because of the way in which failures of practice allowed a racist prisoner to operate unchecked or inadequately checked. Fulfilment of HM Prison Service's statutory duties in respect of race will be impossible if such failures are allowed to persist.

We consider the same argument applies to the other areas of practice we have examined across the other events and other prisons involved in our investigation. It is worth therefore highlighting some of the advantages race equality practice could have brought to functions of the Service other than the prevention of racial harassment and violence:

#### *High quality custodial care*

HM Prison Service has prided itself on being a people-centred service. What enables it to work well is good relations between individuals. The ability to achieve this is what makes a good prison officer. In such a context, racism is not only morally wrong and a breach of the law, but is also in direct contradiction to the primary qualification for excellence in staff. Developing race equality practices will develop the right approaches and skills for staff.

#### *Attracting and rewarding appropriate staff*

Failure to introduce equal opportunity practices and eliminate discrimination means that the organisation shuts itself off from available talent when it comes to staff

recruitment, does not effectively utilise the skills of the staff that it does have and may lead to the dismissal or resignation of excellent ethnic minority employees.

#### *Effective information systems*

Race equality practices require the effective development, monitoring and dissemination of information. If implemented properly, these systems will pull other information chains along in their wake.

#### *Better focus on appropriate actions*

The removal of the influence of racial stereotyping from decision making processes means that the organisation can target its practices properly upon their actual purposes, more effectively identify problem issues that the organisation needs to address, and so develop better practice across all its functions. It drives up objectivity across all decision making processes.

#### *Service delivery*

Ensuring services within the prison – from education opportunities to meals – meet the needs of ethnic minority prisoners will, by focusing attention on service delivery, improve the access to and quality of those services for all prisoners. In turn, this will have a knock-on effect on the quality and effectiveness of the prison regime in general. For example, meeting the needs of ethnic minority diets creates the potential for greater variety for all prisoners, results in less irritation over food, and helps improve the atmosphere in the prison.

#### *Safer custody*

Despite the great attention given to suicide and self harm prevention in recent years in HM Prison Service there has been little attempt to understand what lies behind the significant differences in the rates of suicide and self harm between prisoners from different ethnic groups. Gaining a better understanding of why prisoners engage in this behaviour and what can be done to help divert them from it would be greatly assisted by an understanding of what lies behind these differentials.

Black prisoners are underrepresented among those committing suicide but there has been no attempt to discover what coping mechanisms they employ, consciously or unconsciously, which enable them to avoid suicide.

On the other hand, it has been our impression that the Irish group in prison, possibly also within that the Irish Traveller group, manifest high levels of self-harming behaviour including suicide.

An understanding of why the one group experiences low rates of suicide and the other does not would help direct attention to those aspects of the treatment of

prisoners which lie behind such differences (the weakness of reception procedures, problems of literacy, cultural misunderstanding, poorly functioning Personal Officer schemes and so forth) and help resolve problems in key areas of weakness.



## **Conclusion: Findings of unlawful discrimination**

Consideration of the incidents and circumstances outlined in the 14 areas in which we found evidence of failures has required us to make a number of findings under the Race Relations Act.

In some cases, the findings we have made are matters of what we consider to be fact which may not in themselves be directly issues to do with race but which will have had a significant bearing on the ability of HM Prison Service to deliver race equality outcomes for its staff or the prisoners.

In others, we have pointed to issues which have a direct relevance to race but which may not have amounted to unlawful racial discrimination. These will have even greater relevance in framing the kind of actions the Service needs to undertake in order to put matters right.

Most importantly, we have made 17 findings of unlawful racial discrimination.

Most of these are findings dealing with individual incidents or circumstances and with individual practices. The evidence to support these findings came from our investigation of the circumstances we found within the three establishments named in our terms of reference.

These individual findings, and the finding in respect of circumstances leading to the murder of Zahid Mubarek, lead us to make the two overall findings in respect of HM Prison Service's failure to deliver equivalent protection to all prisoners in its care or to deliver race equality in the way it employed staff or treated prisoners.

While the detail of some of the individual findings arises solely from events within the three establishments, others have significantly wider implications for the Service as a whole. They range from issues (such as the transfer of racist prisoners from one prison to another) which show how incorrect actions in one prison can affect other establishments; through issues where the basic problem was a policy or practice which was Service-wide, to those where the origin of the problem was the failure of Service wide management to ensure that delivery of proper practices at the level of individual prisoners.

We are confident that our findings have relevance to HM Prison Service as a whole. They are a reminder that good intentions and the presence of sophisticated policy

documents are not enough to deliver race equality practice throughout the way an organisation works. They provide a backdrop against which HM Prison Service can judge its progress over the coming years.

The findings have been organised by failure area and have been anonymised with the exception of those names which are already in the public domain.

## **FAILURE AREA 1 - THE GENERAL ATMOSPHERE IN PRISONS**

**FINDING 1** – Finding of fact pursuant to the exercise of the power in section 43(1)(a) and (b) of the Race Relations Act 1976.

