



HM Inspectorate of Probation

***EMPLOYMENT
TRIBUNAL***

**Miss B and the
Nottinghamshire Probation Service**

***The report of the findings of an
investigation undertaken by
HM Inspectorate of Probation under
the terms of the Consent Order
agreed by both parties***

AN OCCASIONAL PAPER

2000

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Introduction

1. In September 1999, Miss B,¹ a probation officer (PO) in the Nottinghamshire Probation Service, brought a case before an Employment Tribunal on the grounds of racial discrimination by the service. Nottinghamshire Probation Service accepted that it had failed to investigate Miss B's allegations of racial discrimination and, under the terms of a Consent Order agreed by both parties, the following requirement was placed upon the service, namely that:

"The probation committee do appoint an independent person to conduct an investigation into the entire history of the subject matter of these proceedings."

2. As a result of an approach made by the Nottinghamshire Probation Committee to HM Chief Inspector of Probation, it was agreed that the investigation would be undertaken by HM Inspectorate of Probation (HMIP) on the basis that the following terms of reference were accepted by all parties:

"The purpose of the investigation is to ascertain the events which led to the Employment Tribunal in the case of Miss B and the Nottinghamshire Probation Service and to identify any lessons to be learnt for the future. Accordingly, the investigation will be conducted in a way which emphasises learning and avoids blame. It is not intended to determine any of the allegations relating to staff identified within the case papers as this was not the basis on which the case was brought to the Tribunal. The committee and chief probation officer (CPO) of the Nottinghamshire Probation Service have agreed that no disciplinary action will arise from the investigation's findings."

In order to assist inspectors, the services of Mark Carroll, an independent consultant with expertise in race equality matters, were engaged.

3. It was agreed that the investigation would attempt to establish:
 - a chronology of events;
 - the response of managers to specific complaints/incidents;
 - whether policies and procedures were followed and, if not, why not;
 - whether, if the policies and procedures had been followed, the matters which were the substance of the original complaint, those resulting in the Employment Tribunal and the Tribunal itself, might have been avoided.
4. This report sets out the findings of the investigation in respect of each of these matters and concludes with a number of recommendations for action.

¹ The member of staff asked to be referred to as Miss B.

Methodology

5. In undertaking the investigation, inspectors had access to all papers and documents submitted to the Employment Tribunal and, with the exception of one senior probation officer (SPO), were able to meet with all managers, committee members and staff considered relevant to the investigation.
6. In examining the circumstances leading up to the Employment Tribunal, inspectors also considered the extent to which events would have been influenced by, or were the result of racial discrimination and/or institutional racism. In order to investigate this possibility, inspectors:
 - engaged in lengthy discussions with the probation committee and all grades of staff to explore the dominant cultures within the service;
 - met with representatives of the Association of Black² Probation Officers (ABPO), the National Association of Asian Probation Staff (NAAPS) and the National Association of Probation Officers (NAPO);
 - wrote to all staff employed by the Nottinghamshire Probation Service, informing them of the investigation and seeking their views about the effectiveness of existing service policies and procedures to deal with complaints;³
 - met with members of the Black Staff Group within the Nottinghamshire Probation Service.

The chronology of events

7. A draft chronology of events, based on written information shown to or provided for HMIP during the course of the investigation, was drawn up and circulated to all parties. This chronology was agreed to provide a factually accurate account of events. HMIP have decided not to publish the chronology as it is possible from the detail that third parties could be identified inappropriately.

The response by managers to specific complaints/incidents

8. The investigation found that in some instances managers responded properly and effectively to complaints raised by Miss B and, in so doing, promoted the re-establishment of harmonious working relationships. Inspectors were told of, or provided with evidence about four such complaints over a three-year period, which related to behaviour towards Miss B by members of external organisations as well as staff from the Nottinghamshire Probation Service. In considering the distinguishing features of these complaints, it was evident that the issues had been raised within an acceptable timescale with the individuals concerned and feedback had been given to Miss B as appropriate. It was apparent that, in each instance, either the person against whom the complaint had been made, or the manager involved, had an understanding

² The term "Black" is used in this report either as part of an accepted title or as the term preferred by Miss B to describe herself.

³ A total of 57 staff, of whom 49 identified themselves as white and 8 from minority ethnic groups, responded to this invitation by completing a questionnaire.

of the nature of the problem. It was therefore possible for the matter to be addressed in a clear and specific way which not only validated Miss B's concerns, as the complainant, but also enabled those against whom the allegations had been made to offer a full and unreserved apology.

