

# The Lammy Review

An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System





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# Introduction



Across England and Wales, people from minority ethnic backgrounds are breaking through barriers. More students from Black, Asian and Minority Ethnic (BAME) backgrounds are achieving in school and going to university.<sup>1</sup> There is a growing BAME middle class.<sup>2</sup> Powerful, high-profile institutions, like the House of Commons, are slowly becoming more diverse.<sup>3</sup> Yet our justice system bucks the trend. Those who are charged, tried and punished are still disproportionately likely to come from minority communities.

Despite making up just 14% of the population, BAME men and women make up 25% of prisoners,<sup>4</sup> while over 40% of young people in custody are from BAME backgrounds. If our prison population reflected the make-up of England and Wales, we would have over 9,000 fewer people in prison<sup>5</sup> – the equivalent of 12 average-sized prisons.<sup>6</sup> There is greater disproportionality in the number of Black people in prisons here than in the United States.<sup>7</sup>

These disproportionate numbers represent wasted lives, a source of anger and mistrust and a significant cost to the taxpayer. The economic cost of BAME overrepresentation in our courts, prisons and Probation Service is estimated to be £309 million a year.<sup>8</sup>

This report is the product of an independent review, commissioned by two Prime Ministers.<sup>9</sup> The review was established to 'make recommendations for improvement with the ultimate aim of reducing the proportion of BAME offenders in the criminal justice system'.<sup>10</sup> It reflects a growing sense of urgency, across party-political lines, to find solutions to this inequity.

## The Review

This review has two distinctive features, the first of which is its breadth. The terms of reference span adults and children; women and men. It covers the role of the Crown Prosecution Service (CPS), the courts system, our prisons and young offender institutions, the Parole Board, the Probation Service and Youth Offending Teams (YOTS). A comprehensive look at both the adult and youth justice systems was overdue.

Secondly, whilst independent of the government, the review has had access to resources, data and information held by the criminal justice system (CJS) itself. In the past, too much of this information has not been made available to outsiders for scrutiny and analysis. As a result, this review has generated analysis that breaks new ground on race and criminal justice in this country.<sup>11</sup>

The focus of the review is on BAME people, but I recognise the complexity of that term. Some groups are heavily over-represented in prison – for example Black people make up around 3% of the general population but accounted for 12% of adult prisoners in 2015/16; and more than 20% of children in custody.<sup>12,13,14</sup> Other groups, such as Mixed ethnic adult prisoners, are also overrepresented, although to a lesser degree.<sup>15</sup> The proportion of prisoners who are Asian is lower than the general population but, within categories such as 'Asian' or 'Black' there is considerable diversity, with some groups thriving while others struggle.

This complexity mirrors the story in other areas of public life. In schools, for example, BAME achievement has risen but not in a uniform way. Chinese and Indian pupils outperform almost every other group, while Pakistani children are more likely to struggle. Black African children achieve better GCSE exam results, on average, than Black Caribbean children.<sup>16</sup> Wherever possible this report seeks to draw out similar nuances in the justice system.

The review also addresses the position of other minorities who are overlooked too often. For example, Gypsies, Roma and Travellers (GRT) are often missing from published statistics about children in the CJS, but according to unofficial estimates, are substantially over-represented in youth custody, for example, making up 12% of children in Secure Training Centres (STC).<sup>17</sup> Muslims, meanwhile, do not fall within one ethnic category, but the number of Muslim prisoners has increased from around 8,900 to 13,200 over the last decade.<sup>18</sup> Both groups are considered within scope for this review.

I hope and expect that many of my recommendations will benefit White working class men, women, boys and girls too. BAME communities face specific challenges, including discrimination in many walks of life. But some of the most marginalised BAME communities have much in common with the White working-class. A justice system that works better for those who are BAME and poor will work better for those who are White British and poor too.

In general, the areas of the CJS addressed in my report cover both England and Wales. The laws on prisons and offender management are reserved to Westminster, as is the single legal jurisdiction which covers courts, judges and criminal procedure, including sentencing. However, in the context of prisons and offender management there are some exceptions which are devolved to the Welsh Government. These include the legal provisions for health care in prisons; social care and education; training and libraries in prisons; and local authority accommodation for the detention of children and young people.

As far as possible I have sought to recommend actions that I believe would benefit the CJS as a whole. I have not been specific about jurisdiction or the levers for implementation, other than in which part or agency of the justice system they should, or could, be owned and taken forward. The work to implement my recommendations will need to be mindful of the differences in how the CJS is administered in Wales.

## International context

The problem is not unique to England and Wales. Over the course of this review I visited six countries and 12 cities around the world. In each jurisdiction, I found governments and civil society organisations grappling with how best to reduce racial disparities within their own criminal justice systems. In France, Muslims make up an estimated 8% of the population and between a quarter and a half of the prison population.<sup>19</sup> In America, one in 35 African-American men are incarcerated, compared with one in 214 White men.<sup>20</sup> In Canada, indigenous adults make up 3% of the population but 25% of the prison population.<sup>21</sup> In Australia, Aboriginal and Torres Strait Islander prisoners make up 2% of the population, but 27% of prisoners.<sup>22</sup> In New Zealand, Maoris make up 15% of the population, but more than 50% of the prisoners.<sup>23</sup>

This report draws together the most promising ideas from those other jurisdictions; from efforts to diversify judiciaries to new ways of involving communities in rehabilitating offenders. In the chapters that follow I explore how they can be applied in our own context. I also draw on ideas from closer to home, gathered through public consultation events, an open call for evidence with over 300 responses from a mix of organisations, experts, and private individuals; round-table seminars; and an intensive programme of visits to courts, prisons, probation services and community initiatives across England and Wales. I have spoken with those who work in the system, from prison officers to prison governors, court clerks to our most senior judges. I have heard from victims and offenders, from faith groups and charitable organisations, campaigners and academic experts. Each of those perspectives has influenced the conclusions I have reached.

I present my findings and recommendations with one major qualification: many of the causes of BAME over-representation lie outside the CJS, as do the answers to it. People from a black background are more than twice as likely to live in poverty than those from a white background.<sup>24</sup> Black children are more than twice as likely to grow up in a lone parent family.<sup>25</sup> Black and Mixed ethnic boys are more likely than White boys to be permanently excluded from school and to be arrested as a teenager.<sup>26</sup> <sup>27</sup> These issues start long before a young man or woman ever enters a plea decision, goes before a magistrate or serves a prison sentence. Although these problems must be addressed, this cannot be done by the justice system alone. Prisons may be walled off from society, but they remain a product of it.

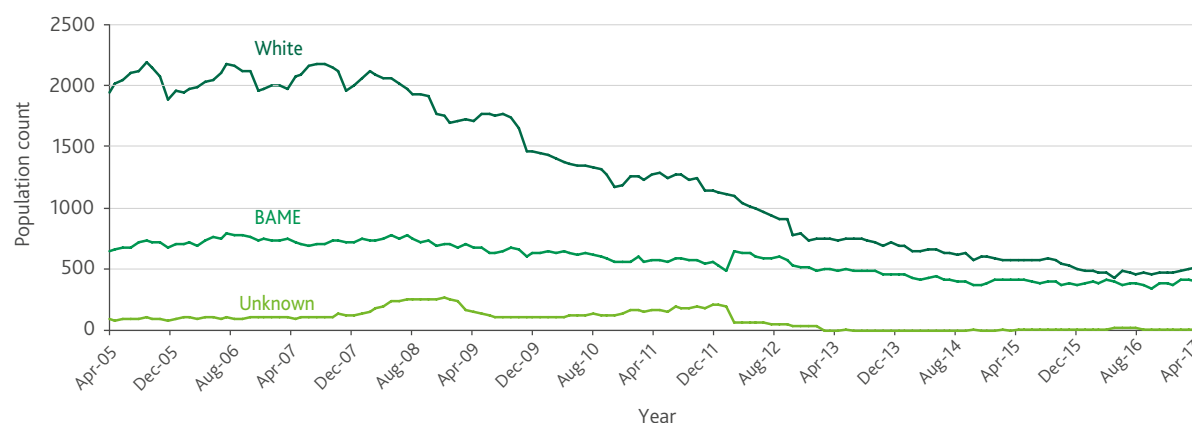
Nevertheless, our justice system is powerful and far-reaching. It makes millions of decisions each year that influence the fate of victims, suspects, defendants and offenders. 1.6 million cases were received by our courts last year, while billions are spent on supervising and rehabilitating offenders.<sup>28,29</sup> More can be done to achieve the core goals of this review: to reduce the proportion of BAME individuals in the CJS and ensure that all defendants and offenders are treated equally, whatever their ethnicity.

## Findings

My biggest concern is with the youth justice system. This is regarded as one of the success stories of the CJS, with published figures showing that, compared with a decade ago, far fewer young people are offending, reoffending and going into custody.<sup>30</sup> YOTs were established by the 1998 Crime and Disorder Act, with a view to reducing youth offending and reoffending and have been largely successful in fulfilling that remit. Yet despite this fall in the overall numbers, the BAME proportion on each of those measures has been rising significantly.<sup>31</sup> Over the last ten years:

- The BAME proportion of young people **offending for the first time** rose from 11% year ending March 2006 to 19% year ending March 2016.<sup>32</sup>
- The BAME proportion of young people **reoffending** rose from 11% year ending March 2006 to 19% year ending March 2016.<sup>33</sup>
- The BAME proportion of youth prisoners has risen from 25% to 41% in the decade 2006-2016.<sup>34</sup> (see figure 1 next page indicating the makeup of the youth custodial population).<sup>35</sup>



**Figure 1: Under 18 secure population by ethnicity 2005/05 – 2017/18\***

\* 2016/17 and 2017/18 data is provisional

The system has been far too slow to identify the problem, let alone to react to it. There are isolated examples of good practice, including in some YOTs<sup>36</sup>, but nothing serious or comprehensive enough to make a lasting difference. Unless something changes, this cohort will become the next generation of adult offenders.

In both the youth and adult systems, there is no single explanation for the disproportionate representation of BAME groups. For example, analysis of 2014/15 data, shows that arrest rates were generally higher across all ethnic groups, in comparison to the white group – twice as high for Black and Mixed ethnic women, and were three times higher for Black men.<sup>37</sup> Arrests are disproportionate but this does not fully explain the make-up of our youth custody population.

Other decisions have important consequences. For example, analysis of the same 2014/15 data, shows that BAME defendants were consistently more likely than White defendants to plead not guilty in court.<sup>38</sup> Admitting guilt can result in community punishment rather than custody, or see custodial sentences reduced by up to a third.<sup>39</sup> Plea decisions are an important factor in the disproportionate make-up of the prison system.

There is evidence of differential treatment that is equally problematic. For example, analysis of sentencing data from 2015 shows that at the Crown Court, BAME defendants were more likely than White defendants to receive prison sentences for drug offences, even when factors such as past convictions are taken into account.<sup>40</sup> Despite some areas that require further study, such as the role of aggravating and mitigating factors, there is currently no evidence-based explanation for these disparities.

In many prisons, relationships between staff and BAME prisoners are poor. Many BAME prisoners believe they are actively discriminated against and this is contributing to a desire to rebel rather than reform. In the youth system, young BAME prisoners are less likely to be recorded as having problems, such as mental health, learning difficulties and troubled family relationships, suggesting many may have unmet needs. All this hinders efforts to tackle the root causes of offending and reoffending among BAME prisoners, entrenching disproportionality.<sup>41</sup>

Probation services and YOTs are charged with managing offenders in the community and helping them start new lives. However, our criminal records regime does precisely the opposite of this. Over the last five years 22,000 BAME children have had their names added to the Police National Database.<sup>42</sup> This includes for minor offences, such as a police reprimand. The result in adulthood is that their names could show up on criminal record checks for careers ranging from accountancy and financial services to plumbing, window cleaning and driving a taxi.<sup>43</sup>

## Key principles

The response to the disproportionate representation of BAME prisoners should be based around three core principles:

- Firstly, there must be robust systems in place to ensure **fair treatment** in every part of the CJS. The key lesson is that bringing decision-making out into the open and exposing it to scrutiny is the best way of delivering fair treatment. For example, juries deliberate as a group through open discussion. This both deters and exposes prejudice or unintended bias: judgments must be justified to others. Successive studies have shown that juries deliver equitable results, regardless of the ethnic make-up of the jury, or of the defendant in question.<sup>44</sup>
- This emphasis on opening decision-making to scrutiny can mean different things in different parts of the system. For example, the CPS has a system of randomly reviewing case files, providing one model to replicate. Other examples include publishing data in much more detail, thereby enabling outsiders to identify and scrutinise disproportionate treatment.
- Secondly, **trust** in the CJS is essential. The reason that so many BAME defendants plead not guilty, forgoing the opportunity to reduce sentences by up to a third, is that they see the system in terms of 'them and us'. Many do not trust the promises made to them by their own solicitors, let alone the officers in a police station warning them to admit guilt. What begins as a 'no comment' interview can quickly become a Crown Court trial. Trust matters at other key points in the CJS too. A growing international evidence base shows that when prisoners believe they are being treated fairly, they are more likely to respect rules in custody and less likely to reoffend on release.<sup>45</sup>
- Trust is low not just among defendants and offenders, but among the BAME population as a whole. In bespoke analysis for this review which drew on the 2015 Crime Survey for England and Wales, 51% of people from BAME backgrounds born in England and Wales who were surveyed believe that 'the criminal justice system discriminates against particular groups and individuals'.<sup>46</sup> The answer to this is to remove one of the biggest symbols of an 'us and them' culture – the lack of diversity among those making important decisions in the CJS; from prison officers and governors, to the magistrates and the judiciary. Alongside this, much more needs to be done to demystify the way decisions are made at every point in the system. Decisions must be fair, but must also be seen to be fair, if we are to build respect for the rule of law.

- Thirdly, the CJS must have a stronger analysis about where **responsibility** lies beyond its own boundaries. Statutory services are essential and irreplaceable, but they cannot do everything on their own. The system must do more to work with local communities to hold offenders to account and demand that they take responsibility for their own lives. Local police forces for example, have spent years working through the best ways to create dialogue and partnership with local communities, from neighbourhood policing approaches to Safer Neighbourhood Boards in every London borough. They are not perfect in every respect, but they do represent progress. It is time for other parts of the CJS to do the same. For example, the youth justice system should be much more rooted in local communities, with hearings taking place in local neighbourhoods, using non-traditional buildings such as libraries or community centres. Addressing high reoffending rates among some BAME groups, can only be done through greater partnership with communities themselves.

Responsibility has a hard edge too. Behind many young offenders are adults who either neglect or exploit them. The youth justice systems appear to have given up on parenting. Last year, 55,000 young offenders were found guilty in the courts,<sup>47</sup> but just 189 parenting orders were issued by the youth justice system. Only 60 involved BAME young people. Parents need support alongside accountability.

Many feel helpless about their children being exploited and drawn into criminality. There is a settled narrative about young BAME people associating in gangs, but far too little attention is paid to the criminals who provide them with weapons and use them to sell drugs.<sup>48</sup> A concerted approach to these issues would focus more attention and enforcement on the powerful adults much further up criminal hierarchies. New tools like the Modern Slavery legislation must be used to hold these adults to account for the exploitation of our young people.

## Chapters

I explore these findings and reform principles in more detail in the following chapters:

- Chapter 1 sets out how 'disproportionality' is monitored in the CJS and what must change in the future.
- Chapter 2 examines arrest rates and CPS charging decisions.
- Chapter 3 looks at plea decisions.
- Chapter 4 focuses on the courts.
- Chapter 5 addresses prisons.
- Chapter 6 tackles rehabilitation in the community.



First, though, I set out my recommendations in full below:

**Recommendation 1:** A cross-CJS approach should be agreed to record data on ethnicity. This should enable more scrutiny in the future, whilst reducing inefficiencies that can come from collecting the same data twice. This more consistent approach should see the CPS and the courts collect data on religion so that the treatment and outcomes of different religious groups can be examined in more detail in the future.

**Recommendation 2:** The government should match the rigorous standards set in the US for the analysis of ethnicity and the CJS. Specifically, the analysis commissioned for this review – learning from the US approach – must be repeated biennially, to understand more about the impact of decisions at each stage of the CJS.

**Recommendation 3:** The default should be for the Ministry of Justice (MoJ) and CJS agencies to publish all datasets held on ethnicity, while protecting the privacy of individuals. Each time the Race Disparity Audit exercise is repeated, the CJS should aim to improve the quality and quantity of datasets made available to the public.

**Recommendation 4:** If CJS agencies cannot provide an evidence-based explanation for apparent disparities between ethnic groups then reforms should be introduced to address those disparities. This principle of ‘explain or reform’ should apply to every CJS institution.

**Recommendation 5:** The review of the Trident Matrix by the Mayor of London should examine the way information is gathered, verified, stored and shared, with specific reference to BAME disproportionality. It should bring in outside perspectives, such as voluntary and community groups and expertise such as the Office of the Information Commissioner.

**Recommendation 6:** The CPS should take the opportunity, while it reworks its guidance on Joint Enterprise, to consider its approach to gang prosecutions in general.

**Recommendation 7:** The CPS should examine how Modern Slavery legislation can be used to its fullest, to protect the public and prevent the exploitation of vulnerable young men and women.

**Recommendation 8:** Where practical all identifying information should be redacted from case information passed to them by the police, allowing the CPS to make race-blind decisions.

**Recommendation 9:** The Home Office, the MoJ and the Legal Aid Agency should work with the Law Society and Bar Council to experiment with different approaches to explaining legal rights and options to defendants. These different approaches could include, for example, a role for community intermediaries when suspects are first received in custody, giving people a choice between different duty solicitors, and earlier access to advice from barristers.

