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Investigated or ignored? An analysis of race-related deaths since the Macpherson Report

Introduction

It can have come as little surprise to many BME communities that statistics published by the Ministry of Justice in November 2013 revealed that courts are consistently biased against them.¹ Black and Asian defendants are some 20 per cent more likely than white defendants to be given prison sentences for similar offences, just as race, religion or nationality mark out who is stopped and searched on the streets. But there is one area of the criminal justice system in which BME communities could perhaps expect ‘fairer play’ – when they are the victims of racial violence. And that is because the agitation of the late 1990s and the campaigning around the death of Stephen Lawrence led to a number of changes in the criminal justice system. The Macpherson Report into his death, and the creation of ‘racially aggravated offences’ under the Crime and Disorder Act (1998) were intended to provide better protection for minorities at risk and justice for victims.

Fifteen years ago, when the Macpherson Report was published, the criminal justice system was placed under unprecedented critical scrutiny in relation to how it responded to racist attacks. After thousands of pages of written submissions, testimonies and empirical evidence, it was famously described, in relation to the Metropolitan Police’s investigation into Stephen Lawrence’s racist murder in 1993, as ‘marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers’.² This would never have been brought to light were it not for Doreen and Neville Lawrence’s dogged persistence over the intervening years to find the truth, both about what had happened to their son and why the police had failed them so comprehensively. Bit by bit, they forced the police to acknowledge how they had failed to apprehend suspects, disregarded witnesses, treated a main witness as a suspect, dropped the investigation soon after beginning it and, ultimately, allowed the teenage boy’s killers to get away with what they had done for nearly two decades.³

Of the seventy recommendations made in the Macpherson Report, sixty-seven have since been implemented in full or in part.⁴ Ten years after it was published, the Home Affairs Select Committee took evidence on the report’s impact on policing, stating that ‘[a]ll witnesses recognised that the police service had made progress towards tackling racial prejudice and discrimination since 1999’.⁵ And this was a message reinforced by the

Equality and Human Rights Commission (EHRC) that same year which, whilst highlighting particular concerns around the policing of ‘race’, said that ‘there had been several key initiatives that have been fundamental to the progress made on racial incidents’.⁶ The sheer scale of internal reviews, progress reports, policy changes and legislative developments cannot be denied.

The official narrative suggests that both racial violence as a problem and as an overlooked crime are over, that inequalities have been addressed. But the reality is somewhat different, as we found out when we looked in detail at murder cases with a known or suspected racial element – the vast majority of victims coming from BME communities. In fact these communities’ experiences of racism have been largely overlooked when murders have been prosecuted. The police, the Crown Prosecution Service (CPS), lawyers and trial judges are taking decisions at various points during the investigation or prosecution of murder cases which rule out any racial element. Ironically, ‘race’ marks individuals out when they are alleged perpetrators of crime, but race and racism are elided by institutions when such individuals are victims of crime. And families end up disillusioned and isolated by a legal process that appears unwilling to address the impact of racism on their lives.

One such family is that of 55-year-old Kamlesh Ruparelia, who, in August 2013, emerged distraught and confused from a coroner’s court in Sheffield and delivered an angry statement to journalists. In it, the family expressed their shock at the ‘mismanagement’ of Mr Ruparelia’s case, stating that the CPS had failed ‘to demonstrate its commitment to protect the public’.⁷ ‘The decision of the [CPS] not to prosecute anyone over Kamlesh’s death’, they stated, ‘and not to let a jury hear the evidence sends out the wrong message’. The message that they as a family had received, and the feelings that they had been left with, were of loss: ‘the loss of Kamlesh and the loss of justice’.

Kamlesh Ruparelia arrived in the UK as a 17-year-old in the 1970s, having fled Idi Amin’s Uganda. In 2010, he was with his cousin and some (white) friends, playing pool in a pub in Sheffield, when a white man walked over and asked them, ‘Why are you talking to these two P***s?’ According to witnesses, after Mr Ruparelia got up to remonstrate, the man hit him with a single, ferocious punch. As one of the women present at the time said, ‘He hit Kam and he went down and his glasses went onto the pool table. I never saw Kam do anything. He just went down like a skittle and his head hit the floor.’ The attacker

himself, in a statement he later gave to the police, was more blunt: ‘I just lashed out at him. I connected really well.’

Exactly how ‘well’ he connected was later made clearer by a pathologist, who explained that Mr Ruparelia had been felled by a ‘heavy punch’ which probably knocked him unconscious immediately. A few days later, he was dead. The perpetrator, a 38-year-old local businessman, initially admitted to the police that he had thrown the punch, but claimed that he couldn’t remember exactly how the altercation had come about. After Mr Ruparelia died from his injuries, however, the assailant said that he had actually acted in self-defence and that he had felt ‘extremely threatened’ at the time. This claim was contradicted by people who had seen what had happened and had already told the police that Mr Ruparelia did nothing to provoke the attacker. But shortly before the defendant was to be put on trial for manslaughter, new witness accounts were produced by the defence, potentially undermining the prosecution case. Now in possession of competing witness accounts about what had prompted the man to punch his victim, the CPS dropped the charges, saying there was no realistic prospect of a conviction. The perpetrator was prosecuted – for possession of a dangerous weapon for which he received a conditional discharge. He was then allowed to go, walking away from court with a fine of £775 to cover the costs that the courts had incurred.⁸

Kamlesh Ruparelia is one of at least ninety-three people (ninety of them male) to have lost their lives as a result of racist attacks, or deaths with a known or suspected racial element, since the publication of the Macpherson Report in 1999 to December 2013.⁹ Looked at closely, all these deaths have their own intricate back-stories and locally defined contexts: the end-points of weeks or months or longer of racial abuse and harassment, for example; alcohol-fuelled assaults; the results of altercations which rapidly escalated in ferocity. Some were pre-planned; others erupted seemingly from nowhere. Whilst each death is different, what links many is the way racism exists as the vehicle through which myriad frustrations are unleashed.

