Ethnic minority magistrates’ experience of the role and of the court environment

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DCA Research Series 3/04
December 2004
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The Research Unit, Department for Constitutional Affairs, was formed in April 1996. Its aim is to develop and focus the use of research so that it informs the various stages of policy-making and the implementation and evaluation of policy.
Acknowledgements

The research team is indebted to the magistrates who participated in this study for giving so generously of their time and for being so frank and thoughtful in their conversations with us. Thanks are also due to the Bench Chairmen, Justices’ Clerks, District Legal Directors and their staff within the participating courts for their help in arranging interviews with magistrates and for answering a number of factual questions about their benches. We should also like to express our appreciation to the Justices’ Clerks and their staff for providing excellent facilities in which to carry out our interviews and for the support they gave members of the research team during the course of the fieldwork.

We are grateful to the members of our Advisory Group - Terry Moore, Jim Quainoo, Jay Jhutti-Johal and Jill Enterkin - for their support and guidance, and for valuable comments on an earlier draft of this report. Our thanks also to Sally Attwood, Jill Enterkin, Mavis Maclean, John Pearson and Judith Sidaway of the Department for Constitutional Affairs for the information that they provided and for their advice and assistance throughout the project.

Carol Marks typed successive versions of this report with commendable speed and efficiency.

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Disclaimer

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Executive Summary

1 Introduction and Background

Following the publication of the Macpherson Report, and as one element of the work being undertaken to ensure compliance with new statutory duties to promote race equality, the Department for Constitutional Affairs is sponsoring a major programme of research designed to improve knowledge of the way the court system affects people from diverse social and ethnic backgrounds. The second phase of this programme focuses on potential discrimination and levels of confidence in the operation of the courts and in the outcomes for those involved. This report presents the findings of one of the projects included in this programme - a study of the experience of magistrates from ethnic minority backgrounds.

The research set out to explore the following issues:

- Had magistrates from ethnic minority backgrounds experienced racism at the institutional level or in their dealings with fellow magistrates, court staff or professional court users?

- In so far as magistrates had experienced or observed behaviour perceived as discriminatory or racist, were senior magistrates and court staff informed; if so, did they attempt to tackle the problem?

- What was the impact of perceived discrimination and racism upon magistrates' satisfaction with the role? Was it a major or a minor component of their work experience?

- What levels of responsibility do magistrates from ethnic minority backgrounds achieve and how does their career progression on the bench compare with that of their white colleagues?

2 The Lay Magistracy

This chapter outlines the role of the lay magistrate and the principles that underpin their selection. The chapter summarises the reasons why it is difficult to achieve benches that
reflect the ethnic and social diversity of the population served by the court. While the magistracy still draws disproportionately on people from professional and managerial backgrounds, efforts to recruit more people from ethnic minority backgrounds have in large part been successful. At the national level the magistracy is now fairly close to being ethnically (if not socially) representative of the population as a whole. In 2002, ethnic minority magistrates comprised 5.6 per cent of the total, compared with an overall ethnic minority population of 7 per cent in England and Wales.

3 Ethnicity and Racism in Society

Chapter 3 places the research within a wider context of studies of ethnic identity, socio-economic disadvantage, racism and discrimination amongst ethnic minorities living in Britain. The chapter focuses on studies of personal and social factors that shape ethnic identity; on differences between ethnic minorities on key indicators of disadvantage; and on experience of discrimination and racial prejudice across a range of public and private sector organisations.

4 Research Method

The research was conducted in nine magistrates’ courts and a cluster of five smaller courts which we refer to collectively as ‘Court 10’. In order to achieve a reasonable geographical spread, courts were selected in four Magistrates' Court Committee areas (MCCs) located in London, the South-West, the Midlands and the North-East. Overall there were 303 ethnic minority magistrates sitting in the ten courts included in the study. We approached 187 magistrates seeking an interview. One hundred and thirty-four agreed to be interviewed (a 'success rate' of 72 per cent). In the event we carried out 128 individual interviews.

Interviews explored respondents' experience of life beyond the bench, and of racism in those other contexts, as well as every aspect of their experience as a magistrate. Our approach was essentially qualitative, enabling us to engage in in-depth discussion around key themes and to capture magistrates' experiences in their own words. We also conducted group discussions with white magistrates at five of the participating courts.

Factual information was obtained from the participating courts on matters including the number of white and ethnic minority magistrates who sit on the bench, act as chairman, sit in specialist courts, and are members of committees.
5 Profile of the Magistrates whom we interviewed

Of the 128 magistrates whom we interviewed, 39 per cent were women and 61 per cent were men. Nationally the magistracy is gender-balanced, although within the participating courts the percentage of ethnic minority magistrates who are female (42 per cent) is very similar to that within our sample. The age distribution of the sample is similar to the national pattern.

Fifty-one interviews (40 per cent) were carried out with magistrates of Black Caribbean and Black African origin; 48 (38 per cent) were with magistrates of Indian origin; and 22 (16 per cent) were with magistrates of Pakistani or Bangladeshi origin. The remainder were from other ethnic minority backgrounds or described themselves as of mixed ethnicity (white and Asian).

6 Magistrates’ Experience of Racism in Other Contexts

Chapter 6 explores ethnic minority magistrates’ experience of, and responses to, racism in their lives outside the magistracy. Most respondents considered that racism was endemic in this country. There was variation in the extent to which they had personally encountered discrimination and/or racist attitudes, although for some magistrates this was a constant feature of their lives. However, a consistent message to emerge from our interviews was that expressions of racism tended to be less overt than in the past. Some respondents suggested that racist attitudes tended not to be directed towards ethnic minority people who, by reference to other social yardsticks, were similar to the white majority. Moreover, negative stereotypes and prejudice could often be overcome through sustained personal contact.

The chapter also explores the ways in which respondents coped with experiences of racism. We note, for example, that there was a widespread reluctance to interpret experience through the lens of racism. Generally speaking, respondents preferred to avoid taking a confrontational stance, although most indicated that they had a sticking point beyond which they would feel bound to act.

The chapter ends with a discussion of the issue of personal identity from the perspective of ethnic minority magistrates. A minority were clear that they did not wish to be identified by their racial and cultural background, while others made it plain that they retained, and were very proud of, their religious and cultural affiliations. Most respondents sought to be fully
integrated into UK society whilst at the same time retaining a strong identification with their own race and culture.

7 The Social Environment of the Magistracy

The motive most often mentioned by respondents for becoming a magistrate was a sense of civic responsibility and a desire to put something back into their community. Others hoped to derive personal satisfaction from the role, and some aspired to make a distinctive contribution in cases involving defendants from black or Asian backgrounds.

Seventy per cent of the magistrates had wholly favourable initial impressions of their bench. As new magistrates they had received generous support from white colleagues, the Justices’ Clerk and court staff. These respondents said that they were as fully integrated as they wished to be. Where there had been early difficulties these had largely been overcome through their own efforts to gain acceptance, or as a result of gradual improvements in the social and ethnic balance of the bench. Thirty per cent of respondents recalled initial feelings of unease, and in some cases of being marginalised by some of their white colleagues. A few continued to feel outsiders on a predominantly white, middle-class bench.

8 Perceptions of Racism and Discrimination on the Bench

Seventy-two per cent of respondents said that they had not personally encountered racist attitudes or behaviour in their dealings with fellow magistrates. The main context in which the minority (28 per cent) had perceived racism was when conferring, either in the courtroom or in the retiring room. Typically, these magistrates felt that they had been excluded or marginalised by white chairmen. Such incidents were demoralising as they conveyed the impression that their contribution was not valued. Only a minority of chairmen behaved in this way, so that even these magistrates enjoyed good working relationships with most of their white colleagues.

Only four of the 128 ethnic minority magistrates whom we interviewed believed that they had been subject to unequal treatment at the institutional level within the magistracy. We examine the circumstances in which discrimination was thought to have occurred and the way in which these respondents dealt with it.

The great majority of magistrates were unhesitating in their praise for the Justices’ Clerk / Legal Director and his or her team. Only ten respondents (8 per cent) were critical of court
staff, and in even fewer cases was it suggested that members of staff had displayed racist attitudes. A minority recalled racist language or behaviour on the part of prosecution and defence lawyers (13 per cent), the police (9 per cent) or defendants (12 per cent).

Most respondents were impressed by the efforts made by their court to be fair, and be seen to be fair, to ethnic minority defendants. A minority (21 per cent) said that they had observed fellow magistrates display racist attitudes towards some defendants.

Of the 53 magistrates who said that they had experienced discrimination or racism, directed either towards them personally or towards ethnic minority defendants, only thirteen had taken the matter up with colleagues or with senior court staff.

9  Racism on the Bench - the Intersection with Class, Education and Personality

Chapter 9 seeks to explain the very different experiences or perceptions of racism which we encountered. Although court culture is clearly influential - for example, an overt commitment to multiculturalism at senior management level contributed to ethnic minority magistrates' sense of belonging - it cannot explain the sharply contrasting accounts of experience within courts. Key factors that had a bearing upon black and Asian magistrates' sense of acceptance and 'comfort' in the court environment were education, social class, gender, and aspects of personality or personal philosophy. The chapter examines the way in which ethnicity intersects with these factors in determining ease or difficulty of integration within the magistracy.