**Recommendation 10:** The ‘deferred prosecution’ model pioneered in Operation Turning Point should be rolled out for both adult and youth offenders across England and Wales. The key aspect of the model is that it provides interventions before pleas are entered rather than after.

**Recommendation 11:** The MoJ should take steps to address key data gaps in the magistrates’ court including pleas and remand decisions. This should be part of a more detailed examination of magistrates’ verdicts, with a particular focus on those affecting BAME women.

**Recommendation 12:** The Open Justice initiative should be extended and updated so that it is possible to view sentences for individual offences at individual courts, broken down by demographic characteristics, including gender and ethnicity.

**Recommendation 13:** As part of the court modernisation programme, all sentencing remarks in the Crown Court should be published in audio and/or written form. This would build trust by making justice more transparent and comprehensible for victims, witnesses and offenders.

**Recommendation 14:** The judiciary should work with Her Majesty’s Courts and Tribunals Service (HMCTS) to establish a system of online feedback on how judges conduct cases. This information, gathered from different perspectives, including court staff, lawyers, jurors, victims and defendants, could be used by the judiciary to support the professional development of judges in the future, including in performance appraisals for those judges that have them.

**Recommendation 15:** An organisation such as Judicial Training College or the Judicial Appointments Commission should take on the role of a modern recruitment function for the judiciary – involving talent-spotting, pre-application support and coaching for ‘near miss’ candidates. The MoJ should also examine whether the same organisation could take on similar responsibilities for the magistracy. The organisation should be resourced appropriately to fulfill this broader remit.

**Recommendation 16:** The government should set a clear, national target to achieve a representative judiciary and magistracy by 2025. It should then report to Parliament with progress against this target biennially.

**Recommendation 17:** The MoJ and Department of Health (DH) should work together to develop a method to assess the maturity of offenders entering the justice system up to the age of 21. The results of this assessment should inform the interventions applied to any offender in this cohort, including extending the support structures of the youth justice system for offenders over the age of 18 who are judged to have low levels of maturity.

**Recommendation 18:** Youth offender panels should be renamed Local Justice Panels. They should take place in community settings, have a stronger emphasis on parenting, involve selected community members and have the power to hold other local services to account for their role in a child's rehabilitation.

**Recommendation 19:** Each year, magistrates should follow an agreed number of cases in the youth justice system from start to finish, to deepen their understanding of how the rehabilitation process works. The MoJ should also evaluate whether their continued attachment to these cases has any observable effect on reoffending rates.

**Recommendation 20:** Leaders of institutions in the youth estate should review the data generated by the Comprehensive Health Assessment Tool (CHAT) and evaluate its efficacy in all areas and ensure that it generates equitable access to services across ethnic groups. Disparities in the data should be investigated thoroughly at the end of each year.

**Recommendation 21:** The prison system, working with the Department of Health (DH), should learn from the youth justice system and adopt a similar model to the CHAT for both men and women prisoners with built in evaluation.

**Recommendation 22:** The recent prisons white paper sets out a range of new data that will be collected and published in the future. The data should be collected and published with a full breakdown by ethnicity.

**Recommendation 23:** The MoJ and the Parole Board should report on the proportion of prisoners released by offence and ethnicity. This data should also cover the proportion of each ethnicity who also go on to reoffend.

**Recommendation 24:** To increase the fairness and effectiveness of the Incentives and Earned Privileges (IEP) system, each prison governor should ensure that there is forum in their institution for both officers and prisoners to review the fairness and effectiveness of their regime. Both BAME and White prisoners should be represented in this forum. Governors should make the ultimate decisions in this area.

**Recommendation 25:** Prison governors should ensure Use of Force Committees are not ethnically homogeneous and involve at least one individual, such as a member of the prison's Independent Monitoring Board (IMB), with an explicit remit to consider the interests of prisoners. There should be escalating consequences for officers found to be misusing force on more than one occasion. This approach should also apply in youth custodial settings.

**Recommendation 26:** Her Majesty's Prison and Probation Service (HMPPS) should clarify publicly that the proper standard of proof for assessing complaints is 'the balance of probabilities'. Prisons should take into account factors such as how officers have dealt with similar incidents in the past.

**Recommendation 27:** Prisons should adopt a 'problem-solving' approach to dealing with complaints. As part of this, all complainants should state what they want to happen as a result of an investigation into their complaint.

**Recommendation 28:** The prison system should be expected to recruit in similar proportions to the country as a whole. Leaders of prisons with diverse prisoner populations should be held particularly responsible for achieving this when their performance is evaluated.

**Recommendation 29:** The prison service should set public targets for moving a cadre of BAME staff into leadership positions over the next five years.

**Recommendation 30:** HMPPS should develop performance indicators for prisons that aim for equality of treatment and of outcomes for BAME and White prisoners.

**Recommendation 31:** The MoJ should bring together a working group to discuss the barriers to more effective sub-contracting by Community Rehabilitation Companies (CRCs). The working group should involve the CRCs themselves and a cross-section of smaller organisations, including some with a particular focus on BAME issues.

**Recommendation 32:** The Ministry of Justice should specify in detail the data CRCs should collect and publish covering protected characteristics. This should be written into contracts and enforced with penalties for non-compliance.

**Recommendation 33:** The Youth Justice Board (YJB) should commission and publish a full evaluation of what has been learned from the trial of its 'disproportionality toolkit', and identify potential actions or interventions to be taken.

**Recommendation 34:** Our CJS should learn from the system for sealing criminal records employed in many US states. Individuals should be able to have their case heard either by a judge or a body like the Parole Board, which would then decide whether to seal their record. There should be a presumption to look favourably on those who committed crimes either as children or young adults but can demonstrate that they have changed since their conviction.

**Recommendation 35:** To ensure that the public understands the case for reform of the criminal records regime, the MoJ, HMRC and DWP should commission and publish a study indicating the costs of unemployment among ex-offenders.

# Chapter 1: Understanding BAME disproportionality



## Introduction

Since the passage of the 1991 Criminal Justice Act, successive governments have published data on ethnicity and the criminal justice system (CJS). The purpose of the legislation is to 'avoid discriminating against any persons on the grounds of race, sex or any other improper ground'.<sup>49</sup> It reflects a key principle of this review: scrutiny is the best route to fair treatment.

This chapter argues that the CJS can do far more in this area. The CJS may be meeting its statutory obligations but it should be more ambitious than that:

- There are important gaps in what we know about the CJS. For example, prisons record inmates' religion but the courts and the CPS do not. This obscures important questions, like why the number of Muslim prisoners has increased by nearly 50% in the last ten years.<sup>50</sup> This lack of transparency undermines accountability.
- The CJS should be world-leading in its analysis of ethnicity. This means learning from the methods used in the US to shine a spotlight on each part of the system. Specifically, the Relative Rate Index analysis commissioned for this review must be repeated and published on a regular basis, to understand more about the impact of decisions at each stage of the CJS.
- Accountability should come from outside the system as well as from within it. This requires a new default position: all the datasets held centrally on ethnicity and the CJS should be published, whilst protecting the privacy of individuals. Making all this data freely available will enable outsiders such as academics, journalists and campaigners to conduct their own analysis, contribute ideas and hold the CJS to account.
- Alongside consistency, openness and rigour, there must be a no-excuses culture. The government should introduce a new principle of 'explain or reform' for racial disparities across the CJS. If governments cannot provide an evidence-based explanation for apparent disparities, then reforms should be introduced to address them.

## Data and transparency

### Corston Independent Funders Coalition – Written submission to Call for Evidence June 2016

*Inadequacies in the data currently collected make accurate analysis of disproportionality impossible.*

### Magistrates Association – Written submission to Call for Evidence: June 2016

*More data at different points in the criminal justice system would be very helpful in identifying the stages at which disproportionality arises.*

There are important blind spots in our justice system. The first of these concerns Gypsies, Roma and Travellers. Though Gypsies, Roma and Irish Travellers represent just 0.1% of the wider population, they are estimated to account for 5% of male prisoners.<sup>51</sup> The reason these figures remain estimates, however, is that Gypsies, Roma and Travellers have not featured in the official monitoring systems across the CJS.

The absence of Gypsies, Roma and Travellers from official monitoring has meant, for example, it is impossible to analyse whether charging rates, sentencing decisions, or reoffending rates are proportionate for Gypsies, Roma and Travellers. Ministers have committed to rectifying this problem – the change should be made as soon as possible.

### All Party Parliamentary Group for Gypsy, Roma, Travellers – Written submission to call for evidence May 2016

*Given the serious issues raised over recent years we believe the least the Government can do is monitor the apparently significant population of Traveller children in custody.*



A second gap in the data concerns religion. A quirk of the CJS is that the prison system monitors religious identification. As a result, we know that the number of Muslims in prison has increased by almost 50% over the last decade from 8,900 to 13,200.<sup>52</sup> Muslims now make up 15% of the prison population, but just 5% of the general population. This is a worrying trend and risks becoming a source of social division.

This dramatic rise in the number of prisoners is not linked to terrorism offences, as on average, very few people are convicted of these offences each year. Just 175 Muslims were convicted of terrorism-related offences between 2001 and 2012.<sup>53</sup> However, because the rest of the CJS does not ask or record the same information as the prison system, we know far too little about what has been driving this trend. Are charging decisions, or trial outcomes affecting the numbers ending up in prison? Are large proportions of prisoners converting to Islam once they are in custody? We simply do not know. This gap needs to be taken seriously. The Crown Prosecution Service (CPS) and the courts should ask and record religious identification in the future in the same way that the prison system does.

**Recommendation 1:** A cross-CJS approach should be agreed to record data on ethnicity. This should enable more scrutiny in the future, whilst reducing inefficiencies that can come from collecting the same data twice. This more consistent approach should see the CPS and the courts collect data on religion so that the treatment and outcomes of different religious groups can be examined in more detail in the future.

## From data to insight

### Young Review/Black Training and Enterprise Group (BTEG) – Written submission to Call for Evidence: June 2016

*There is a need for Her Majesty's Prison and Probation Service (HMPPS)/Ministry of Justice (MoJ) to work more collaboratively with external academics in utilising the data that is currently available to inform and drive change.*

#### Public comment

*There needs to be accurate quantitative and qualitative data collated annually and reported to the Minister about BAME outcomes.*

Real scrutiny comes when data is turned into insight. The MoJ and the Office for National Statistics (ONS) already produce a biennial publication, entitled *Statistics on Race and the Criminal Justice System*. Whilst this is welcome, it is not designed to track the impact of decisions made at each particular stage of the CJS – a pre-requisite for proper accountability.

For example, the most recent *Race and the Criminal Justice System* publication reports that 'the Black ethnic group had the highest rate of prosecutions'.<sup>54</sup> However, the analysis is not designed to show whether this is down to the number of people being arrested or, alternatively, whether charging decisions after arrest are driving the figures. Understanding this is the difference between providing data and creating insight.

The US government has an answer to this problem. The American Office of Juvenile Justice and Delinquency Prevention uses an approach called a 'Relative Rate Index' (RRI) to isolate the effect of decision-making on disproportionality at each stage in the CJS.<sup>55</sup> This review commissioned analysis of our justice system adopting the RRI method.<sup>56</sup> This is the first time such analysis has been performed and published by the MoJ and, as far as I am aware, anywhere in England and Wales.

Table 1 provides an example of the RRI method. It compares BAME groups with the White group, as all similar tables in this report do. The 2014/15 data shows, for example, that:

- Once arrested, Black women were less likely than White women to face prosecution. Of those arrested, 88 Black women were charged by the CPS for every 100 White women.<sup>57</sup>
- Once charged with an offence, Black women were more likely to be tried at the Crown Court. Of those charged, 163 Black women were tried at the Crown Court for every 100 White women.



**Table 1: Arrests, charging and prosecutions of BAME women relative to the White ethnic group women<sup>58</sup>**

	<b>Black women</b>	<b>Asian women</b>	<b>Mixed ethnic women</b>	<b>Chinese/ Other women</b>	<b>All BAME women</b>
Among those arrested, 100 White women were CPS Charged compared with...	88	71	97	96	85
Among those CPS charged, 100 White women proceeded at Magistrates' Court compared with...	90	64	102	68	84
Among those CPS charged, 100 White women proceeded at Crown Court compared with...	163	208	136	154	164

This provides a level of detail and rigour that has been missing until now. The results of the study are set out in this report, but the analysis must not be a one-off exercise. In the US repetitions of the study allow for trends to be mapped over time. The same should be the case here – the MoJ should repeat and publish the RRI analysis biennially, so that existing disparities can be tracked and new disparities identified.

**Recommendation 2:** The government should match the rigorous standards set in the US for analysis of ethnicity and the CJS. Specifically, the analysis commissioned for this review – learning from the US approach – must be repeated biennially, to understand more about the impact of decisions at each stage of the CJS.

As a simple principle, each time the RDA exercise is repeated, the CJS should aim to increase the number of datasets made publicly available. This should be done in dialogue with academics, journalists, campaigners and others about what they would like to see made available. The default should be that all the datasets held centrally – by MoJ and CJS agencies – on ethnicity are published, whilst protecting the privacy of individuals.

**Recommendation 3:** The default should be for the MoJ and CJS agencies to publish all datasets held on ethnicity, while protecting the privacy of individuals. Each time the Race Disparity Audit exercise is repeated, the CJS should aim to improve the quality and quantity of datasets made available to the public.

The CJS can do more to hold itself to account, but outsiders are likely to examine different questions to insiders. For this reason, external scrutiny – from academics, journalists, campaigners – is also vital. Given access to the right data, these outsiders will produce not just more analysis, but more varied analysis, reflecting a broader range of perspectives and priorities.

Governments increasingly acknowledge these benefits, exemplified by forthcoming Race Disparity Audit (RDA), which will require Whitehall departments to identify and publish information showing how outcomes differ for people of different backgrounds, in a range of areas, including health, education and employment. The purpose of the audit is to 'shine a light on how our public services treat people from different backgrounds'.<sup>59</sup>

## Insight to action

Scrutiny is essential, but no analysis is perfect. There is always scope for debate or a reason for further research. The danger is that the search for incontrovertible proof of a problem becomes an excuse for inaction.

I have seen this problem throughout the review. Generally, I have found CJS institutions to be open to dialogue and scrutiny. But there remains a tendency to dismiss disparities between racial groups by pointing to the possibility that there may be another explanation. For example, that a disparity may be explained by the age profile of a particular group rather than by ethnicity per se.

Such questions are healthy so long as possible explanations are tested and explored in a rigorous way. But speculation is not analysis. The justice system has a special responsibility to ensure equal treatment before the law. This means there must be a constant, restless search for the truth about the treatment and outcomes of different groups.

There must be a driving force for this kind of approach. I propose a new rule for the CJS: 'explain or reform'. If there are apparent disparities by ethnic group, then the emphasis should be on institutions in the system to provide an evidence-based explanation for them. If such an explanation cannot be provided, action should be taken to close the disparity. This principle would change the default. The expectation should be placed on institutions to either provide answers which explain disparities or take action to eradicate them.

**Recommendation 4:** If CJS agencies cannot provide an evidence-based explanation for apparent disparities between ethnic groups then reforms should be introduced to address those disparities. This principle of 'explain or reform' should apply to every CJS institution.

## Conclusion

This chapter has set out a key principle to bolster accountability across the CJS for the treatment and outcomes of BAME individuals: fair treatment is more likely when institutions are open to scrutiny. In the future, more of that scrutiny should come from outside the CJS itself, facilitated by the government releasing more and better quality data that is easy for others to analyse. But the government and CJS agencies have a responsibility themselves too. Following this review, England and Wales should ensure that they are once again at the cutting edge of research and analysis in this area, learn from innovations in the US, and introduce a new principle that racial disparities should be met with either explanation or reform.

The following chapters look in detail at particular institutions and decision-points across the CJS, starting with the police and the CPS.



# Chapter 2: Crown Prosecution Service



## Introduction

This review starts with decisions made by the Crown Prosecution Service (CPS),<sup>60</sup> but an individual's journey through the criminal justice system (CJS) does not. Arrest rates determine the number of cases passed onto the CPS. This chapter looks both at the caseload that the CPS receives from the police, following arrests, and the decisions that the CPS itself then goes on to take:

Arrest rates are generally higher across minority ethnic groups in comparison to the white group. In particular, Black and Mixed ethnic groups are arrested at much higher rates. The disproportionate representation of Black, Asian and Minority Ethnic (BAME) individuals starts at the beginning of the CJS journey.

Policing has a second, important legacy for the rest of the CJS: it affects how people view 'the system' as a whole. Grievances over policing tactics, particularly the disproportionate use of Stop and Search, drain trust in the CJS in BAME communities.

Stop and Search is frequently used to disrupt gang crime, with arrests for drug offences particularly high.<sup>61</sup> The police and the CPS must respond to gang crime in a proportionate way. Tough enforcement is needed against powerful adults at the top of criminal hierarchies. New tools such as Modern Slavery legislation should be used to the fullest to protect vulnerable young people who are coerced into gang activities and bear down on those responsible. Meanwhile, the CJS must avoid equating gang membership with young people simply associating in groups.

Overall, the charging decisions taken by the CPS are broadly proportionate. Once arrested, suspects from different ethnic groups are charged at relatively similar rates, with the important exceptions of rape and domestic abuse. The CPS should deal with these exceptions through adopting 'race-blind prosecuting' wherever possible, redacting identifying information such as name and ethnicity from the information passed by the police to CPS prosecutors.

