PROTOCOL
FOR THE INVESTIGATION AND
PROSECUTION OF RACIST AND
RELIGIOUSLY AGGRAVATED INCIDENTS IN
COUNTY DURHAM AND DARLINGTON

FOREWORD

It is of the utmost importance to all Officers and staff of the Durham Constabulary and the Crown Prosecution Service, Durham, that the public of County Durham and Darlington should have confidence in the part we each play in the Criminal Justice System. From the investigation to the prosecution of offenders we each seek to perform our duties fairly, effectively and confidently in our efforts to provide the public with the service each person can expect of us, whether living, working, studying or visiting our area.

It is a sad fact of community life throughout the United Kingdom that a proportion of all crime is motivated by racism. To commit crime against an individual motivated wholly or in part by the racial origins of the victim tears at the fabric of our society and our local community. The issues surrounding racial crime, intimidation and discrimination have been debated for many years. Most recently the recommendations of the MacPherson Report following the inquiry into the tragic murder of Stephen Lawrence focused on the Police and CPS response to the crime. It called for changes in the way we identify and respond to all racially motivated incidents.

In recent months our Services have worked together with community groups and other Agencies to implement these recommendations and conduct joint training. Out of this joint work came a call for our operational response to racist incident to be recorded as a guide to those handling such cases and as a standard against which our performance can be measured. We commend this protocol to all Officers and staff as part of our constructive local response to dealing with racist incidents and crime. We believe that implementing its practices will assist in ensuring we achieve our aim of restoring and maintaining the confidence of the ethnic minority communities and the community at large in the Criminal Justice System.

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Purpose and Scope of Racist Incident Policy

1. Background

2. What is a Racist Incident?

3. Racially or Religiously Aggravated Offences

4. Purpose of the Racist Incident Policy

5. The Reporting of a Racist Incident

  5a. Victim Impact Statements

6. Custody Officers

7. Prosecution Policy
8. No Formal Complaint

9. Retraction of Complaint

10. Avoiding Delay

11. Monitoring the Prosecution Case

12. Polaroid Law Enforcement Kits

13. Procedure for the use of the Law Enforcement Kits

14. Role of Supervisors

15. Crime Recording

16. Performance Monitoring

16a. Audit

17. Crime Intelligence

18. Medical Attention
19. Advice which may be given

20. Role of Divisional Commander and CPS Head of Criminal Justice Unit

21. Media Strategy
**Purpose and Scope**

The Protocol for the Investigation and Prosecution of Racist and Religiously Aggravated Incidents defines the roles and responsibilities of all personnel within Durham Constabulary and CPS Durham in response to racist and religiously aggravated incidents.

It provides guidance on scene attendance, investigation and prosecution and support to the victims and their family.

It provides information regarding criminal law, together with reference to other agencies that may assist the victim.

The document should be read in conjunction with the Repeat Victim Strategy, the ACPO Guide to Identifying and Combating ‘Hate Crimes’![][1] which contains useful advice and the ACPO Diversity Strategy 2[2] that Durham Constabulary has adopted as a framework for Community and Race Relations.
1. **Background**

1.1 Racist or religiously aggravated crime has a corrosive effect on the quality of life of those directly affected by it and on community relations generally. In some cases, a racist or religiously aggravated attack has led to the death of the victim. Other racist or religiously aggravated offences, which may seem relatively minor in contrast, can cause profound distress to victims and their families, especially when set against a background of repeated harassment.

1.2 Racist crime is widespread. Whilst it may be more common in London and other metropolitan areas, minority ethnic groups living in isolated pockets in rural areas may be particularly vulnerable to racist attacks and harassment.

1.3 Legislation was introduced in the Crime and Disorder Act 1998 to create a statutory definition of racial aggravation, to create specific racially aggravated offences and to impose a duty on sentencing courts to treat racial aggravation as a factor increasing the seriousness of all offences (other than the statutory racially aggravated offences) and to state this fact publicly when passing sentence. These provisions came into effect on 30th September, 1998 and are now fully operational.

1.4 The Macpherson Report, following the murder of Stephen Lawrence in April of 1993 has made wide ranging recommendations relating to the investigation and prosecution of racist crime, including a recommendation that a new definition of ‘racist incident’ be universally adopted by all relevant agencies.