10  The Role of the Court

The magistrates whom we interviewed identified a number of obstacles to recruiting ethnic minorities to the bench. These included financial disincentives; employers' reluctance to allow their staff to take time off work; and the public's image of the magistracy as predominantly white, middle-class and middle-aged. There was also thought to be a widely held misperception that only highly educated people who hold professional and managerial positions can become magistrates. A clear message to emerge from our interviews is that more needs to be done to increase understanding of the range of activities in which magistrates are involved, to convey the importance of their role, and to inform the public about the criteria by which suitability is assessed.
Across the nine courts approximately 20 per cent fewer ethnic minority magistrates had become chairmen as compared with their white colleagues. There were substantial differences in the representation of ethnic minority magistrates in the family court (with significant under-representation at three courts), and here again ethnic minority magistrates were under-represented as chairmen.

Most of the magistrates whom we interviewed had received training in ethnic awareness. Although a few respondents thought that this training was not as comprehensive as they would have liked, the majority considered that it was of some value. Several respondents mentioned other improvements in training and written guidance that, whilst not targeted at race issues, helped ensure that people from ethnic minority backgrounds were treated fairly.

Views were mixed on the benefits of support mechanisms geared to the particular needs of ethnic minority magistrates. Whereas some respondents thought that these initiatives could play a useful role in respect of newly appointed magistrates, others saw their potential for creating division. Court-based initiatives appear to have most to offer when membership is open to all, irrespective of ethnicity, and when they adopt a broad commitment to increasing understanding of different cultures and to ensuring equal treatment for all who come into contact with the court.

11 Conclusion

Formal steps, such as the introduction of training in race issues, have been accompanied by genuine, beneficial change in the experience of black and Asian magistrates sitting in these courts. It is not acceptable to express racist sentiments, and cultural differences are on the whole viewed sympathetically, including where they may have a bearing on a defendant’s actions. At the same time, black and Asian people continue to be under-represented on some benches, and they tend not to ‘progress’ at a rate equivalent to that of their white colleagues.

Ethnic diversity and representativeness is but one part of a broader social diversity and representativeness. Magistrates’ courts, if they are to command the confidence of the communities they serve, must build on the progress they have undoubtedly made in broadening the social base of the bench. Also, and especially since we aspire to this social mix, it is vital that the role of the lay magistrate retains its intrinsic appeal - that it remains challenging, rewarding, and effectively administered, so that talented people of all backgrounds will continue to come forward.
1 Introduction and background

In his report concerned with the circumstances surrounding the murder of the black teenager, Stephen Lawrence, Lord Macpherson argued that "it is incumbent upon every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities".¹ Macpherson recommended that a responsibility be placed on all public bodies to review the way in which they treat people from minority ethnic backgrounds. A major part of the Government's response to the Macpherson Report was the Race Relations (Amendment) Act 2000. This Act placed a general duty on a wide range of public authorities "to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people of different racial groups". This general duty was supported by a number of specific obligations placed upon some of these public bodies, one of which was the requirement to publish a Race Equality Scheme by the end of May 2002. The Scheme published by the Lord Chancellor's Department (now the Department for Constitutional Affairs) endorsed the objectives identified within the Act.²

The legislation placed the same statutory duties upon the Magistrates' Courts Committees (MCCs), the bodies which at the time of our fieldwork were responsible for the organisation and administration of the magistrates' courts.³ A thematic review of the way in which magistrates' courts have responded to the requirements of the Act was conducted by the Magistrates' Courts Service Inspectorate (2003). This review encompassed the policies, practices and behaviours of the people who serve on or are employed by MCCs. It examined the extent to which MCCs were promoting race equality in all areas of service delivery and employment, and whether equality was being achieved in practice. The objective was to introduce "[w]orking arrangements that ensure the elimination of unlawful discrimination, promote equality of opportunity and good relations between people of different racial groups, and meet the requirements of the Race Relations (Amendment) Act 2000".⁴

¹ W. Macpherson (1999) at para 46.27.
² Lord Chancellor's Department, Race Equality Scheme (May 2002).
³ The DCA assumed responsibility for the administration of magistrates' courts in April 2004.
⁴ For further details, see H. M. Magistrates' Courts Inspectorate (2003) at Annex C.
In his Foreword to the report, the Chief Inspector noted that, while institutional racism was not the focus of this review, "Inspectors did encounter some responses that could be interpreted as indicative of it." He concluded, however, that:

"... the structures and processes of magistrates' courts are not intrinsically a source of racial discrimination. Magistrates and those who serve them are well aware of the principles they are required to observe, which are enshrined in the judicial oath. MCCs have taken considerable care over recent years to strengthen their non-discrimination policies."

Nonetheless there was some evidence of prejudice among MCC staff and magistrates, and these attitudes tended to be prevalent "in areas where people have had little exposure to members of ethnic minorities". The Chief Inspector was also concerned that "[s]ome in the Service still find it hard to grasp that there is a real issue which demands their attention. It is easy for any initiative to spark a reaction of defensiveness and accusations of 'political correctness'". The report concluded that, while some MCCs had a good track record in addressing race equality issues, others had further to go:

"In a significant number of MCCs, there was a worrying inclination for MCC Chairs and/or senior managers to express the opinion that 'race is not a problem here'. Associated with this there is a tendency towards a compliance-led approach to race equality, rather than a determination to take action. This needs to change if real progress is to be made and race equality is to become a reality in magistrates' courts." (para 4.2)

Following publication of the Macpherson report, the Lord Chancellor's Department launched a Courts and Diversity Research Programme, the agenda of which was "specifically dedicated to examining whether, and to what extent, the court system deals fairly and justly with the needs of a diverse and multicultural society". This research programme has been in train for three years. In the first phase of the programme four pieces of research were conducted, all focusing in one way or another upon discrimination within the court system. The studies were concerned with ethnic monitoring of the civil justice system; perceptions of fairness and trust in the criminal justice system; the way that race, language, culture and religion are addressed in care proceedings; and housing possessions involving ethnic minority tenants.

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5 Following Macpherson, 'institutional racism' is defined in this report as "the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people".
6 Lord Chancellor's Department Research Unit, Courts and Diversity Research Programme (March 2003) p1.
In 2001 the Lord Chancellor’s Department announced the second phase of this research programme. This would “focus on potential discrimination which might be indicated by the under-representation of particular groups among staff or users of the court service, and on perceptions of and confidence in the system with regard to both the operation of the courts and the outcomes for those involved”. For this phase of the programme the Department identified four areas of interest: the experience of magistrates from ethnic minority backgrounds; ethnic diversity and the jury system; ethnic diversity and the tribunal system; and the experience of minority ethnic families in care proceedings. In December 2001 the writers submitted a proposal to undertake the first of these studies, concerning the experiences of magistrates. The Department had envisaged that this project would be concerned with the question of “whether ethnic minority magistrates feel able to work effectively without being treated in any way differently as a result of their ethnicity”.

**The research brief**

No study of the experience of magistrates from minority ethnic backgrounds has been conducted since the subject was examined by King and May in 1985, and, as we shall see, that study is now very dated. In the proposal that we submitted to the Lord Chancellor’s Department in 2001, two principal aims were outlined. The first was to investigate whether magistrates from ethnic minority backgrounds experienced discrimination or racism in their dealings with fellow magistrates, court staff or professional court users; and the second was to examine how such experiences, insofar as they occurred, affected respondents' ability to work effectively as magistrates. We proposed to interview magistrates from ethnic minority backgrounds in order to find out about any discriminatory or racist behaviour that they had experienced; how they had dealt with it; and whether any action had resulted. It was also proposed to interview white magistrates (in small groups rather than on a one-to-one basis) to assess the extent to which any problems identified by magistrates from ethnic minority backgrounds were common to all magistrates or were attributable to ethnicity per se. The specific research questions that we set out in the application were as follows:

- Did magistrates from the main ethnic minority groups experience any direct or indirect discrimination or racist behaviour from fellow magistrates, court staff, or professional court users?

- To the extent that there was perceived discrimination or racism, what form did this take? Were senior magistrates and staff of the court (especially the Bench
Chairman, Justices' Clerk and Justices' Chief Executive) informed about it? Did they attempt to tackle the problem? If they did, how effective were they in doing so?

- What impact did racist attitudes and behaviour have upon magistrates' job satisfaction, their continued willingness to serve, and their perceived ability to perform the role?

- What levels of responsibility did magistrates from ethnic minority backgrounds achieve? How did their career progression on the bench compare with that of white magistrates? For instance, how many magistrates from each minority ethnic group qualified to sit as court chairmen? How many of them actually took the chair? How many acted as appraisers? How many served on Magistrates' Courts Committees and Advisory Committees? How many were actively involved in training initiatives?