Other CJS institutions should learn lessons from the CPS, including openness to external scrutiny, systems of internal oversight, and an unusually diverse workforce within the wider CJS.

## Arrest rates

### **CPS – Written submission to Call for Evidence: July 2016**

*The CPS is not the gatekeeper of the criminal justice system. We can only prosecute those cases which are referred to us by the police and so have limited control over which cases enter the CJS. Once files are referred to us, prosecutors are obliged to make their decisions strictly in accordance with the Code for Crown Prosecutors.*

### **Young Review/Black Training and Enterprise Group (BTEG) – Written submission to Call for Evidence: June 2016**

*The main pathways and risk factors for young people into the youth justice system all record high levels of ethnic disproportionality: from school exclusions, the care system, Child and Adolescent Mental Health Service (CAMHS) and first contact with the police. There is a long history and a plethora of evidence around the black community's poor relationships with the police and the corrosive effect of Stop and Search policies.*

The CPS caseload is determined by police arrest rates. Analysis commissioned by this review shows that arrest rates are generally higher across minority ethnic groups in comparison to the white group, with the exceptions of Asian women and boys. In particular, Black men were more than three times more likely to be arrested than White men, whilst Black women and Black boys were also significantly more likely to be arrested than White women and boys. Mixed ethnic men and women were also more than twice as likely to be arrested than White men and women.<sup>62</sup>

The consequence of these arrest rates is that the caseload passed onto CPS prosecutors and, potentially the courts and prison system, is already skewed towards particular BAME groups. The statistical analysis for this review found that 'the system itself (from the CPS onwards) did add some degree of disproportionality', but 'rarely at the levels seen in arrest differences.'<sup>63</sup>

Relationships between the community and the police also have a profound effect on trust in the justice system as a whole. The police, the CPS, the courts, prisons and probation may all be separate institutions, but they form part of a single 'system' in many people's minds. The result is that treatment and outcomes at one stage in the CJS affect trust in the integrity of all of it.

In particular, the disproportionate use of Stop and Search on BAME communities continues to drain trust in the CJS as a whole. Despite recent reforms to increase accountability and promote good practice, the latest published figures show that 'those from BAME groups were three times as likely to be stopped and searched as those who are White. In particular, those who are Black were over six times more likely to be stopped.'<sup>64</sup>

This is contributing to a sense among many in BAME communities that the justice system is stacked against them. Among those born in England and Wales, people from ethnic minorities are less likely than those who are White to agree that the CJS is fair. A majority of BAME people (51%) believe 'the CJS discriminates against particular groups and individuals', compared with 35% of the British-born white population.<sup>65</sup> This lack of trust starts with policing, but has ripple effects throughout the system, from plea decisions to behaviour in prisons. This report turns to these issues in detail in later chapters.

Some of the more forward-thinking police forces are innovating in response to this challenge. The approach adopted in Northamptonshire, for example, (see box in next column) reflects a key theme of this review: subjecting decision-making to scrutiny is the best way to deliver fair outcomes. Importantly, there are also consequences for those found to misuse powers repeatedly. I hope that other police forces learn from this innovation and, in later chapters, I set out where other parts of the CJS could do the same.

### CASE STUDY: NORTHAMPTONSHIRE POLICE

Having been criticised in the past for its use of Stop and Search powers, Northamptonshire now scrutinises the grounds recorded for every Stop and Search conducted. This scrutiny is undertaken by a Reasonable Grounds Panel (RGP), which consists of a Chair (Police Officer), 25 panel members (public), and a Police Constable or Police Sergeant. Each month, completed search records are sifted by a Sergeant.

In Northamptonshire, any search grounds which are not clearly and immediately identifiable as reasonable, or do not meet the Force guidance, are selected for presentation to the RGP. The grounds are presented with a brief explanation. The presentation does not identify the officer, the result of the search, or the time/place unless part of the grounds. The Panel discusses whether the record meets the Force standard and votes.

If the Panel decides that there were not reasonable grounds for the stop, the officer involved is informed of the decision and the reasoning behind it. The following then takes place:

- In the first case, the officer and supervisor are offered training and reminded of the guidance on Stop and Search.
- If the officer is involved in a second case, both the officer and supervisor receive mandatory one-to-one training.
- In the third case, the officer and supervisor are suspended from conducting/supervising Stop and Search until a personalised development plan has been completed.

## Gangs

### London Criminal Courts Solicitors' Association – Written submission to Call for Evidence: June 2016

*Identity is a critical issue. In the absence of educational or employment progression, or ambition, it may become a default position to fall in with a 'gang' which offers others 'rewards', albeit both high risk and short-term but certainty of identity.*



Often Stop and Search is linked to suspicions of gang offending, including drug dealing – with Black boys more than ten times as likely as White boys to be arrested for drug offences.<sup>66</sup> This links together two prominent narratives about urban crime: that the war on drugs must be won and that gangs cannot be allowed to terrorise communities.

The problem is that gangs are, by their very nature, hard to pin down – and ‘gang offending’ even more so. As the Gang and Group Offenders Handbook produced by the Metropolitan police puts it, ‘gangs in London are very fluid and chaotic – individuals may move in and out, and between gangs fairly rapidly, and will not always fit a precise definition. It is important that we recognise that not all groups of young people are gangs, and that we target the criminal and violent behaviour of individuals rather than the group.’<sup>67</sup>

Surveillance tools such as the Metropolitan Police’s Trident Matrix, a database of names have been developed to deal with these issues, alongside the use of Joint Enterprise to secure convictions (see box in next column). The latest public figures show that of the 3,621 names on the Trident Matrix, 86% are BAME.<sup>68</sup> Meanwhile, thousands of people are estimated to have been prosecuted under Joint Enterprise over the last decade,<sup>69</sup> with a survey of prisoners suggesting that up to half of those convicted under Joint Enterprise identify as BAME.<sup>70</sup>

Surveillance informs both enforcement and interventions designed to divert individuals away from gang life. Both are necessary. However, care must be taken to ensure that information on such databases is accurate, up to date and used in the right way. It is not clear, for example, why the charge sheets passed by the police to the CPS detail whether or not an individual can be found on the Trident Matrix. The line between intelligence about people’s associations and evidence about their actions needs to be guarded carefully.

At the time of writing, the Mayor of London is engaged in a review of the Trident Matrix in London. The Mayor should ensure that this review examines the way information is gathered, verified, stored and shared, with specific reference to BAME disproportionality. To build trust and legitimacy in the review, it should bring in outside perspectives, such as voluntary and community groups, and expertise such as the Office of the Information Commissioner. This review should set an example to follow for other police forces around the country.

**Recommendation 5:** The review of the Trident Matrix by the Mayor of London should examine the way information is gathered, verified, stored and shared, with specific reference to BAME disproportionality. It should bring in outside perspectives, such as voluntary and community groups, and expertise such as the Office of the Information Commissioner.

One of the key tools used to prosecute suspected gang members is Joint Enterprise. Joint enterprise can apply where two or more people are involved in an offence or offences. As the CPS guidance sets out, individuals in a Joint Enterprise may be ‘principals’ or ‘secondary parties’ (accessories or accomplices). A ‘principal’ is the person who carries out the substantive offence, for example stabbing the victim.<sup>71</sup> A secondary party is one who assists or encourages a principal to commit the substantive offence, without being a principal offender. Under the doctrine of Joint Enterprise, the secondary party can be prosecuted and punished as if he or she were a principal offender. Thousands of people are estimated to have been prosecuted under Joint Enterprise over the last decade<sup>72</sup>, with a survey of prisoners suggesting that up to half of those convicted under Joint Enterprise identify as BAME.<sup>73</sup>

#### WHAT IS JOINT ENTERPRISE

Joint Enterprise can apply where two or more people are involved in an offence or offences. Individuals in a Joint Enterprise may be ‘principals’ or ‘secondary parties’ (accessories or accomplices). A ‘principal’ is the person who carries out the substantive offence, for example stabbing the victim.<sup>74</sup>

A secondary party is one who assists or encourages a principal to commit the substantive offence, without being a principal offender. Under the doctrine of Joint Enterprise, the secondary party can be prosecuted and punished as if he or she were a principal offender.

A landmark High Court judgement in 2016 established that the law on Joint Enterprise has been misinterpreted in the criminal courts for three decades.<sup>75</sup> The High Court ruling turned on the judgement that an individual foreseeing a possible crime does not equate to ‘automatic authorisation’ of it, as the law had been interpreted in previous cases.<sup>76</sup> A higher threshold of proof is now required as a result.

Despite the High Court ruling, experts in the field remain concerned about some of the legal practice on Joint Enterprise. Many are not convinced that the line between 'prohibitive' and 'prejudicial' information is drawn appropriately in the evidence put before juries when cases reach trial. People must be tried on the basis of evidence about their actions, not their associations - and the evidence put before juries must reflect this. The CPS should take the opportunity, while it reworks its guidance on Joint Enterprise, to consider its approach to gang prosecutions in general.

**Recommendation 6:** The CPS should take the opportunity, while it reworks its guidance on Joint Enterprise, to consider its approach to gang prosecutions in general.

The CPS should also review its role in protecting vulnerable individuals who are coerced into gang activities by powerful adults. Many children and young adults from a BAME background risk being drawn into the justice system as they undertake criminal acts under threat from others. Police records show, for example, that children as young as 12 are being recruited by gang leaders to sell drugs. Freedom of Information requests have revealed that, in 2016, the vast majority (71%) of police forces across England, Wales and Northern Ireland arrested under-16s for selling crack, heroin or cocaine.<sup>77</sup>

A worrying feature of gang culture is the role of girls and young women. According to the National Crime Agency (NCA), 90% of areas see women involved in gang activities. Many of the women who become involved are targeted because they are vulnerable, potentially class A drug users; and they can often find themselves controlled through threats and intimidation.<sup>78</sup>

There is an established narrative about BAME children and young adults joining gangs, but far too little attention is paid to the criminals who encourage them to carry weapons and use them to sell drugs. A concerted approach to these issues would focus more attention and enforcement – on the powerful adults much further up criminal hierarchies.

Recent legislation offers an opportunity.<sup>79</sup> The NCA has indicated that Modern Slavery legislation may prove a stronger deterrent to gang leaders than many of the current legal tools available to the police and the CPS. It provides greater social stigma than other offences, in addition to the legal routes for prosecution that it opens up.<sup>80</sup> The CPS should examine how the legislation can be used to its fullest, in order to protect the public and prevent the exploitation of vulnerable young men and women.

**Recommendation 7:** The CPS should examine how Modern Slavery legislation can be used to its fullest, to protect the public and prevent the exploitation of vulnerable young men and women.

## CPS charging

Whilst the police make charging decisions for minor offences, the most serious offences are passed onto the CPS (see box below). This amounted to 35% of cases in 2014/15.<sup>81</sup> Evidence indicates that CPS decision-makers are making broadly proportionate decisions across ethnic groups. The CPS conducted its own analysis to provide a submission to this review. It found that 'Where the CPS is responsible for making a charging decision, we prosecute the same proportion of cases across all ethnic groups: irrespective of a defendant's ethnicity we take the decision to prosecute in approximately 70-72% of cases'.

### CPS CHARGING DECISIONS

CPS prosecutors consider cases against a two-step test. Firstly, cases must pass an evidential stage. Prosecutors must decide if there is enough evidence against the defendant for a realistic prospect of conviction. Secondly, there is the public interest stage. If the prosecutor decides that there is a realistic prospect of conviction they must then consider whether it is in the public interest to prosecute the defendant. This includes the interests of the victim and the seriousness of an alleged offence, with prosecution more likely to be needed for more serious offences.<sup>82</sup>

Independent analysis commissioned by this review,<sup>83</sup> corroborates the picture of broadly proportionate CPS decision-making. The analysis found that of those cases passed onto the CPS, BAME men and women were both slightly less likely to be charged than White men and women, though neither by a great deal.<sup>84</sup> For example, for every 100 White men charged, there were 98 Black men, 92 Asian men, 102 Mixed ethnic and 98 Chinese and other men were charged.<sup>85</sup>

The relatively small number of cases for BAME girls made analysis of charging decisions difficult to break down by ethnicity, though Black girls were less likely to be charged than White girls, while Mixed ethnic girls faced charges more often. BAME boys were slightly more likely to be charged than White boys, but these differences were, statistically, small.<sup>86</sup> The overall picture, therefore, was one of broadly equitable results, with only small differences in either direction for CPS charge rates.

Despite this positive story, there was one area of concern identified by the CPS itself. When looking at specific offence types, it identified 'significant differences in the prosecution and conviction rates for rape and domestic abuse'. Black defendants and 'Chinese and Other' defendants (which includes anyone who self-identifies as 'Other ethnic group') were found to have higher prosecution rates for these two offence types. The CPS concluded that:

“The difference could be said to indicate that the CPS is too reluctant to prosecute White defendants for rape or too quick to prosecute Chinese and Other or Black defendants. There could equally be other factors at play, however, so this paper sets out the possibilities and calls for more research in this area.”<sup>87</sup>

More analysis is welcome, but there are also practical steps that could be taken to address this issue. The CPS could redact all identifying information, such as name and ethnicity, from the case information that passes between police officers and prosecutors – for example from charge sheets. Under this approach race-blind decisions would be made. The CPS and the public could then be confident that any disparities in charging decisions were not being driven by bias, either conscious or unconscious.

**Recommendation 8:** Where practical all identifying information should be redacted from case information passed to them by the police, allowing the CPS to make race-blind decisions.

## Learning lessons

No organisation is perfect – and the discrepancies described above must be addressed – but there are lessons that other institutions within the CJS could learn from the CPS.

### External scrutiny

The first of these is that the CPS has opened itself up to external scrutiny. For example:

- In 2000, the Home Office published an analysis of 5,500 cases of young defendants to test for ethnic differences in decisions made by the CPS.<sup>88</sup>
- In 2003, the CPS published *Race for Justice: A Review of CPS Decision-Making for Possible Racial Bias at Each Stage of the Prosecution Process*. The study examined nearly 13,000 case files to determine whether there was any bias in decision-making by the CPS at each stage of the prosecution process.<sup>89</sup>
- In 2005, the CPS commissioned an independent impact assessment to assess the impact of statutory charging and determine if charging decisions vary with gender and the ethnicity of the suspect. The study found that there were no significant differences across different ethnic groups in the proportion of cases finalised by a charge.<sup>90</sup>
- In 2005, the CPS published an independent ethnic and gender impact assessment of charging decisions for the 42 CPS areas. The study involved an analysis of approximately 225,000 charging decisions.<sup>91</sup>
- In 2007, another study was published, with the academic having been granted permission to shadow 12 CPS prosecutors in a city court and nine in the local county magistrates' court. The study examined whether BAME and White individuals were more likely to see their cases reach Crown Court or, alternatively, be dealt with at the Magistrates' Court.<sup>92</sup>

Given this track record of external scrutiny, the broadly equitable results produced by the CPS are no coincidence. Organisations that embrace accountability commit to high standards because there is nowhere to hide from the results. This reflects leading practice in England and Wales, and around the world (see box on next page). In addition to one-off studies analysing its data, the CPS continues to hold local and national community accountability meetings, at which other organisations such as Victim Support are given an opportunity to hold senior CPS officials to account. This provides an opportunity to raise difficult issues and identify gaps in the evidence-base.

### CASE STUDY: VERA INSTITUTE

In 2014, the Vera Institute of Justice published a landmark study, commissioned by Manhattan District Attorney, Cyrus R. Vance, Jr. The two-year study examined racial and ethnic disparities in criminal case outcomes in New York County. Researchers from the Vera Institute were given access to data held by the District Attorney's Office to undertake the study. Their analysis focused on the decisions made by prosecutors at a number of stages, including case acceptance for prosecution, dismissals, pre-trial detention, plea bargaining, and sentencing recommendations.

They concluded that the most influential factors in determining case outcomes were the defendant's prior record, the offence type and the seriousness of the charge. However, the study also found that ethnicity did appear to affect whether individuals were prosecuted in some cases. The findings of the study were published to ensure transparency, with the study recommending further scrutiny in the areas where disparities were uncovered.

### Internal scrutiny

The CPS also has internal systems of accountability and quality control. The organisation systematically reviews charging decisions to ensure rigor and balance. Within the organisation, each prosecutor will have at least one randomly selected case reviewed each month. (see box in next column.) The process of peer review creates a healthy sense of accountability for CPS prosecutors. Though the peer review system is not specifically designed to consider whether the ethnicity of defendants affects decision-making, academic evidence suggests that simply being scrutinised can encourage individuals to check their own decision-making to ensure that it is as neutral and justifiable as possible.<sup>93</sup>

### CASE STUDY: RANDOM CASE REVIEWS IN THE CPS

The review examines the quality of the decision making, ensuring that decisions are proportionate and responsive, and that they comply with the Code for Crown Prosecutors and other national policies, such as the Victims' Code. The review is undertaken by the prosecutor's line manager. If a particular issue is identified through the random review then the level of scrutiny increases, both of the prosecutor and of decisions concerning that offence. If further problems are identified, then immediate action is taken to improve performance which may include the provision of further training for prosecutors and increased monitoring of decisions by managers. The Internal Quality Assurance (IQA) guidance advocates constructive feedback and a reflective practice to drive up quality as well as securing enhanced engagement with the prosecutor.

In addition, Local Case Management Panels (LCMPs) are convened in all serious and complex cases. The Panel assures that cases are managed appropriately. Particularly complex cases are scrutinised by a Director's Case Management Panel (DCMP), ensuring that these cases are monitored at the highest level.