1.5 In the aftermath of the events of 11 September 2001, the Anti-Terrorism, Crime and Security Act 2001 was introduced to extend the Crime and Disorder Act 1998 to cover offences aggravated by religious hostility, and by amending the Crime and Disorder Act by inserting the words “religious” or “religiously” in the alternative wherever the words “racial” or “racially” occur. All references in this Protocol to racial or racist incidents or racial aggravation should therefore be read to include religiously aggravated incidents or religious aggravation.
2. **What is a Racist Incident?**

2.1 The Stephen Lawrence Inquiry Report recommended that the existing definition of a racial incident (the Association of Chief Police Officers (ACPO) definition) should be replaced with a clearer, crisper and more victim orientated definition. The recommendation further indicated that it felt that ‘racist’ rather than ‘racial’ was a more appropriate adjective to apply. Accordingly, the Inquiry recommended that the universally applied definition should be:

> “A racist incident is any incident which is perceived to be racist by the victim or any other person” (definition adopted from the Stephen Lawrence Inquiry Report recommendation 12)

Additional guidance is provided in “Racist Incidents – What you must do Questions and Answers” which has been circulated to all operational officers.

2.2 The new definition is intended to be clearer and more readily understood by both the police and public. It is a subjective test and is even more widely drawn than the previous ACPO definition. Available evidence (British Crime Survey and other associated studies) suggests that racist incidents tend to be under reported generally; a clearer definition should therefore improve the initial identification of such incidents by the police.

2.3 The definition of a racist incident is the starting point for prosecutors considering cases thought to be racially aggravated, whether charged as specific racially aggravated offences, identified as meeting the new definition by the police, or considered as such by the reviewing lawyer.

2.4 The new definition uses the word ‘incident’. It includes therefore the full range of criminal activity, not just those offences which may be specifically charged as racially aggravated offences. This allows for early identification of cases where there may be evidence of racial aggravation as defined by Section 28 CDA 1998 which can
subsequently be taken into account on sentence. However, although the police record all incidents which meet the definition, not all recorded incidents will result in charges being brought.

3. **Racially or Religiously Aggravated Offences**

3.1 Section 28 Crime and Disorder Act 1998 provides a definition of the term ‘racially aggravated’:

‘An offence is racially aggravated if:

a) at the time of committing the offence, immediately before or after doing so, the offender demonstrates towards the victim hostility based on the victim’s membership (or presumed membership) of a racial group.

OR

b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.’

3.2 This term applies to the following offences under the Crime and Disorder Act 1998:

- Assaults (Section 29)
- Criminal Damage (Section 30)
- Public Order offence (Section 31)
• Harassment (Section 32)

3.3 The Anti-Terrorism, Crime and Security Act 2001 amended the Crime and Disorder Act 1998 so that the nine existing offences under sections 29 to 32 of that Act are committed if they are aggravated either by racial or religious hostility.

3.4 An offence will be religiously aggravated if:
   a) the offender demonstrates hostility based on the victim’s membership of a religious group
   OR
   b) the offence was motivated by hostility towards members of a religious group.

3.5 A religious group is a group of people who are defined by reference to religious belief or lack of religious belief.

4. **Purpose of the Racist Incident Policy**

   4.1 The purpose of the Racist Incident Policy is to set the standard of the Durham Constabulary and the Crown Prosecution Service (Durham) approach to tackling racist incidents. It is a clear statement of intent in relation to racist incidents and will embrace a positive policy of investigation and appropriate enforcement.

5. **The Reporting of a Racist Incident**

   5.1 A racist incident may be reported by e-mail, letter, Internet, telephone or at the Police station enquiry office or to an officer directly whilst on patrol. The racist incident may be reported by a third party, or by the victim themselves.
Future developments will include the introduction of a self-reporting facility through the use of an appropriate leaflet which is currently being negotiated and designed.

5.2 In any event, this may be seen as a last resort by the victim and therefore such a report must receive an empathetic and positive response.

5.3 The first priority is to establish an appropriate response (i.e. if life is being threatened or a crime is being committed).

5.4 The Police Service operates a positive action policy for racially aggravated offences. This means that where, in the opinion of the investigating officer, there is sufficient evidence of an offence with a power of arrest, the suspect(s) will be arrested unless in the circumstances an arrest at that time is clearly inappropriate to deal with the allegation. Where there are specific concerns relating to the use of police powers officers are advised to consult their immediate supervisor.