- Was the experience of racist attitudes or discriminatory behaviour a major or a minor component of the work experience of these magistrates? Was it perceived as endemic, frequent or occasional? How significant was it compared with other difficulties experienced by lay magistrates?

- What practical steps need to be taken to eliminate existing barriers to inclusive and effective working?

As will be apparent in this report, we sought to distinguish between practices which are discriminatory in that they disadvantage ethnic minority magistrates and, whether directly or indirectly, work against them in terms of career progression, and racist attitudes, stereotypical generalisations and offensive remarks which may be hurtful and unpleasant but do not necessarily constitute discrimination.
2 The Lay Magistracy

There are at present about thirty thousand people serving as lay magistrates in the criminal courts in England and Wales. All give up substantial amounts of their time to sit as magistrates and they do so without any financial reward. While there are examples in other countries of lay people serving as adjudicators in the criminal courts (most commonly as members of juries7 or as part-time adjudicators who sit alongside professional judges8), nothing comparable to the lay magistracy found in England and Wales exists anywhere else in the world. Although lay magistrates receive advice about the law from a professional legal adviser, they assume sole responsibility for the judicial decisions in their courts. Some 97 per cent of defendants who are proceeded against in criminal courts in England and Wales are dealt with entirely in the magistrates' courts. Also, about five in every six defendants who are proceeded against in relation to offences which can be tried either in the magistrates' courts or by a judge and jury at the Crown Court9 are now dealt with entirely in the magistrates' courts.10

Since the role is a voluntary one, the training that lay magistrates are obliged to undertake is limited, and many of the necessary skills are inevitably picked up through the experience of hearing cases in court. Anyone who wants to be a magistrate must be prepared to devote at least half a day every fortnight to sitting in court. This is a significant commitment, particularly for someone who is in full-time employment or who has young children. Yet many magistrates sit much more frequently than this minimum. And the time that is spent sitting in court is only part of the work involved. In addition there are training courses, bench meetings, committees and other responsibilities. For some magistrates (including a number interviewed in the present study), the time devoted to these matters is the equivalent of a part-time job. Although the lay magistracy has attracted a good deal of criticism in the media in recent years, most would deem it a considerable strength of the criminal justice system in England and Wales that lay members of the community are so deeply involved in its delivery.11

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7 Vidmar (2000) notes that well over fifty countries have adopted some form of jury trial.
8 See further Morgan and Russell (2000) at p2.
9 The category 'indictable offences' covers many types of violent and sexual crime, burglaries, theft, fraud, drugs offences and the like.
11 On this, see White Paper (2002) at p149.
Social composition of the magistracy

In selecting suitable candidates for local benches, Advisory Committees - the bodies responsible for nominating individuals to the Lord Chancellor with a view to their appointment as lay magistrates - must have regard to "the need to ensure that the composition of the bench broadly reflects the community which it serves in terms of gender, ethnic origin, geographical spread, occupation and ... political affiliation". This idea that benches should reflect the social composition of the local community was expressed almost a century ago by the Royal Commission on The Selection of Justices of the Peace (1910). The Royal Commission stated the general principle that "it is in the public interest that persons of every social grade should be appointed Justices of the Peace". This principle is now firmly established. Indeed, Lord Chancellors may decline to accept a recommendation made by an Advisory Committee if to do so would exacerbate existing imbalances on a particular bench.

It is not difficult to understand why so much weight is attached to the need to secure socially representative benches of magistrates. Very important judicial decisions, including the decision to impose a sentence of imprisonment, are entrusted to lay people, even though they have no specialist knowledge of the law. A number of conditions are, however, laid down. People who are appointed as lay magistrates are to be carefully selected; they are to be given the appropriate level of training; and they are to be drawn from a wide spectrum of society. It is assumed that that individual prejudices, predilections, sympathies, idiosyncrasies and biases will be ironed out in deliberation with people from different backgrounds holding different views. In other words, a balanced cross-section of local people will bring to the task of adjudication a breadth of knowledge and experience of the life of a particular local community that no professional judge can equal.

Securing a balanced and socially representative bench is, then, the principle upon which the lay magistracy in England and Wales is based. It constitutes its principal raison d'être. Accordingly, if the people appointed as lay magistrates are not representative of their communities, the theory breaks down. Where benches are not representative there is a danger that public confidence in the ability of lay magistrates to administer justice will be

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14 Lord Gifford (1986) has summarised this argument in the following passage:
"Justice over everyday affairs ought not to be done by professional lawyers who may feel no identity with the greater part of the community which they serve. ... By contrast, lay magistrates, if they were truly representative of the community in which the sit, would have many of the virtues of juries. They would be local people aware of
undermined. Enjoying the confidence of the community (including those who are subject to magistrates’ decisions) is critical, and ensuring that the local bench reflects the social composition of the community at large is one important way of securing that confidence. The principle that the lay magistracy should constitute a balance of social and other characteristics and that lay magistrates should be selected widely from groups within the population (always assuming that the individuals in question are up to the job\textsuperscript{15}) is now so firmly entrenched that it is almost never questioned. Debates about the future of the magistracy have tended instead to focus upon whether benches are in practice sufficiently representative and, where they are not, whether adequate steps are being taken to improve matters.

Given the amount of attention that has been paid for so many years to the question of the balance and representativeness of local benches, it is noteworthy that Advisory Committees have always experienced the greatest difficulty in ensuring that local benches reflect the communities they serve.\textsuperscript{16} The image of the lay magistracy that is presented both by the media and by many empirical researchers is of white, middle-class, middle-aged people dispensing justice to those who share few, if any, of these characteristics.\textsuperscript{17} Darbyshire sums up the general criticism when she writes:

"A glance at any Bench of magistrates .. and a closer examination of statistics shows us that [Advisory Committees] are not fulfilling the Lord Chancellor’s desires. The clichéd complaint is manifest: lay magistrates are too white, middle class, Conservative and, I would add, old."\textsuperscript{18}

Several of the empirical studies that have been conducted by researchers in England and Wales since the 1970s have demonstrated that, despite all the efforts that have been made to recruit magistrates from a wide range of socio-economic backgrounds (especially people in manual occupations), most benches remain stubbornly unrepresentative.\textsuperscript{19} The

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\textsuperscript{15} The Lord Chancellor requires that all magistrates have the following qualities: good character, understanding and communication, social awareness, maturity and sound temperament, sound judgement and commitment and reliability: see Lord Chancellor’s Department, \textit{How to Become a Magistrate} (http://www.lcd.gov.uk/magist/mag2fr.htm).

\textsuperscript{16} Darbyshire (2002) provides a useful summary of the problems that face those responsible for selecting magistrates in achieving a social balance on benches.

\textsuperscript{17} See, for instance, King and May (1985) at pp149-50 and Gifford (1986). This brings to mind the comment made by Mr Frank Dobson MP about social security tribunals: "[w]hat we get is people who are comfortably off coming to decisions about the incomes and futures of people who are uncomfortably off" (Standing Committee A, col 470, 6 March 1984).

\textsuperscript{18} Darbyshire (1997) p863.

\textsuperscript{19} See, for example, Hood (1972) at pp50-53; Baldwin (1976), Burney (1979) at pp56-72, and Dignan and Wynne (1997). Darbyshire (1997) provides a useful summary of the available empirical and documentary evidence.
imbalance that has been most commonly identified by academic researchers has been in the social class composition of the lay magistracy, and study after study has shown a heavy preponderance of magistrates in professional and managerial occupations. Although the composition of the magistracy has been changing, and in certain respects dramatically - the proportion of female magistrates is, for instance, now very close to 50 per cent - there have nonetheless been persistent complaints that, when lay magistrates are selected, certain social groups predominate.

Complaints of this kind were voiced over half a century ago when the Royal Commission on Justices of the Peace (1948) noted that "the process of selection has not cast the net sufficiently wide to bring in all the potential talent available" and successive Lord Chancellors have conveyed essentially the same message. Lord Justice Auld (2001), in his review of the criminal courts, accepted that "the magistracy is not a true reflection of the population nationally or of communities locally". He argued that "urgent steps must be taken to remove its largely unrepresentative nature". This point was subsequently accepted in the 'Justice for All' White Paper (2002) where it was noted that "there is still some way to go before we achieve benches that reflect local communities in all their diversity". The Government expressed its commitment to this principle by raising the profile of the lay magistracy and encouraging more people to apply.

In recent years disquiet about the unrepresentative nature of the lay magistracy has increasingly focused upon the selection of magistrates from ethnic minority backgrounds. Morgan and Russell (2000) observed, for instance, that "[i]t has been a longstanding complaint that the lay magistracy is overwhelmingly white and fails to represent the increasing diversity of contemporary Britain". There are powerful arguments in favour of the appointment of substantial numbers of magistrates from ethnic minority backgrounds, most obviously that members of ethnic minority communities need to have a stake in the magistrates' courts if they are to have confidence in the impartiality of the justice administered there.