### Diverse workforce

One of the most notable features of the CPS, within the wider family of CJS institutions, is the diversity of its workforce (see Figure 2). The latest CPS workforce data shows that BAME staff account for 19% of those who declared their ethnicity.<sup>94</sup> This makes the CPS one of the most diverse institutions within the CJS – it is, in fact, more diverse than the population as a whole (BAME people made up 14% of the general population, according to the 2011 census<sup>95</sup>).

Significantly, this diversity runs throughout the organisational structure – for example 15% of Senior Prosecutors in the CPS are BAME.<sup>96</sup> This contrasts with other parts of the CJS where BAME staff are much less likely to be found in senior positions within the organisation. For example, while 23% of Ministry of Justice (MoJ) staff are BAME, the figure is just 5% for senior civil servants in the department.<sup>97</sup>

This diversity in the CPS staff-base is not, in and of itself, a guarantee that decisions made by prosecutors will be fair and proportionate. It is, however, one important part of setting the tone within an organisation and the CPS's record on this sits alongside its record of largely proportionate decision-making.

Figure 2: Proportion of staff identifying as BAME, compared to the general population



## Conclusion

In most cases, defendants' ethnicity does not affect the likelihood that they will be charged by the CPS. Other institutions in the CJS should look carefully at the factors that have driven this, from internal and external oversight, to a workforce that reflects the society it serves.

There are some areas that the CPS should address. These include worrying disparities for the specific offences of rape and domestic abuse, and the role of the CPS (alongside other CJS institutions) in tackling gang crime effectively and proportionately.

The next chapter turns to the plea decisions of defendants and the effect that has on the treatment and outcomes of BAME defendants.

# Chapter 3: Plea Decisions





## Introduction

Plea decisions are critical in the criminal justice system (CJS). This chapter identifies a stark difference in plea decisions between Black, Asian and Minority Ethnic (BAME) and White ethnic groups and examines its consequences for BAME disproportionality:

- The CJS provides incentives for those who have committed crimes to admit guilt, to prevent the stress placed on victims. For example, those who plead guilty can see sentences reduce by a third, or gain access to interventions which seek to keep them out of prison altogether.<sup>104</sup>
- However, BAME defendants are consistently more likely to plead not guilty than White defendants.<sup>105</sup> This means that, if found guilty, they are likely to face more punitive sentences than if they had admitted guilt.
- The primary reason for this difference in plea decisions is a lack of trust in the CJS among BAME communities.<sup>106</sup> This makes BAME defendants less likely to cooperate with the police or trust the advice of legal aid solicitors, who can be seen as part of the 'system'.
- Both statutory and non-statutory organisations have been slow to address this lack of trust. The Home Office, the MoJ and the Legal Aid Agency should work together to experiment with different approaches to explaining legal rights and options to defendants. But organisations like the Law Society should also be engaged in the task of building trust with BAME defendants.
- Alongside building trust, the CJS should learn from innovations that place less emphasis on the role of plea decisions. For example, 'Operation Turning Point' in the West Midlands<sup>107</sup> intervened before defendants are asked to enter a plea. Defendants were given the opportunity to go through a structured intervention, such as drug treatment, instead of facing criminal charges. Compliance with the intervention saw charges dropped; non-compliance saw the defendant prosecuted.

## The role of plea decisions

### Transition to Adulthood (T2A) report - Leaders Unlocked – July 2017

*Overall, we found that there is a general distrust of the CJS among young adults from BAME backgrounds. Again and again during our consultation, we found they trust the system even less than their white counterparts. This distrust is rooted in their experiences of being stereotyped by the police and harassment. Talking to young adults, we found that distrust tends to take hold during childhood, when individuals lose any faith in the police.*

The Sentencing Council explains that an acceptance of guilt:

- “ a) normally reduces the impact of the crime upon victims;  
b) saves victims and witnesses from having to testify; and  
c) is in the public interest in that it saves public time and money on investigations and trials.”<sup>108</sup>

In light of these benefits, the justice system rewards those who admit to crimes when charged. For example, many out of court disposals, are open only to those willing to admit guilt. Guilty pleas are also required before being able to gain access to many interventions aimed at more serious offending. This is the case with 'problem-solving courts', which consider alternatives to prison sentences.<sup>109</sup> Admissions of guilt can also shorten the sentences of those placed in custody. Defendants indicating a guilty plea at the first stage of court proceedings can benefit from a reduction of up to one-third from prison sentences, with later guilty pleas resulting in smaller reductions.<sup>110</sup>

**HUMBERSIDE – ADULT FEMALE TRIAGE PILOT**

The Humberside Adult Female Triage pilot is unique for women arrestees in that it seeks to divert them from the CJS towards a supporting organisation, the Together Women Project (TWP), before, and instead of, being charged with a crime.<sup>111</sup> Eligibility is restricted to women who admit the offence. TWP aims to provide a one-stop shop in which women can access support and services through both TWP and other support agencies who work out of their offices.<sup>112</sup> An evaluation found a 46% reduction in the re-arrest rate over a 12-month follow-up period, when compared to a control group of similar women offenders.<sup>113</sup>

**BAME plea decisions**

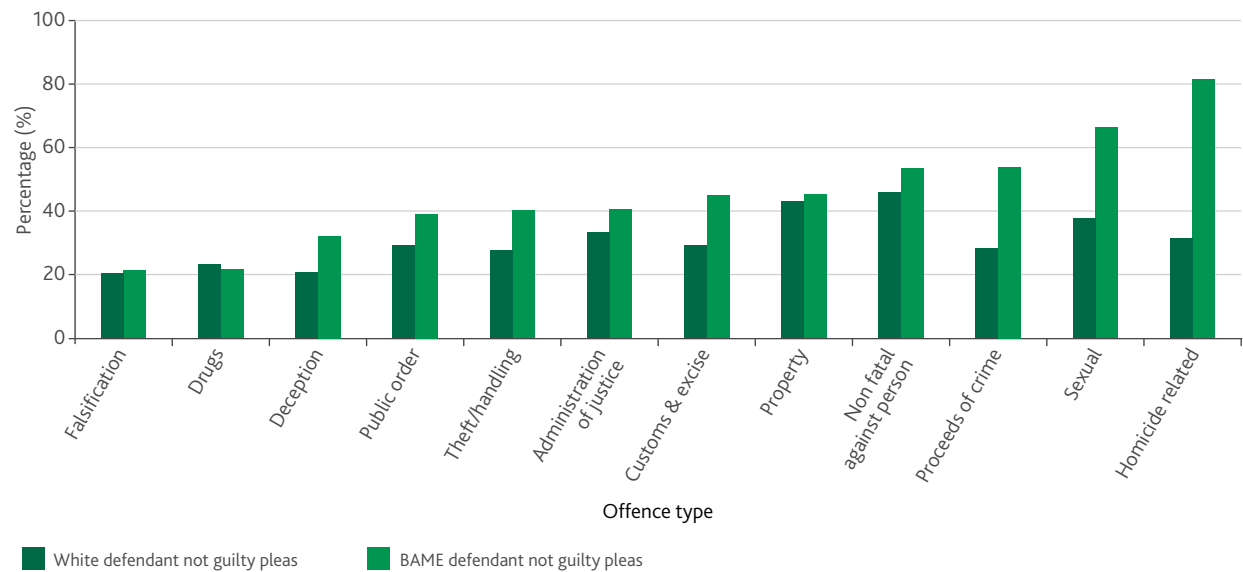
Plea decisions can make a critical difference to the way defendants are treated by the justice system – but there

is a stark difference between BAME and White defendants. Several studies have found that BAME defendants are less likely to enter guilty pleas. The pattern can be found in studies conducted two decades ago<sup>114</sup> as well as at the turn of this decade.<sup>115</sup> The finding is repeated in the Relative Rate Index (RRI) analysis of 2014/15 data conducted for this review.<sup>116</sup> It found that:

- Black and Asian men were more than one and a half times more likely to enter a 'not guilty' plea than White men. Mixed ethnic men were also more likely to plead not guilty.
- Black, Asian, Mixed ethnic and Chinese/Other ethnic women were all more likely than White women to enter not guilty pleas at Crown Court, with Asian women more than one and a half times more likely to do so.
- While there were too few cases to examine plea decisions for young women, young men from a Black, Asian or Mixed ethnic background were more likely to enter a not guilty plea compared to their White counterparts.<sup>117</sup>

Leading academics have studied this pattern in more detail. Professor Cheryl Thomas, of University College London (UCL), has published two studies, both showing that, in 11 out of 12 offence types, BAME defendants were more likely to plead not guilty than White defendants.<sup>118,119</sup> The latest study, published in 2017, found that between 2006 and 2014, BAME defendants pleaded not guilty to 40% of charges, compared with White defendants doing so for 31%.<sup>120</sup> The analysis of plea decisions, showing a consistent difference between BAME and White defendants, across offence types, is illustrated in Figure 3.

**Figure 3: BAME and White comparison of plea decisions**



## Lack of trust

### PUBLIC COMMENTS - CALL FOR EVIDENCE

*In my time BAME defendants pleaded 'not guilty' and opted for trial in the Crown Court whenever this was possible because they had more confidence in the fairness of juries than they had in the fairness of Magistrates' Courts.*

Lack of trust in the justice system is at the heart of this issue. Throughout this review, I met offenders – mostly Black young men – who described how they regretted their initial not guilty plea. Often, they had responded to their arrest with a 'no-comment' interview in a police station, before entering an initial not guilty plea.

Several of the BAME defendants I spoke to, in fact, changed their plea when the reality of their case was brought home. Professor Thomas's work shows that this is not unusual. BAME defendants are more likely than White defendants to change their plea from not guilty to guilty. In total, 21% of BAME defendants changed their plea from not guilty to guilty, compared with around 17% of White defendants. These late guilty pleas cost the taxpayer money, the victim heartache and, often, families several years extra without a father at home.<sup>121</sup>

The problem is not a lack of legal advice. Black, Asian and Mixed ethnic defendants are all more likely to request legal advice in police station than their white counterparts.<sup>122</sup> Instead, it is that many BAME defendants neither trust the advice that they are given, nor believe they will receive a fair hearing from magistrates. In some cases, this means defendants pleading not guilty and then electing for a jury trial at the Crown Court, rather than be tried in a Magistrate's Court, despite the higher sentencing powers available at the Crown Court.

In focus groups conducted by the charity Catch 22, researchers identified a lack of trust in legal aid-funded solicitors among both White and BAME offenders as a particular problem. Many questioned the motives of the legal aid solicitors, who were often viewed as representing 'the system' rather than their clients' interests. Offenders commonly believed that solicitors did not have the time or the capacity to advise them effectively in any case.<sup>123</sup>

“ I mean, obviously they don't really care: they're duty, they're working for the police as well. ”

– BAME prisoner, HMP Thameside

“ Only now do I realise that the law is there to protect you, not to catch you out. ”

– BAME prisoner, Grendon prison

“ I've spoken to a lot of people where they have had situations where it almost feels like the duty legal team has taken the opportunity to go to trial, when the individual would have been much better off pleading guilty, the odds were stacked against them, but from a solicitor's point of view there's obviously financial benefit for them to continue to trial. ”<sup>124</sup>

– BAME prisoner, HMP Thameside

This is a problem that should have been addressed before now. Organisations like the Law Society and Bar Council should be leading the way, conducting research and consulting its members about what more can be done to build trust in the advice given by its members. Alongside this, the Home Office, the Ministry of Justice (MoJ) and the Legal Aid Agency must work together to experiment with different approaches to explain legal rights and options to defendants. These different approaches could include, for example, a role for community intermediaries when suspects are first received in custody, giving people a choice between different duty solicitors, and earlier access to advice from barristers. In each case, the effect on the proportion of guilty/not guilty plea decisions for different ethnicities should be evaluated. The results should be published as part of a public consultation on this issue.

**Recommendation 9:** The Home Office, the MoJ and the Legal Aid Agency should work with the Law Society and Bar Council to experiment with different approaches to explaining legal rights and options to defendants. These different approaches could include, for example, a role for community intermediaries when suspects are first received in custody, giving people a choice between different duty solicitors, and earlier access to advice from barristers.

## Deferred prosecution

Building trust in the justice system among BAME communities is essential work, but will not happen overnight. In the meantime, the CJS needs more interventions that do not rest upon plea decisions. Until this happens, the treatment of BAME defendants will remain more punitive by comparison with the White population.

In New Zealand there is a 'not contested' plea option for defendants taking part in restorative justice schemes, which does not require defendants to admit guilt to take part in schemes.<sup>125</sup> This reflects a delicate balance between restorative justice requiring offenders to take responsibility and the reality that many are reluctant to formally admit guilt. California, meanwhile, has a Pre-trial Diversion Program, which diverts offenders before a plea is entered in some cases (see box below). This removes guilty pleas as a gateway to interventions.

### CASE STUDY: CALIFORNIA<sup>126</sup>

The Northern District of California offers a Conviction Alternatives Program (CAP) for certain individuals at the pre-plea and post-plea phases of their criminal cases. Pre-trial Diversion does not require a guilty plea, but participating defendants must agree to a Speedy Trial Act exclusion and may be required to agree to a statement of shared facts about their case. Participants in the Pre-trial Diversion Program are supervised for an agreed period of time, typically six months to one year. If the participant successfully completes the program (as determined by the US Attorneys Office), they will take whatever action is set forth in the Pre-trial Diversion Agreement, which typically includes dismissal of the charges.

In England and Wales, an innovative scheme named Operation Turning Point (OTP), points the way forward. OTP was piloted in the West Midlands from November 2011 to July 2014.<sup>127</sup> OTP was designed with racial disparities in plea decisions in mind, and saw offenders participate without the requirement that they first admit an offence.<sup>128</sup> The experiment involved offenders for whom the police had decided it was in the public interest to prosecute, but who had no more than one conviction. Those judged by a statistical model to present low risk to the public were then divided into two groups.<sup>129</sup> The first group faced prosecution as normal, while the second group had their prosecution deferred.

The 'deferred prosecution' group voluntarily entered into a contract, agreeing to go through a programme of structured interventions including, for example, drug or alcohol treatment. Those successfully completing their personalised programme would see the prosecution dropped, while those who did not would face criminal proceedings.<sup>130</sup> The latest published information indicates that almost as many BAME offenders took part in OTP as White offenders.<sup>131</sup>

The early evaluation of the OTP scheme indicates its worth:

- **Victims** were surveyed and comparisons drawn between those who saw their cases handled in court, as usual, and those who had cases diverted through OTP. The evaluation found that victims whose case was in the Turning Point sample were 43% more satisfied than those with cases sent to court.<sup>132</sup> Victims thought that Turning Point was more likely than court to stop the offender from reoffending, while many were dissatisfied with their experiences at court when cases were dismissed, individuals were found not guilty or were given a conditional discharge.<sup>133</sup>
- **Reoffending** results were also positive. Overall reoffending rates were similar when OTP was compared to the group facing traditional prosecution, but positive differences were recorded for violent offenders in particular. This group proved 35% less likely to reoffend under OTP – and less likely to engage in serious reoffending when they did. The evidence suggests that OTP reduces the risk of reoffending to the public.<sup>134</sup>
- **Cost** was lower than traditional prosecutions. The scheme yielded 68% fewer court cases than those cases that were prosecuted in the usual way.<sup>135</sup> The result was a saving of around £1,000 per case, despite the costs associated with the structured interventions paid for through the OTP scheme.<sup>136</sup>

OTP is one of a number of innovative schemes that have not relied on plea decisions in their eligibility criteria (see box below).

#### **DURHAM – OPERATION CHECKPOINT DESISTANCE PROGRAMME**

The Durham Constabulary Checkpoint Desistance Programme requires suspects to meet ten criteria to be eligible.<sup>137</sup> Importantly, all offenders for whom there is sufficient evidence to charge are eligible and admitting the offence is not a requirement. Instead of a charge, a Checkpoint offender will undergo a needs assessment and agree a 'contract to engage.' As part of the contract, an offender must meet the following conditions: no reoffending within a four month period (mandatory); participation in a restorative approach (mandatory if the victim agrees); attend appointments regarding individual personal issues or undertake one-to-one intervention work; carry out community/voluntary work for 18-36 hours and/or wear a Global Positioning System (GPS) tag; and undertake voluntary drug testing.<sup>138</sup>

Rarely does an intervention improve outcomes for victims, offenders and wider society all at the same time. OTP does this – and without the usual trap of sifting out defendants through the plea process, which is likely to disproportionately affect those from BAME backgrounds. Critically, it also holds the potential to prevent large numbers of children and young adults from picking up a criminal record, which can be hugely damaging for their future employment prospects. The government should follow the evidence. If the final evaluation for OTP reaffirms the benefits described above, the Home Office and MoJ should support police forces to roll the scheme out nationally, for both adult and youth offenders.

**Recommendation 10:** The 'deferred prosecution' model pioneered in Operation Turning Point should be rolled out for both adult and youth offenders across England and Wales. The key aspect of the model is that it provides interventions before pleas are entered rather than after.

## **Conclusion**

The consistent differences in plea decisions between BAME and White defendants highlight a fundamental challenge for the CJS: a trust deficit in many BAME communities. Many BAME defendants trust neither the advice of solicitors paid for by the government, nor that the CJS will deliver on the promise of less punitive treatment in exchange for prompt admissions on guilt.<sup>139</sup>

The response to this problem should be twofold. First, the CJS must experiment and innovate. New and imaginative approaches are needed to explain defendants' legal rights and options when they first enter police stations. Second, the CJS needs to find ways to work around this lack of trust. Operation Turning Point, piloted in the West Midlands, indicates how this can be done. The deferred prosecution model, which takes plea decisions out of the equation, has produced impressive results and should be rolled out across the country. In doing so, the government could address a key source of disproportionate outcomes from BAME groups in the CJS, whilst delivering benefits to victims, the taxpayer and wider society.