**Particulars of finding** - It is a finding of this investigation that the Respondent did not take adequate steps to ensure that the policies on race equality that it published from 1991 onwards were properly implemented, despite evidence from research, surveys, monitoring and employment tribunal cases that the policies were not being delivered in respect of either prisoners or staff.

*Refer also to Failure Areas 2, 3 and 12 in relation to this Finding.*

**FINDING 2** - Finding of fact pursuant to the exercise of the power in section 43(1)(a) and (b) of the Race Relations Act 1976.

**Particulars of finding** – Notwithstanding the provisions of PSO 2800, it is a finding of this investigation that racist behaviour was persistently present in each of the three establishments mentioned in the Terms of Reference of this investigation exemplified by abuse and harassment of inmates and/or staff by inmates and/or staff, and/or the appearance and non-removal of racist graffiti, which the Respondent did not take adequate steps to eradicate.

**FINDING 3** - Racial discrimination contrary sections 1(1) (a), 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** – Notwithstanding the provisions of PSO 2800, between July 1998 and July 2000 the Respondent failed adequately or at all to protect unknown prisoners from exposure to racist graffiti and racial abuse occurring during the course of their detention at HMP Parc. This is a race specific finding.

## **FAILURE AREA 2 - TREATMENT OF PRISON STAFF**

**FINDING 4** - Racial discrimination contrary to sections 1(1)(a) and 4 of the Race Relations Act 1976.

**Particulars of discrimination** - Notwithstanding the provisions of PSO 2800, between 18 June 2000 and July 2000 at HMP Parc, the Respondent failed to protect [a member of staff], from racial harassment in the course of his employment by providing an appropriate safe system of work despite requests from him for such protection. This is a race specific finding.

*Refer also to Failure Area 1 in relation to this Finding.*

**FINDING 5** - Racial discrimination contrary to sections 1(1)(a) and 4 of the Race Relations Act 1976.

**Particulars of discrimination** - In or about January 2000 at HMP Brixton, the Respondent failed to carry out in a timeous manner any or any adequate investigation within the meaning of the mandatory requirement to do so in PSO 2800 into the dispatch to [a member of staff] of a note reading “You loud mouth Paki, go home”. This is a race specific finding.

**FINDING 6** - Racial discrimination contrary to sections 1(1)(a), 2 and 4 of the Race Relations Act 1976.

**Particulars of discrimination** - The details of discrimination and victimisation of Mr CLAUDE JOHNSON, a member of staff employed by the Respondent, are particularised in the Employment Tribunal decisions and the Employment Appeal Tribunal decision promulgated respectively in 1995, 1996 and 2000. This is a race specific finding.

## **FAILURE AREA 3 - TREATMENT OF PRISONERS**

**FINDING 7** - Racial discrimination contrary to sections 1(1)(a), 2, 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** - Notwithstanding the provisions of PSO 2800, in or about October 1999 the Respondent failed adequately or at all to protect [a prisoner] from racial abuse and occurring during the course of his detention at HMP Parc as provided for in PSO 2800. This is a race specific finding.

**FINDING 8** - Racial discrimination contrary sections 1(1)(a), 2, 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** - Notwithstanding the provisions of PSO 2800, in or about June, July and August 1999 at HMP Parc, the Respondent failed:

- (a) adequately or at all to protect a prisoner, [a prisoner], from racial abuse;
- (b) adequately or at all to deal with the complaint of racial abuse made by [the] prisoner or his apprehensions of assault;
- (c) to take appropriate disciplinary action against the assailants of [the] prisoner

This is a race specific finding.

**FINDING 9** - Racial discrimination contrary to sections 1(1)(a), 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** - Notwithstanding the provisions of PSO 2800, on or about 7 May 2000 and thereabouts, the Respondent failed adequately or at all to protect [a prisoner] from exposure to threats, having items thrown at him, graffiti and racial abuse occurring during the course of his detention at HMP Parc. This is a race specific finding.

**FINDING 10** - Racial discrimination contrary to sections 1(1)(a), 2, 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** – Notwithstanding the provisions of PSO 2800, on or about January 2000 at HMYOI Feltham, the Respondent failed adequately or at all to investigate the complaints of [a prisoner] in that:

- (a) although he was a Muslim prisoner he was offered a pork chop;
- (b) his Home Detention Curfew application form had been lost;
- (c) he had been denied a drug test following an allegation by an officer that he had been using drugs; and furthermore
- (d) he was transferred to another prison by reason of having made these complaints.

Additionally, following the concerns of the Race Relations Liaison Officer and the Board of Visitors who both describe the complaints of [the prisoner] as racial complaints, it is inferred by this investigation that he was less favourably treated than a white prisoner making the like complaints would be. This is a race specific finding.