9. However, the positive effect of the handling of these complaints was counteracted by the impact of the way in which a number of other matters were handled and it was these matters which formed the substance of the allegation presented to the Tribunal. Inspectors found that the response by managers at all levels of the organisation to these events was characterised by the failure to:
 - follow service policy and procedures, including adhering to the timescales required;
 - understand and accept the significance of the allegations to Miss B;
 - communicate openly, effectively and sensitively with her;
 - maintain proper channels of communication between respective managers, whilst still respecting confidentiality.
10. From discussion with managers at all levels of the service, it was apparent that they believed that they had responded to Miss B's evident distress at the time of the different incidents. However, few appeared able to understand the significance of the allegations to her. They did not at the time, nor were they able subsequently to empathise with the sense of isolation and powerlessness experienced by her as an individual and additionally they were unaware of the extent to which this was shared by a significant number of minority ethnic staff within the service. The complaints raised by Miss B therefore became personalised to her and were seen as a series of individual issues rather than evidence of organisational failure.
11. Although she had raised issues clearly and explicitly about what she perceived as racism in the Crown Court as early as September 1997, the service showed by its response that it had not taken on board the significance of her complaint. Actions identified by managers at that time to address her concerns, such as the review of race equality issues within the court team, were never taken forward. The continuing adverse effect on her daily existence was unappreciated and her ongoing and rightful insistence that the matters should be dealt with properly eventually came to be seen as vexatious and unreasonable. Even when the service was eventually compelled, some three years later, to acknowledge to the Employment Tribunal that it had failed to investigate her allegations of racial discrimination, she was seen by some managers to have used the issue of race to pursue her own advantage.
12. It emerged during the course of the investigation that, over the past decade and pre-dating the appointment of either Miss B or any of her contemporaries to the Crown Court, other minority ethnic staff working within the team had raised complaints about racist behaviour. Over the years attempts had been made to examine these difficulties and to assess how far the ethos of the Crown Court itself, and the structure of the particular roles within the team, could be considered a contributory factor. Working in this setting required individuals to have a willingness and ability to work as a member of a team, be capable of coordinating and directing the work of colleagues and represent the service to important individuals including judges. Some attempts had been made to consider the implications of these requirements for the induction of new staff, particularly those from a minority group, the supervision and support of all staff, and the way the unit operated as a team. However, these efforts had not been sustained and the problems which consequently were not confronted remained largely ignored or denied by managers and staff.

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13. It was not therefore surprising that, insofar as can be ascertained, neither of the SPOs responsible for the Crown Court team during the main period of events leading up to the Employment Tribunal,⁴ was given the time, resource and support necessary to manage its complex internal dynamics effectively. The committee and CPO indicated that the SPO establishment had been reduced from one full to a half-time post at the Crown Court, in order to reduce staff as a result of funding cuts. One SPO told inspectors that he was unable to provide individual team members with routine supervision due to the different and, at times, conflicting demands of his own disparate workload and that he spent a significant amount of his time covering for staff sickness. In the absence of regular, planned supervision sessions between the SPO and individual team members, no forum therefore existed to explore or seek to resolve in a non-adversarial manner the normal tensions which could emerge within teams. These difficulties were made known by the SPO to his line manager at the time but were not addressed.
 14. The succeeding SPO was given the brief of consolidating the recent merger of the Crown and magistrates' court teams in which insufficient attention was given, as was later acknowledged, to the issue of race equality. Although the individual concerned was not available for inspectors to interview, the investigation raised questions about the level of support and oversight provided to her. For example she was said not to have been told until December 1998 of the substance of Miss B's grievance against the senior management team of the service, taken out in May 1998. Additionally, inspectors viewed her response to the allegations made by Miss B in September 1998 about the behaviour of a number of her colleagues, as an indication that she had not been properly briefed about the background of events and was neither familiar with, nor comfortable about the process of handling such a complaint.
 15. Within this context, the failure of individual managers to communicate effectively, either between themselves or with Miss B, was particularly unfortunate. The inconsistent involvement of the assistant chief probation officer (ACPO) with responsibility for both race equality and personnel issues, and the confusion between his role and that of the ACPO with line management responsibility for the Crown Court, hampered effective communication. The ongoing and, ultimately inappropriate, direct involvement of the CPO compounded the difficulties. As a result of the unsuccessful attempt to maintain confidentiality over the investigation of Miss B's complaints, individual managers were uninformed and became uncertain about their own levels of responsibility.
 16. The need for Miss B to be provided with additional consultation and support outside the normal line management structure was recognised by the service as early as December 1997. Arrangements were made, however, to engage the services of a consultant only in September 1998, some three months after Miss B had taken out a grievance against the senior management team. It was apparent to inspectors that insufficient attention was then given by senior managers to determining the purpose and nature of the consultancy and whether the consultant had been engaged solely to support Miss B or also to work with the SPO in addressing the issues within the team. Whatever the initial intent, the SPO was allowed to withdraw from meetings. The consultant indicated to inspectors that her own attempts to meet with members of the team were obstructed and met with failure.
 17. The drafting of some letters sent by managers to Miss B was undoubtedly ambivalent and appeared to inspectors, in two instances, as intimidating. Although managers denied any intention to pressurise her in this way, it was apparent that little attention had been given to how the letters might be perceived by the recipient. The failure to recognise the sensitivity of the