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20 At para 32.
21 No Lord Chancellor in the post-war period has departed to any significant extent from the view that the benches throughout the country need to reflect more closely the characteristics of the communities they serve: see further Darbyshire (1997) at pp863-66.
22 Auld (2001) at p119.
23 ibid. Lord Justice Auld proposed a number of measures, including the provision of greater financial assistance to those who need it, increasing public awareness of the work done by magistrates, and more flexible arrangements for court sittings to help to extend the scope of recruitment efforts: pp119-26.
26 In the study conducted by Hood, Shute and Seemungal (2003), significantly more ethnic minority defendants than white defendants expressed themselves in favour of the greater representation of ethnic minorities in courts. As the authors make the point:
Since the first black magistrates were appointed in England in the early 1960s\(^{27}\) the number of people from minority ethnic backgrounds appointed to the bench has increased dramatically. In the 1980s, in the only empirical study which has focused upon the appointment of black magistrates, King and May (1985) drew the following conclusion:

"There is evidence of racial prejudice among some of the members of the Lord Chancellor's Advisory Committees and Sub-Committees. This takes the form of negatively stereotyping Asian and Afro-Caribbean people and applying such stereotypes in their expectations of black people's behaviour and in their assessment of their character and abilities.\(^{28}\)

Furthermore, King and May noted that the attempts that were being made in some parts of the country to increase the representation of ethnic minorities on the bench had had only very limited effects.\(^{29}\) They also noted a marked under-representation of women (especially Asian women) and of manual workers amongst appointees from ethnic minority backgrounds, and they argued that greater efforts needed to be made to encourage members of these communities to seek appointment.

Although people in manual employment are still under-represented in the magistracy, increasing numbers of magistrates from ethnic minority backgrounds have indeed been recruited. The social and political context in which issues of diversity and racial discrimination are discussed has also undergone change in these years, partly as a result of the public debate which attended the Stephen Lawrence Inquiry (Macpherson Inquiry, 1999). As has already been noted, the Inquiry prompted government departments and other public organisations to re-examine and rethink their policies. Judicial attitudes have also changed, and the fact that the Judicial Studies Board has introduced training in ethnic awareness for magistrates and judges is itself a significant development.\(^{30}\) The judges, magistrates and

\(^{27}\) Grove (2002 at p13) notes that the first magistrate from a minority ethnic background in this country was Mr Eric Irons, a Jamaican who was appointed to the Nottingham bench in 1962.

\(^{28}\) King and May (1985) p135.

\(^{29}\) ibid at pp100-7.

\(^{30}\) Hood, Shute and Seemungal (2003) at pp93-105 note that over three quarters of the magistrates who had received this kind of training regarded it as 'helpful' to 'very helpful'. These authors attach considerable significance to this training and conclude: "the lower than expected proportion of defendants from ethnic minorities who said they had been treated in a racially biased way by the courts may well be a reflection of the success of the initiative begun in the early 1990s
lawyers whom Hood, Shute and Seemungal (2003) interviewed in their study apparently perceived:

"a 'culture change', which was attributed to the inculcation of much greater sensitivity towards and better understanding of ethnic minority defendants than had previously been the case". (p133)

There is, then, no doubt that the under-representation of ethnic minorities in the lay magistracy is being tackled in a much more determined and effective way than at the time that King and May were carrying out their research.31 Statistical data collected by the Department for Constitutional Affairs demonstrate that the proportion of magistrates from ethnic minority backgrounds is now similar to that within the general population.32 The most recent published statistics show that, in October 2002, ethnic minority magistrates made up 5.6 per cent of lay magistrates in the country.33 This compares with an overall ethnic minority population in England and Wales of 7 per cent. During 2001/2002 a total of 1,786 magistrates were appointed, of whom 8 per cent were from ethnic minority backgrounds. In a few large metropolitan areas the proportion was far higher than this34 - for example, in two MCC areas over 20 per cent of newly appointed magistrates were from ethnic minority backgrounds. We shall return to the issue of representation in later chapters.

to make judges and magistrates more ethnically aware and conscious of the dangers of misperception and prejudice when dealing with defendants and witnesses from ethnic minorities in the criminal courts." (p114)

31 King and May (1985) themselves found that the number of black magistrates appointed had grown rapidly from the mid-1970s onwards. Even so, black magistrates were seriously under-represented in 23 out of 25 of the areas that were covered in their study: pp99-102.

32 In what is probably the most extensive study of lay magistrates ever conducted in this country, Morgan and Russell (2000) concluded that "the composition of the lay magistracy is now approaching ethnic representativeness" (p14). This conclusion was, however, subject to a number of qualifications, in particular that "in those areas with very large ethnic minorities - the London area and one of [the] provincial urban courts - .. the lay magistracy, despite having recruited many non-white members, remains disproportionately white" (p14).

33 Figure 1, Magistrates' Courts Service Inspectorate (2003) at p20. The corresponding proportions for 1999, 2000 and 2001 were 4.5, 5.0 and 5.4 per cent respectively.

34 The Magistrates' Courts Service Inspectorate (2003) noted, for instance, that "[i]t is commendable that, in thirty-five MCCs, the percentage of ethnic minority magistrates was greater than the ethnic minority percentage of the local area population" (p20).
3 Ethnicity and racism in society

With the exception of the study by King and May (1985), with its focus upon the system of selection and appointment, magistrates from ethnic minority backgrounds have not been the subject of empirical research. A large volume of research has, however, been carried out into the circumstances of people from ethnic minority backgrounds in British society, encompassing issues of cultural diversity, personal identity, disadvantage, discrimination and what has been termed 'the new language of institutional racism' (Phillips and Bowling, 2003). Although our own exploration of these issues was focused upon the experiences of ethnic minorities in their role as magistrates, it is important to place our study within this wider context, as indeed we sought to do in our interviews. The following overview of this literature is inevitably selective.

Ethnic minorities in Britain

The 1991 National Census was the first to include a question on ethnic origin. It did so by asking people to state their perceived ethnic group at that time, distinguishing on the basis of colour and country of origin between three broad categories: black (originating from the Caribbean or Africa), South Asians (originating from India, Pakistan or Bangladesh), and Chinese and other minorities. The 'white' majority includes all people of European descent. The same approach, based on self-categorisation, was used in the most recent (2001) Census and in the Labour Force Survey. These most recent (Labour Force) statistics reveal that in 2001/2002, 7.6 per cent of the population of the United Kingdom belonged to a ethnic minority group (Social Focus in Brief: Ethnicity, 2002). Just over half of the total ethnic minority population were Asians, the large majority of these being of Indian, Pakistani or Bangladeshi origin. Just over a quarter of the total ethnic minority population described themselves as black, with approximately equal proportions of Black Caribbeans and Black Africans. The census shows that ethnic minority populations are concentrated in large urban centres, with nearly half the total living in the London region. The next largest concentration of people from ethnic minority backgrounds is in the West Midlands, followed by the North West.

Implicit in the use of the terms 'black' and 'white' is a recognition that skin colour is a determining factor in the census definitions of ethnic groups. However, physical appearance is only one of many factors that define an ethnic group. Country of birth is also taken into account in the census, as is racial descent. It is clear from research into how ethnic minority people think of themselves that in terms of personal identity other considerations are at least
as important as race and country of origin, notably cultural and religious affiliations. The Fourth National Survey of ethnic minorities in Britain, conducted in 1994, included new questions on the significance of ethnic background to the self image of people from ethnic minority backgrounds and on the relative importance of different components of ethnicity, in particular skin colour, racial grouping, country of birth, religion and language. There is clear evidence from the survey findings that people from ethnic minority backgrounds identify strongly with their ethnic and family origins. This applies even to young adults who have been born and brought up in the UK. But it emerged from the survey that the most common expression of ethnicity is not so much what people do but what they say or believe about themselves. The authors term this an "associational or community identity" which people may express strongly even though they do not participate in many distinctive cultural practices (Modood et al, 1997: 332).