**FINDING 11** - Racial discrimination contrary to sections 1(1)(a), 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** – Notwithstanding the provisions of PSO 2800, on or about January 2000 at HMYOI Feltham, the Respondent failed:

- (a) adequately or at all to protect [a prisoner] from racial abuse, and a racial attack by two white prisoners, which resulted in his jaw being broken;
- (b) adequately or at all to investigate the attack on [the prisoner] in a timeous and effective manner; and
- (c) to take disciplinary action against the assailants of [the prisoner].

This is a race specific finding.

**FINDING 12** - Racial discrimination contrary to sections 1(1)(a), 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** – Notwithstanding the provisions of PSO 2800, from June 2000 at HMP Parc, the Respondent failed adequately or at all to protect [a prisoner] from:

- (a) Racial abuse and physical violence accompanying that abuse while he was cleaning the servery area;
- (b) Racial abuse while he was being escorted to the Segregation Block following the incident mentioned at (a) above.

This is a race specific finding.

#### **FAILURE AREA 4 - ACCESS TO GOODS FACILITIES AND SERVICES**

**FINDING 13** - Racial discrimination contrary to sections 1(1)(b), 20, 21 and 28 of the Race Relations Act 1976.

**Particulars of discrimination** - Notwithstanding the provisions of PSO 2800:

- (i) Between June 1991 and July 2000 at HMP Brixton, the Respondent refused or deliberately omitted to provide facilities and services to meet the faith needs of Muslim prisoners, in that it intentionally limited the number of hours that an Imam may attend on Muslim prisoners. These hours were proportionally less than the number of hours served by the Church of England chaplaincy on white prisoners.
- (ii) Between June 1991 and July 2000 at HMP Brixton and between January 1996 and November 2000 HMYOI Feltham, the Respondent refused or deliberately omitted to provide facilities and services to meet the faith needs of Muslim prisoners, in that it failed:
  - (a) to put in place a staffing complement that would to enable Muslim prisoners to attend Friday prayers;
  - (b) to consistently provide suitable prayer rooms; and

(c) to consistently to provide the facility of enabling pre-prayer ritual washing.

- (iii) The investigation is satisfied that the following were requirements or conditions:
- (a) reliable access to a place of worship or service on a person's holy day that holy day must be a Sunday;
  - (b) access to a dedicated prayer room of place or worship the prisoner must be a Christian; and
  - (c) an opportunity to properly practice one's religion the religion should not require ritual washing.

There is no justification for the relative differential in the number of hours that Imams and Chaplains may attend on prisoners of their respective faiths nor for the differences in facilities afforded to the prisoners of the respective faiths.

- (iv) The Respondent refused or deliberately omitted to provide facilities and services to meet the faith needs of Muslim prisoners, in that:
- (a) on or about 12 January 1999 in HMP Brixton an officer employed by the Respondent required a Muslim prisoner to stand naked for approximately 15 minutes following a strip search, knowing that it was contrary to the requirements of the Muslim faith that a person exposes his private parts to another person;
  - (b) on or about 27 May 2000 in HMP Brixton a male officer employed by the Respondent, knowing that it was contrary to the requirements of the Muslim faith, required one [visitor], to lift her veil in order that he might "identify" her; in circumstances where it would have been possible if indeed such a necessity existed, for a female officer to carry out any identification procedure that was necessary.
  - (c) knowing it to be a requirement of the Muslim faith, failed in HMP Brixton adequately or at all to address the issue of modesty screens in showers or cell toilets;
  - (d) on or about 23 June 1999 in HMP Brixton, and on various previous occasions, female officers employed by the Respondent, knowing that it was contrary to the requirement of the Muslim faith, insisted on searching male Muslim prisoners.

These acts and omissions are discriminatory because the number of black and Asian prisoners who are likely to be Muslim and affected by the matters complained about, is significantly greater than the number of white persons who are likely to be Muslim and affected in the like way.

This is discriminatory because the number of black and Asian prisoners who are likely to be adversely affected on religious and cultural grounds by the

matters complained about is significantly greater than the number of white persons who are likely to be adversely affected on religious and cultural grounds in the like way, and there is no justification for the differences in the religious and cultural facilities afforded to black and white prisoners.

**FINDING 14** - Racial discrimination contrary to sections 1(1)(a) and (b), 20, and 21 of the Race Relations Act 1976.

**Particulars of discrimination** - On or about 15 May 1998 at HMP Brixton, the Respondent failed to provide a Muslim prisoner, [a prisoner], with a Halal diet upon the basis that he had committed the offence of “diet abuse”. It is asserted that it is contrary to the provisions of PSO 2800 to deprive a prisoner of a religiously and culturally appropriate diet for disciplinary reasons.

Furthermore, this is discriminatory because the number of black and Asian prisoners who are likely to be adversely affected on religious and cultural grounds by the withdrawal of a halal diet as a result of a condition or requirement imposed on disciplinary grounds is significantly greater than the number of white persons who are likely to be adversely affected on religious and cultural grounds in the like way, and there is no justification for the differences in diet facilities afforded to black and white prisoners. This is a race specific finding.