5.5 Officers should recognise that a power of arrest is not reliant upon a formal complaint from the victim. (The existence or not of a complaint will be relevant to prosecution).

5.6 The appropriate response should accord with the force graded response policy and the repeat victimisation strategy.

5.7 The person receiving the report should ascertain whether an injunction or other court order is in force in favour of the victim or their address.

5.8 All racist incidents will be correctly recorded on the Police Operational Information System (OIS) and properly tagged with the incident subject code.
5.9 All reported racist incidents will require further investigative action which should be undertaken in consultation with the victim. Officers should consider the good practice outlined in detail in the ACPO Hate Crime Manual.

5.10 Investigate the incident as a crime - inform a supervisor. If the incident is a recordable crime it should be recorded as soon as practicable. The modus operandi section of the crime field form should clearly state the crime resulted from a racist incident. Secure and preserve evidence and consider forensic evidence. Where injuries/damage is/are apparent and the appropriate equipment is available, consideration should be given to the use of ‘Polaroid Law enforcement Kits’. Any photographs should be taken in accordance with force guidelines and should not be expected to replace Scientific Support Officer photographs. There should be early medical examination and recording of injuries.

5.11 Submit Form Com.Rel. 3 before the end of the reporting Officer’s tour of duty and submit Form Crime Intelligence 30 to the Divisional Intelligence Unit before the end of the reporting officer’s tour of duty and submit within 24 hours, even if the victim does not wish to support a prosecution, the information is still valuable in building intelligence, supporting the community and proactively identifying potential suspects.

5.12 Consider the assistance of other agencies who specialise in dealing with victims from minority ethnic backgrounds.

5.13 If the victim is unable to communicate in English, the investigating officer will, via the force control room, ensure that she/he is provided with an independent interpreter immediately or as soon as possible.

5.14 Evidence suggests that using an interpreter from the same family may place pressure upon a victim as they may feel embarrassed to discuss the full details of the incident.

5.15 When Officers are involved with the care of victims and witnesses when dealing with racist incidents and crimes, they should be mindful
of the provisions for a victims evidence to be recorded on video. This in turn, may attract "special measures" in the Crown Court under the provisions of the Youth Justice and Criminal Evidence Act 1999 which should be carefully explained to victims.

Further advice is provided by the act in respect of social and cultural background, ethnic and religious beliefs which should be considered when determining the vulnerability of victims and witnesses.

5.16 In certain cases (depending on the nature, seriousness and circumstances of the incident) an early strategy meeting between the investigating Officer, a representative of the Divisional ASU, and the CPS will be necessary to discuss and agree the form in which a statement should be taken (i.e. written, audio or video) and what measures might be needed to assist the witness/victim before and during the trial, taking into account the witnesses own views and preferences.

In certain circumstances, depending upon the needs and consent of the victim, the use of external agencies who specialise in dealing with victims from black and minority ethnic communities may be considered.

5a. **Victim Impact Statements**

5a.1 In cases where there is racial aggravation, it is important that the police obtain a statement from the victim setting out the effects of the crime on him or her. Statements of this nature serve to emphasise to the court the seriousness of the offence to the victim and can have a direct bearing on sentence. Such a Victim Impact Statement may be included in the text of the original evidential statement. As good practice it would be prudent to re-visit the victim prior to any resulting proceedings to provide a further victim impact statement covering the intervening period.
5a.2 To ensure fair and non-prejudicial incident investigations there will be:

- individual ownership of the investigations of racist incidents by investigating officers / crown prosecutors

- regular feedback on the progress of enquiries to the victim and where appropriate the Racial Equality Council or other agencies involved by the (senior) Investigating Officer or the Family Liaison Officer to the victim/relative/community.

- records of all actions taken and enquiries conducted

- considerations of primary or corroborative evidence which may negate the need for a victim to attend court, such as:
  
  * allegations made by the victim in the presence and hearing of the accused
  * evidence of the victims injuries and emotional state
  * admissions of the accused
  * forensic evidence

- positive investigation and appropriate enforcement

- localised or specialist victim support

- and to prevent future instances, participation in a multi-agency problem solving approach.
The provisions of the Repeat Victim Strategy will also apply where appropriate.

