

On the edge of objectivity

Rohan Collier describes the developments in community engagement as a means of improving prosecutions for hate crimes.

Six years ago, following damning reports concerning performance on race and determined to rid itself of a label of 'institutional racism', the Crown Prosecution Service (CPS) established an Equality and Diversity Unit (EDU). But there was more to be done than tackle racism. The EDU identified that the culture within the CPS meant that issues important to communities were not understood and that this impacted on the ability to prosecute certain crimes effectively. One solution was to develop community engagement. In 2000 the overriding view of the CPS was that the community did not understand the prosecution process and we needed to 'tell' them. Communities, meanwhile, had no confidence in the CPS and felt strongly that prosecutors were not prepared to listen to their views. This lack of trust meant that victims and witnesses withdrew from the process, thus contributing to the attrition rate. The CPS was defensive and adamant that engaging with

for most crimes despite the fact that the perpetrator is easily identifiable. A day-long workshop was organised which involved dialogue between policy makers and community groups. As a result the policy on domestic violence changed radically. Prior to the workshop, the policy did not distinguish between the violence and the victim's relationship with the perpetrator, which meant that the focus was often on the relationship rather than on the crime. So, if the victim wanted to stay in the relationship, there was less likely to be a prosecution. The community's view was that the victim's safety had to be paramount and that the relationship was irrelevant. The community saw the prosecution acting as some kind of therapist rather than prosecuting crimes. The workshop also revealed that prosecutors had little understanding of why women withdrew from the process. Much dialogue was needed (during and beyond the workshop) to persuade the CPS to push for 'victimless' prosecutions. A case needed to be built

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different communities would pollute decision-making and undermine independence. Typically, 'engagement' with communities took the form of a 'lecture' from the CPS. Prosecutors were fearful of genuine engagement and resented change. But communities had expertise that the CPS needed, and still needs. Prosecutors, however, could never satisfactorily explain why they needed to be ignorant of community views in order to be independent!

Since 2000 the CPS has made steady progress in community engagement. In its early days, the EDU developed a series of initiatives. All aimed at getting prosecutors to listen to and learn from communities and to become more at ease with a two-way dialogue. The aim was to expose the CPS to the views they found difficult and to see criticism from the community as a learning experience which could help improve the prosecution process. At one event a disabled speaker said "if you don't think people with learning disabilities are credible witnesses, then I don't think you are credible prosecutors".

In terms of prosecution policy it was important to move from a distant relationship that was over reliant on written communication. In 2001, the domestic violence policy was being rewritten. Domestic violence attrition rates are higher than

on the assumption that the victim would withdraw, so it was important to take the decision to prosecute away from her and move it towards the state. This meant relying on evidence other than the victim's statement.

The success of this process led in 2002 to a radically new approach to policy making, and when the CPS developed its policy on homophobic crime, the team included community members and policy officers working side by side from the very beginning. A major issue for the community was that when victims called the police they often found themselves charged for sexual offences (if they were 'cottaging'). Ultimately, the new policy stated that "when a person committing such an offence becomes the victim of a more serious crime, or witnesses one, the serious offence will be investigated and, where appropriate, prosecuted, even if this means not pursuing a prosecution for the minor offence". A similar process was followed in 2003 with the policy on racist and religious crime. Here the CPS engaged with its most severe critics within black and minority ethnic communities. True to form, the CPS was anxious, feeling its 'independence' under attack from what they thought were 'dangerous campaigning groups'. The reality was that these

groups had knowledge the CPS lacked. The community's view was that the racial element was too often dropped from the prosecution case and that 'plea bargaining' resulted in a lesser charge. The new CPS policy contained a firm commitment to prosecute on the racial element.

Community engagement has not only changed the way policies are developed, but how the CPS deals with individual cases. It has become clear that well-established and continuous engagement with local communities can improve the prosecution process. A good example is the way the prosecution dealt with the murder of Anthony Walker in Merseyside in 2005. Throughout the case, communication was maintained with local communities. The case also shows that "a proactive and joined up approach to engaging with marginalized communities with historically poor relations with the Criminal Justice System such as this arise, before and during the prosecution process is crucial to increase and maintain public confidence" (EDU).

Community engagement provides a learning experience for prosecutors. The evaluation of one attendee at an early race event commented "I have been on numerous race awareness courses, I have never before understood what racism really meant until today". People often learn most from personal stories, and this method of engagement can help debunk the myths and stereotypes that stand in the way of objective decision-making. This is most clearly illustrated in cases of rape. CPS policy on rape still has not involved communities in the same way. Here myths still prevail to a larger extent than for other 'hate' crimes. The credibility of the victim is often questioned. Charges are less likely if the victim is young, knows the offender, has been drinking or where there are mental health issues. The focus is on the status of the victim rather than the evidence available. One myth, unbacked by evidence, is that reported rapes are often mischievous. Other myths include the belief that rape is committed by strangers and that anyone facing rape will resist. A pervasive belief is that women lead men on and that men find it difficult to control themselves. All these myths prevent objective decision-making as they mean that effort is spent looking for alternative explanations for the 'rape' instead of looking for evidence of a crime: "The research evidence... shows that police, prosecutors, barristers and judges agree that rape is a very serious offence, but they rarely encounter cases that fit their definition of what rape really is" (Kelly 2002). The Code for Crown Prosecutors says of the evidential stage (the first test in whether to pursue a case) that it is an 'objective' test. A prosecutor must decide whether a jury or bench or judge "properly directed in accordance with law is more likely than not to convict" (EDU, 2006). Given the fact that myths often stand in for reality in cases involving rape, domestic violence, racist crime and homophobic crime, one has to ask to what extent subjectivity creeps into the decision to prosecute. Prosecutors may second-guess the court's views rather than objectively assess the evidence. What counts as evidence in these types of crimes has often been distorted by prevailing myths. As the chief inspector of HMCPSI commented "independence is a state of mind".

The prosecution of domestic violence cases is a good example of how successful community engagement can be. Recent figures by the CPS show a year on year improvement in prosecutions over the last four years. In May this year at the Old Bailey, the CPS prosecuted a case where a woman had committed suicide after years of well-documented abuse. The charge was manslaughter and although the judge threw

the case out, it illustrates how prosecutors now have a deep understanding of the dynamics of domestic violence. However, good practice is patchy and this needs to be rectified. National policies may be developed with communities, but they are not always understood by prosecutors and more work needs to be done at the local level. There are still prosecutors who resent engagement with community members, arguing "I am a prosecutor, not a social worker". When they do engage, many prosecutors still need to learn to move from talking 'at' people to talking 'with' communities. The CPS has come a long way since 2000 and change continues with recent development of performance measures on community engagement, pilots to test a range of different approaches and events with Muslim communities. However, only when a two-way dialogue is ongoing and commonplace will prosecutions be truly effective.

Rohan Collier is a consultant in equality and diversity and was Head of Equality and Diversity at the Crown Prosecution Service from 2000 till 2003.

References

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