#### **FAILURE AREA 5 - CONTROL OF THE USE OF DISCRETION**

**FINDING 15** - Finding of fact pursuant to the exercise of the power in section 43(1)(a) and (b) of the Race Relations Act 1976.

**Particulars of Finding** - It is a finding of this investigation that the Respondent did not exercise adequate supervision over the use of discretion by staff with the result that there existed a significant risk or potential for discriminatory conduct in the following fields:

- (a) discipline, where the use of negative stereotypes in relation to black prisoners appeared to cause them to be over-represented in the cohort of prisoners reported for disciplinary action, while in at least one prison they were also over represented in the pool of people who had reports against them dismissed;
- (b) the allocation of prisoners to work parties within prisons which caused black prisoners to be disadvantaged in their access to jobs;
- (c) the choice of prisoners to be subjected to “suspicion” drug testing which caused innocent black prisoners to be disproportionately subjected to such tests.

*Refer also to Failure Area 7, 9 and 13 in relation to this Finding.*

## **FAILURE AREA 6 - PRISON TRANSFERS AND ALLOCATIONS**

**FINDING 16** - Finding of fact pursuant to the exercise of the power in section 43(1)(a) and (b) of the Race Relations Act 1976.

**Particulars of finding** - It is a finding of this investigation that the Respondent followed a practice of not sending prisoners from English prisons to HMP Parc, and when English prisoners were sent there, of removing them from that prison when any disruption involving them occurred, in preference to ensuring that racist abuse and harassment was properly dealt with within that prison.

## **FAILURE AREA 8 - INCENTIVES AND EARNED PRIVILEGES**

**FINDING 17** - Racial discrimination contrary to sections 1(1)(a), 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** – Between June 1991 and July 2000 at HMP Brixton, the Respondent put in place a system of requirements and conditions called the Incentives and Earned Privileges scheme. The allocation of prisoners to the different level of privilege is based on reports created by prison officers.

Notwithstanding the provisions of PSO 2800, the use of stereotypical language, in those reports adversely affected the opportunities of black prisoners to be allocated to the higher levels of privileges, with the result that they suffered the detriment of being over-represented in the basic level of privileges and under-represented in the enhanced level of privileges, relative to the number of white prisoners in those two levels.

Additionally, between June 1991 and July 2000 at HMP Brixton and between January 1996 and November 2000 at HMYOI Feltham, having put in place an Incentives and Earned Privileges scheme which had the effect that prisoners could not obtain these items by way of having them “handed in”, the Respondent refused or deliberately omitted to provide goods facilities and services in the Prison Canteen, namely:

- (a) hair and skin care products necessary for the health and well-being of black prisoners; and
- (b) a diet that is culturally and religiously appropriate to ethnic minority prisoners.



This is a race specific finding.

*Refer also to Failure Area 3 and 4 in relation to this Finding*

## **FAILURE AREA 10 - RACE COMPLAINTS BY PRISONERS**

**FINDING 18** - Finding of fact pursuant to the exercise of the power in section 43(1)(a) and (b) of the Race Relations Act 1976.

**Particulars of finding** - It is a finding of this investigation that the Respondent failed minority prisoners distrusted the system and did not complain about certain matters about which they were entitled to complain.

Further, the Respondent failed to ensure the proper investigation of race related complaints. This is because there was a failure adequately, or in some cases at all, to train staff properly to investigate such race complaints.

The Respondent failed to ensure that those of its staff who were concerned with the specialist task of investigating incidents of alleged race discrimination were adequately trained so as to be able to deliver good race relations practice.

It is a finding of this investigation that the Respondent's method of investigating individual complaints made it difficult for investigators to uncover race aspects of complaints.

*Refer also to Failure Area 3 and 11 in relation to this Finding*

## **FAILURE AREA 11 - INVESTIGATION OF RACE COMPLAINTS**

**FINDING 19** - Finding of fact uncovered processionaly in the course of the investigation.

**Particulars of Finding** - It is a finding of this investigation that the Respondent failed to devise or operate an adequate system for prisoners or staff to make complaints generally, and about racial discrimination in particular.

Furthermore, it is a finding of this investigation that the Respondent failed to devise or operate an adequate system for the investigation of complaints made by prisoners or staff generally, and about racial discrimination in particular.

*Refer also to Failure Area 10 in relation to this Finding.*

## **FAILURE AREA 12 - CORRECTING BAD PRACTICE AND SPREADING GOOD PRACTICE**

**FINDING 20** - Finding of fact pursuant to the exercise of the power in section 43(1)(a) and (b) of the Race Relations Act 1976.

**Particulars of finding** - It is a finding of this investigation that the practice of allowing video and television broadcasts of a nature likely to influence prisoners open to racist ideas did not conduce to the implementation of an effective policy of equivalent protection, and that the Respondent had not made provision to advise staff on these issues.

*Refer also to Failure Area 1 in relation to this Finding.*

**FINDING 21** - Finding of fact pursuant to the exercise of the power in section 43(1)(a) and (b) of the Race Relations Act 1976.