5a.3 Following the arrest of an offender the attending officer will revisit the victim to establish the course of action they wish to pursue.

The trauma experienced from such incidents can affect the victim’s ability to provide and receive information coherently. Revisits provide an ideal opportunity to establish the needs of victims, outline the level of support available including specialist equipment e.g. alarms, mobile telephones etc., and offer advice about other agencies who can be utilised to give support and guidance.

6. **Custody Officers – Charge / Caution Guidelines**

6.1 The prosecution of offences in racist incident cases are sometimes not pursued for a variety of reasons including the fears of the victim and the general lack of confidence in the Criminal Justice System.

6.2 Prosecution can however, be taken in :-

a) Incidents where the victim has made a formal complaint

b) Incidents where the victim has made a formal complaint but withdrawn that complaint

c) Incidents where the victim has made no complaint and refuses to do so, but evidence is accrued by the Investigating Officer.

In the cases of (b) and (c) above, proceedings will only be pursued after consultation with the Crown Prosecution Service (See Section 7 – Prosecution Policy)
6.3 Where an alleged perpetrator is to be released on police bail, the Officer in charge of the case will make every effort to ensure the victim is informed before the time of release and will endorse the custody record accordingly. It must be emphasised that a person's release from custody cannot be delayed solely for this purpose.

Where appropriate, details of bail conditions can be provided to the victim for the purpose of reassurance.

6.4 Where an adult caution of an offender is considered the custody officer will consult the investigating officer and CPS.

Home Office Circular 18/1994 on “The Cautioning of Offenders” and the “National Standards for Cautioning (Revised)” describe the circumstances in which a formal caution should be administered. Further guidance is provided on the Police National Legal Database (PNLD) Ref. No. D3391.

6.5 Where a juvenile Reprimand or Final Warning is considered the ASU Inspector will consult the CPS.

6.6 CPS policy is that cases in which there is a racist element are almost invariably serious. A prosecution will usually take place unless there are very powerful public interest factors as defined in “The Code for Crown Prosecutors” tending against prosecution which clearly outweigh those in favour (See Section 7 – Prosecution Policy).

6.7 Officers will provide all relevant background information to the CPS if a file is submitted (advice or charge). Form MG1 should be highlighted that this is a racist offence.

7. Prosecution Policy
7.1 This document is the Durham Constabulary and the Crown Prosecution Service agreed prosecution policy for racist incidents. This policy accords with the Code for Crown Prosecutors. In applying this policy, prosecutors should also refer to the CPS Prosecution Manual, Volume 1, Chapter 3A ‘Racist Crime and Racially Aggravated Offences’. The Crown Prosecutor must be satisfied that there is enough evidence to provide a ‘realistic prospect of a conviction against each defendant on each charge. This means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. (The ‘evidential test’).

7.2 If the case does not pass the evidential test, it must not go ahead, no matter how important or serious. If the case does pass the evidential test, the Crown Prosecutor applies the second test and decides if a prosecution is needed in the public interest.

7.3 When considering a case involving a racist incident the Crown Prosecutor will require all relevant background information. To assist in this, investigating officers should ensure that the following is included in the body of the victims statement:

- the ability and willingness of the victim to testify;
- any details of any previous incidents;
- details of any other cases, current and previous, including any orders made and, if applicable, any breaches.

8. **No Formal Complaint**

8.1 The C.P.S. under their Service Level Agreement with the Durham Constabulary on the submission of Advice Files are able to give precharge advice on such cases where there is no formal complaint (i.e. victim statement) with the specific purpose of considering whether there is sufficient evidence to charge which includes:
- similar fact evidence from a series of incidents,
- the availability of the res gestae exception to the rule against hearsay
- Evidence which might be admissible under S.23 Criminal Justice Act 1968
- the general weight of the available evidence

8.2 In the above cases advice may be obtained by submission of an appropriate file or immediate verbal advice from a lawyer at the Police Station.