Modood et al emphasise the complexity of the issue of personal identity and of the difficulties involved in addressing this question in an omnibus survey. Although common ancestry, cultural and physical characteristics are clearly important in understanding what Rex calls "consciousness of kind", wider socio-economic factors and perceptions of one's social class and social status are also highly influential (Rex, 1986: 16). One important finding of the Fourth National Survey with regard to the concept of personal identity is that the main items of self-description were radically different for Caribbeans than for South Asians. Whereas religious affiliation was central to the self-definition of the majority of South Asian people (irrespective of whether they were Sikh, Hindu or Moslem), skin colour was the main descriptive factor mentioned by Caribbeans. Among Asians there were also important differences in cultural distinctness between African Asians and Indians on the one hand and Pakistanis and Bangladeshis on the other. While the process of change and adaptation in cultural practices is highlighted, so also is the fact that cultural heritage is maintained across generations, as manifested for example by the use of community languages within the family. The authors suggest that there may be an especially high degree of "cultural retentiveness" among Pakistanis, for example in their preferences for arranged marriage, single sex schools for girls, wearing Asian clothes, and marriage between cousins. Modood et al found that the age at which the respondents came to Britain also influenced their perception of identity, although again there were important differences between ethnic groups. A far higher proportion of Asians who migrated after the age of 35 attached importance to religious observance, to wearing Asian clothes and to speaking Asian languages than was the case with Asian people who were either born in the UK or who arrived before starting school. The pattern was different and more complex amongst African Caribbean respondents, with those who migrated as children appearing to have a stronger
associational Caribbean or 'black' identity than those who grew up in the Caribbean. The authors suggest that this 'black' identity developed in this country largely in response to racial rejection (Modood et al, 1997: 329, citing Carter, 1986). Other studies have also shown that for many British born migrants the strength of their ethnic identity derives at least in part from a response to perceptions of racial exclusion and stereotyping by the white majority. Such experiences have contributed to new "anti-racist solidarities" and assertions of ethnic identities, evident in the use of such group labels as 'black' and 'British-Pakistani', and in a revival of aspects of African-Caribbean culture. Modood et al characterise this as a sense of "pride in one's origins…and sometimes a political assertiveness" (Modood et al, 1997: 355; Modood et al, 1994).

It would appear from this research that personal identity is far from being static and fixed by racial origins, custom and convention. As Song argues, people may shape and adapt their own ethnic identities if they so choose according to the situations and contexts in which they find themselves (Song, 2003: 16). Song's analysis suggests that some groups possess more options than others, in part because they are able to draw on a range of distinctive cultural practices in different contexts. Socio-economic status may also extend the identity choices open to ethnic minorities in the sense that being perceived as middle class "helps to provide a social buffer to some forms of racism" (Song, 2003: 29). Those who lack middle class status may choose to assert distinctive ethnic identities which emphasise divergence from the white majority. The assertion of a 'black' identity, for example, as manifested in certain forms of dress, speech and music, affords a degree of 'cultural kudos' among some white young people and is thus an important ethnic option for many young African Caribbean men.

It was evident from the Fourth National Survey of ethnic minorities that identification with an ethnic minority group need not be exclusive. For most respondents this did not conflict with a British self-identity (Modood et al, 1997: 329). Half of the Chinese respondents and more than two thirds of the respondents in the other groups also said they thought of themselves as British. These proportions were even higher among young people and those who were born in the UK. The group most likely to regard themselves as British were African Asians (71 per cent). Modood et al observe that most respondents regarded themselves as British and as a member of their own ethnic group, in effect identifying with both cultures. On the other hand there were significant numbers of respondents whose identity was perceived exclusively in terms of their own ethnic origins, notably the Chinese, very few of whom were born in the UK. Song's analysis illustrates that many factors contribute towards such choices. She also demonstrates that members of minority communities may be under
considerable pressure to conform to the distinctive cultural practices of their own ethnic group. If they flout group norms they risk being accused of inauthenticity or of a lack of commitment to the group (2003: 42). Black people, for example, may be accused from within their group of being 'coconuts' or 'bounty bars' - black on the outside, white on the inside – or of 'acting white' because they have chosen to adopt what is perceived as a middle class lifestyle or way of speaking. This criticism was directed at black magistrates by members of the African Caribbean community interviewed by King and May in their study of the selection and appointment of ethnic minority magistrates. Community workers in particular regarded certain of the black magistrates who were known to them as ready to "sell the community out", or as "living among us but not being part of us" (1985: 129). It was thought that these magistrates were likely to be "swamped by establishment views" and would adopt "middle-class values" whatever their ethnic and social background.

Such pejorative judgements may well be rejected by those on the receiving end, particularly as they may not wish to opt out entirely from their group affiliation. One possible solution is to maintain partial identity with the majority culture, or perhaps a sense of "localised belonging", which stops short of becoming a full investment in a wider British national identity (Song, 2003, citing Gilroy, 1987). This may be seen, for example, in the way in which middle class black and Asian people who work in a predominantly white environment become integrated into mainstream society in their public lives, while in their private lives they continue to uphold the cultural values and practices of their ethnic group.

Socio-economic disadvantage

In the Home Office report 'Race Equality in Public Services' it is stated that the Government is committed to "making this country a successful multi-racial society where equality of opportunity is a reality for all" (Home Office, 2002). The indicators employed by the Home Office to chart change and progress include performance data obtained from the main public services which compare their impact upon different ethnic minority groups. Information is also gathered on perceptions of access to those services amongst both minority and majority communities. On both types of indicator there are marked differences between white people and ethnic minorities. There is also considerable variation among ethnic minority groups. People from ethnic minority backgrounds are more likely than the white majority to live in low-income households and to be unemployed. Pakistani and Bangladeshi people have considerably lower levels of employment than both white and other ethnic minority groups and they are much more likely than all the other groups to live on low incomes. Interestingly,
Black Caribbean men have high rates of unemployment, whereas Black Caribbean women have employment rates almost as high as those of white women.

As Modood et al (1997) emphasise in their examination of the findings of the Fourth National Survey of Ethnic Minorities, differences between minority groups have become as important and as significant to 'life-chances' as the similarities. These authors demonstrate that trends identified in earlier surveys (1966, 1974, 1982) continued into the 1990s, with some improvement for most groups on the key dimensions of socio-economic disadvantage (education, employment and housing), but with minorities still concentrated in a limited number of less well paid occupations and industries. People of African-Asian and Indian origin now have a profile similar to that of white people in terms of educational achievement and employment levels, whereas Muslim groups (principally those of Pakistani and Bangladeshi origin) are at a substantial disadvantage in terms of employment, education, income and standard of living (Jones 1993; Modood et al, 1997).

The Home Office report on Race Equality in the Public Service (2002) suggests that, in terms of both participation and qualifications achieved, the UK education system is successful in involving members of the ethnic minorities. Although educational progress partly reflects the educational profile of the migrant generation, statistics for 2001/02 indicate marked differences between people from different ethnic minority groups, with Bangladeshi and Pakistani people achieving far fewer GCSEs and higher level qualifications (degrees or equivalent) than other groups. On the other hand, some ethnic groups (Chinese, Indians and Black Africans) were more likely than white people to have degrees.

**Experience and perceptions of discrimination and racism**

The evidence of continued socio-economic and educational disadvantage among ethnic minority groups raises the question of whether this stems from racial discrimination and failure to promote race equality across the range of public services. The Race Relations Act 1968 made it unlawful to discriminate on grounds of race, colour or ethnic or national origin. Subsequent research into the incidence of racial discrimination indicates that experience of discrimination and racial prejudice is influenced principally by perceived 'colour' (Smith, 1997: 708). This is clear from field experiments designed to identify discrimination among job applicants and from interviews with people in the position to discriminate. These experiments have consistently shown that levels of discrimination are substantially higher in respect of African-Caribbeans, Indians and Pakistanis than in respect of white immigrants. Although there is some evidence from such experiments that racial discrimination in
employment and housing declined following the Race Relations Act 1968, similar experiments conducted in 1986 indicated continuing discrimination in the employment field. Many members of minority groups believe that they have been discriminated against in the workplace, although it has been suggested that increased reporting of discrimination among South Asians since the 1980s may indicate a rising level of consciousness. As Modood et al put it, "the perception of discrimination may be affected by the extent to which the different minorities feel themselves to be defined by 'race' or 'colour'" (1997: 352). The authors also make the point that minorities are not passive objects of white opinion, but influence white attitudes and behaviour through a process of "interactive ethnicity, shaped partly by and in reaction to, white people, institutions and society".

It may be inferred from this research that the reasons why people from different ethnic backgrounds report varying degrees of discrimination are complex. Modood et al identified a "cultural synthesis and sociability" which derived from the fact that "some young [white] people admire their black contemporaries not in spite of, but because of their blackness, or their aesthetics, style and creativity as well as for their anti-racist resistance" (1997: 352). Asians have been less involved than African Caribbeans in this pattern of contemporary youth culture and there is some evidence from the Fourth Survey National Survey of Ethnic Minorities in Britain that young white people are beginning to express more prejudice against Asians (especially Muslims) than against African-Caribbean people. Modood et al conclude that it is no longer adequate to think of a single kind of racism based on perceptions of colour since, besides 'colour-racism', there are other forms of racial prejudice and discrimination which use cultural difference "to vilify or marginalize", particularly in the case of South Asian people (see also Smith, 1997: 711). These authors also argue that since the 1990s Muslim groups have become more assertive and politically organised, a development associated with an increase in specifically anti-Muslim prejudice. In short, 'cultural racisms' may be at least as significant as 'colour racism' in explaining racist attitudes and behaviour on the part of the white majority.