**Particulars of finding** – It is a finding of this investigation that:

- (a) the Respondent failed to ensure that its staff generally were kept properly informed of the necessary best practice to enable them to deliver effective race equality procedures in their individual establishments; and
- (b) the Respondent failed to ensure that those staff responsible for delivering race equality practice were provided with adequate training, sufficient hours or adequate guidance and support for them to adequately perform their responsibilities. This is evidenced: first, by the limited time that Race Relations Liaison Officers and Race Relations Management Teams had to carry out race relations work; and secondly by the absence of supervision to ensure the delivery of the PSO 2800 standard in relation to the Mubarek chain of events (as set out in *The murder of Zahid Mubarek* Formal Investigation into HM Prison Service of England and Wales, Part One).

## **FAILURE AREA 13 - PROTECTION FROM VICTIMISATION**

**FINDING 22** - Racial discrimination contrary to sections 2, 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** – Notwithstanding the provisions of PSO 2800, between June 2000 and July 2000, the Respondent, at HMP Brixton, in relation to [a prisoner], he having done a protected act, namely he complained of certain racist remarks made to him by officers, was victimised by way of:

- (a) being subjected to unauthorised and flawed drug testing;

- (b) being unlawfully confined to his cell by an officer to “reflect” on his complaint of racism;
  - (c) having his enhanced status under the Incentives and Earned Privileges scheme reduced to standard;
  - (d) being refused access to the gym for no good or sufficient reason;
  - (e) being prevented from obtaining a paid job in the prison;
  - (f) failing to act on the poor investigations into his complaints; and
  - (g) failing to discipline staff in respect of wrongdoing identified by an internal investigation.
- This is a race specific finding.

*Refer also to Failure Area 8 in relation to this Finding.*

**FINDING 23** - Racial discrimination contrary sections 1(1)(a), 2, 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** - Between June 1991 and July 2000 at HMP Brixton, between 1998 and July 2000 at HMP Parc and between January 1996 and November 2000 at HMYOI Feltham the Respondent committed acts of victimisation against prisoners in its care in that it had in place a practice whereby:

- (a) prisoners who had done a protected act were put on discipline charges when they complained that subsequent action taken in relation to them was racist;
- (b) prisoners who complained that officers were racist were put on discipline charges.

The result of these practises was that black and ethnic minority prisoners suffered a detriment, namely that they were variously unlawfully victimised, or were impeded from making complaints which they were entitled to make by law. This is a race specific finding.

**FINDING 24** - Finding of fact pursuant to the exercise of the power in section 43(1)(a) and (b) of the Race Relations Act 1976.

**Particulars of finding** - It is a finding of this investigation that the Respondent failed to take adequate steps to prevent the victimisation of those who made race related complaints, possibly because their staff did not have an understanding of the legal concept of victimisation.

*Refer also to Failure Area 2, 3, 10 and 11 in relation to this Finding.*

## **FAILURE AREA 14 - MANAGEMENT SYSTEMS AND PROCEDURES**

**FINDING 25** - Finding of fact uncovered processionally in the course of the investigation.

**Particulars of finding** - It is a finding of this investigation that the Respondent did not ensure, in each of the three establishments mentioned in the Terms of Reference of this investigation, that management systems were working effectively enough to ensure the delivery of race equality practice within those prisons. Specifically, the Respondent failed:

- (a) To maintain accurate records of a wide number of practices, the fulfilment of which was necessary for the proper delivery of good practice on the management and security of its establishments, the training of its staff and the handling of matters to do with prisoners;
- (b) To maintain proper security and effectiveness of communications within and between its establishments so that instructions and advice from Service Headquarters could not reach the appropriate staff in establishments;
- (c) To ensure the proper functioning of cell alarm systems or the proper management of the checking processes to ensure that functioning, so leaving prisoners in a state of potential danger;
- (d) To have the proper managerial systems necessary for the effective delivery of race equality practices.

This is evidenced by information from the individual establishments of failures in the Respondent's own procedures, lack of effective line management procedures and the absence of procedures on areas of key importance for the custodial care of prisoners.

**FINDING 26** - Finding of fact uncovered processionally in the course of the investigation.

**Particulars of finding** - It is a finding of this investigation that the Respondent made access to certain facilities and an understanding of the regime in prisons conditional on literacy, despite its recognition of the scale of reading difficulties among prisoners. This requirement of literacy disadvantaged those ethnic minority groups with high levels of illiteracy, such as Irish Travellers. It is a finding of this investigation that the Respondent failed to provide information about its regimes and requirements in a form suitable for those with low or no reading skill, and that reception staff in prisons were not adequately trained to deliver that information in an appropriate form.

*Refer also to Failure Area 4 in relation to this Finding.*

**FINDING 27** - Finding of fact uncovered processionaly in the course of the investigation.

**Particulars of finding** - It is a finding of this investigation that the Respondent failed to take adequate steps to remedy defects in the way that HMYOI Feltham was being operated after being alerted to these defects and the seriousness of them by HM Inspectorate of Prisons.