It should be made clear from the outset that deaths, and the responses to them, are not necessarily representative of the way that the criminal justice system works in relation to racial violence as a whole.¹⁰ Deaths, of course, are the most serious outcomes of racial violence, and it could be assumed that the criminal justice system’s response to fatal attacks may be more dedicated than in relation to other incidents. But these attacks do show up broader patterns of racism and indicate the ways in which violent racism is

informed by wider political, cultural and economic factors. For example, many victims are asylum seekers, who have been killed soon after being dispersed to live in areas where they don't want to go and where they are not wanted. Migrant workers are also particularly vulnerable, targeted in areas where they are relatively new to the locality, as are visitors to the UK seeing family or friends and students. Employees in the night-time economy, too, are at risk: taxi drivers, takeaway workers, waiters and chefs. And the vicious stabbing to death of pensioner Mohammed Saleem, as he walked home from a mosque in Birmingham in April 2013, shows how Muslims can be targeted by far-right fanatics.

Overview of deaths

Ethnicity and nationality

Using census definitions, in nine of these 'cases' (or 10 per cent of the total) the victim was from a white ethnic background,¹¹ including three white British people and three Polish people. Over half of those killed (fifty-three people, 57 per cent) were Asian or Asian British, with the majority of those from Pakistani (twenty-two people) or Indian (fourteen people) backgrounds. Two people were Chinese and one person Vietnamese.

Sixteen people were black or black British, and two people were of mixed ethnicity. Thirteen people were from 'other' backgrounds in census terminology, including two Iranian men and two people from Afghanistan.

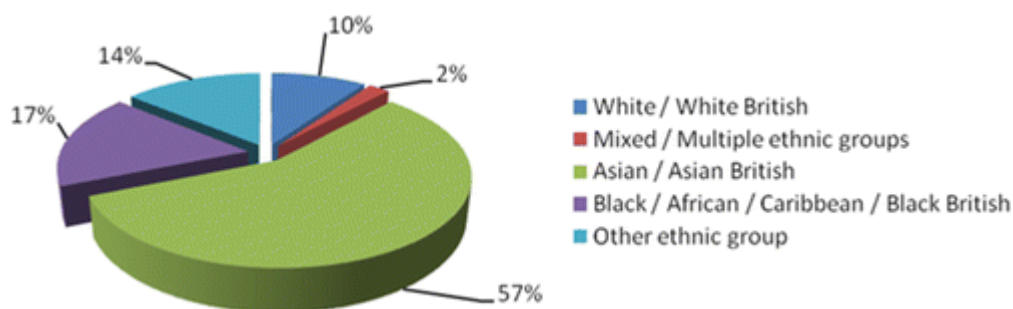


Figure 1. Victims' ethnic group.

There were many more offenders than victims, as around half of the attacks were carried out by multiple perpetrators. But in sixty-nine of the ninety-three deaths the attacker or attackers were white British (74 per cent of the total). In five cases, the perpetrator(s) were Black or Black British and in four cases the perpetrator(s) were Asian or Asian British.

Newcomers at risk

In a quarter of the cases (or twenty-three people), the victim had only recently moved to the UK. Of these, ten people (43 per cent of this sub-total) were seeking asylum or had recently been granted leave to remain. Others had recently arrived for employment reasons, were international students, or were visiting friends or family.

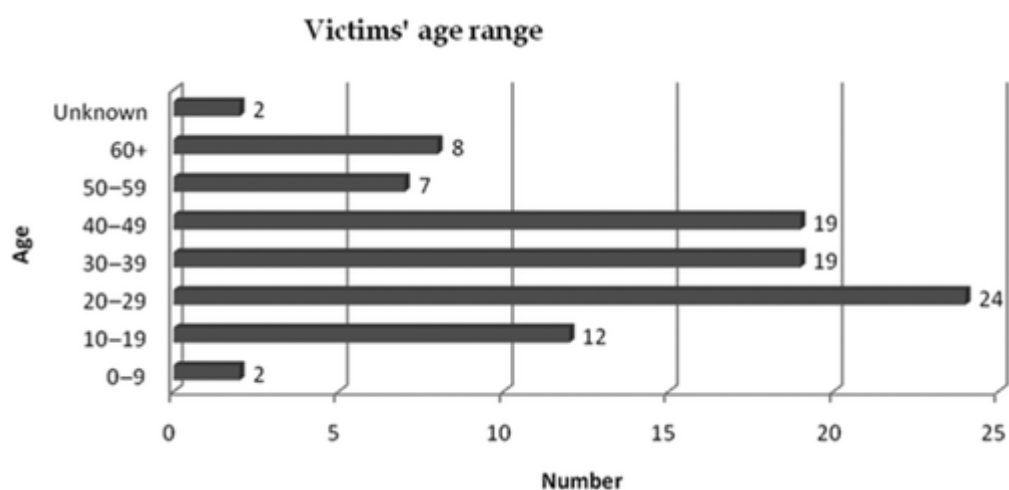


Figure 2. Victims' age range.

The majority of these deaths came about as a result of street attacks, and some after the most innocuous of chance meetings. One person, for example, was beaten to death after he was asked by a group of people for a light.

Risk and the night-time economy

As we have emphasised elsewhere, those working in certain industries face a particular risk of racial violence, which can be fatal.¹² In more than a quarter of the deaths (twenty-six, or 28 per cent of the total), people lost their lives either whilst at or in relation to their work. Within this, the majority took place in service industries where employees often work alone or with only a handful of colleagues, and in these cases were killed by their customers. Ten people, for example, were killed in the course of their work in takeaways or restaurants.

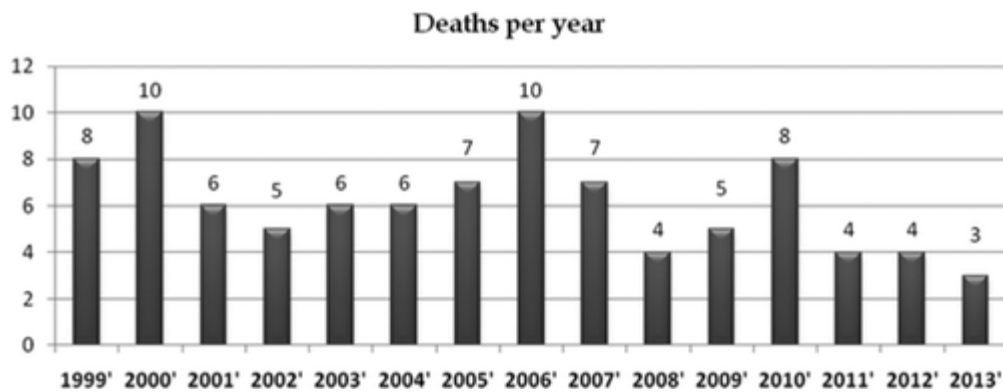


Figure 3. Number of deaths per year.