The next chapter addresses the treatment and outcomes of those defendants whose cases proceed to court.

# Chapter 4: Courts





## Introduction

The most important decisions in the justice system are made in our courts. They are where life-changing judgements are made about innocence or guilt – with 20% of cases involving Black, Asian and Minority Ethnic (BAME) defendants each year.<sup>140</sup> Trust in impartial decisions rests not just on the constitutional independence of the judiciary, but also on the connection between the courts and the communities they serve. Magistrates, who deal with 90% of criminal court cases each year<sup>141</sup>, do not require legal training or qualifications but are understood to be 'representatives of the people'. Similarly, the centuries-old tradition of trial-by-jury is built on the idea that, in the most serious cases, defendants should be judged by a collection of their peers.

The courts also cast a shadow into the future. Judges and magistrates must weigh up not just what punishment is deserved, or what risk individuals pose, but also what support and constraints will break cycles of reoffending. In these ways, the Crown Court and Magistrates' Court are at the front-line of delivering on the three principles that underpin this report – guaranteeing fairness, building trust and sharing responsibility for reducing reoffending. This chapter examines each of those themes in turn. It argues that:

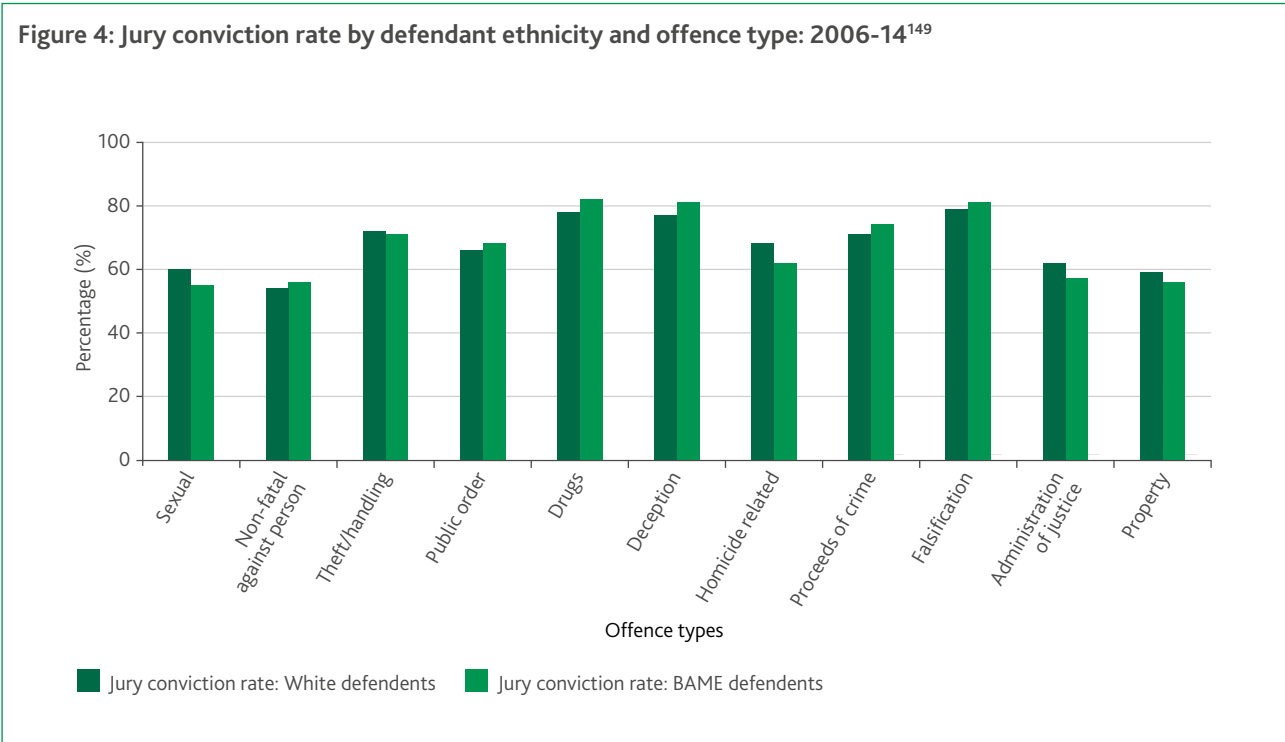
- Juries are a success story of our justice system. Rigorous analysis shows that, on average, juries – including all-white juries – do not deliver different results for BAME and White defendants.<sup>142</sup> The lesson is that juries are representative of local populations – and must deliberate as a group, leaving no hiding place for bias or discrimination.
- More subtle scrutiny is needed of sentencing decisions, to ensure that many finely balanced judgements do not add up to disproportionate sentencing of BAME defendants over time. It is already possible to look up the pattern of sentencing decisions in each city and courtroom in the country.<sup>143</sup> In the future, it should be possible to see whether this differs for defendants of different ethnicities.
- To build trust and respect for the rule of law, there must be a step change in the diversity of the magistracy and especially the judiciary. Until this is achieved, there will continue to be a pervasive sense of 'them and us' among BAME defendants. A single organisation such as the Judicial Appointments Commission (JAC) should be given more powers and resources to deliver this.

- Much more can be done to build on the judiciary's principle that 'justice must not only be done – it must be seen to be done'.<sup>144</sup> This should include publishing the sentencing remarks in each case. There should also be systems of feedback to help judges assess how well they are communicating with victims, defendants and others in courtrooms.
- Closer links must be built between courts and local communities to cut youth proven reoffending rates, which are higher for Black boys compared to their white counterparts.<sup>145</sup> Youth offender panels should be renamed local justice panels. They should take place in community settings, have a stronger emphasis on parenting, involve selected community members and have the power to hold other local services to account for their role in a child's rehabilitation.

## Fairness – verdicts

Our justice system is built on the principle that the law will be applied impartially. In the cases that involve the greatest harm to victims and the longest sentences for offenders, juries are the guardians of this principle. Our jury system may be centuries old, but it is still fit for purpose today. Successive studies have shown that, on average, jury verdicts are not affected by ethnicity.<sup>146</sup> A detailed study of verdicts across England and Wales, published in 2010, found that BAME and White defendants were convicted at very similar rates, including in cases with all-white juries. It concluded that 'one stage in the criminal justice system where B[A]ME groups do not face persistent disproportionality is when a jury reaches a verdict'.<sup>147</sup>

The 2010 study was updated in 2017 to inform this review, with analysis of over 390,000 jury decisions between 2006 and 2014. As with the 2010 study, it found that jury conviction rates are very similar across different ethnic groups. White, Black, Asian and Mixed ethnic defendants are all convicted at rates of between 66% and 68%.<sup>148</sup> The study was able to go into more detail, comparing rates for different types of offence. As Figure 4 shows, BAME and White conviction rates are similar across a range of offence-types, with only small differences and no overall pattern.



This does not mean that every jury decision is perfect, but it does indicate that the system as a whole is working.

The way that juries make decisions is key to this. Juries comprise 12 people, representative of the local population. When a jury retires to make a decision, its members must consider the evidence, discuss the case and seek to persuade one another if necessary. This debate and deliberation acts as a filter for prejudice – to persuade other jurors, people must justify their position. In the final decision, power is also never concentrated in the hands of one individual. If consensus cannot be reached, then a majority verdict can be delivered. Those holding an outlying point of view can be outvoted. This is a case study for a key theme of this review: the best way to deliver fair results is to bring decisions out into the open, subjecting them to scrutiny.

This helps both to prevent bias in the first place and to correct it where it occurs.

This positive story about the jury system is not matched by such a clear-cut story for magistrates’ verdicts. The relative rate analysis (explained in Chapter 1) commissioned for this review found that decisions were broadly proportionate for BAME boys and girls. However, there were some disparities for adult verdicts that require further analysis and investigation. In particular, there were some worrying disparities for BAME women. As Table 2 shows, of those women tried at Magistrates’ Court, Black women, Asian women, Mixed ethnic women and Chinese/Other women were all more likely to be convicted than White women.

Table 2: BAME and White women comparison – found guilty at Magistrates’ Court <sup>150</sup>					
	Black women	Asian women	Mixed ethnic women	Chinese/ Other women	All BAME women
Among those tried at Magistrates’ Court, 100 White women were found guilty compared with...	122*	142*	111	143*	124*

\*indicates statistically significant difference.

Systematic scrutiny of magistrates' decisions is hindered by the absence of reliable data collected on a number of key issues. For example, Magistrates' Court keep no systematic information as to whether defendants plead 'guilty' or 'not guilty' – though we know that there are disparities in this at the Crown Court. Magistrates' Courts also do not keep proper records of defendants' legal representation<sup>151</sup> which means that no-one knows whether particular ethnic groups are more or less likely to appear in court facing criminal charges without a lawyer. Remand decisions are another blindspot. The Ministry of Justice (MoJ) should take steps to address these key data gaps. This should be part of a more detailed examination of magistrates' verdicts, with a particular focus on those affecting BAME women.

**Recommendation 11:** The MoJ should take steps to address key data gaps in the Magistrates' Court including pleas and remand decisions. This should be part of a more detailed examination of magistrates' verdicts, with a particular focus on those affecting BAME women.

## Fairness – sentencing

### Agenda – Written submission to Call for Evidence: June 2016

*What we do know is that gender has an impact on sentencing decisions and outcomes. Women tend to serve shorter prison sentences than men and for less serious offences.*

*Most women have committed non-violent crimes and most do not need to be in prison. Over-representation in prisons could be addressed in part by reviewing how sentencing is working and by a greater use of community-based support and supervision.*

### Magistrates Association – Written submission to Call for Evidence: June 2016

*It is crucial that appropriate sentencing options are available to the courts, with services in place to allow them to be delivered.*

Sentencing is a second area of concern. One of the most sophisticated pieces of analysis published in this country on ethnicity and sentencing was conducted by the MoJ in 2016.<sup>152</sup> The study examined Crown Court sentencing for three groups of offences – offences involving acquisitive violence, sexual offences and drugs offences.<sup>153</sup>

This research demonstrated that for offenders convicted of recordable, indictable offences in the Crown Court in 2015, there was an association between ethnicity and being sentenced to prison. Under similar criminal circumstances the odds of imprisonment for offenders from self-reported Black, Asian, and Chinese or other backgrounds were higher than for offenders from self-reported White backgrounds. Whilst statistically significant, the increases in the odds of imprisonment were all medium sized effects (53%, 55%, and 81% higher, respectively, for offenders self-reporting as Black, Asian, and Chinese or other). No effect was observed for offenders from a self-reported Mixed background.<sup>154</sup>

Of approximately 21,370 cases studied, there was no statistical link between ethnicity and the likelihood of receiving a prison sentence for the offence groups of acquisitive violence and sexual offences, but there was a strong effect within drug offences. Within drug offences, the odds of receiving a prison sentence were around 240% higher for BAME offenders, compared to White offenders. The study could not account for the impact of aggravating and mitigating factors, or for the possibility that BAME offenders may have been convicted of more serious drugs offences than their White counterparts, but it was able to take account of sex, ethnicity, age, previous criminal history and the plea decisions.

The finding that, within drug offences, the odds of receiving a prison sentence were around 240% higher for BAME offenders is deeply worrying. Many will conclude that this is evidence of bias. It is now incumbent on the judiciary to produce an evidence-based explanation for the finding it wishes to allay those fears.

Defendants can take their cases to the Court of Appeal if they believe their sentence to be unfair. But the appeal process will only overturn sentences that are made in error or are 'manifestly excessive'. Importantly, the Court of Appeal permits sentencing judges a broad range of discretion as to the sentence they pass, and the Court of Appeal will only alter the sentence if it clearly falls outside that range of discretion. The analysis published by the MoJ in 2016 highlights a potential risk in this process: a significant proportion of decisions made within a sentencing judge's discretion, may result in that discretion being exercised in one direction for BAME defendants (a longer sentence) and in the other direction for White defendants (a shorter sentence). Individually, these decisions would not be altered on appeal because they all fall within the broad range of judges' permissible discretion. As a result, the appeal process may not pick up collective differences in how discretion is applied to BAME defendants and this, in turn, may contribute to significant differences in incarceration rates.

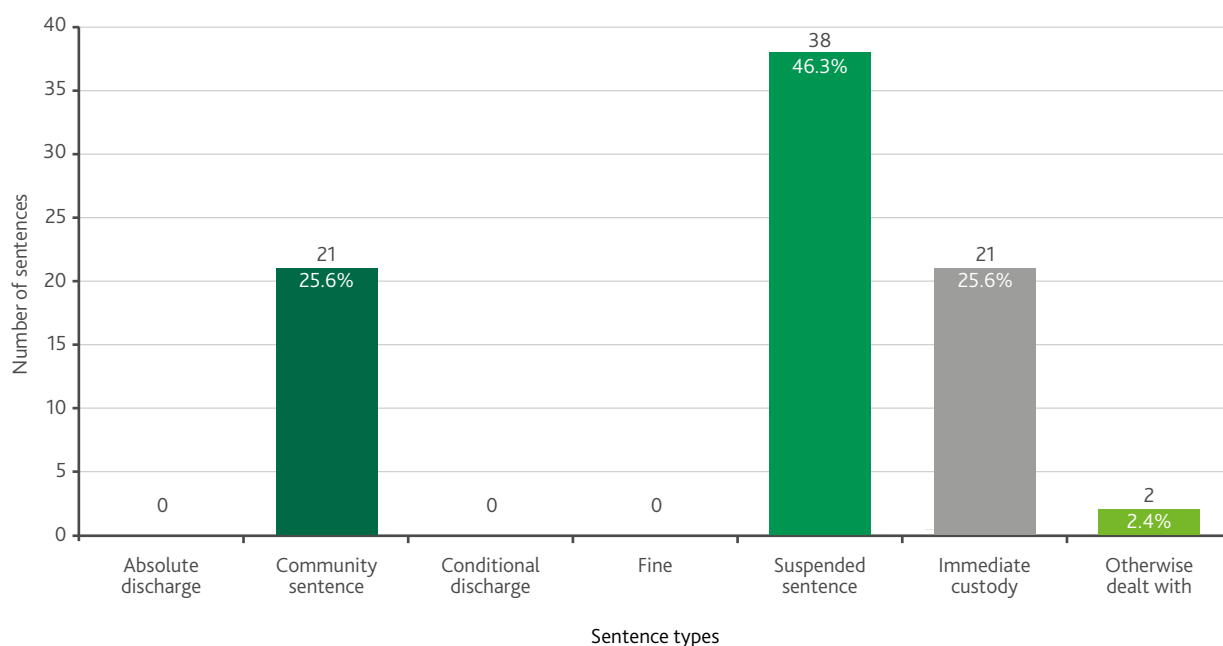
Guarding against this risk requires a different form of scrutiny to the appeals process – and the tools for it are already in place. Since 2011 it has been possible to examine the pattern of sentencing for different offence types, broken down by city or by individual court. The example in Figure 5, is taken from the webtool on the government's Open Justice website. It shows sentences for supplying cannabis at Manchester Crown Court (Crown Square) in 2011. It shows that equal number of defendants were sentenced to prison and community sentences that year, with a larger number receiving suspended sentences.

The purpose of the Open Justice initiative was to allow anyone to examine the pattern of sentencing in different parts of the country, with the Crown Court and 322 Magistrates' Court in England and Wales covered. This precedent should be built upon. The tool should be extended and updated to so that it is possible to use the tool bring up the same information, broken down by demographic characteristics including gender and ethnicity. This would enable comparisons across all demographic groups. It could, for example, explore whether BAME defendants were equally likely to receive prison sentences and community sentences – or whether they received a particular type of sentence or order more often in comparison with White defendants at the same court. This extension of an existing initiative would help to identify if there are areas of the country, or even specific courts where BAME defendants are more likely to go to prison for the same offences.

**Recommendation 12:** The Open Justice initiative should be extended and updated so that it is possible to view sentences for individual offences at individual courts, broken down by demographic characteristics including gender and ethnicity.

Sentencing decisions need greater scrutiny, but judges must also be equipped with the information they need. It is the role of the Probation Service to provide judges with pre-sentence reports (PSRs), which set out greater information about the character and circumstances of an offender (see box on next page). These reports 'assist[s] the court in determining the most suitable method of dealing with an offender'<sup>156</sup> – and may be particularly important for shedding light on individuals from backgrounds unfamiliar to the judge. This is vital considering the gap between the difference in backgrounds – both in social class and ethnicity – between the magistrates, judges and many of those offenders who come before them.

**Figure 5: Sentences for supplying cannabis handed down by Manchester Crown Court (Crown Square) in 2011<sup>155</sup>**



### PRE-SENTENCE REPORTS

The purpose of a PSR is to assist the courts in determining the most suitable method of dealing with an offender. PSRs are prepared by Probation Officers. They usually contain:

- an assessment of the nature and seriousness of the offence, and its impact on the victim;
- an analysis of the offence and its precipitating factors, including an assessment of culpability;
- a description of factors relevant to an individual's offending, such as substance misuse or mental health concerns;
- an assessment of the risk posed to others by the offender; and
- a proposal to the court on sentencing.