This is evidenced by the ineffective response of Headquarters, Area Managers and Governor in relation to the management of HMYOI Feltham.

*Refer also to Failure Area 12 in relation to this Finding.*

**FINDING 28** - Finding of fact pursuant to the exercise of the power in section 43(1)(a) and (b) of the Race Relations Act 1976.

**Particulars of finding** - It is a finding of this investigation that the Respondent failed to ensure the existence of effective ethnic monitoring systems across its functions in all its establishments, and to ensure that relevant staff were capable of using the information from those systems and then did so.

This is evidenced by the failure of staff to gather, or when it was gathered, to use information from monitoring systems in HMYOI Feltham.

*Refer also to Failure Area 12 in relation to this Finding.*

## **OMNIBUS FINDINGS IN RELATION TO ALL THE FAILURE AREAS**

**FINDING 29** - Race Discrimination contrary to sections 1(1)(a), 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** - the Respondent discriminated against prisoners in its care in that it failed to put in place an effective policy of equivalent protection which comprehensively addressed the needs of prisoners to be safe from detrimental treatment by act or omission of officers or inmates on the grounds of their race and/or it failed to implement a comprehensive policy of equivalent protection by providing the following: appropriate deployment of staff, adequate training to staff, adequate systems for making and investigating complaints, and adequate monitoring of racially discriminatory activity in its prisons.

This failure is discriminatory because the need for such a policy is itself race specific as is evident from the fact that the Respondent had at all relevant times known that it had a high proportion of persons of racial or ethnic minority origin, and other inmates who were racists. Moreover, other safety policies in relation to non-race specific matters such as escapes, drug abuse, suicide and self-harm amongst others were pursued by the Respondent more vigorously than those in relation to race.

*Refer to Failure Areas 1-14 in relation to this Finding.*

**FINDING 30** - Race Discrimination contrary to sections 1(1)(a), 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** - The Respondent discriminated against prisoners and staff in that it failed to put in place an effective delivery of race equality through its welfare and grievance policies. It failed comprehensively and effectively to address the needs of ethnic minority staff and prisoners for protection from detrimental treatment by the acts or omissions of other officers and inmates, on the grounds of their race, and it failed to implement a comprehensive race equality policy in that it failed to provide appropriate deployment of staff, adequate training to staff, adequate systems for making and investigating complaints, adequate access to goods, facilities and services, adequate management of the premises, and adequate monitoring of racially discriminatory acts and omissions in the prisons which have been the subject of investigation.

In the matters of canteen provision, religious and culturally appropriate diet and faith needs, this finding relates to omissions to provide goods, facilities and services as well as not providing goods, facilities and services on like terms to those provided for white inmates, contrary to the provisions of PSO 2800.

This is evidenced by events mentioned in the report in respect of the treatment of staff and inmates, and by Employment Tribunal decisions referred to therein. This failure is discriminatory because it was a race specific failure and also because other non-race specific needs for safety and policies in relation to escapes, drug abuse, suicide and self-harm and other non-race specific goods, facilities and services were pursued more vigorously than those in relation to race.

*Refer to Failure Areas 1-14 in relation to this Finding.*

## **Finding published in Report Part 1 - The murder of Zahid Mubarek**

**FINDING 31** – Race Discrimination contrary to sections 1(1)(a), 20 and 21 of the Race Relations Act 1976.

**Particulars of discrimination** - The Respondent discriminated against prisoners in its care in that it failed to put in place an effective delivery of equivalent protection which comprehensively addressed the needs of prisoners to be safe from detrimental treatment by act or omission of other inmates on the grounds of their race and failed to implement a comprehensive equivalent protection policy by providing the following: appropriate deployment of staff, adequate training to staff, adequate systems for making and investigating complaints, and adequate monitoring of racially discriminatory activity in its prisons.

This is evidenced by the fact that the Respondent had comprehensive powers to control the situations of both Mr Robert Stewart and Mr Zahid Mubarek but failed to exercise control to secure the safety of Mr Mubarek from the racial attack by Mr Stewart. In particular the Respondent failed:

- (a) To ensure the proper transmission and use of the various files on Robert Stewart in an appropriate and a timeous manner;
- (b) To ensure the proper transmission of appropriately completed Prisoner Escort Records in relation to Robert Stewart from his transferring prison to HMYOI Feltham in a timeous manner, contrary to Prison Service Instruction 66/1998 (subsequently incorporated into Prison Service Order 1025);
- (c) To carry out any or any adequate screening of, or induction procedure in relation to, Robert Stewart upon his arrival at HMYOI Feltham in January 2000, contrary to YOI Rule 3(1), Prison Service Standing Order 1A Reception Procedures; Prison Service Order 2200 Sentence Planning;
- (d) To carry out any or any adequate medical examination of Robert Stewart, contrary to Prison Service Standing Order 1A, Instruction to Governors 1 1994, Prison Service Order 0200 on health care;
- (e) To cause relevant security information about Robert Stewart to be provided to all relevant staff, contrary to Prison Service Order 1000 The Security Manual;
- (f) To have proper regard to the need for a cell allocation policy;
- (g) To ensure the proper monitoring of the mail of Robert Stewart contrary to Prison Service Standing Order 5B and Prison Service Order 4400 Prisoner Communications;
- (h) To have reported to the Race Relations Liaison Officer any racial incidents in which Robert Stewart may have been involved, contrary to Prison Service Order 2800 Race Relations;
- (i) Effectively to utilise information contained in wing flimsies in relation to Robert Stewart, contrary to YOI Rule 3(1);