⁴ April 1997-February 1999.

situation and the possibility of different interpretations was lamentable and spoke of managers' inability to consider the situation from any perspective other than their own.

18. Although it was not within the remit of this investigation to determine whether these failings extended to managers' dealings with other staff, it was apparent from feedback to the questionnaire, circulated by HMIP as part of the investigation, that elements of Miss B's case were not unique. Twelve of the 59 staff who completed the questionnaire indicated that they had instigated a complaint as a result of a colleague's or manager's behaviour. Ten of the 12 identified themselves as white and 2 from minority ethnic groups. Of the 12 members of staff to respond, only 3 (all white) described themselves as satisfied with the outcome and 1 (white) did not express an opinion. The remaining 8 gave the following reasons for their dissatisfaction with the process:
- no response made to complaint (2 cases);
 - no action taken to address complaint (3 cases);
 - no change in the perpetrator's conduct (2 cases);
 - manager did not believe complaint serious (1 case).

It would be unwise to draw firm conclusions from this limited evidence but it does indicate that staff other than Miss B were dissatisfied with the way managers dealt with their cases.

Were the service's policies and procedures implemented?

19. As indicated above, inspectors found that service policies and procedures had not been implemented consistently during the events leading up to the Employment Tribunal.
20. The grievance procedures used by the service had been only slightly amended since 1987. Although similar in format to the model suggested by the National Negotiating Council for the Probation Service in April 1997, the Nottinghamshire procedures allowed for 14 days (instead of 7) for a grievance hearing to be arranged by the chief officer, or their representative, and gave a specific timescale of 7 days within which the aggrieved was to be informed of the outcome of the meeting.
21. It was apparent from discussion with both staff and managers that different opinions existed across the service over what a grievance consisted of and whether the term applied solely to terms and conditions of service or could be used to address a wide range of complaints. Opinions ranged from whether the grievance procedure should be regarded either as a serious step to be taken only in extreme circumstances, or as a legitimate way for staff to get their voice heard. The interface between the grievance and the harassment procedure appeared to be little understood and it was evident that some managers saw their role in dealing with grievances in terms of mediation and resolution rather than that of an adjudicator. No common philosophy existed across the service in relation to grievances and the response consequently varied according to the attitude of the individual manager.
22. Of the 57 members of staff who completed the questionnaire:
- 52 knew of the existence of the grievance policy;
 - 26 knew what it said;
 - 35 knew how to get access to it;

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- 35 were aware of the existence of the harassment policy;
 - 22 knew what it said;
 - 29 knew how to get access to it.
23. Representatives of the local branch of NAPO told inspectors that they had experienced increasing difficulties in obtaining a response from managers, which met the requirements of the policies and procedures, to individual concerns or complaints from their members. They believed that the situation had worsened in recent years, and particularly following the departure of the assistant chief with human resources responsibilities.
24. The administration of hearings in the case of Miss B was characterised by the failure to meet the timescales, or requirement for recording established by the service's own grievance procedures, for example:
- the original grievance, dated 4 December 1996, was only heard some two months later at a meeting on 7 February 1997. No record of the hearing of 7 February was ever made, despite Miss B's repeated requests for written confirmation of the decisions reached, particularly in relation to the extension of workload relief to cover her work as ABPO convenor;
 - the grievance against the senior management group, first lodged on 15 May 1998, was heard on 31 July 1998. The CPO gave an initial response to Miss B within the accepted timescale in which he identified some, but not all of the issues agreed at the meeting on 31 July 1998. However, he did not send the notes of the meeting to her until 1 October 1998. The outstanding matters from the meeting of 31 July 1998 were never formally addressed by the CPO but carried over to the subsequent meeting on 28 October 1998.
25. The grievance process, once instigated, became a protracted affair which, in the case against the senior management team and heard by the CPO, lasted over a period of 8 months. Remedies, where communicated, as in the CPO's letter to Miss B of 11 December 1997, were either not implemented or only taken forward after significant delay. As it was, the absence of clear findings and adjudication was crucial and had the ultimate effect of preventing Miss B from taking her case to the probation committee on appeal, despite her wish to do so recorded as early as 1 June 1998.
26. In respect of other service policies:
- no specific resources were identified to provide workload relief for the half day a week granted to Miss B as ABPO convenor in 1996/97, other than to identify the East Criminal Work Unit responsible for providing the cover. The SPO concerned was consequently placed in the position of trying to negotiate with her colleagues workload relief, to support the role of the ABPO convenor, at a time of significant budget constraints. The inability of the service to recognise both the impossibility of the SPO's position and her vulnerability to unhelpful stereotyping (as the service's first African-Caribbean woman manager, newly-appointed to the role) was further evidence of the lack of anti-racist practice and sensitivity within the organisation;
 - the use of the racial harassment policy was considered only in retrospect, even though the case cited in the declaration to the Tribunal as one example of the service's failure to investigate Miss B's complaints, would appear to have fallen within its remit;
 - the failure to implement until July 1999, the national appraisal system for all probation staff, provided by the Home Office to services in 1994, meant that for much of the
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period covered by this investigation, no formal appraisal system existed through which staff and managers could be properly held to account and their development needs identified.