The dangers facing staff in these industries appear to be accentuated at night, often at the weekend, and two people killed worked as club doormen. Grocery store and convenience store staff also face particular risks, as do taxi drivers, of whom some were murdered by their customers and, in a few cases, left to die as their customers stole takings and fled.

Age of victim and perpetrator

Slightly fewer than half (thirty-eight people, 41 per cent) of those killed were under 30 years of age; and the same number of people were aged between 30 and 49. Twelve people were teenagers and two were children under the age of 10.

The oldest person whose case we monitored was a man in his eighties. His death was one of the forty-two cases (45 per cent of the total) where people lost their lives as a result of unprovoked attacks in streets or other public places such as parks, at bus-stops or whilst waiting for trains. The other 55 per cent included deaths at work (above), people being killed at home or just outside their home, deaths in pubs, clubs or nightclubs and those killed in penal institutions or other forms of accommodation (like accommodation for vulnerable people). In the majority of cases (seventy-two, or 77 per cent of the total), the victims did not know their attackers. Most deaths were caused by the actions of strangers. Of the twenty-one cases where the victims knew their attackers, this included cell mates, neighbours and work colleagues. In seven cases, the victims knew their attackers only through long-standing campaigns of racial harassment and abuse.

Group and gang attacks

In almost half of the cases (forty-six, 49 per cent), there were multiple attackers. (In two cases, the number of attackers remains unknown.) One-third of the total number of cases

(thirty-one) involved victims who were on their own when attacked by groups of two or more people, and in fifteen cases multiple attackers targeted a victim who was with friends or colleagues. Of these forty-six cases, nearly two-thirds (twenty-eight) were carried out by groups of teenagers or teenagers and young (under 25) adults. The remainder were mainly carried out by groups of people in their 20s and 30s. The size of these groups or gangs varied, but in one case an attack involved up to about thirty different people targeting their victim. In forty-five cases, the attacker was alone.

Weapons

Weapons were used in half of the cases (forty-seven, 50 per cent), and in many of the attacks which were unprovoked the attacker(s) were armed. Knives were the most popular weapon, but weapons also included baseball bats, blocks of wood, guns, running people over with cars and arson. In some cases the attacker began an altercation and then left, before returning with a weapon picked up from somewhere else. In some cases where weapons were not used, sustained beatings carried on long after the victim was rendered unconscious.

Place

The majority of the deaths (seventy-nine, or 85 per cent) were in England. Ten (11 per cent) were in Scotland and the remainder (4 per cent) in Northern Ireland and Wales.¹³ Twenty-one deaths were recorded in London, five in Glasgow, four in Birmingham and three in each of Manchester, Bolton and Sunderland. Most of the deaths that took place were in cities (fifty-six, or 60 per cent). But it should be pointed out that around one-fifth of these took place in smaller cities outside the major urban centres in the UK. Thirty-seven cases (40 per cent) of the overall total were in towns or villages.

Rates per year

On average, there were about five deaths per year in the fourteen-year period. But there were increases in particular years: 1999 (eight deaths), 2000 (ten), 2006 (ten), 2010 (eight). It is difficult to draw a definitive conclusion as to the reasons. But it is notable that 'spikes' in fatal attacks included violence against asylum seekers dispersed to certain towns and cities; deaths of migrant workers in areas where their presence was routinely derided by local and national press; and violence against Muslims (after the 2005 July terrorist attacks, for example). What is also notable is a sharp increase in attacks in

Scotland. Of the nine deaths in Scotland, only two took place in the ten years between 1999 and 2008; seven were between 2009 and 2013. Of the ninety-three deaths, four were perpetrated by people known to be supporters of far-right groups.

Responding to racial violence

The Macpherson Report was held up as a ‘defining moment in British race relations’,¹⁴ a ‘watershed’¹⁵ and a document that ‘rocked the foundations of the police service’.¹⁶ One of its most damning findings was how Stephen Lawrence’s friend, Duwayne Brooks, who had watched his friend bleed to death from his stab wounds, was initially treated by the police as a suspect rather than a witness. Coupled with this, Stephen’s parents were treated with disdain when interviewed by police officers. (It has recently emerged in the ‘confessions’ of a former undercover officer, who posed as an anti-racist activist, that he was tasked by his superiors to get close to the Lawrence family in an attempt to discredit them and their supporters.¹⁷)

Such conduct was characteristic of a criminal justice system indifferent to the impact of racial violence and seemingly in denial about its existence. Yet even in the immediate aftermath of the Macpherson Report in February 1999, when the police were first supposed to be taking in the lessons of its findings, some forces were continuing to act with indifference to those targeted in racist attacks.

Indifference to or unwillingness to act against campaigns of harassment

This was something that Errol McGowan, a black man in his thirties, found out prior to his death in Telford, in July 1999. Confusion surrounded this death, with the police initially classifying it as suicide and the man’s family believing he had been murdered. But what was beyond doubt was that Mr McGowan was a doorman who, within the space of a few months, had gone from being a ‘happy-go-lucky’ popular man to a ‘wreck’, against a backdrop of persistent and increasingly serious harassment. And if he did end his own life, this harassment was a significant factor. (It is for this reason that it is included in our cases.)

This persecution had actually started a few years earlier, when McGowan was racially abused by a white male who had been barred from the hotel he worked at. Although he was racially abused again later that year, there were no other incidents until May 1999, when McGowan said he heard he was on a watchlist run by the neo-Nazi group Combat

18. Whether this was true was not verified, but around this time the campaign against him intensified. Racist graffiti appeared where he worked stating 'Errol is a black bastard'; when he was ordering food in a takeaway with a friend, a gang ran in shouting 'There ain't no black in the Union Jack' and a brawl ensued. One of the gang had reportedly racially abused Mr McGowan years earlier, and in 1999 this person had spoken of how 'the area was full of n*****s and p****s and that he was going to get them sorted out'. Mr McGowan received written death threats telling him he was going to be 'skinned alive', and his workplace soon began taking calls where more death threats were made. The last was from a woman asking if he was working, and then explaining 'Well he's a black bastard and he's dead'. By this point, Mr McGowan was so terrified he was scared to open the door to his house. People had gathered shouting 'n*****r' at him whilst he worked. He told friends that he and Asian colleagues were being followed by people who would make throat-slitting gestures. On 2 July, he was found hanged, and later that day a gang of men drove outside his house, sounding their car horn in apparent celebration.