(j) During March 2000 to carry out an adequate or effective search of Cell 38 at HMYOI Feltham with the result that it was not noticed that a table leg was loose and capable of being used as a weapon, contrary to Prison Service Order 1000 The Security Manual;

(k) To implement, in an effective way, the Personal Officer scheme and sentence planning in relation to Robert Stewart and Zahid Mubarek contrary to the purposes of YOI Rule 3(1) and the provisions of Prison Service Order 2200 Sentence Planning;

(l) To ensure that training in race relations for staff to enable them to recognise racial incidents, contrary to Prison Service Order 2800, and be aware of the need to have policies in place to monitor television programmes for material that is racially inciteful;

(m) To ensure the separation of Robert Stewart and Zahid Mubarek upon Robert Stewart's change of circumstances contrary to Prison Rules Part II Section 7(C).

(n) To have proper regard to the need to ensure effective supervision of prisoners at night time with due observation and checking (*Failure Area 15*);

(o) To have proper regard to the need to require the appropriate use of radios at the scene of an emergency;

From the evidence in relation to these failures of control in relation to Mr Stewart and Mr Mubarek, the Commission also conclude that there was a wider failure of control in relation to other prisoners.

These failures of control were discriminatory because had they not happened the racial murder of Mr Mubarek would not have happened as it did. The Respondent knew or ought to have foreseen that Mr Stewart would be likely to subject a member of a different racial group to racial harassment and therefore could have controlled whether the two men shared a cell for a prolonged unobserved period. Accordingly Mr Mubarek (and any other persons who were similarly exposed by the failure of control exemplified by this case, to the risk of racial attack) was (were) subjected to a detriment and denied the provision of equivalent protection and equivalent protection procedures.

This is a race specific finding in relation to the matters set out in subparagraphs f, g, and h. The comparator in relation to the race neutral subparagraphs is a hypothetical white prisoner who was required by the Respondent to share a cell with Mr Stewart, it being a matter within the knowledge of the Respondent that Mr Stewart had a hostile disposition to persons who belong to ethnic minorities.



## **Appendices**

### **Appendix A: Terms of Reference for the Formal Investigation**

#### **Grounds for belief**

The Commission for Racial Equality believes that HM Prison Service by itself, its servants or agents may have committed unlawful acts of racial discrimination in contravention of sections 4, 20, 21, 28, 30 and 31 read with sections 1, 2, 3, 32, 33 and 40 of the Race Relations Act 1976 in that:

1. In decisions promulgated in July 1995 and March 2000 the employment tribunal upheld complaints of racial discrimination brought by Mr Claude Johnson against the Prison Service and named governors of HM Prison Brixton.
2. The findings of the employment tribunal in the cases brought by Mr Johnson suggest that complaints of racial discrimination in relation to prisoners and/or staff may have resulted in further discrimination by way of victimisation.
3. The findings of the employment tribunal in the cases brought by Mr Johnson further suggest that prison governors may have failed to take sufficiently seriously complaints of racial discrimination in relation to prisoners and/or staff and/or may have failed adequately to follow up such complaints in order to prevent further acts of racial discrimination.
4. The Commission for Racial Equality is aware that the Prison Service has received more recent reports suggesting that acts of unlawful racial discrimination may have continued to be perpetrated within HM Prison Brixton both against prisoners and staff.
5. The Commission for Racial Equality is aware that there is serious public concern about the murder of Zahid Mubarek whilst in Prison Service custody and the belief that the murder was racially aggravated.
6. The Commission for Racial Equality is aware that the Prison Service has received reports from Her Majesty's Chief Inspector of Prisons and other evidence suggesting that acts of racial discrimination may have been committed against staff and/or prisoners in other prisons including HM Prison/Young Offender Institution Parc.