Returning to the focus of our own study, the central question that we investigated concerned the ability of people from ethnic minority backgrounds to work effectively as lay magistrates without being treated in any way differently as a result of their ethnicity. This focus is consistent with wider questions concerning racial discrimination and race equality which underpin the DCA’s Courts and Diversity programme. These questions were framed as follows: (a) to what extent is there evidence of direct discrimination; how do questions of race influence decisions; and (b) to what extent is there evidence of any indirect discrimination; how do processes impact differently upon different ethnic minority groups?
The distinction between direct discrimination and indirect discrimination is an important one. Field experiments such as those mentioned above illustrate direct discrimination against black and Asian people in work, while others point to similar behaviour on the part of housing authorities.\(^3\) Examples of direct discrimination can also be found in the criminal justice system. For example, Hood’s (1992) study of race and sentencing practices found evidence of a higher incidence of custodial sentences imposed on African-Caribbean defendants. This could not be accounted for by factors that the courts may properly take into consideration. Other studies have found evidence of direct discrimination in the probation service (Mavunga, 1992; NACRO, 1986).\(^3\) It has been suggested, for example, that probation officers do not consider the same range of sentences for black and Asian defendants as for white defendants, and that they are reluctant to recommend probation for black people as they lack confidence in their ability to work with them.

The concept of indirect discrimination, made unlawful under the Race Relations Act 1976, implies the use of requirements, conditions or rules that, whilst they may be applied equally, cannot be justified on non-racial grounds and, in practice, disadvantage minority groups. In general, indirect discrimination derives from racial prejudice or negative assumptions about people from ethnic minority backgrounds, encompassing a belief that one’s own race or ethnic group is superior. As Phillips and Bowling (2003) point out, indirect discrimination may be as important as direct discrimination when seeking to explain unequal outcomes. An example of indirect discrimination in the criminal justice process is the differential use of custodial remands, one effect of which is to increase the likelihood of a subsequent custodial sentence. Phillips and Bowling (2003) note that ethnic minorities often fall into the category of defendants remanded in custody because of the greater likelihood of their being homeless, unemployed or in ‘disrupted’ families, factors which may be seen as increasing the risk of failure to appear at court. Phillips and Bowling also observe that the seemingly neutral criteria taken into consideration in the remand decision are loaded against ethnic minorities because of social inequalities “which are themselves often the result of racially discriminatory social practices” (2003: 279).

Concerns about poor relations between the ethnic minority population and agencies of the criminal justice system are long-standing (Scarman, 1982). Although many of the studies that have examined the issue of racial discrimination within the criminal justice system are


\(^{3}\) Mavunga (1992) notes, however, that even by 1992 much had been done to eliminate such discrimination and to improve the Probation Service’s understanding of the needs of black people as defendants and victims.
inconclusive, Hood et al (2003) note that some people from ethnic minority backgrounds perceive the system to be unfair. Other surveys have likewise highlighted black and Asian people’s lack of confidence in aspects of the criminal justice system. The most recent British Crime Survey, for example, disclosed lack of confidence among ethnic minority respondents that the justice system "respects the rights of, or treats fairly, people accused of committing a crime" (Mirlees-Black, 2001). Members of ethnic minorities are also more likely than the rest of the population to live in communities that are particularly affected by criminality, and more likely to experience direct victimisation, although they are less likely to report such crimes to the police. As court users, members of ethnic minority communities are less likely than their white counterparts to be satisfied with the treatment they receive in court.

A recent citizenship survey carried out by the Home Office (Attwood et al, 2003) included an investigation of perceived racial prejudice and racial discrimination in a range of public and private organisations in England and Wales. With regard to perceptions of racial prejudice, two in five respondents thought there was more racial prejudice now than five years ago. Perhaps surprisingly, white respondents were more likely than their black or Asian counterparts to believe that prejudice had increased, although within all groups (with the exception of black Africans) more people said that racial prejudice had increased than said that it had fallen. Respondents in higher socio-economic groups were less likely than those in other groups to say that there was more prejudice today than five years ago, as were degree holders compared with those with lesser qualifications. Overall, most respondents expected public and private organisations not to discriminate on grounds of race, although respondents from ethnic minority groups said that they were more likely to experience discrimination. Black people in particular were more likely to believe that they would be treated worse than other ethnic groups.

The citizenship survey also revealed that expectations of unequal treatment were highest in relation to the criminal justice system, particularly the police service. Consistent with the findings of the British Crime Survey, confidence in the police was lowest among Caribbean respondents (46 per cent thought that they would receive unequal treatment) although a

37 Hood, Shute and Seemungal (2003) found that complaints from ethnic minority defendants regarding unfair or racially biased treatment were muted. Although at least one in ten black and Asian defendants appearing in magistrates' courts perceived racial bias, the authors nonetheless concluded that their results "revealed that the perceptions of racial bias amongst ethnic minority persons who appear before the criminal courts appear to be less widely held than in the past" (p v).

38 On the basis of figures extracted from the British Crime Survey, FitzGerald and Hale (1996) drew the following conclusion: "Relatively low levels of ethnic minority confidence in the police are not confined to Afro-Caribbeans. They are also found among Asian groups; and may be influenced by these groups' experiences as victims of crime - in particular the police response to crimes which have a racial element to them." (p4).

39 See further the discussion in the White Paper (2002) at p119.
minority of Asians also held this opinion. Black people were also more likely than any other group to believe that they would be treated worse than other groups by landlords and letting agents and by banks and building societies. With regard to the public sector, ethnic minority respondents who had had contact with the organisation in question were more likely to believe that they would be discriminated against than those who had had no contact. For example, a third of black people who had had contact with the courts said that they were likely to be treated worse than people of other ethnic backgrounds. This same pessimistic view was expressed by 50 per cent of respondents in respect of the Crown Prosecution Service (compared with 24 per cent of those who had had no contact with the CPS).

The Macpherson Report into the death of Stephen Lawrence focused public attention on the urgent need for public organisations to respond to negative perceptions and expectations within ethnic minority communities. The term ‘institutional racism’, although not new, has been given considerable prominence since the publication of the Macpherson Report (1999: 28). It was defined in the report as:

"the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage ethnic minority people."

The inquiry team uncovered fundamental errors in the investigation into the death of Stephen Lawrence and concluded that the investigation was marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers. Institutional racism was apparent in the conduct of the Metropolitan Police Service and it also affected police services elsewhere. The report warned that other institutions and organisations had no room for complacency since collective failure was apparent in many of them, including other agencies within the criminal justice system. Hence the conclusion that all institutions needed to "examine the outcome of their policies and practices to guard against disadvantaging any sections of our communities" (Macpherson, 1999, paragraph 46.27). The report also identified a need to demonstrate fairness, and to generate trust and confidence amongst ethnic minority groups who saw themselves as being discriminated against.
4 Research method

The team which carried out this research comprised the three project directors (Julie Vennard, Gwynn Davis and John Baldwin) and a Research Associate appointed specifically to work on the study (Julia Pearce). Julie Vennard undertook responsibility for day to day management of the project. The research team was supported by an Advisory Group which comprised a representative of the Department for Constitutional Affairs, a representative of the Magistrates' Association (and member of its sub-committee on minority ethnic issues), a representative of the Justices' Clerks' Society (and member of its Diversity Network), and an academic researcher.

A qualitative approach

It was understood from the outset that our principal focus would be upon the way ethnic minority magistrates experience the court environment. To explore this effectively required, in our view, an essentially qualitative approach by means of which we would discuss this and related topics in depth, inviting and encouraging individual magistrates to give us the full benefit of their experience, employing their own language and understandings with minimal prompting from the research interviewer.

However, at the same time and potentially at odds with this avowedly qualitative approach, the research team recognised that magistrates' experience might be different in different parts of the country, in different courts, also according to whether they were male or female, and by reference to aspects of personal biography, for example their education, perceived social class, language skills and professional status. There would also, we surmised, be a host of personality factors that might come into play. This argued for a combination of the essentially qualitative approach that we favoured with a commitment to achieving adequate 'coverage' of the spectrum of experience so as to reflect all the above factors.

Choice of courts

In an attempt to meet these competing aspirations we decided to conduct the main empirical component of the research in nine large magistrates' courts (plus a cluster of smaller courts, referred to collectively as 'Court 10'). We wanted to achieve a reasonable geographical spread and accordingly selected courts in four Magistrates' Court Committee areas (MCCs). The chosen courts comprised:
• courts which were predominantly or even overwhelmingly 'white' alongside others with a significant ethnic minority representation;
• a mix of larger and smaller courts (although for logistical reasons the former predominated); and
• a mix of inner-city courts and others serving a population that was socially diverse (only the cluster of small courts subsumed within 'Court 10' could fairly be labelled 'rural').

Throughout this report we identify courts only by number, as follows:

Court 1 A city court in the South-West.
Courts 2, 3 and 4 Three Midlands courts.
Courts 5, 6 and 7 Three London courts.
Courts 8 and 9 Two courts in conurbations in the North-East.
Court 10 A cluster of five semi-rural courts in the South-West.