9. **Retraction of Complaint**

9.1 Where a complainant who has made a witness statement subsequently seeks to retract the statement, the Crown Prosecutor handling the case will request the police obtain a statement of withdrawal ensuring that it includes:

- a full explanation of reasons,
- whether the original complaint was true or false,
- whether there has been any element of duress,
- any other relevant information

and request that officers submitting any such statement, also submit on form MG6

- their comments on the veracity of the reasons given,
- their view on how the case should be dealt with,
any other information, for example, in appropriate cases how the complaint may react to being compelled to give evidence.

9.2 Where a complainant wishes to retract a statement or decline to give evidence, full and appropriate consultation will take place between the CPS and the Police. Consideration may be given to any of the alternatives to terminating proceedings.

9.3 Consultation will also be taken with Victim Support and any relevant minority ethnic community group, including Darlington and Durham Racial Equality Council if deemed appropriate by the CPS.

9.4 Prosecutors and caseworkers will ensure that all relevant aspects of CPS national policy have been considered and applied.

9.5 S.23 Criminal Justice Act 1988 provides that, subject to the Courts discretion:

‘A statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which oral evidence by him would be admissible if;

EITHER

a) a person who made the statement is dead or by reasons of his bodily or mental condition unfit to attend as a witness;

b) that

i) the person who made the statement is outside the UK, and

ii) it is not reasonably practicable to secure his attendance; or
c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.

OR

a) that the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and

b) that the person who made it does not give oral evidence through fear or because he is kept out of the way.’

9.6 Any statement which an officer considers might be admissible pursuant to S.23 must be supported by clear evidence contained in witness statements providing the qualifying criteria within any of the paragraphs a), b) or c) above.

10. **Avoiding Delay**

10.1 The longer the delay, the longer the victim will be at risk and under pressure. We will make sure that cases involving racist incidents are not delayed without very good reason. We will ensure that the victim is kept informed of the reasons for any delay in the proceedings.

11. **Monitoring the Prosecution Case**

11.1 The Police Service and the CPS will ensure that particular care is taken at all stages of prosecution to recognise and to include reference to any
evidence of racist motivation. In particular, it is the duty of the CPS to ensure that such evidence is referred to both at trial and in the sentencing process (including Newton Hearings). The CPS and Counsel to ensure that no ‘plea bargaining’ should ever be allowed to exclude such evidence.

11.2  Magistrates and Judges should state publicly that a sentence has been increased because of racial aggravation.

11.3  The CPS will ensure that a victim and/or victim’s family shall be consulted and kept informed as to any proposal to discontinue proceedings or to change a charge significantly.

11.4  The CPS will ensure that all decisions to discontinue or to change a charge significantly will be carefully and fully recorded in writing and that, save in exceptional circumstances, such written decisions should be disclosable to a victim and/or victim’s family.

11.5  In cases of racist crime the CPS will contact a victim and/or victim’s family to offer to explain a decision to advise against proceedings, or to discontinue or to change a charge significantly. Contact with the victim and/or victim’s family will be made directly by the CPS, with a copy of the correspondence being sent to the Police, who will be consulted about the arrangements for any meeting, including about involvement of the Police and/or any other party in the meeting.

12.  **Polaroid Law Enforcement Kits**

12.1  Law enforcement kits will be held at each twenty four hour police station.

12.2  The Law Enforcement camera is provided to assist officers in the collection of photographic evidence of victims of crime in relation to racist incidents.
12.3 The intended use will be for officers attending incidents to obtain early photographic evidence which ordinarily would not be obtained, i.e. injuries amounting to actual bodily harm, minor criminal damage.

12.4 Polaroid photographs will provide value to investigations (such as during interview or suspect) by providing a useful instant record of a scene or injury.

12.5 Polaroid photographs should never be regarded as an alternative to those obtained by a Scientific Support Officer.

12.6 Polaroid photographs should only be taken:

- with consent of the victim and in the case of a juvenile, with the parents permission
- where the areas to be photographed is not an intimate part of the body
- On the understanding that the photograph is for evidential purposes in criminal procedures and the victim will not be provided with a copy at that time. (Copies may be supplied if civil proceedings are subsequently taken against the perpetrator by the victim).

12.7 Training in the use of the Law Enforcement Kit will be provided by a Scientific Support Officer.

12.8 Only those officers who have received the appropriate training will be permitted to operate the camera equipment.
13. **Procedure for the Use of the Law Enforcement Kit**

13.1 Officers attending racist incidents should make use of the camera to obtain evidence of assault and where relevant, the scene.