Mr McGowan had told the police of his harassment as he became increasingly frantic with terror. When he heard he was on a far-right death-list, he phoned the police, named the man who it was thought was targeting him, explained his fears about increasing racism in the area and told of an attack on an Asian man. According to journalists, the police officer responsible denied that the harassment was racially motivated, saying that the trouble was a work issue stemming from someone being banned from the premises where Errol worked as a doorman. Just a few days before he died, he rang the police and said 'I am basically saying I am living in fear of my life'; but seemingly this plea did not hold enough weight and was classified in such a way that it had only to be logged, rather than acted upon. An officer who read his account a few days later, reportedly decided not to fill out a racial incident form on the basis that 'I felt if he wanted to speak to me he would have got in contact again'. Errol saw it another way, and around this same time told a friend: 'Somebody is going to die in this town before the police do anything about it'. His premonition proved correct.

Mr McGowan's death is one of eighteen we have documented – 19 per cent of the total – which was preceded by a campaign of racial harassment *or* where there was a known risk of serious racial violence and, in some cases, these risks were not acted upon either by the police or other authorities (see below). Such cases may not be a majority, but neither can they be classed as isolated; and in some examples the police seemed either unwilling or

unable to recognise the existence of racist violence and the impact that this was having upon individuals or communities.

One of the most significant impacts of the Macpherson Report has been the introduction of a 'victim focused' definition of how a racist incident is defined: 'A racist incident is any incident which is perceived to be racist by the victim or any other person'. This has undeniably influenced the logging of incidents, and has gained general acceptance within the workings of criminal justice agencies.¹⁸ But it is undermined if police officers understand racism as just a by-product of disputes and/or not the domain of 'real' policing. This, for example, appears to be what happened in relation to 41-year-old Mi Gao Huang Chen, in Wigan in 2005. According to his partner, Eileen Jia, the couple had been harassed at their work – a takeaway they had recently taken over – for months by local white youths who urinated in the premises, vandalised the building and racially abused the staff. Despite repeated pleas for help, she claimed that the police only interviewed the couple the night before the murder, and did little to resolve the abuse. The following night, the couple confronted youths outside the takeaway and Ms Jia chased them away with a wrench. They later returned en masse with weapons and attacked them both, leaving Mi Gao Huang Chen with injuries that he later died from.

A similar pattern of events surrounds Iranian refugee Bijan Ebrahimi's death in Bristol in 2013. Mr Ebrahimi was abused and harassed persistently by local residents prior to his murder. He was abused because he was disabled; he was called a 'P**i' and a 'foreign cockroach'. Over several years he had been forced to relocate at least three times, having been beaten with a baseball bat and doused in boiling water in a series of attacks which left him so terrified that at one point he broke both of his legs as he tried to flee. In a desperate attempt to prove his harassment, he took photos of youngsters as they vandalised his flowerbeds (he was a devoted gardener) in July 2013. But after this a false rumour was spread that he was a paedophile and he was subsequently arrested and led away as his neighbours cheered. A few days later, he was beaten to death. His body was doused in white spirit and set on fire.

As the judge at the trial of a white man who was the main perpetrator later remarked, Mr Ebrahimi's killing was an act of 'murderous injustice'. Yet this was an injustice compounded by the actions of the police, who did little to protect him from his torment. According to a local reporter, at one point officers ignored him as he banged on the door

of a police station desperate for protection. And another time, an officer allegedly neglected to visit him because he was eating, and didn't want his food to go cold.

Negligence by other authorities

What such cases and others like them indicate is an unwillingness to recognise that racial violence can be part of a continuum within which incidents of 'low-level' abuse can escalate and be connected to acts of extreme violence.¹⁹ And if these point to a denial of the impact of racist harassment, this denial is also manifested in other ways that are not confined solely to the police. When, for example, 30-year-old Liaquat Ali was killed in 1999, he lost his life in a bed-sit described by a community nurse as 'the worst environment he had ever visited in order to see a discharged patient'. The killer was a 28-year-old white patient with serious psychiatric problems, and with a known dislike of black and Asian people. At his trial, witnesses recalled how he had once walked round with a baseball bat and talked of killing a 'P**i'. He had also stood outside a college haranguing Asian pupils, shouting things like 'you f*****g black bastards f**k off from our country'. Prior to his murdering Mr Ali, some of the white patient's medical notes had been lost and his care had been described as 'uncoordinated'. Indications that he was prepared to seriously harm Mr Ali were apparent in the way that he reportedly assaulted Mr Ali just a few days before killing him, but this was not brought to the attention of the relevant mental health services.

A similar case is that of 19-year-old Zahid Mubarek – placed in Feltham Young Offenders' Institution with Robert Stewart, a white racist cell-mate known to be dangerous. He might have survived if these risks had been acted on earlier. In Mr Mubarek's case, at least, it was clear that institutional indifference to racism contributed to his death. After bludgeoning him with a table leg, his killer scrawled a swastika on a cell wall. An inquiry which followed highlighted 186 failings preceding this, including: missing the warnings contained within letters Stewart wrote fantasising about racial violence; putting Stewart in this particular cell without checking his security file; and a general mismanagement of dangerous prisoners. The prison's workings, it was found, were underpinned by a pervasive institutional racism.²⁰

Racial motivation and the criminal justice process

As the above cases make clear, to look at the system's response *after* a fatal attack is to overlook persistent low-level racial violence, and the way that criminal justice agencies

(or indeed other services) can be complicit in leaving victims open to fatal attacks by ignoring the warning signs – particularly complaints from victims. Of the ninety-three deaths documented here, there were convictions *of some kind* in relation to the majority: seventy-eight, or 84 per cent of the total.²¹ However, in some of those cases, the abuse of the victim was ignored or downplayed up to the point it resulted in his or her death.

At the same time, analysis of these convictions indicates that in forty-two cases (45 per cent of the total) racial motivation appears to have been erased from the charge as the case progressed through the criminal justice process. Although there have long been provisions within the law to respond specifically to racially motivated incidents,²² the Crime and Disorder Act 1998 made some racially motivated crimes offences in their own right, carrying higher maximum sentences. (However, these specific racially motivated offences do not include murder or manslaughter which are most relevant to the cases discussed in this report.) In addition, as the Law Commission has explained, there is a separate provision (now under the Criminal Justice Act 2003) that ‘hostility against specified groups is an aggravating factor to be taken into account in setting sentences within the normal range applicable for the offence in question’.²³ That is, racial motivation, in relation to those offences falling outside the provisions of the Crime and Disorder Act 1998, has to be given weight in a sentence. The Act stipulates that if a murder is racially aggravated the appropriate starting point for determining the minimum prison sentence should be 30 years. (The starting point for sentencing 21-year-olds or over for murder, who have not been given a whole life order, is either 15, 25 or 30 years. Thus the starting point for sentencing someone convicted of a racially aggravated murder and not given a whole life order is therefore set at the maximum starting point that can be recommended.)