Would the Employment Tribunal have been avoided had the service followed its policies and procedures?

27. The investigation identified significant shortcomings within the policies themselves or relating to their implementation. The grievance policy did not address the possibility of a complaint being made against the senior management team or consider the position of the CPO in such an eventuality. Although the CPO had sought advice from the committee secretary before deciding to hear the grievance himself, his role was initially challenged by Miss B and her advisors on the basis that he could not adjudicate on a complaint in which he was personally involved. It was apparent to inspectors in reviewing the events that the continuing involvement of the CPO had damaged both the credibility of the process and of the chief officer himself.
28. The relationship between the harassment and grievance policies required clarification by the service. It was apparent on reading both policies that, whereas the grievance procedure could relate to a wide range of issues including processes and organisational matters, the harassment policy had been developed to deal with specific events. As such, it could have been invoked following the incident involving a social worker cited in the Tribunal declaration. It was, however, significant, but not altogether surprising given that the policy on harassment referred in the main to issues about sexual harassment, that neither Miss B nor her SPO considered resorting to that particular policy to help them in addressing a sensitive matter about race with a member of another organisation.
29. Inspectors identified that the events leading to the Tribunal were marked by the failure to seek personnel/human resources expertise until very late in the process. Professional advice was available to all managers through the personnel manager but this post did not carry chief officer status and the post holder was not involved in all key managerial decisions. The lack of emphasis given to the human resources function was compounded by the absence of training offered to managers on the implementation of the policies relating to personnel matters.
30. It would also appear that, partly due to the other pressures facing the service, the issue of equality had taken a lower priority in the service's concerns. An Equality Standard approved by the committee in 1997, which would have required the service to review its policies and procedures to ensure that "equality issues are at the heart of the agenda of this service", was never implemented. No information was presented to the probation committee on the implementation of the discipline, grievance and complaints procedures by race or gender. The absence of performance data, broken down by race and gender, had been identified in HMIP's area inspection for the Nottingham Probation Service, published in October 2000, as a major difficulty in the assessment of staff. The inspection concluded that this resulted in some instances in a failure to tackle incompetence and, in others, in staff working far harder than they should to compensate. It also meant that the committee had no way of knowing that service policies were being administered equitably and without prejudice. These are issues which need addressing as a matter of urgency.
31. Other factors were significant. The events leading up to the Tribunal cannot be considered in isolation from the culture of service, which was described during the course of the investigation as, at one time, radical and forward thinking, but now somewhat inward looking and slow to

change. Emphasis was placed on mediation and resolution by agreement. HMIP's area inspection for the service identified "the level of disputes involving managers and the consequent desire by management to avoid conflict". Despite a substantial programme of anti-racism training in the early 1990s, little understanding appeared to exist about the different forms in which racism could manifest itself intentionally or unintentionally. Few mechanisms existed to support and assist managers in working with diversity and many of those interviewed expressed uncertainty about their ability to do so. It was also apparent that NAPO locally was seen by its minority ethnic members as a powerful force, but not one which was particularly responsive to their needs.

32. The self-image of the service was not one which facilitated challenge and made it difficult for those who were seen as outside the existing order, for whatever reason, to raise issues or put forward other perspectives. A number of white staff and managers told inspectors that they did not feel they "belonged" in the organisation even though they had worked there for over 10 years. Within this culture, staff from minority ethnic groups reported feeling particularly isolated and unsupported.