## **Terms of reference**

To inquire into HM Prison Service, with reference to the need to eliminate unlawful racial discrimination and the need to promote equality of opportunity and good relations between people of different racial groups:

1. The nature and frequency of incidents of racial discrimination that occur in prison.
2. The nature and frequency of complaints of alleged racial discrimination by prison staff and prisoners and any barriers that prevent such complaints being made and/or registered.
3. The way that incidents/complaints of racial discrimination in relation to prison staff and prisoners are investigated and dealt with by prison governors and/or prison officers.
4. The nature and effectiveness of action, if any, taken by governors and/or prison officers in response to incidents/complaints of racial discrimination to ensure that victimisation does not occur and that acts of racial discrimination are not repeated.
5. The circumstances leading to the murder of Zahid Mubarek in HMYOI Feltham, and any contributing act or omission on the part of the Prison Service.
6. The reference in reports on individual prisons by Her Majesty's Chief Inspector of Prisons to:
  - a) the investigation by prison governors and/or prison officers of incidents/complaints of racial discrimination;
  - b) action to follow up such incidents/complaints;
  - c) promotion of racial equality and good race relations; and
  - d) any standards of such investigation and follow-up that have been set for the Prison Service as a whole, and the response by Prison governors to any such reference in reports of HM Chief Inspector of Prisons.

The investigation will be limited to events occurring between mid-1991 and July 2000 in HM Prison Brixton, between 1998 and July 2000 in HM Prison/Young Offender Institution Parc, and between January 1996 and November 2000 in HM Young Offender Institution and Remand Centre Feltham.

## Appendix B:

### Glossary of Terms

BIAS	Brent Irish Advisory Service
BOV	<b>Board of Visitors.</b> Now known as Independent Monitoring Board. Independent voluntary bodies who, as required by law, regularly visit all parts of the prison, often unannounced. Their main role is to check the state of the prison and to ensure that the prisoners are being suitably cared for and humanely treated. Their role is also crucial in safeguarding the inmates' rights and voicing any concerns that they have on their behalf.
CRE	Commission for Racial Equality.
DDG	Deputy Director General of HM Prison Service of England and Wales
DG	Director General of HM Prison Service of England and Wales
DG's AGR	Director General's Advisory Group on Race
EO	Equal Opportunities
Feltham Murder Inquiry Team	An HM Prison Service investigation into the circumstances leading up to the murder of Zahid Mubarek.
Feltham Murder Report 1	HM Prison Service investigation into the murder of Zahid Mubarek
Feltham Murder Report 2	HM Prison Service investigation into racism in HMYOI Feltham at the time of the murder.
Feltham Task Force	A review body set up by the Director General to help improve Feltham after the 1998 HMCIP report on it.
Governor	At the time of the murder, there were five grades of governor in HM Prison Service ranging from the most junior, governor 5 to governor 1. The term "Governor" in this report always refers to the governing Governor in charge of the prison unless stated otherwise.
Governor's Order	A written order from the Governor to staff which applies only to that prison.
HDC	Home Detention Curfew
HMCIP	Her Majesty's Chief Inspector of Prisons
HMP	Her Majesty's Prison
HMYOI	Her Majesty's Young Offender Institution
HQ	HM Prison Service Headquarters
ICPO	Irish Commission for Prisoners Overseas

IEP	<b>Incentives and Earned Privileges.</b> This HM Prison Service-wide scheme rewards prisoner behaviour with certain privileges according to their status of basic, standard or enhanced.
IG	Or <b>Instructions to Governors.</b> An instruction from Headquarters to all Governors in England and Wales.
LBB	Locks, bolts and bars. HM Prison Service terminology for cell searching.
MDT	Mandatory Drug Testing
MSC	Management Consultancy Service. An HM Prison Service Headquarters' team which carries out reviews of on staffing and regime.
NACRO	National Association for the Care and Resettlement of Offenders
PEI	Physical Education Instructor
PO	Principal Officer – the highest uniformed grade in HM Prison Service.
POPS	Partners of Prisoners
PSI	<b>Prison Service Instruction.</b> A short term mandatory instruction from HM Prison Service Headquarters for all staff.
Prison Service Standards	Issued by Headquarters, Standards provide staff with clear and concise key audit baselines to improve performance and compliance.
PSJ	Prison Service Journal
PSMB	Prison Service Management Board
PSO	<b>Prison Service Orders</b> which are long term directions given to staff by Headquarters
PSO 2800	HM Prison Service Order on Race Relations
PSRRG	Prison Service Race Relations Group on Race
RESPOND	Racial Equality for Staff and Prisoners. A HM Prison Service network to promote race equality.
RRLO	Race Relations Liaison Officer. A prison officer who is the main person responsible for investigating complaints of racial discrimination and promoting and ensuring equal treatment in a prison.
RRMT	Race Relations Management Team. Meetings that are mandatory under the PSO 2800, Race Relations Order.
SAU	Or <b>Standards Audit Unit.</b> An HM Prison Service Headquarters' team that reviews a prison's achievement of required the standards.
SIR	Security Information Report

SO	Senior Officer – a uniformed staff member ranked between Principal Officer and prison officer
SO	Standing Order
SMT	Senior Management Team
Standards and Security Audit	An HM Prison Service Headquarters’ team that reviews a prison’s level of security and achievement of required the standards.
Standing Order	The predecessor to Prison Service Orders. They are still in force unless specifically revoked or replaced by Prison Service Orders.
VDT	Voluntary Drug Testing
YOs	Young Offenders
YOI	Young Offenders Institution
YJB	Youth Justice Board