Theoretically, given the victim-focused definition of a racially motivated offence, any reported incident should be logged by the police as such and investigated with this in mind. However, the charge of racial motivation can in effect be erased from certain offences if the evidence does not reach a particular threshold.

Clearly, in relation to the law as it stands – with racial motivation potentially impacting on the length of a prison sentence if the offence is deemed racially motivated – it is correct that an offence should not automatically be prosecuted as such without being subject to examination. But what our research indicates is that even where attacks lead to convictions, the racially motivated aspect of cases is often filtered out by the police, the CPS and the judiciary, through a combination of a failure to understand the broader

context within which racist attacks are carried out, an unwillingness to recognise racial motivation, the reclassifying of racist attacks as disputes, robberies or other forms of hostility and through the way racial motivation is incorporated in the sentencing of offenders. These are discussed below.

Failing to understand wider contexts of racism

Several cases highlight how the police can fail to acknowledge that an attack may have been racially motivated, despite wider concerns within local communities that racism may have been a factor, or other indications that this may have been the case. This is what happened, for example, in relation to the death of 33-year-old Changez Arif in Manchester in 2007. Mr Arif was stabbed to death in an alleyway by a white teenager who had already been given an anti-social behaviour order for terrorising a predominantly Asian local estate. (The teenager denied this claim.) It was a case that could only be reported publicly after the teenager had pleaded guilty to a different, unrelated assault on a different Asian male. But the police ruled out racial motivation, stating that it was motivated instead by revenge. On the night of the murder, the teenager and Mr Arif were involved in a fight and the teenager came off worst. He then picked up a knife and hunted for Mr Arif, stabbing him in the back in an attack described by a judge as ‘vicious and ruthless’, leaving his victim with ‘no chance’. He was given a 15-year minimum prison sentence. But, as in the death of 42-year-old Israr Hussain, in Oldham in 2003, indications that the case may have been racially motivated do not appear to have been pursued. Mr Hussain was a taxi driver who had his throat slit by a white passenger he picked up in the early hours of one morning at the start of the year. The offence was eventually logged as racially motivated, but only after sustained pressure by local community members and taxi drivers (including white taxi drivers). According to the secretary of Oldham Trades Council: ‘The police [initially] said how do we know it’s racist? From my point of view you can’t look at what happened to him in isolation. There have been so many attacks on Asian taxi drivers. There has been sustained racist and fascist activity in the town. That’s the kind of environment for these attacks.’

Reclassifying and ‘downgrading’ racial violence

What these and other similar cases signify is how the police frequently understand racism only in terms of the immediate circumstances of an attack, rather than the circumstances *surrounding* and leading up to an incident. But they also indicate that

concerns about racism are only too readily dismissed from a case where there are other possible motivations that can be suggested. In law, the courts have established that racist motivation does not have to be the primary motivation in an offence for racial aggravation to be accepted. In *DPP v Woods* (2002) EWHC 85, for example, the defendant called a doorman a 'black b*****d' in his frustration at being refused entry, and although it was accepted that racist motivation was not the prime impetus for the offence, it still met the threshold of racial aggravation. Despite this, where there are several factors behind fatal attacks, it seems racism is often quickly defined out.

In particular, this seems to emerge when deaths coincide with robbery, such as in the case of Mahesh Wickramasinghe in Liverpool, in 2011. Mr Wickramasinghe, born in Sri Lanka, had only been in the UK about a year when he was killed whilst at work in a newsagent's shop. His killer, a 19-year-old white teenager, walked into the store and, after a brief struggle, stabbed him in the throat, severing his jugular vein and collapsing his lungs. The owner of the store suggested that the attack was racially motivated as there had been numerous racist 'incidents' targeting Sri-Lankan shop workers in the city. These suspicions were heightened when this same shop was targeted again at the time that the teenager was on trial, with staff members racially abused and the store vandalised. The police, however, said that the murder was not racially motivated, instead it was a robbery gone wrong.

What our research shows is that whilst broader contextual factors rarely seem to be applied to an understanding of when a death may be racially motivated, they are, somewhat ironically, applied to rule out racial motivation. And in this respect, when the police do see a death as racially motivated they may be overruled by either the CPS or the judiciary. This, for example, is what happened in relation to Asaf Mahmood Ahmed, a 28-year-old man killed in Bolton in 2007. Mr Ahmed was viciously beaten by two white teenagers in an unprovoked attack as he went to the shops, and died from an asthma attack brought on by the assault. The two teenagers, both drunk, had already assaulted another (white) man before they attacked him, and when they turned on Mr Ahmed they beat him to the ground before jumping and stamping on his head. They then left, but the older youth returned and seeing Mr Ahmed trying to use his inhaler, kicked it out of his hand and continued the assault. Such was the extent of the injuries that a woman who came to his assistance could not tell the colour of his skin. The police treated this attack as racially motivated, and the judge, when sentencing the attackers, said 'I have no doubt the pleasure you derived at the time of the assault was all the greater because the victim happened to be

Asian'. The CPS, however, did not prosecute the murder as racially motivated because the earlier victim was white, despite acknowledging that one attacker in particular had 'a very nasty attitude to Asian people which no doubt added fuel to his attack on Mr Ahmed'.