Statistical information

In addition to our interviews with individual magistrates and our group discussions (see below), we sought factual information concerning the role of ethnic minority magistrates in the courts which figured in the study. We sought this information partly from the Department for Constitutional Affairs and partly from the courts themselves. This factual information included:

• the number of white and ethnic minority magistrates in each court;
• their length of service;
• the number of applications from ethnic minority candidates and relative success rate;
• the number of appointments of ethnic minority magistrates, year by year;
• the number of departures and resignations, also year by year;
• the number of ethnic minority magistrates who act as Chairman;
• the number of ethnic minority magistrates sitting in specialist courts;
• the number of ethnic minority magistrates who are members of committees;
• any formally constituted group to review race issues;
• training for magistrates in that court on the theme of race and diversity;
• recruitment strategies.
Which ethnic minorities?

We were aware from the outset of the study that the definition of 'ethnic minority' is not straightforward. We wondered, for example, whether magistrates who might regard themselves as members of a white minority - say people with a European or Irish background - should be included. In the end we decided that whilst the definition of 'ethnic minority' is imprecise and gives rise to intriguing questions about the intended boundaries of this study, we would do what was expected of us, which was to focus our attention upon 'the visible minorities'. This meant, in practice, that we interviewed 'black' and 'Asian' magistrates, acknowledging as we did so that there is questionable logic in employing these particular appellations. We included magistrates born in this country and those who had come here as children or young adults. As long as the label 'black' or 'Asian' was applied by the court, that was good enough for us. In fact, some of our respondents were keen to impress upon us that they did not consider themselves to be a member of any minority, while a few even questioned the decision to ground this study in perceived racial difference. They thought it exaggerated its significance and drew attention to something which they repudiated as a significant component of their identity. This was a minority view, but some expressed it very forcefully.

Approaching magistrates

We approached individual magistrates by letter, these letters being for the most part channelled through the individual courts. The court administration was asked to send the letters (which we had drafted) to a given number of ethnic minority magistrates. In smaller courts we asked that the letter be sent to all the ethnic minority magistrates on that particular bench; in others we asked that it be sent to a particular number, the magistrates in question to be chosen at random (for example, every second name on the list). The letters incorporated a reply slip and SAE - the latter being addressed to the researchers. Where there was no reply to the initial letter, we asked that a follow-up letter (again drafted by us) be sent.

The number of magistrates contacted in each court was in part a reflection of our availability to conduct interviews in that centre, and in part it reflected our wish to achieve an adequate representation of ethnic minority experience within each court.
Interview numbers and success rate

Overall there were said to be 303 ethnic minority magistrates within the ten courts included in the study (always remembering that Court 10 is a composite). Of these, we approached 189 magistrates seeking an interview. One hundred and thirty-four replied agreeing to be interviewed (a 'success rate' of 71 per cent) and in the event we carried out 128 individual interviews with ethnic minority magistrates. The full breakdown, by court, is given in the table below.

**Table 1: Breakdown of Interviews with Ethnic Minority Magistrates (by court)**

<table>
<thead>
<tr>
<th>Court</th>
<th>Total number of EM magistrates within each court (1)</th>
<th>Number of magistrates approached</th>
<th>Number agreeing to be interviewed (2)</th>
<th>% of those approached who agreed to be interviewed</th>
<th>Number actually interviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>19</td>
<td>19</td>
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<td>5</td>
<td>36</td>
<td>18</td>
<td>14</td>
<td>78%</td>
<td>12</td>
</tr>
<tr>
<td>6</td>
<td>28</td>
<td>22</td>
<td>12</td>
<td>55%</td>
<td>12</td>
</tr>
<tr>
<td>7</td>
<td>12</td>
<td>12</td>
<td>8</td>
<td>67%</td>
<td>6</td>
</tr>
<tr>
<td>8</td>
<td>31</td>
<td>15</td>
<td>13</td>
<td>87%</td>
<td>13</td>
</tr>
<tr>
<td>9</td>
<td>44</td>
<td>30</td>
<td>15</td>
<td>50%</td>
<td>13</td>
</tr>
<tr>
<td>10</td>
<td>12</td>
<td>12</td>
<td>9</td>
<td>75%</td>
<td>9</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>298</strong></td>
<td><strong>189</strong></td>
<td><strong>134</strong></td>
<td><strong>71%</strong></td>
<td><strong>128</strong></td>
</tr>
</tbody>
</table>

1 These were the figures supplied by the LCD in May 2002. The numbers may have altered slightly by the time we approached these courts in autumn 2002.

2 There were six magistrates who agreed to be interviewed but whom we did not, in the end, manage to interview. In some instances we were unable to contact these magistrates following their initial positive response; in others it proved impossible to schedule interviews to coincide with our visits to their court.

Conducting the interviews with individual magistrates

We carried out most of the interviews on court premises, rather fewer in magistrates' own homes, and the remainder at our respective universities or (in a couple of instances) in a public setting such as a public house. All but six interviews were conducted face to face; the remainder were done over the telephone. The average duration was about one hour, although some magistrates gave us substantially more time than that.
We did not employ a standardised questionnaire; rather, we had a checklist of topics that we wished to cover. Interviews therefore took the form of a conversation, with magistrates being given every encouragement to elaborate on points that seemed important to them. The checklist was employed principally to ensure that neither we, nor they, missed anything important.

All but one of our interviews, including those conducted over the telephone, were tape-recorded. The areas covered in our interviews are reflected in the main body of this report. We explored respondents’ experience of life beyond the bench, and experience of racism in those other contexts, as well as every aspect of their experience as a magistrate.

As well as an in-depth discussion around key themes, we asked certain specific questions which lent themselves to subsequent quantification. We had designed a pre-coded questionnaire for this purpose and we completed this instrument as well as providing a much fuller transcription to take account of all the topics that had been covered.

Writing up the interviews

Individual interviewers were responsible for writing up the interviews they had conducted. We used the tape to help produce a full written account. This was not a complete transcription, but all the key points were reproduced as a typed record, at least some of it a verbatim account of what had been said (signified by the use of quotation marks in the written text). These interview records typically ran to four or five typed pages. The balance between summary and verbatim record was at the discretion of the interviewer and reflected the power or distinctiveness with which points were made. The account was 'thematised' rather than (necessarily) strictly chronological.

Group interviews

From the outset of this study we recognised the need to examine the views and experience of white magistrates alongside those of their minority ethnic colleagues. This was partly so that we could examine the issue of racism - or perceived racism - from the perspective of the white majority, but also to enable us to explore issues pertaining to the magistracy in general, including criticisms or dissatisfactions with the role which applied to the bench as a whole. Our aim was to distinguish between problems or concerns attributable to race and those which had a wider provenance. Although our primary focus was on race and racism, we thought an exclusive focus on that topic was liable to mislead. We wanted always to
place race in its wider context - that is, in magistrates’ experience of every aspect of the role. As we have already indicated, some ethnic minority magistrates were not concerned about racism, or regarded it - in this context - as a matter of minor significance. We were seeking to understand not only whether race was an issue, but how important an issue it was when set alongside other concerns.

We conducted these group discussions at five courts. Each meeting lasted between one and a half and two hours. The numbers present varied considerably: generally it was fewer than ten magistrates - in one court, just three - although in another court some twenty magistrates contributed. The groups were intended to canvass the views and experience of white magistrates, although at one centre (the one where twenty magistrates were present), two ethnic minority magistrates also participated. In managing these discussions we once more employed a checklist of topics to be covered, and the discussions were again tape-recorded.

As with our individual interviews, we prepared a full written account of these discussions, much of it reproduced verbatim.

Managing and analysing the research data

The quantifiable elements of our interviews with individual magistrates was analysed with the aid of SPSS (Statistical Package for the Social Sciences). It was a rather more arduous business to analyse thematically 128 individual interviews (plus our various other discussions), each of which had been written up at length, many with copious verbatim extracts. There is no simple answer to the question of how to go about this, as experienced socio-legal researchers of a ‘qualitative’ persuasion know only too well. One option would have been to employ one of the computer packages which have been designed to assist in the identification and retrieval of recurring themes or topics within verbatim or semi-verbatim field notes. We were not convinced that a computer program would offer very much by way of time saved or effectiveness in managing this particular data set. We relied instead on a laborious, painstaking process of reading through all our interviews and organising the material under thematic heads. Since we had ourselves conducted the interviews we had a good sense of what the field notes contained and this enabled us to plan a writing structure and, thereafter, to identify the various subsidiary themes which would contribute to each chapter. All of us involved in the analysis and writing read through all the material in order to gauge the weight of opinion on particular topics and to select individual contributions that were illustrative of particular viewpoints or experience.
As one way of helping to organise material from 128 interviews, and of choosing which extracts to employ for the purpose of illustration, we identified 45 interviews in which it seemed to us that our respondents had conveyed their experience with particular clarity. The point is not that these interviews contained unusual features - quite the opposite - but that the interviewees expressed themselves in a striking way which made them effective representatives of particular viewpoints or experience. Also, we prefer to avoid the use of disembodied quotes in research reports. All our verbatim extracts are attributed to one of these 45 respondents, partly for evidential reasons but also because we think it is easier for readers to keep track of 45 interviews than 128. In order to protect the anonymity of our magistrate respondents we have assigned letters (ranging from Mr A to Mrs SS) as identifiers.