Findings and recommendations

33. This investigation had serious implications for the committee who were anxious to learn from its findings. It raised questions about how far they, in their role as employers, were able to hold managers, from the CPO down, to account for the implementation of policies and procedures. In some instances managers responded properly and effectively to complaints raised by Miss B. The response by managers in dealing with the events which formed the substance of the case presented to the Employment Tribunal, however, was characterised by a failure to:
- follow service policy and procedures, including adhering to the timescales required;
 - understand and accept the significance of the allegations to Miss B;
 - communicate openly, effectively and sensitively with her;
 - maintain proper channels of communication between respective managers whilst still respecting confidentiality.
34. Given the remit of the investigation, it was not possible to determine whether all staff would have experienced the same difficulties as Miss B or if staff from minority ethnic groups were treated differently from their white colleagues when raising a complaint. During the investigation, inspectors heard from both white and minority ethnic staff of cases which had been subject to similar procedural obstacles and it was clear that the service needed to give immediate attention to the implementation of their personnel procedures. In deliberating on the likely impact on Miss B, however, inspectors considered that it would have been reasonable for her to ask why she was being dealt with in such a way and for her to believe that she would have received different treatment had she been white. It was also evident that the impact on her was more adverse because of the sense of isolation she experienced as a black person in these circumstances. Inspectors considered that it was reasonable to expect managers to have taken account of these issues in their dealings with her.
35. The service's failure to recognise the significance of Miss B's complaints, made at some considerable time prior to the Employment Tribunal, and respond appropriately, was evidence of the lack of understanding and acceptance in the organisation about race equality, as was the

neglect of the long-standing issues in the Crown Court team. In considering whether the matters raised during the investigation related solely to Miss B and the Crown Court, inspectors also learnt of the perception of differential treatment held by other minority ethnic staff. A number of examples to support this perception emerged during the course of the investigation. Inspectors concluded that the events resulting in the Tribunal were not isolated to one individual or team but were symptomatic of a wider organisational response, highlighted by the particular tensions within the structure of the Crown Court team. Inspectors came to the view that the circumstances which culminated in Miss B taking the service to an Employment Tribunal were indicative of the service's response to dealing with issues of race equality and, as such, demonstrated the effects of institutional racism.

36. The investigation was discussed with the CPO and probation committee at a meeting in which they accepted HMIP's findings and agreed that the service's handling of the case had been characterised by management failure which resulted in racism. Building on that statement, it was therefore agreed that, in implementing the findings in the thematic report "Towards Race Equality",⁵ the CPO and probation committee would pay particular attention to the local significance of the following recommendations:

- (a) *adopt the definition of racist behaviour and institutionalised racism given in the Macpherson report and use it as the basis for disciplinary, grievance and complaints procedures and ensure that the implications of this change are reflected in all its future policy and practice guidance;*
- (b) *ensure the inclusion of appropriate mandatory training for all staff to promote race equality in the annual training and staff development plans from 2001 giving priority to:*
 - *committee members;*
 - *white managers supervising minority ethnic staff;*
 - *minority ethnic managers;*
 - *race equality training including raising cultural awareness, and considering implications for aspects of service delivery or organisational practice;*
- (c) *ensure that the needs of minority ethnic members of staff are taken into consideration in determining their work base and that appropriate support systems, including supervision, are operating effectively.*

37. Additionally, it is recommended that:

- (a) in undertaking the review of policies and procedures, as required under the terms of the Consent Order agreed at the Employment Tribunal, the probation committee should ensure that:
 - the revised policies are informed by a greater understanding of the ways in which racism, in its different forms, can manifest itself;
 - the remit of the grievance, harassment and complaints procedures are clear and explicit, and understood by committee members and all grades of staff;
 - the policies make clear the requirements placed on committee members and all grades of staff;
 - the implementation of the policies is supported by appropriate training;
 - the use of the policies is monitored by race, gender and grade of staff and reported to the committee at least annually;

⁵ HM Inspectorate of Probation *Towards Race Equality* Report of a thematic inspection (2000).

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- (b) the CPO and committee should ensure the accessibility of personnel advice and, in so doing, make certain that the role and authority of the chief officer with functional responsibility for human resources is clearly defined and understood;
 - (c) an action plan is developed to support the implementation of the equal opportunities plan, placing explicit responsibility on managers for the delivery of specific and measurable targets for which they are held accountable;
 - (d) action is taken to address the long-standing issues about culture and managing conflict identified within the Crown Court team.

38. HMIP will examine the effectiveness of the implementation of these recommendations in the area follow-up inspection to be undertaken in late 2001.

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