It is in such ways that violent racism can be rendered invisible by the CPS through its own institutional workings. When choosing to take a case forward, the CPS must consider whether there is a realistic prospect of conviction and whether it is in the public interest to prosecute. And in the aftermath of the Macpherson Report, the CPS's guidelines have developed in such a way that racially motivated attacks will normally 'pass' this public interest threshold as a matter of course. Beyond this procedural point, however, it appears that the CPS frequently defines the public interest very narrowly in terms of securing a basic conviction rather than one that most accurately reflects the complexities of an attack, and as a result may decline or neglect to bring forward evidence that racism played some part in an attack.²⁴

This is what appears to have happened in relation to the murder of Mohammed Saleem Khan in 2012. Mr Khan, a delivery driver, was stabbed to death by a white man during a botched robbery in north Yorkshire. Before murdering him, the killer told a witness that he 'might do that P**i', and when she asked him why, his response was because 'I can'. The prosecution, however, chose to drop the allegation that the murder was racially motivated. In another case, in Scotland, which has a separate prosecution body, Kurdish asylum seeker Firsat Dag was 'dispersed' to Glasgow in 2001 and within a few weeks had reportedly told an uncle that he wanted to leave because of the racial abuse he was receiving. Hostility towards asylum seekers was rife and, soon after, he was stabbed to death. Whilst his death was initially treated as racially motivated, this claim was dropped by the Crown Office and Procurator Fiscal Service (COPFS) in the end – a decision which was questioned by local campaigners.

Racial hostility as an aggravating factor in sentencing

If such cases indicate something about the way that the criminal justice system fails to understand the impact and realities of racism, this is compounded by the practical implementation of the law. In many of the cases we have analysed, those responsible were convicted of *an* offence despite the eradication of racial motivation from the charge. But what this might indicate is that the threshold set for proving racial motivation is being interpreted in such a way as to be frequently dismissed from cases. Over ten years ago,

concerns were raised in research carried out by the Home Office, which argued that there was confusion amongst practitioners about what did or did not count as racial motivation, particularly where the racist element was ancillary to the substantive offence, rather than the primary cause of it.²⁵ And what has emerged is a legislative framework which, at least in its operation, has hamstrung the criminal justice system's ability to recognise such nuances.

As the ninety-three deaths that we have documented suggest, racial violence does not exist in a vacuum, divorced from the political, economic and social conditions within which it thrives. Racist attacks are by no means always carried out by people whose *sole* motivation is racism. But the legal framework demands that, if any element of racial motivation is accepted by the court, that racial motivation must be treated as an aggravating factor and be incorporated into the sentence imposed, although the extent of this will depend on the circumstances of each case. The law here may be seen by practitioners as too blunt an instrument and as allowing too little leeway. This is to some extent a misconception, since, as noted, the court can take account of the nuances and complexities of the racial element in each case in determining the extent to which it is factored in to the punishment imposed. But this may be seen as allowing insufficient flexibility and make practitioners within the criminal justice system wary of factoring racism 'in' at all.

What may be emerging is a situation where levels of circumstantial evidence that would be accepted in court in other scenarios are not being accepted in relation to offences that might be racially motivated. This, coupled with persistent failures to recognise and understand racism (discussed above), leads judges to decide not to acknowledge the impact of racism even where there is evidence of racial motivation. For example, in 2010, 36-year-old Inderjit Singh was stabbed to death as he returned drunk from a night out on Christmas Eve in Bedford after mistakenly going to the wrong house when looking for a friend. The resident of the house was a 35-year-old white British far-right sympathiser who, seeing the man on his landing, slit his throat. Police later found far-right leaflets and materials in the man's flat, including a Swastika-embossed dagger and a leaflet saying 'F**k off. We're full', as well as a cache of weapons including crossbows, swords and a rifle. This man later confirmed his far-right sympathies in court, but the judge stated that 'There is some evidence this was a racially-motivated killing, but I cannot be satisfied to the necessary high standard.'

The judge in the case of the killing of 18-year-old Christopher Alaneme, of Nigerian descent, in Sheerness in 2006 acted in a similar way. As a black teenager living in a predominantly 'white' town, Christopher had been racially abused on numerous occasions but generally this had gone no further. On one particular night though, when he was out with some friends, there was an altercation during which he was racially abused and chased by a group of white people who cornered him, punched him to the floor and then one of them stabbed him to death. The same person then stabbed a white person who tried to come to Mr Alaneme's aid. In this attack, racial motivation was accepted by the police, and it was accepted in court that racist language had preceded the attack. But the judge decided that it should not be treated as racially motivated as it wasn't the killer, specifically, who had made racist remarks and because the killer had also attacked a white person.

We are certainly not calling here for a blanket acceptance of racial motivation every time it is claimed in a case. But, if one of the aims of the sentencing regimes for racially aggravated offences was to send out a public message that such crimes are intolerable, then ironically, the opposite message appears to be being conveyed.²⁶ Families, already having to come to terms with the devastating loss of a family member, are being told that the violence was not racially motivated when myriad factors suggest this was the case. And by stating that racism does not exist, the state appears to be condoning it. The father of Johnny Delaney, for example, made this clear after two 16-year-olds were given short custodial sentences for beating his son to death in Liverpool, 2003. One of the boys was reportedly heard to say that 14-year-old Johnny deserved the violence they meted out to him 'because he is only a f*****g Gypsy'; the police treated this as a racist attack. But this was rejected by the judge in the case, and the victim's father, outraged and devastated, argued: 'There is no justice here. They were kicking my son like a football. Are they going to let this happen to another Gypsy?'

Allowing racism to be redefined as self-defence

Nowhere is this clearer than in cases where the criminal justice system asserts that racist attacks can be redefined as self-defence. As the case of Kamlesh Ruparelia (killed in 2010, see above) indicates, where racist attacks are perceived by representatives of the criminal justice system as self-defence, they then absolve the perpetrator of responsibility for their actions. In Mr Ruparelia's case, there was conflicting evidence about the immediate events preceding his death. Some witnesses claimed that the victim did nothing

whatsoever to provoke the attack that led to his death. Others, whose evidence was made available much later, said that Mr Ruparelia had been aggressive to his killer, corroborating his claim that he had felt threatened when he killed Mr Ruparelia. What was not in dispute was the fact that Mr Ruparelia was racially abused. As already discussed, the penalty his killer received for ending his life was a conditional discharge and a £775 fine.

This was more than the killer of 43-year-old Mohammed Asghar was given in 2001. Mr Asghar was stabbed to death outside his restaurant in Huddersfield by a white man who had been persistently racially abusing him for weeks. And on the night of the incident, the victim had brandished a bottle as his attacker had come once again to harass him, this time with a six-inch knife. At the trial, the man did not deny stabbing Mr Asghar to death and his solicitor warned him to expect a custodial sentence. But the jury was reportedly directed to regard this attack as self-defence in a summing up that even amazed the defence lawyer, and his client was allowed to walk free. It was a case that bore some similarities to that of Derrick Shaw, killed outside a fast-food outlet in Surrey in 2002 by a man who boasted of having ‘done a n****r’. His killer argued that he had punched Mr Shaw in self-defence, despite witnesses testifying that, to the contrary, he was heavily drunk at the time of the incident and that he had been dancing around him, as if looking for a fight. One witness described what happened in the following terms: ‘Del [Mr Shaw] stepped back off the kerb and went to have a sip of his drink. [He] threw a punch to his face and it landed in his mouth ... The drink went everywhere. I expected Del to retaliate but he stood there for about three seconds ... [the perpetrator] threw another punch. Del flew to the floor. I did not see him hit the floor. I heard a big bang.’ Mr Shaw died five days later; no one was ever convicted.