13.2 Photographs of the victim should be obtained whether a formal complaint is made or not.

13.3 The photograph produced has space at the bottom where the victim should be invited to sign.

13.4 The Officer taking will endorse the photograph with the time and date it is taken, where applicable the Incident Number and sign his/her name.

13.5 The Officer taking should attach a completed exhibit label to each photograph. (it may be good practice to insert the photograph into clear plastic bags). The exhibit number should be written onto the photograph e.g. A.S. 1.

13.6 The taking of photographs should be recorded into the officers pocket note book.

13.7 Where a victim makes a written statement reference should be made to the taking of the photographs.

13.8 The integrity and continuity of a photograph(s) is paramount.

13.9 When an arrest has been made following a report of racist incident, the photograph(s) may be used during subsequent interview.
13.10 The photograph must be retained in POFP pending any criminal proceedings (see next paragraph) thereafter they will be ‘married up’ with Com Rel 3.

13.11 In cases where a crime file is created reference should be made to the photograph(s) as an exhibit, and the photographs included with the file.

14. **Role of Supervisors**

14.1 Supervisors have overall responsibility for ensuring that those officers under their supervision conduct an effective and efficient investigation into racist incidents which they attend.

14.2 Supervisors will ensure that, where a crime has been committed, it is correctly recorded and a thorough investigation pursued.

14.3 Supervisors will ensure racist incident forms (Com Rel 3) are submitted by the attending officer prior to the end of their tour of duty.

14.4 Supervisors will ensure that communications staff have tagged all racist incidents in accordance with this policy.

15. **Crime Recording**

15.1 The role of the Crime Desk supervisor is vital in the accurate recording of racist crime. The accurate recording will aid the compilation of statistical returns.
16. **Performance Monitoring**

- **Audit**

16a.1 The role of audit will be carried out by the Chief Inspector, Corporate Development, during his/her inspection of the Division.

16a.2 The CPS will gather information on prosecution decisions and outcomes in all cases identified by the Police or CPS as racist incidents. The CPS will share this information with the Police.

17. **Crime Intelligence**

17.1 Officers attending scenes of racist incidents should be aware of the valuable intelligence which can be gained from speaking to victims.

17.2 Officers who have been subject of violence whilst attending a racist incident should record this fact to inform other Officers attending future incidents.

17.3 Information should be recorded on the Form Crime Intelligence 30 and submitted to the Officer Divisional Intelligence Unit.

17.4 Divisional Intelligence Units will ensure that Officers are made aware of any bail conditions imposed by a Custody Sergeant upon persons released following a racist investigation.
18. **Medical Attention**

18.1 In cases where a victim requires any urgent medical treatment for injuries, attending officers will ensure that arrangements for such an examination are made as soon as possible.

18.2 In cases where there is the likelihood of any forensic evidence being available, then an examination by a police surgeon will be arranged. Consideration should be given to the use of the interview suites in these cases. If the incident involves a female victim then a female police officer should accompany the victim in any medical examination.

19. **Advice which may be given:**

19.1 The parties of a racist incident may also be advised as follows:-

- consult victim support
- consult a solicitor
- consult Racial Equality Council
- consult other minority ethnic support groups.

20. **Role of Divisional Commander and C.P.S. Head of Criminal Justice Unit**
20.1 For Durham Constabulary Divisional Commanders will be responsible for the implementation of this policy within their division, with appropriate support from the Community Justice Department.

20.2 Divisional Commanders should identify the location at which the Polaroid Law Enforcement Kits will be held within their division. They will be responsible for the audit of use, ensuring that the equipment is used appropriately.

20.3 C.P.S. Durham Unit Heads will be responsible for implementation.

20.4 Divisional Commanders hold responsibility for identifying the process by which replacement films for the Polaroid cameras will be acquired and the location at which the are kept.

20.5 Consideration be given by Divisional Commanders in consultation with head of Community Justice to supply whole or part of Community Relations 3 form to aggrieved party.

21. **Media Strategy**

21.1 An agreed press strategy will be formulated between Police/CPS on the reporting of racist incidents and crimes in order to maximise the crime prevention opportunity. This will completed in consultation with the victim and where appropriate other agencies which have been involved e.g. Racial Equality Council.