Historically, PSRs involved a much longer process and more detailed report than is the case today. PSRs were written while courts were adjourned and drew on detailed interviews with defendants, often in their own homes. However, over the last decade, the number of defendants sentenced using a 'fast delivery' PSR prepared on the same day has risen significantly (see Table 3). Meanwhile, judges have received guidance discouraging them from using PSRs altogether for some offences.<sup>157</sup> These offences include drug offences such as 'Possession with intent to supply class A drug' – precisely the type of offence where the evidence suggests there are sentencing disparities.<sup>158</sup> In light of this, the Ministry of Justice (MoJ) should review the use and effectiveness of PSRs, in close consultation with Her Majesty's Courts and Tribunals Service (HMCTS), the Probation Service and the judiciary.

**Table 3: Pre-sentence report types for Crown Court<sup>159</sup>**

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
<b>Crown Court</b>	<b>49,871</b>	<b>52,763</b>	<b>55,811</b>	<b>60,195</b>	<b>63,930</b>	<b>61,133</b>	<b>57,523</b>	<b>42,352</b>	<b>37,856</b>	<b>44,881</b>
Standard PSR	47,938	50,488	51,721	49,975	44,796	37,388	30,073	18,478	15,045	13,113
Fast delivery PSR written	1,747	2,000	3,585	9,197	17,346	21,536	24,958	22,249	21,436	29,188
Fast delivery PSR oral	186	275	505	1,023	1,788	2,209	2,492	1,625	1,375	2,580

## Trust – Demystifying courts

### Transition to Adulthood (T2A) report – Leaders Unlocked – July 2017

*When talking to young adults, we heard that the language of the courtroom can be confusing and disempowering for many. Several participants told us they did not understand much of what was said in their own cases. Young adults can feel very 'distanced' in the court, as the case seems to happen around them, without them being actively involved.*

Fair decision-making is essential, but not enough. The judiciary itself is clear that 'Justice must not only be done – it must be seen to be done,'<sup>160</sup> reflecting a growing body of academic work which shows the link between respect for the law and confidence that it has been applied equitably.<sup>161</sup> However, the criminal justice system (CJS) has a trust deficit with the BAME population born in England and Wales, many of whom lack their parents' reverence for our legal system.

Understanding the process by which a decision is taken is vital to accepting the outcome – and sentencing is the key area of the court process that needs demystifying. I met many BAME prisoners harbouring grievances about their sentences, often because they knew others who they believed had committed similar offences, but received quite different sentences. As this chapter has already covered, sentencing itself must be equitable, but the system should also do much more to ensure that offenders understand why they have been given the sentences they have.

In court, judges provide detailed sentencing remarks, which explain how considerations like plea decisions, previous criminal offences and mitigating and aggravating factors have either lengthened or shortened a custodial sentence. These factors can significantly affect the length of a sentence – an early guilty plea can reduce a prison sentence by up to a third, for example. However, when offenders listen to these remarks in court this is often the first and last time that they are given a full, formal explanation for the sentence that they are about to serve.

In future, all sentencing remarks should be published in both audio and written form.<sup>162</sup> This would provide a clear record for victims and offenders of the rationale for sentencing decisions. Sentencing remarks are published (in written form) for cases regarded as being of particular 'public interest'. But this conception of the public interest is too narrow. It is in the public interest for all victims and offenders to fully understand the sentencing decisions made by judges. All Crown Court cases are already audio-recorded. At a time when over £700 million has been allocated for the full digitisation of the courts through the court modernisation programme, publishing sentencing remarks would be an important step to a more comprehensible and trusted system.<sup>163</sup>

**Recommendation 13:** As part of the court modernisation programme, all sentencing remarks in the Crown Court should be published in audio and/or written form. This would build trust by making justice more transparent and comprehensible for victims, witnesses and offenders.

More generally, there is a responsibility for judges to ensure that all those in court understand what is going on and believe that they are being treated fairly. Many judges already do this, using plain language not legal jargon and taking care to ensure that victims, witnesses and defendants all understand how a trial will proceed, which decisions have been taken, and why. However, more could be done to ensure that justice is not just done, but is seen to be done.

As ever, there are lessons to learn from other jurisdictions. In one US state, for example, an electronic survey is used routinely to ask court staff, lawyers, jurors and others who conduct business with judges in the courtroom to complete a survey on judicial performance.<sup>164</sup> The survey is completed electronically, and focuses on legal ability, judicial temperament, integrity and administrative performance. As such, it provides an important source of feedback for judges, from the perspective of others in the court room.

The constitutional position of our judiciary is different to that in the US – judges' independence from outside influences is fiercely protected in England and Wales. However, the judiciary could learn lessons from this US innovation and protect its independence. For example, a similar electronic survey, gathering feedback on how judges conduct cases could be established in this country, focusing specifically on attributes such as courtesy, clarity and efficiency.<sup>165</sup>

If respondents to surveys were asked to record factors like their age, gender and ethnicity the picture generated by this survey could be even richer. Over time, this would help build up a view of which judges communicate effectively and inspire trust, and which do so less effectively. This information could be used by the judiciary to support the professional development of judges, including in performance appraisals for those judges that have them. Such a move would bring the judiciary into line with other professions – for example, doctors in the NHS are expected to seek feedback from both colleagues and patients on a regular basis. This feedback then forms part of the discussion at annual appraisals.<sup>166</sup>



**Recommendation 14:** The judiciary should work with HMCTS to establish a system of online feedback on how judges conduct cases. This information, gathered from different perspectives, including court staff, lawyers, jurors, victims and defendants, could be used by the judiciary to support the professional development of judges in the future, including in performance appraisals for those judges that have them.

## Trust – Judicial diversity

### Youth Justice Board – Written submission to Call for Evidence: June 2016

*BAME people are underrepresented in workforces across the youth justice system (YJS), including police, judiciary, magistracy, courts and secure establishments. This disparity increases when examining representation at management and senior management levels. A more diverse workforce is known to bring a number of benefits and we believe that it could help address over-representation, including by increasing BAME young people's confidence in the system.*

### Transform Justice

*However good they are, we need magistrates to be truly representative of the communities they serve if trust in the CJS is to be maintained. We don't have enough BAME magistrates, and those we have are overwhelmingly middle-class and middle-aged. Where are the magistrates from the Somali, Roma and Romanian communities? Nowhere to be seen.*

### Public comments - Call for Evidence

*In my view there is a great cultural gulf between the judge (in most cases of white middle class background) and the defendant who does not understand the nuances of court procedure. There could also be language difficulties which prevent the defendant from putting his best case forward during bail considerations. The situation is not helped if the defence counsel is of a similar background to that of the judge. They both have little or no understanding of the defendant.*

A fundamental source of mistrust in the CJS among BAME communities is the lack of diversity among those who wield power within it.<sup>167,168</sup> Nowhere is this more apparent than in our courts, where there is a gulf between the backgrounds of defendants and judges. Of those who declared their ethnicity, 20% of defendants who appeared in court last year were from BAME backgrounds, compared with 11% of around 16,000 magistrates.<sup>169</sup> Research also shows that people from working class occupations are also considerably under-represented in the magistracy.<sup>170</sup>

Meanwhile, just 7% of around 3,000 court judges are from BAME backgrounds.<sup>171</sup> On average, younger cohorts of court judges are more diverse – 10% of those under 40 are BAME compared with 4% of those 60 and over<sup>172</sup> – but even this younger group remains significantly less diverse than the country it serves.

Judges are selected on merit – but there is no reason why this principle should count against the many talented BAME barristers and solicitors who want to become judges. The problem is often framed as a question of encouraging more applications from BAME candidates, but the figures in table 4 show that this is not where the problem is. BAME barristers and lawyers are applying to become judges, however, the issue is that they are not getting through the process. As Table 4 shows, in virtually every recent recruitment round, BAME applicants have been recommended for positions at lower rates than they applied.

**Table 4: BAME and White comparison of applications and recommendations for judicial positions<sup>173</sup>**

Post	Year	Proportion (and number) with BAME background (of those who declared their ethnicity) <sup>174</sup>		Proportion (and number) with White background	
		Applications	Recommendations	Applications	Recommendations
Circuit judge	2006-07	8% (23)	3% (3)	92% (274)	97% (95)
	2008-09	9% (30)	4% (3)	91% (304)	96% (81)
	2011-12	12% (32)	–	88% (237)	–
	2011-12	13% (16)	8% (2)	87% (109)	92% (23)
	2012-13	11% (30)	9% (3)	89% (253)	91% (31)
	2013-14	12% (28)	–	88% (198)	–
	2014-15	12% (28)	5% (1)	88% (198)	95% (20)
	2015-16	8% (18)	6% (3)	92% (208)	94% (49)
	2016-17	12% (20)	5% (2)	88% (149)	95% (38)
Deputy District Judge (Mag's Court)	2008-09	20% (154)	12% (3)	80% (632)	88% (22)
	2012-13	19% (263)	25% (7)	81% (1,125)	75% (21)
	2016-17	23% (237)	6% (1)	77% (805)	94% (16)
Deputy High Court Judge	2014	–	–	–	–
	2015	23% (78)	11% (2)	77% (254)	89% (17)
	2016-17	17% (49)	15% (3)	83% (232)	85% (17)

### EFFECTIVE RECRUITMENT AND WORKFORCE DEVELOPMENT

Many organisations recruit and develop high-quality, diverse candidates and there are good examples inside and out of the criminal justice system. The organisation 'Unlocked Graduates' encourages high-calibre graduates to take up positions in the prison workforce. In its first year, Unlocked made attracting a diverse cohort of applicants a special focus and 18.5% of their offers were to BAME candidates in 2016-17. KPMG puts inclusion at the heart of its recruitment strategy, but also actively tries to develop the next generation of leaders from underrepresented groups, offering mentoring and other professional development to BAME staff – last year, 37% of their graduate intake were from BAME backgrounds. In a recent report, *Increasing judicial diversity*, the organisation JUSTICE argued that evidence-based training and decision-aids for recruiters could make a positive contribution to judicial selection, as could offering professional development to 'near-miss' candidates. Initiatives like training recruiters in unconscious bias and cultural competence could also help create a modern, diverse judiciary.

The Judicial Appointments Commission (JAC) was established just over a decade ago to make the appointments process clearer and more accountable.<sup>175</sup> The aim was to formalise the process for appointing judges, replacing the so-called ‘tap on the shoulder’ approach with more meritocratic methods ‘(see box in next column)’. However, these figures show that there is still a problem.

The JAC should also examine the way it carries out selections. It is important to ensure that one generation does not simply recruit the next in its own image. The risk is always that a judiciary drawn overwhelmingly from one small segment of the population finds it easier to identify ‘merit’ in people like themselves. The JAC already involves lay members on selection panels, a move designed to ensure that judges can relate to and communicate with non-legal experts. I have heard concerns that lay observers tend to come from backgrounds not too dissimilar to the judiciary itself – a problem if part of their role is to prevent judges recruiting in their own image. Going beyond ‘the usual suspects’ – those who tend to sit on committees like this – requires outreach and perhaps additional training for a broader mix of participants.

Talented individuals must also be given every chance to demonstrate their abilities. For example, candidates are now assessed against published criteria, covering a range of competencies – but having a competency and demonstrating it are different things. The neat distinction between who you know and what you know does not always exist, even when processes are formalised in this way. Candidates with the right contacts and connections will inevitably still enter a process with greater knowledge of how to succeed within it.

### SUMMARY OF THE JUDICIAL SELECTION PROCESS

- Qualifying tests are exam-style papers used to shortlist candidates for selection days for some judicial vacancies. The JAC determines the number of candidates that should be invited to interview, normally at a ratio of between two and three per vacancy.<sup>176</sup>
- The JAC uses telephone assessments as a shortlisting tool, often in addition to other shortlisting tools before deciding who to take forward to selection day.<sup>177</sup>
- If shortlisted, candidates will be invited to a selection day, which can include:
  - a panel interview - panels usually have three members including a chair, judicial member and an independent member;
  - situational questioning about scenarios you may face as a judge;
  - role play, simulating a court or tribunal environment; and
  - making a presentation.<sup>178</sup>
- The JAC carries out consultation as part of a selection exercise. This includes:
  - sharing summary reports with experienced judges for comment.<sup>179</sup>
- JAC Commissioners sit as the Selection and Character Committee to make the final decision on which candidates to recommend.<sup>180</sup>
- The JAC provides feedback to help candidates understand why their application was unsuccessful and to consider this for future applications.<sup>181</sup>

The judiciary already has schemes to help equip candidates for the selection process – and these schemes have high proportions of BAME participants (see box on next page). However, more can be done to ensure that BAME candidates enter the process as well prepared as possible. Those with talent need to be actively sought out at an early stage in their careers and advised as to how to accumulate the right experience and develop the competencies they will ultimately need to demonstrate in any selection process. To draw on the widest pool of talent possible, this should include finding ways to fast-track the diverse pool of lawyers working across the public sector, including the CPS, to become judges.

Meanwhile, candidates should be supported not just before, but also after, they make applications. Those who just miss out in one recruitment round should be nurtured and coached so that they come back better prepared for the next. None of this goes against selecting on merit, it is simply about preparing people to demonstrate their full abilities.

### JUDICIARY-LED INITIATIVES ON DIVERSITY

The judiciary runs work shadowing programmes, mentoring programmes and a job application workshop. It also has a positive action mentoring scheme and provides pre-application workshops (who are first time applicants and judges seeking to progress). The Judicial Diversity Committee's report for the period of April 2017-March 2018 – showed that:

- 61% of participants on the mentoring scheme were BAME;<sup>182</sup>
- 33% of participants on the High Court support programme were BAME;<sup>183</sup>
- 40% of participants in the Deputy High Court support programme were BAME<sup>184</sup>; and
- 28% of participants who declared their diversity information in the Judicial Work Shadowing Scheme were BAME<sup>185</sup>

In addition, 163 role models<sup>187</sup> and over 102 Diversity and Community Relations Judges<sup>188</sup> (DRCJs) have been recruited. Both groups, role models and DRCJs encourage legal professionals from under-represented groups to consider a judicial career.

Accountability for judicial diversity is diffuse. The JAC, Judicial Office and the MoJ all have formal responsibilities to promote diversity in different ways. The result is that no one individual or organisation can be held to account for whether results are being achieved. To resolve this, an organisation such as the Judicial Training College or the JAC should take on the role of a modern recruitment function for the judiciary, involving talent-spotting, pre-application support and coaching for 'near-miss' candidates. Work should focus on equipping talented individuals from under-represented groups, including BAME communities and people from working class backgrounds – to fulfil their potential in the application process. Within these groups, it should also aim for gender balance, reflecting the slow progress towards gender equality in the judiciary.

The MoJ should also examine whether the same organisation could take on similar responsibilities for the magistracy. Magistrates are currently recruited by local advisory committees, with each committee responsible for interviewing applicants and recommending candidates to the Lord Chief Justice.<sup>188</sup> The consequence of this decentralised system, however, is there is not the infrastructure to make a genuine push on diversity. The degree of emphasis placed on this can therefore vary quite considerably around the country.

Giving a single organisation, such as the JAC, greater responsibility in this area could revive the model of partnering with other institutions, from employers to campaign groups, to encourage applications from ethnic minority communities. For example, a previous partnership between the MoJ and Operation Black Vote was funded by the MoJ and involved potential applicants shadowing a magistrate to learn more about the role. Following the scheme, nearly 100 candidates were selected as magistrates.<sup>189</sup> The scheme – and the subsequent ending of the funding attached to it – is a reminder that progress can be made if there is sufficient commitment to it.

This kind of activity is essential, but above all there must be a focus on results. To achieve this, the government should set a clear, national target to achieve an ethnically representative judiciary and magistracy by 2025. It should then report to Parliament with progress against this target biennially.

**Recommendation 15:** An organisation such as the Judicial Training College or the Judicial Appointments Commission should take on the role of a modern recruitment function for the judiciary – involving talent-spotting, pre-application support and coaching for near-miss candidates. The MoJ should also examine whether the same organisation could take on similar responsibilities for the magistracy. The organisation should be resourced appropriately to fulfill this broader remit.

**Recommendation 16:** The government should set a clear, national target to achieve a representative judiciary and magistracy by 2025. It should then report to Parliament with progress against this target biennially.

## Responsibility – youth justice

Courts exist to deliver justice, but must also be the start of an offender's rehabilitation journey. Much sentencing policy is framed explicitly to take this into account, though reoffending rates remain stubbornly high. The biggest challenge lies in the youth justice system, with the latest published figures showing 38% of juveniles reoffending,<sup>190</sup> within 12 months.<sup>191</sup> BAME reoffending rates show a mixed picture with, for example, Asian young people less likely to reoffend than the White group, but the figures for Black young people are a major concern. 45% reoffend within a year of being released from custody, receiving a non-custodial conviction at court, a reprimand or a warning.<sup>192</sup>

Overall, the total number of under-18s reoffending has been falling in recent years. However, numbers have dropped slower for BAME young people than White young people. The result is that the BAME proportion of young people reoffending has risen from 11% to 18%.<sup>193</sup>

To play their full role in reducing reoffending, youth courts must focus not just on young people themselves, but also on the responsible adults around them. This includes parents, in particular, but also the communities who live alongside them. Throughout this review I have seen an appetite in many BAME communities to take more responsibility for this: the question is how far the justice system can adapt to help make it a reality.

Our youth justice system has a very limited conception of what involving communities in youth justice looks like. When young people plead guilty to first-time offences, the youth justice system typically passes a Referral Order. A youth offender panel, headed by two volunteers from the local community, then agrees a contract with the young offender in question. The contract may involve reparation to the victim, alongside and participation in, interventions designed to tackle the causes of offending. The young offender is monitored by a Youth Offending Team (YOT) case worker, then required to return (with parents or carers if under 16) to the panel to assess compliance with the contract. The role of the community volunteers and the possibility that a young offender may have to repair some of the harm that they have done are the only ways in which the justice system seeks to invite communities into the process.