Progress since the Macpherson Report

There is no doubt that the political pressure which culminated in the Macpherson Report and the recommendations contained within it have led to changes within the criminal justice system. That the police more frequently respond to racist murders with a level of dedication that can be reasonably expected of them is testament to the struggles of the Lawrence family and those who campaigned alongside them. Moreover, the enactment of racially aggravated offences (and sentencing regimes), as well as the pressure that has been exerted on the CPS to acknowledge racist motivation indicates a commitment, in rhetoric at least, to recognise the impact and reality of racially motivated attacks.

However, with racial motivation/aggravation carrying an expectation of harsher sentencing, what appears to be happening is that it is being accepted within the criminal justice process only in a narrow set of circumstances. There are, it should be emphasised, cases which we have documented where the allegation of racism was accepted, seemingly with little or no debate and prosecuted as such. Most of these cases though were murders where racism was the undisputable motivation in the case, there appeared to be few other factors behind the attack and they were unprovoked. Bapishankar Kathirgamanathan, for example, was killed in 2004 by two white males in Ashford who had reportedly drunk up to ten pints each before setting upon him, shouting racist abuse and beating him until he stopped moving. They were both convicted of racially aggravated murder. Kunal Mohanty, meanwhile, a sailor who was in Glasgow in 2009 to sit nautical exams, was walking with some friends when he was approached by a man who called him a 'black bastard' and slit his throat. At the subsequent trial, a consultant described the 18-centimetre wound as 'one of the worst [he had] ever seen' and the killer, who had boasted of having 'done a p**i' after the attack, was given an eighteen-year prison sentence. Ross Parker, in 2001, was set upon by three Pakistani men who brutally beat him with a hammer, sprayed CS gas in his face and stabbed him to death in Peterborough. The killers targeted him simply because he was white, and were all given life sentences for the racist murder.

It was by comparing and contrasting the treatment of the cases of Stephen Lawrence (1993) and Anthony Walker (2005) (both black teenagers viciously murdered by gangs seemingly so consumed by racism that it prompted them to kill) that the orthodoxy grew about progress being made in relation to the investigation and prosecution of racist murders.²⁷ The comparisons were clear, and the responses radically different. Anthony was killed in Liverpool in July 2005 and his killers were tracked down within months; their racism was acknowledged immediately by the police and they were convicted soon after. Evidently, this points to a level of professionalism and commitment to respond to racial violence that, in large part, simply was not in existence in the Metropolitan Police twelve years earlier.

But the measure of progress should not just be that prosecutions of perpetrators of unambiguously racist murders are now easier to obtain. It is those cases where racism is not so overt and acknowledged, where it is redefined as something else and where, ultimately, racial violence appears to bereaved families as being legitimated by the

criminal justice system, which must also be held as a measure of the state's response to racist attacks.

Families of racially motivated murder victims still get stereotyped – which affects the treatment they receive and undermines faith in the criminal justice system. Take, for example, the response to the murder of Mohammed Saleem in 2013 in Birmingham. 82-year-old Mr Saleem was stabbed to death by a Ukrainian white supremacist, who also planted bombs in local mosques, in an attempt to instigate an anti-Muslim terror campaign. He was ultimately arrested, pleaded guilty to his offences and was given a forty-year prison sentence. But the police had spent the first ten weeks of their investigation focusing their inquiry on the elderly victim's own son.

There are still many families in our case research whose struggles echo those of the Lawrence family, and so many families before them. In at least twelve cases (13 per cent) we have monitored, families or supporters have resorted in one way or another to challenging the decisions of the police, exerting pressure to force the police to recognise racial harassment, mobilising the media and, in the most desperate cases, challenging the actions of the criminal justice system. They include, for example, the family of 40-year-old Simon San, a man killed in Edinburgh in 2010.

Mr San, a delivery driver for a family takeaway, was surrounded by white teenagers who rocked his van back and forward as he returned from a job. Given that this was only one amongst several times staff at the takeaway had been harassed and suffered racist abuse at the hands of teenagers, he phoned the police. But when he got out of his van he was attacked, and one teenager hit him with such force that he later died. Despite witnesses claiming that the teenagers called him 'ch***y', and despite the previous racist abuse and other factors (such as the fact some of the group already had convictions for attacking Chinese shopkeepers), the police denied that the death was racially motivated and instead claimed it was a robbery. (The teenagers went through his pockets after assaulting him.) The 16-year-old who punched him later admitted culpable homicide and was given a five year custodial sentence. Two of his friends were given 42- and 34-month sentences (later reduced on appeal) for assault and, in the latter case, also for stealing Mr San's mobile phone.

It was only because of the outrage of the family and supporters that the police were prompted to investigate the handling of the case. And this investigation uncovered

multiple flaws, including wrongfully ‘defining out’ the racial motivation, failing to recognise that the murder was a ‘critical incident’ and asserting that Simon has just been ‘in the wrong place at the wrong time’. As a result of this investigation, the police issued a public apology, somewhat undermined when one of the detectives involved in the case was subsequently promoted, and undermined further when the Crown Office, disassociating itself from the police’s apology, stated ‘We can confirm the Lord Advocate will not be instructing an inquiry and is satisfied with the Crown’s prosecution of the case.’

When 37-year-old Brij Brushan Sharma was killed in Northern Ireland in 2004, his killer was given a 17-month prison sentence for manslaughter. This man’s brother, who when confronted about the injuries that Brij had suffered, reportedly replied ‘Sure he was only a P**i bastard’, was given community service for witness intimidation. When the family challenged the way that the case had been handled, amassing supporters as they did so, they eventually forced the police to admit that a series of mistakes had been made: the prosecuting authority failed to take into account earlier racist remarks, an earlier incident was not taken into account and the prosecution case was based on wrong information about what had happened. Such was their dismay at how Brij’s death had been treated, that five years later his family called a press conference asking for a full public inquiry and arguing that the prosecution was undermined by institutional racism. In such a context, those killed are not only victims of the UK’s racial violence. As Patrick Yu, chair of the Northern Ireland Council for Ethnic Minorities (NICEM) which supported the family stated, they also become ‘victims of the whole justice system’.