Some reflections on our research method and the research team

The first task in research is to identify the key questions and then to devise a method that provides a fair chance of answering them. Thereafter, researchers may have to grapple with a variety of practical difficulties which threaten the integrity and effectiveness of their enterprise. Some of these limitations and difficulties were evident in this study, although not (in our view) on a scale to threaten the viability of the project.

One limitation which we must acknowledge at the outset is that it was not possible for us to go beyond the magistracy in order to interview members of the ethnic minorities who had perhaps contemplated applying to be a magistrate but who had in the end decided against it, or who had applied to become a magistrate but had been turned down, or who had once been a magistrate but had resigned. None of these strategies, all of which might have been illuminating, were feasible within the timescale and resources of this study. This does not undermine the value of what we were able to achieve but it is undeniably a gap - or several gaps - in our knowledge.

Secondly, and related to the above, the research had no longitudinal element - that is to say, we could not follow magistrates over a period of time in order, for example, to gauge whether concerns expressed by relative newcomers dissipated as they became more familiar with the court environment and their colleagues. A common theme of our interviews was that the experience of joining the magistracy, say ten or twenty years ago, had been intimidating, but that these days new recruits (whether black or white) were treated altogether differently. We cannot know for certain whether we should take these assertions entirely at face value, or
whether we should attribute some of this supposed transformation to the greater ease that these magistrates, now themselves fully integrated old stagers, felt in the environment of the court.

Thirdly there is the interview form itself. We were not, in this study, examining events which could be viewed and reported from a variety of perspectives; we were reliant, instead, upon a series of unchallenged personal accounts. That is not to say that we regard our interview data as unreliable: our respondents were appointed to the bench partly on the basis of their integrity and we have no doubt that they all made a conscientious effort to tell the truth as they saw it. Furthermore, we conducted a great many interviews and whilst we were not reviewing specific incidents common to several of our respondents, the interviews all covered more or less the same ground. But that is not the same as our having ourselves observed the incidents under discussion, or being offered accounts of a single event from the perspective of different actors.

Finally on this theme, it is beyond the scope of this chapter (and the competence of the authors) to examine all the pitfalls and limitations of 'truth' in social exchange, whether it be in a research interview or a conversation across the garden fence, but we should at least acknowledge that people tell stories in their particular way, maybe giving emphasis to aspects which other respondents would not even have noticed (and would conscientiously deny had taken place) and omitting others which their fellow story-tellers would deem highly relevant. An avowedly confidential discussion of racism or discrimination in the context of the magistracy is not perhaps as highly charged as some recollections, but it may still present certain difficulties - not least because this is a social and working group to which this person still belongs.

Lastly, we have to consider the research team itself. We are all white and, at least by virtue of our current occupations, middle-class. The view we take of this matter may be summarised as follows. Social research, especially interviewing, is greatly assisted where the researchers are able to inspire confidence and trust in their respondents. This is especially true where the interviewing style is conversational and the interviewee is being asked to reflect on sensitive topics. There are several aspects of the interviewer's presentation of him/herself which may inhibit this desired frankness. Racial difference - especially where race is the topic under discussion - is one of these. But these barriers are not impenetrable. Depending on the social distance involved, people become highly skilled in crossing them - if they want to. In this instance we were interviewing magistrates rather than, say, teenage rap artists, which might have been more difficult. We were trying to gain
insight into experience that we did not share, but that is true of nearly all social research and a good many other interactions besides. It is not necessarily insurmountable - it depends what else one brings to the table.

One final point, related to this theme. If qualitative research is to give full value, it can only be because the in-depth research interview provides an opportunity for the researcher to understand better - and not simply to accumulate another set of experiences to add to the pile. This is why, in our view, it is essential that those responsible for the ultimate translation of the research data into seamless prose be present at its birth - which is another way of saying that in this instance the research directors participated fully in the fieldwork, undertaking between them some eighty interviews.
5 Profile of the magistrates whom we interviewed

In this chapter we provide a brief profile of the magistrates whom we interviewed in terms of their sex, age and ethnic group. We also summarise the length of time they had sat as magistrates, their seniority on the bench and the extent to which they participated in specialist courts and committees.

Sex, age and ethnic group

Of the 128 magistrates whom we interviewed across the ten courts, 50 (39 per cent) were women and 78 (61 per cent) were men. Nationally the proportion of magistrates who are female is higher, at just under half the total. Statistics supplied by the participating courts showed, however, that the percentage of magistrates within the ethnic minority membership who are female (42 per cent) is very similar to that within our sample.

All but 13 (10 per cent) of our respondents were over 40 years of age. Sixty per cent were aged between 40 and 59 and just over 25 per cent were aged 60 plus. This age distribution is similar to the national pattern within the magistracy. The female magistrates whom we interviewed were younger overall than the men, a third of the men falling within the 60 plus age bracket compared with just 14 per cent of the women.

The ethnic background of the magistrate in the sample was classified according to the broad categories employed in the National Census. As indicated in Table 2 below, interviews were carried out predominantly with magistrates of Black Caribbean and Indian origin. Just over three-quarters of our interviews were with magistrates from these two ethnic backgrounds. In addition we interviewed 22 magistrates of Pakistani or Bangladeshi origin and seven who were from other ethnic minority backgrounds, or who described themselves as of mixed ethnicity (white and Asian).
Table 2: Ethnic breakdown of magistrates by court

<table>
<thead>
<tr>
<th>Court</th>
<th>Black Caribbean</th>
<th>Black African (1)</th>
<th>Indian</th>
<th>Pakistani, Bangladeshi</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>9</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td></td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>9</td>
<td>13</td>
<td>6</td>
<td>2</td>
<td></td>
<td>30</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td></td>
<td>12</td>
</tr>
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<td>4</td>
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<td>4</td>
<td>1</td>
<td>1</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>Totals</td>
<td>51 (40%)</td>
<td>48 (38%)</td>
<td>22 (16%)</td>
<td>7 (5%)</td>
<td></td>
<td>128 (100%)</td>
</tr>
</tbody>
</table>

1 There were only three magistrates of Black African descent.

The number of interviews that we conducted with black and South Asian (that is Indian, Pakistani and Bangladeshi) magistrates varied by court, but broadly reflected the ethnic balance of each bench. For example, at Court 3 Indian magistrates outnumbered black magistrates by approximately three to one, as they did in our sample. At Court 1 black magistrates outnumbered South Asian magistrates by almost three to one, and again the pattern was similar within our sample of respondents.

It must be remembered that white magistrates, who were in the large majority in all the participating courts, have been excluded from this picture. Although national figures suggest that the percentage of magistrates from ethnic minority backgrounds is now close to mirroring the population as a whole, there appeared to be some under-representation of these groups at five of the courts in our study. We return to this issue in Chapter 10 when we examine the profile of the benches as a whole and compare this with the population they serve.

Years’ experience as a magistrate

The length of time our respondents had been sitting as magistrates ranged from under two years to over twenty years. This wide range of experience across the participating courts enabled us to explore the important question of whether magistrates who were appointed relatively recently expressed different views and reported different experiences from those magistrates who had been sitting for several years.
Chairmanship and membership of committees

Fifty-three (41 per cent) of the magistrates whom we interviewed were qualified to sit as chairman of the bench. A further nine respondents were undertaking chairmanship training at the time of our interviews. Of those who were qualified to chair proceedings, the large majority (45 out of 53) did so on a regular basis. There was variation between courts in the proportion of respondents who acted as chairman. This broadly reflected inter-court variation in the ratio of wingers to chairman among the ethnic minority magistrates as a whole. At three courts, however, our sample included a disproportionately large number of ethnic minority magistrates who sat as chairmen. As might be expected, there was a clear relationship between the age of the magistrates we interviewed, the number of years they had been sitting, and whether or not they sat as bench chairman.

In addition to their role as magistrates in the Adult Court, 57 (45 per cent) of our respondents sat in one or both of the specialist courts - the Youth Court and the Family Court. Involvement was higher in the Youth Court (33 per cent) than in the Family Court (24 per cent).

Fourteen respondents (11 per cent) were members of their Court’s Advisory Committee, responsible for interviewing prospective new recruits to the bench and making recommendations for their appointment to the Lord Chancellor. This level of representation on Advisory Committees was slightly higher than for the ethnic minority magistrates on the participating benches as a whole.

Although magistrates may also be elected to the Magistrates’ Courts Committees (MCCs) that are responsible for the administration of the courts, in practice only a very small proportion of magistrates sit on these committees. Since they are coterminous with the 42 Criminal Justice Areas, many cover several magistrates’ courts (for example, there is only one MCC for the whole of Greater London). The maximum number of committee members in any one area is twelve (with the exception of the committee that serves Greater London), including non-magistrate members. It is not therefore of great significance, given these numbers, that none of our respondents were members of the MCC covering their court.

In Chapter 10 we compare our respondents' careers on the bench with those of their white colleagues, employing these same yardsticks of progression to chairmanship, involvement in specialist courts, and membership of committees.