Youth offender panels are a small step in the right direction, but could go further in involving parents, communities and key local services. To emphasise this greater focus in shared responsibility, they should be renamed local justice panels and reformed along the following lines:

**Family:** In England and Wales we have separate youth and adult justice systems to distinguish between the different needs of adults and children. Adults are expected to take complete responsibility for their offending but it is understood that young people lack the same maturity and require far greater support structures around them. Yet when children are brought before a youth offender panel, parents are only required to attend hearings for under 16s. For children in care, the situation is more serious still. The Children Act 1989 guidance only sets out that social workers accompanying children to hearings is 'good practice', despite the recognition that having a social worker there to support the child is extremely beneficial. This means that, in practice, children from the care system can be unaccompanied even under the age of 16.

When many BAME children are being drawn into street crime, sometimes under duress, by powerful adults, the role of parents and carers is important in re-establishing boundaries and protecting young men and women. Parents and carers should be held responsible for their children until they reach adulthood, including attending hearings alongside them up the age of 18.

A growing body of scientific evidence suggests that, not only children, but many young adults lack the maturity to make effective, balanced decisions.<sup>194</sup> This includes abilities like judging risk, delaying gratification and mastering their own impulses.<sup>195</sup> Furthermore, there is evidence to suggest that things like traumatic brain injury and maltreatment as a child can further contribute to limited maturity, and additionally, that these problems are frequently seen amongst young adult offenders.<sup>196</sup>

In other countries, like Germany for example, understanding of maturity is fundamental (see box on next page). In contrast to England and Wales, where there is an inflexible boundary between the adult and youth justice systems (which is age 18), the German justice system allows for juvenile law to be applied to young adults if the 'moral and psychological development' of the defendant suggests he or she is 'like a juvenile'.

## GERMANY

Reflecting the scientific evidence base on brain development, the youth justice in Germany covers children and young adult offenders from 14 to 20 years of age. Most young adults (over 18/under 21) receive milder sentences than under adult criminal law.<sup>197</sup>

Youth imprisonment covers the age groups of 14 to 17-year-old juveniles, 18 to 20 year-old young adults, and adults aged 21 to 24 who were sentenced by Juvenile Courts as juveniles or young adults.<sup>198</sup>

Maturity is assessed through an analysis of both the offender and the offence, with youth justice interventions applied if a lack of maturity is demonstrated. Juvenile law can be applied to young adults if the 'moral and psychological development' of the defendant suggests he or she is 'like a juvenile'. This might include a lack of emotional maturity or empathy. Similarly, juvenile law is applied if 'elements demonstrate that a considerable development of the personality is still ongoing'.<sup>199</sup>

In England and Wales, our approach to assessing maturity should reflect the scientific evidence. As with Germany rigorous assessments of maturity should inform rehabilitative interventions. This approach should apply to all those up to the age of 21. The MoJ and Department of Health (DH) should work together to develop a method to assess maturity. The results of this assessment should inform interventions, including extending the support structures of the youth justice system for offenders over the age of 18 who are judged to have low levels of maturity. There are particularly high proportions of BAME individuals among young adult prisoners – a more developed approach to maturity could make a big contribution to their rehabilitation.<sup>200</sup>

**Recommendation 17:** The MoJ and DH should work together to develop a method to assess the maturity of offenders entering the justice system up to the age of 21. The results of this assessment should inform the interventions applied to any offender in this cohort, including extending the support structures of the youth justice system for offenders over the age of 18 who are judged to have low levels of maturity.

For young offenders, it is also clear that some of the key tools at the disposal of youth courts are not being used. For example, parenting orders are designed to give courts the tools both to challenge and support parents. Courts can require parents to attend counselling or guidance sessions designed to improve parenting skills, manage difficult adolescent behaviour and ensure school attendance. But courts can also impose a second element, requiring parents to exercise control over their child's behaviour. Last year the youth courts issued parenting orders in just 60 cases involving BAME young people. In total, just 189 parenting orders were issued for all ethnicities, including White young people, despite 55,000 young offenders being found guilty in the courts.<sup>201</sup>

It is clear that YOTs have little faith in the efficacy of parenting orders and are discouraging their use as a result. But the answer is not to give up on parenting orders altogether – it is to make sure that there are well-designed, clearly-evidenced alternatives to them. The MoJ should review the effectiveness of parenting orders and replace them with something better if there are flaws with them. YOTs should not only contribute to this process but also consider whether they are doing enough to challenge and support parents.

**Community:** The government is currently in the process of closing and centralising courts across the country, with 86 confirmed for closure.<sup>202</sup> The consequence is that justice will become more detached and remote from local people. Instead, precisely the opposite should be happening, with justice literally moving closer to communities. For example, the JUSTICE think tank has recommended a new model of 'justice spaces' (see box below) arguing for a 'rejection of the over-standardisation prevalent in existing courts and tribunals'.<sup>203</sup> The working party of experts behind the JUSTICE Report argued that the type of space used in each case should be determined by factors like the level of security risk posed by the case, including the level of anticipated public participation and the extent to which parties may need to be segregated.<sup>204</sup> Youth court cases, for example, are closed events so may prove particularly suitable for non-traditional settings.

## THE 'JUSTICE SPACES' MODEL PROPOSED IN WHAT IS A COURT?<sup>205</sup>

- **Simple justice spaces:** less formal and highly flexible spaces capable of accommodating the majority of the disputes currently heard by courts and tribunals.
- **Standard justice spaces:** semi-formal and flexible spaces ideal for hearings which require some permanent fixtures – such as extensive technological equipment, or a raised judges' bench.
- **Formal justice spaces:** formal, semi-flexible and purpose-built spaces used in a limited number of very serious cases including major criminal trials.



More can also be done to bring the community into the process itself. Despite involving two community members on each panel, youth offending panels are, in no real sense, community events. This stands in contrast with other jurisdictions – for example the Rangatahi Courts in New Zealand (see box below) – which invite in people with a stake in young people's lives. The Rangatahi Courts may be specific to particular cultural contexts and anonymity must be protected in the youth justice system, but there remains scope to learn from the carefully managed ways in which community members are invited into the process. Local justice panels would see those who have a direct responsibility for, or appropriate interest in, the child's education, health, welfare or general progress invited into hearings. They would observe the process, advise the panel if called upon and understand their own responsibility for the child's rehabilitation.

#### CASE STUDY: RANGATAHI COURTS IN NEW ZEALAND<sup>206</sup>

In New Zealand, Rangatahi Courts operate in the same way as the youth courts – with the same laws and consequences – but involve young Maori offenders and members of the adult Maori community. The Rangatahi Courts are for young people who have admitted guilt. After a sentencing plan has been set for young people, Maori young people can choose to have their case monitored by the Rangatahi Court. Those who opt for this appear in court fortnightly, in front of the same judge. At the beginning of each hearing, the young person receives a mihi (talk) from the kaumātua (respected elders). Also present will be whanau (extended family), police officers, social workers, the young person's lawyer and the victim if they choose to attend. The hearings are designed to bring together families and communities to take responsibility, alongside the offender, for ensuring that this offence is their last.

**Services:** it is essential that there is a mechanism for bringing together all those with a stake in young people's lives and a link to their offending behaviour. If an offence has been committed in school hours, for example, teachers or the headteacher should be brought in to discuss the role of the school in preventing future offending behaviour. If there are substance abuse or mental health concerns, the relevant services should also be present. Local justice panels would have the power to convene these services alongside parents and the local community, both to inform the tailored sentencing plan for each child and to review progress against it in the future.

I also share the concern expressed in the Taylor report that:

“magistrates frequently report that they impose a sentence without having a real

understanding of the needs of the child, and they rarely know whether it has been effective. It is possible for the bench to hear about breaches or further offences, but only if one of their number happens to be sitting on the day when that child is brought back to court.”<sup>207</sup>

This gap between magistrates and youth offender panels needs to be closed.

Magistrates must be fully informed not just about how the system functions in theory, but also how well it works in practice. To achieve this, magistrates should follow an agreed number of cases each year from start to finish, joining the referral panel for the initial hearing, when a contract with the young offender is agreed, as well as future hearings to monitor compliance. Tracking cases from start to finish would deepen their understanding of the youth justice system. The MoJ should also evaluate whether their continued attachment to cases has any observable effect on reoffending rates, given evidence from problem-solving courts that the same judge retaining contact with an offender throughout their rehabilitation period can have a positive effect

**Recommendation 18:** Youth offender panels should be renamed local justice panels. They should take place in community settings, have a stronger emphasis on parenting, involve selected community members and have the power to hold other local services to account for their role in a child's rehabilitation.

**Recommendation 19:** Each year, magistrates should follow an agreed number of cases in the youth justice system from start to finish, to deepen their understanding of how the rehabilitation process works. The MoJ should also evaluate whether their continued attachment to these cases has any observable effect on reoffending rates.

This approach – more local, more family orientated, and more concerned with bringing services together – would build on the best parts of the existing system to bring the adults around young offenders. Inevitably, however, some offenders will require custodial sentences. The next chapter addresses the role of the prison system.

# Chapter 5: Prisons



## Introduction

There are over 20,000 adults BAME in prisons across England and Wales, representing around 25% of the overall prison population.<sup>208,209</sup> If the demographics of our prison population reflected that of England and Wales, we could have over 9,000 fewer Black, Asian and Minority Ethnic (BAME) people in prison – the equivalent of a dozen average sized prisons.<sup>210</sup> The youth custody population is smaller, but the BAME proportion is much higher, at over 40%.<sup>211</sup>

This over-representation of BAME offenders in both the adult and youth estates has an economic as well as social cost – estimated at £234 million a year in work commissioned by this review.<sup>212</sup> This chapter examines the treatment and outcomes of BAME individuals in custody.

- There is evidence to suggest differential treatment against BAME offenders in both the adult and the youth estates. BAME individuals are less likely to be identified with problems such as learning difficulties or mental health concerns on reception at prison. The prison system inherits some of these disparities from other services, such as schools failing to identify learning difficulties and mental health services failing to serve BAME communities effectively.<sup>213</sup> But it must do far more to rectify them when prisoners arrive in custody.
- On average, both BAME men and women in prison report poorer relationships with prison staff, including higher rates of victimisation by prison staff. BAME prisoners are also less likely to report having a prison job or participation in offender behaviour programmes.<sup>214</sup>
- Systems of redress need to be reviewed urgently, with just one in a hundred of prisoners alleging discrimination by staff having their case upheld,<sup>215</sup> while there is inadequate governance surrounding key aspects of prison life, such as the Incentives and Earned Privileges (IEP) system which BAME prisoners widely regard as unfair.
- The lack of diversity among prison officers, including prison leadership, helps perpetuate a culture of 'us and them' with BAME prisoners. It contributes to an atmosphere in which many rebel against prison regimes, rather than start on the road to a life without offending.
- The prison system must take steps to address these shortcomings, many of which have a direct link to reoffending rates. This should include:
  - a far more comprehensive approach to assessing prisoners' health, education and psychological state on entry to prisons;
  - creating a more diverse workforce, including at leadership levels;
  - opening up more decision-making to outside scrutiny, including the way in which complaints about discrimination are handled; and
  - holding prison leadership teams directly to account for the treatment and outcomes for BAME prisoners.

## Purpose of prison

Of the 86,000 prisoners across England and Wales, only a small fraction will never leave custody – more than 20,000 of those adults are from BAME backgrounds.<sup>216</sup> In total, 99% of those who go to prison will be released at some stage in their lives.<sup>217</sup> With this in mind, there is a growing political emphasis on the role of prisons in reforming offenders and reducing reoffending.<sup>218</sup>

To succeed, prison governors and officers must have a proper understanding of the prisoners they are responsible for. Some ethnic groups are particularly over-represented. Black people make up 3% of the general population but 12% of prisoners and 21% of children in custody are Black.<sup>219,220</sup> The last Census showed that just 0.1% of people in the wider population identified themselves as Gypsy or Irish Traveller,<sup>221</sup> but the proportion is very high in some prisons. In 2012–2013, 12% of prisoners at Her Majesty's Prison (HMP) Elmley, 11% at HMP Gloucester and 10% at HMP Winchester identified themselves as being Gypsy, Roma or Traveller in the 2014 prisoner survey. At New Hall, 8% of women identified themselves as Gypsy, Roma or Traveller, despite the prison only reporting one known Traveller.<sup>222</sup> Ensuring that the treatment and outcomes for this group are as good as they possibly can be is not just a legal necessity<sup>223</sup>, it is a key part of running an effective prison.

## Categorisation

The regime that prisoners are held under has a significant effect on efforts to rehabilitate them. High security prisons are focused overwhelmingly on preventing escape, while lower security prisons involve more freedom of movement and therefore more opportunity to provide a regime focused on rehabilitation.

Analysis commissioned for this review reveals that BAME male prisoners are more likely to be placed in high security prisons than White male prisoners committing similar types of offences (see Table 5). Most strikingly, among prisoners serving prison sentences for public order offences, 417 Black offenders and 631 Asian offenders are placed in high security prisons, for every 100 White offenders.<sup>224</sup>

**Table 5: Number of convicted BAME men placed in a high security prison, for every 100 White men convicted of the same types of offence (mid-year 2015)<sup>225</sup>**

	Black	Asian	Mixed ethnic	Chinese / Other	All BAME
Violence against the person	160*	121*	118	97	119*
Sexual offences	118	126*	108	--	118*
Robbery	136*	69	132	--	104
Theft offences	186*	138	110	--	121
Criminal damage and arson	--	194*	--	--	156
Drug offences	82	125	142	--	127*
Possession of weapons	180*	160	--	--	144
Public order offences	417*	631*	--	--	494*
Misc. crimes against society	213	129	179	--	135
Fraud offences	150	--	--	--	92
All offence groups	143*	126*	120*	--	121*

\* indicates statistically significant difference

-- indicates too few cases for analysis

High security prisons contain two types of prisoners: those who have been classed as the most dangerous – Category A prisoners – and individuals on remand awaiting trial in the same part of the country. The prison service should publish research establishing which of these two groups – Category A or remand prisoners – is driving the high proportion of BAME individuals in high security prisons. If BAME individuals are being classed as more dangerous having committed similar offences to White offenders, then the categorisation and allocation system should be reviewed immediately.

## Identifying problems

### **Centre for Crime and Justice Studies – Written submission to Call for Evidence: June 2016**

*The prison population largely consists of people from low income backgrounds. Many are dispossessed. For example, a third of the prison population were homeless, half of this group sleeping rough before entering prison.*

### **Agenda – Written submission to Call for Evidence: June 2016**

*Staff across the criminal justice system should receive training about the realities of women's lives and particularly the likelihood of histories of abuse and violence. Community and prison services should be gender and trauma-informed.*

### **Friends, Families and Travellers – Written submission to Call for Evidence: June 2016**

*Another issue is the above average numbers of Gypsies and Travellers suffering from poor mental health. The high numbers of Gypsy/Traveller suicides in prison has been flagged up in the Prisons and Probation Ombudsman for England and Wales Bulletin of January 2015 'Deaths of Travellers in prison'.*

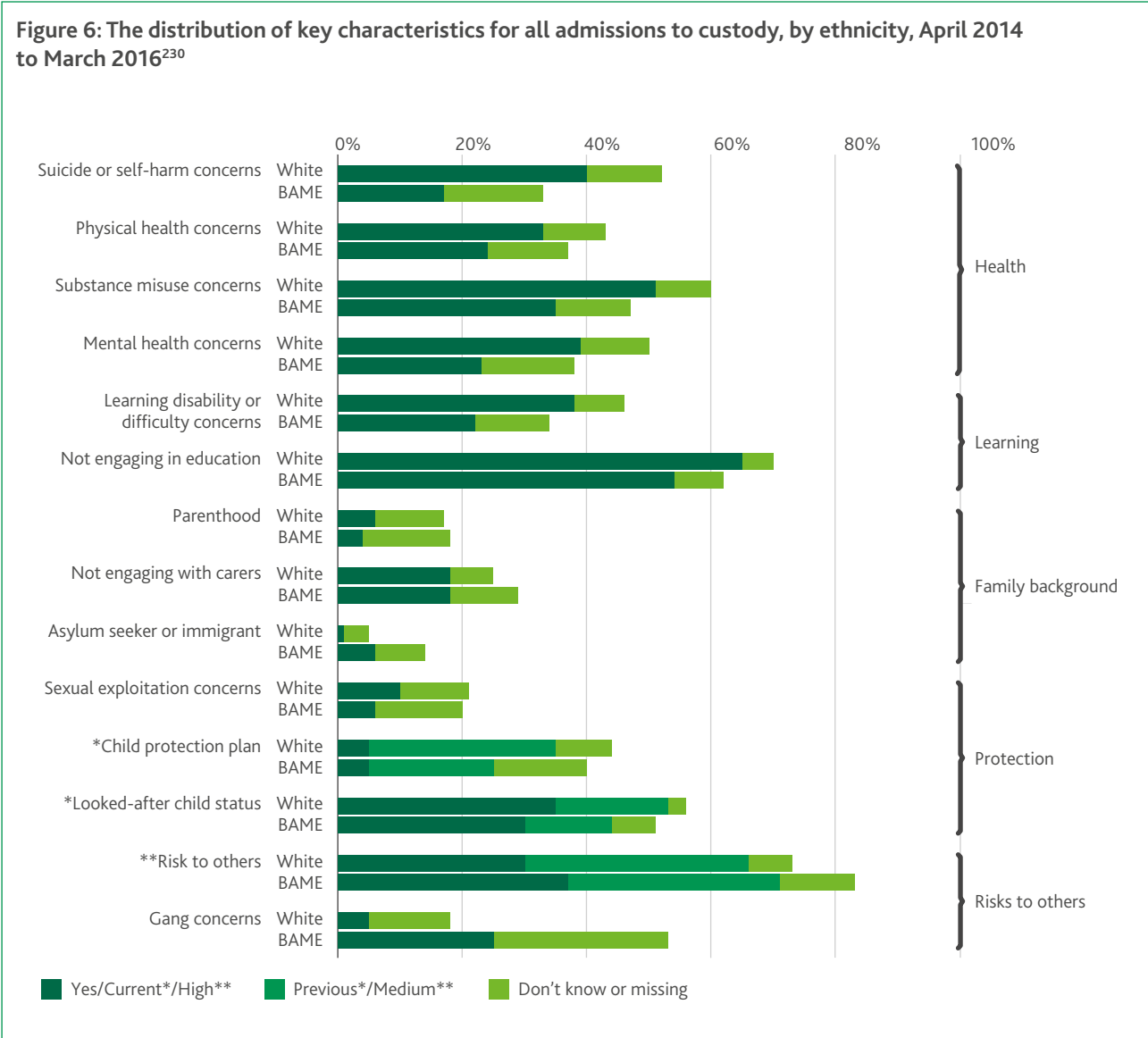
Many prisoners arrive in custody as damaged individuals. In the youth estate, 33% arrive with mental health problems, whilst a similar proportion presents with learning difficulties. A third of children in prison have spent time in the care system, 45% arrive with substance misuse problems and 61% have a track record of disengagement with education.<sup>226</sup> In the adult estate, an estimated 62% of men and 57% of women prisoners have a personality disorder<sup>227</sup>, while 32% of new prisoners were recorded or self-identified as having a learning difficulty or disability.<sup>228</sup> Many have been both victims and perpetrators of violence, with resulting trauma and psychological damage.