Conclusion

Our findings bear out the important observation by criminologists Andrew Sanders and Richard Young that criminal justice is shaped ‘not only by the way the law is enforced, but in the way that it is not enforced’.²⁸ Our concern is that victims of racial violence are falling between two stools. On the one hand, the majority of those working in the criminal justice system do not have a deep understanding of how racism shapes the lives of those in poor BME communities. On the other hand, they have a particular view of violent crimes (and motivation) which runs counter to the lived reality of racist attacks.

Racism is acknowledged only to the extent that it informs interpersonal violence and attacks. That is, it is something recognised only in terms of individual beliefs and the

extent to which these underpin particular acts of violence. And it has to be at its most overt and brutal – and uncontaminated by any other external factor – to be accepted by the criminal justice system.

Within the police, obviously the first necessary port of call for those facing racial violence, we find that racial abuse and harassment are still being downplayed and disregarded in some forces which appear at times to have little understanding of the context within which these take place or how they can escalate into a deadly attack. Some of the murders we have documented cannot be understood without seeing the way in which police apathy has enabled ongoing harassment to continue, with victims becoming increasingly desperate.

This is not to argue that the policing of racial violence ought to be given particular priority or treated differently from other aspects of policing. But rather that an understanding of the prevalence and danger of racial violence should be integral to all policing ‘on the beat’. To date, the criminal justice system’s response to racial violence (and other forms of ‘hate crime’) has been to treat it as a separate entity, a crime apart. The sentencing regime for a racially-motivated crime, whereby racial aggravation is factored into a sentence, might have been envisaged as part of a public education message that ‘hate’ would not be tolerated. But the policy has, as far as we can see from our research, the potential to backfire.

Given that ‘the law imposes a general duty on criminal courts, when sentencing an offender, to treat more seriously any offence which can be shown to be racially or religiously aggravated’, it is proper that such allegations are rigorously examined. But as things stand, racism is only considered in relation to whether an allegation of racial motivation can meet the threshold necessary to impact on a sentence. And for a range of reasons, including the fact that motivation is hard to prove, a prosecutor is likely to drop racial aggravation from a prosecution – and thereby cast the discussion of racism from the courtroom.

Because the criminal justice system’s response to racial violence has become disproportionately concentrated on decisions about whether racial motivation meets the threshold to be reflected in sentencing, any broader understanding of racism and the conditions informing racial violence is being lost. The criminal justice system’s duty to

the public interest should also be interpreted (in particular by the police) as working in a preventative capacity with regard to racial violence.

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2. Home Office, The Stephen Lawrence Inquiry: report of an inquiry by Sir William Macpherson of Cluny, Cm 4262-1 (London, The Stationery Office, 1999), para 46.27.
3. In 2012, Dobson Gary, Norris David were convicted of the murder of Stephen Lawrence. Others involved in the attack have not been convicted.
4. 'The Macpherson Report – ten years on', Twelfth report of session 2008-09, HC 427 (London, House of Commons, 2009), p. 2.
5. Ibid.
6. Bennetto Jason, Police and Racism: what has been achieved 10 years after the Stephen Lawrence Inquiry report? (London, Equality and Human Rights Commission, 2009), p. 34.
7. Direct quotes from cases not otherwise attributed are taken from the IRR's database.
8. This case is discussed in further detail in Claire Lewis, 'Family want justice for punch death dad', Sheffield Telegraph (14 March 2011); see also Molly Lynch, 'Sheffield family vow to fight for justice', Sheffield Star (6 August 2013).
9. Our term of reference – deaths with a known or suspected racial element – is deliberate. We are not examining all interethnic crimes. Attacks which occur where the perpetrators(s) and the victim(s) are of different ethnic backgrounds are, of course, not necessarily racially motivated *per se*. Nonetheless, as our research shows, there are many deaths with a known or suspected racial element which take place where the racial element is, in effect, 'defined out' of the case as it is processed through the criminal justice system. Given the well-known limitations of official crime statistics in capturing accurate incidences of offences, coupled with the historic failure of criminal justice agencies to respond adequately to racist attacks, our methodology does not rely solely on those attacks which are recognised formally and prosecuted as racially motivated. To do so would be to ignore the ways in which the state's response to racism is contested. Instead, we utilise the following definition: 'The IRR considers that the identification of a racially motivated attack must depend on an objective evaluation of the whole context in

which the attack takes place and not just on the skin colour or ethnicity of the alleged perpetrator(s) or victim. In particular, the IRR would regard a murder or attack as racially motivated if the evidence indicates that someone of a different ethnicity, in the same place and similar circumstances, would not have been attacked in the same way. Subject to the above, a formal legal finding or allegation of racial motivation would be taken as prima facie (but not definitive) evidence that an attack was racially motivated.’ Summaries of the cases identified by the IRR as deaths with a known or suspected racial element are available at: <http://www.irr.org.uk/news/deaths-with-a-known-or-suspected-racial-element-1991-1999/> and <http://www.irr.org.uk/news/deaths-with-a-known-or-suspected-racial-element-2000-onwards/>.

- For discussion of this point, in relation to victimisation more generally, see Robert
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 11. All figures are rounded to the nearest percentage point.
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 13. It should be noted that criminal justice systems across the UK are not entirely consistent. The criminal justice system in Scotland has different agencies and procedural workings than that of England and Wales, for example.
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 19. For discussion of this, see Ben Bowling and Coretta Phillips, *Racism, Crime and Justice* (London, Longman, 2002), p. 113.
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21. In three cases, it is unclear whether anyone was ever convicted. At the time of writing, one case is still ongoing.
22. The Race Relations Act 1976, for example, contained an offence of ‘incitement to racial hatred’.
23. Hate crime: the case for extending the existing offences. Appendix B: history of hate crime legislation (London, Law Commission, 2013), pp. 53–4.
24. It should be noted that it is CPS policy ‘not to accept pleas to lesser offences, or omit or minimise admissible evidence of racial or religious aggravation for the sake of expediency’. See ‘Racist and religious crime – CPS guidance’, CPS, available at: http://www.cps.gov.uk/legal/p_to_r/racist_and_religious_crime/
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