A successful prison system depends upon addressing these problems. It is inconceivable that prisons will be places of order, let alone rehabilitation, unless the deep-rooted issues in people's lives are identified and dealt with. In the short term, problems like rising violence in prisons can be limited by recruiting more staff to support colleagues stretched to the limit. But, the longer term, answer is to deal with the underlying causes of violence, disorder and subsequent reoffending.

The youth estate collects the most reliable data on the problems that individuals present with when they are admitted to custody. But the detail reveals a worrying pattern.<sup>229</sup> Though there are very high proportions of BAME young people in custody, data from the period April 2014 to March 2016, on admissions to custody, showed that BAME youths were less likely than the white group to be recorded as having health, educational or mental health problems. This may indicate unidentified needs and could have a knock-on effect on the services and support made available to them.

As Figure 6 indicates, between April 2014 and March 2016, BAME youth entering prison were less likely to be recorded as at risk of self-harm, or to have problems with their physical or mental health. They were less likely to be recorded as having learning difficulties, to be disengaged with education. Both BAME and White youth were equally recorded as having problematic relationships with carers. But BAME youth were less likely to be recorded as having substance misuse concerns. The only areas where BAME youths were over-represented were concern about the risks they pose to other young people.





The data is much poorer for the adult estate, but there is evidence of similar patterns. For example, on mental health, as far back as 2007 the Chief Inspector of Prisons found that:

“ Reception screening is failing to pick up the extent or diversity of need. This is partly because it is not always well done, or properly followed up, by appropriately skilled staff. But it is also partly because the screen itself is not sensitive enough to pick up real, and particularly unacknowledged, need. Our own

screening processes picked up higher levels of need throughout, but particularly so in the case of black and minority ethnic (BME) prisoners, who are much less likely to access mental healthcare in the community, and also male prisoners, who are less likely to acknowledge need.”<sup>231</sup>



This finding is echoed in The Bradley Report (2009) and in his report 'Five Years On' (2014), where he recommends that the criminal justice system (CJS) should collect and analyse how services are accessed and used by BAME people. In addition, a number of practitioners have expressed concerns that the same problem exists with learning difficulties and disabilities (LDD).<sup>232,233</sup>

The prison system inherits some of these disparities from other services, such as schools failing to identify learning difficulties and mental health services failing to provide effective services to BAME communities.<sup>234</sup> But the response cannot be for the prison system simply to translate problems with community services into equivalent problems in custody. Instead there must be screening processes that accurately identify the problems that prisoners arrive in custody with.

## Assessment

### **Revolving Doors – Written submission to Call for Evidence: June 2016**

*Not every person from every ethnic or cultural group has the same experiences either of health and social problems or of accessing services, and differences can vary according to gender, religion or sexual orientation. Considering the variability of those experiences will make a welcome contribution to public understanding.*

### **Agenda – Written submission to Call for Evidence: June 2016**

*Women in prison have often experienced extensive abuse and are likely to have complex mental health, addiction and other needs.*

Prisons and secure institutions in the youth justice system should have proper access to assessments made by other services, such as health, mental health and education – but must not rely entirely on this. In the youth justice system there is innovation that the whole prison system could learn from. The Offender Health Research Network at the University of Manchester have developed the Comprehensive Health Assessment Tool (CHAT). The CHAT is a standardised approach to screening and assessment for all young people (11 to 18), used to build up a comprehensive picture of any health problems they face.

The CHAT begins with an initial assessment – a 'reception screen' – before the first night in custody, to assess for urgent/immediate physical and mental health needs including suicide, self-harm and substance withdrawal.<sup>235</sup> A physical health assessment is then completed within three days of admission to custody. Full physical and mental health assessments are completed by a nurse and a Child and Adolescent Mental Health Services practitioner. Within five days of admission a substance misuse assessment is completed by a trained substance misuse worker and within ten days there is a neuro-disability assessment carried out by a Registered Learning Disability Nurse. This last assessment includes screening for Post-Traumatic Stress Disorder – vital for a cohort of people likely to have experienced significant levels of violence in their lives.<sup>236</sup>

The CHAT makes its own health assessments of individuals, building on information already held about them, but not relying entirely on it. For this reason, it has the potential to address some of the disparities outlined earlier in this chapter. As a submission to this review from a Lead Clinical Psychologist at a Secure Training Centre put it:

“All of the services contributing to this paper felt that the 'CHAT' process meant that they were able to ensure equitable access to their services across the boundaries of ethnicity.”

The CHAT is a new tool, which will need to be evaluated and adapted as more is learned about its strengths and weaknesses. In particular, the leaders of institutions in the youth estate will need to ensure that it, together with the new AssetPlus system, fulfils this promise of equitable access to health services. But even at this early stage it is clear that it represents a model that can be learned from and emulated in the adult estate. Prisons have various screening processes but nothing as comprehensive or rigorous as the CHAT. The prison system, working with the Department for Health (DH), should adopt a similar model for both men and women prisoners, giving prisons a greater chance of identifying the multiple and complex problems that prisoners arrive with, whatever their ethnicity.

**Recommendation 20:** Leaders of institutions in the youth estate should review the data generated by the CHAT and evaluate its efficacy in all areas and ensure that it generates equitable access to services across ethnic groups. Disparities in the data should be investigated thoroughly at the end of each year.

**Recommendation 21:** The prison system, working with the DH, should learn from the youth justice system and adopt a similar model to the CHAT for both men and women prisoners with built in evaluation.

Treatment in prison

Transition to Adulthood (T2A) report - Leaders Unlocked – July 2017

*A key message from the prisoners that we spoke to – of any racial or ethnic background – is that there is too much favouritism in the way things work in prisons. Prison officers can choose to help some people and block others, as they wield too much discretionary power.*

The way individuals are treated in prison affects their chances of rehabilitation in tangible and intangible ways. Tangibly, access to opportunities like training courses, prison jobs and behaviour management programmes affects offenders’ ability to cope without reoffending when they leave prison.<sup>237</sup> Intangibly, the extent to which prisoners believe they are treated fairly in prison has proven links both to their behaviour in custody and their likelihood of reoffending once released.<sup>238</sup>

In one landmark study undertaken in 2010/11, tracking Dutch prisoners over time, prisoners took part in a longitudinal survey and were asked to judge how fairly they felt they had been treated on a scale of 1 to 5. Those who felt that they had been treated more fairly were found to be less likely to break prison rules, less likely to suffer from problems with mental health and less likely to reoffend on release.<sup>239</sup> The same reality can be found in prisons across England and Wales: those who carry around a sense of

injustice are more likely to rebel against prison regimes, rather than start on the road to a life without offending.

Each year the prison inspectorate surveys prisoners to build up a picture, alongside the inspectors’ own observations, of how prisoners are treated and snapshot survey data are published. In 2015/16, the difference in the responses provided by BAME and White adult male prisoners was striking.<sup>240</sup> On some important measures, BAME adult male prisoners reported reduced access to opportunities and interventions that support rehabilitation. As Table 6 indicates, they were less likely to report having a prison job, taking part in offender behaviour programmes or spending ten hours outside of their cell on weekdays.

Transition to Adulthood (T2A) report - Leaders Unlocked – July 2017

*“Majority of officers were white. I used to work in kitchens and I started to hate this guy, he always had something to say to me, and it felt like he was bullying me, felt like he was being racist. He was making me suffer, giving me IEPs all the time.”  
(Workshop participant, Leicester)*

Other results from the survey are deeply worrying and unsatisfactory (see Table 7). Both men and women prisoners from BAME backgrounds who responded to the survey were consistently less likely than White prisoners to report positive relationships with prison staff. A lower proportion of BAME respondents believed staff treated them with respect, recalled staff members checking on their well-being or having a member of staff they felt they could turn to for help.

The picture worsens with questions about whether prisoners are actively mistreated. Men from BAME backgrounds were more likely than White prisoners to report being victimised, unfairly treated by the Incentives and Earned Privileges scheme (IEP), which is designed to punish and reward prisoners’ behaviour.

Table 6: BAME and White men comparison of access to a prison job, offender behaviour programmes and association time<sup>241</sup>

	BAME	White
A prison job	46	56
Offender behaviour programmes	9	10
Spending ten hours or more outside of your cell on a weekday	11	16

This is deeply counterproductive, with the data suggesting a link between perceptions of fairness and the effectiveness of the IEP scheme. BAME prisoners were not just less likely to regard the IEP scheme as fair – they were also less likely to say that it affected their behaviour. Most shocking of all, BAME prisoners were more likely to report being threatened and intimidated by staff.

### Transition to Adulthood (T2A) report - Leaders Unlocked – July 2017

*"Race played a big difference in my experience. When I was in a prison in one place it was mostly white including staff and prisoners. I felt segregated and suffered a lot of racial abuse. I was strip searched six times in three days and it was humiliating, when the people who said I was doing things were the ones actually doing it and getting away with it because they are white. My co-defendant saw what was happening and mentioned something to the guard and said I was being racially abused, to which his reply was 'good, tell someone that cares.' (Prisoner, East Midlands)*

**Table 7: BAME and White comparison of prison experiences 2016-17<sup>242</sup>**

	Adult Men		Adult Women	
Number of responses	1,513	4,866	149	541
	BAME %	White %	BAME%	White%
<b>Positive Relationships</b>				
Do most staff, in this prison, treat you with respect?	69	76	69	79
Do staff normally speak to you most of the time/all of the time during association?	14	20	14	21
Has a member of staff checked on you personally in the last week to see how you are getting on?	21	29	26	36
Is there a member of staff, in this prison, that you can turn to for help if you have a problem?	64	71	72	81
<b>Negative Treatment</b>				
Have you been victimised by staff?	36	29	31*	28*
Have staff victimised you because of your race or ethnic origin	11	2	7	1
Do you feel you have been treated fairly in your experience of the IEP scheme?	35	44	38	59
Do the different levels of the IEP scheme encourage you to change your behaviour?	38	41	41	51
<b>Safety</b>				
Have staff threatened or intimidated you?	16	14	19	10
Have staff hit, kicked or assaulted you?	7	6	2*	1*

The survey findings can be broken down further, to examine the responses of specific groups. The results show that Gypsy, Roma and Traveller prisoners were more likely than non-Gypsy, Roma and Traveller prisoners to report needing support across a range of problems, but were less likely to say that they had actually received such support.<sup>243</sup> For example, in 2014, 27% of Gypsy, Roma and Traveller prisoners reported feeling depressed or suicidal on arrival (compared with 15%). However, they were less likely to report receiving information about what support was available for this (35% compared with 44%).

Likewise, Muslim prisoners report more negative prison experience, particularly with regards to their safety and relationship with staff, than other prisoners – this is even more pronounced than the discrepancy between the reported experiences of Black and Minority ethnic prisoners compared to White prisoners.<sup>244</sup>

These worrying differences in the Her Majesty's Inspectorate of Prisons (HMIP) survey data are, of course, the perceptions of prisoners. But the pattern is too consistent to be ignored. In any case the question is simply what kind of problem the prison service has: are BAME prisoners treated less respectfully, fairly and safely by prison officers – or is there simply endemic mistrust between BAME prisoners and prison staff?

Individual prisons should already be making far better use of data, including information from HMIP and Measuring the Quality of Prison Life (MQPL) surveys, but a more systematic approach is also needed.<sup>245</sup> Part of the answer could be found by requiring much greater transparency around key aspects of prison life. The recent prisons white paper sets out a range of new datasets that will be collected and published in the future.<sup>246</sup> These data include measures such as the number of hours prisoners have worked in industry, the quality of work opportunities offered by prisons and time spent by prisoners out of their cells engaging in purposeful activity.<sup>247</sup> Regrettably, the 68 page white paper made no mention of ethnicity, but there is still an opportunity to correct this. The data envisaged in the white paper should be collected and published with a full breakdown by ethnicity.

Another important area lacking in transparency on the treatment and outcomes for BAME prisoners is the Parole Board, which carries out risk assessments on prisoners and manages early release for those serving fixed-length sentences of four years or more and those serving life or indeterminate sentences.<sup>248</sup> Currently no figures are published showing whether prisoners of different ethnicities are released in similar proportions through this process. To allow for effective scrutiny, the Ministry of Justice (MoJ) and the Parole Board should report on the proportion of prisoners released by offence and ethnicity. If possible, this data should also cover the proportion of each ethnicity who also go on to reoffend.

**Recommendation 22:** The recent prisons white paper sets out a range of new data that will be collected and published in the future. The data should be collected and published with a full breakdown by ethnicity.

**Recommendation 23:** The MoJ and the Parole Board should report on the proportion of prisoners released by offence and ethnicity. This data should also cover the proportion of each ethnicity who also go on to reoffend.

#### **Prisons and Probation Ombudsman – Written submission to Call for Evidence: June 2016**

*From my office's perspective, more work should be carried out by staff in communicating the appropriate policies and procedures across prison establishments; and then correctly following these procedures.*

#### **Transition to Adulthood (T2A) Alliance – Written submission to Call for Evidence: June 2016**

*Poor procedures for administering the IEP and prison adjudications process may contribute to the perception of unfairness and disproportionate outcomes.*

A central theme of this report is that exposing decision-making to scrutiny is the surest route to ensuring fair treatment. Publishing better quality information is part of this, but is not enough on its own. The adjudications system – a disciplinary measure – in prisons provides another example of how this principle can be put into practice. Analysis commissioned for this review indicates that based on 2014/15 data, adjudications were disproportionately brought (charges made) against adult male BAME prisoners from a Black or a Mixed ethnic background. Adjudications are brought by individual officers. But the analysis showed that when the case was reviewed by a panel, adjudications against all adult male BAME prisoners were less likely to be upheld. The lesson is that oversight provides an important corrective.<sup>249</sup>

#### **Clinks – Written submission to Call for Evidence: June 2016**

*Participants in Clinks consultations also raised this lack of transparency in prison procedures, feeling that there seemed to be no clear process to securing certain jobs in prison, to be upgraded or downgraded on the IEP scheme, or to move to different categories of prison. This could mean that decision-making is down to staff discretion and therefore affected by conscious and unconscious bias against BAME prisoners. The lack of transparency in these processes was demotivating to prisoners and increased mistrust between prisoners and staff through deepening perceptions of staff racism and discrimination.*

These systems of oversight become more important for issues which are either particularly contentious or particularly serious. The IEP system – also criticised in the latest annual report from the Chief Inspector of Prisons<sup>250</sup> – falls into the first of these categories. The direction of national policy is to give prison governors greater powers. If and when this happens in relation to IEP policies, each prison governor should ensure that there is forum in their institution for both officers and prisoners to review the fairness and effectiveness of their regime. Both BAME and White prisoners should be represented in this forum.

Governors should, of course, make the ultimate decisions in this area, but this kind of dialogue between leadership teams, officers and prisoners would help resolve concerns over the design and enforcement of IEP regimes. Research by Clinks indicates that most prisons already have forums such as a prison council: where these exist they should be used to address IEP grievances – and where they do not they should be established.<sup>251</sup>

**Recommendation 24:** To increase the fairness and effectiveness of the IEP system, each prison governor should ensure that there is forum in their institution for both officers and prisoners to review the fairness and effectiveness of their regime. Both BAME and White prisoners should be represented in this forum. Governors should make the ultimate decisions in this area.

The use of force by prison officers falls into both categories – it is both contentious and serious. There will always be times when officers have no option but to use force, either to protect themselves, maintain order or, to enforce prison rules. However, the Chief Inspector of Prisons was also clear on this issue, reporting that 'In half the prisons inspected we found inadequate governance and made main recommendations about the use of force...In almost two-thirds of inspected prisons, the use of force was increasing and/or high. In many prisons we were not assured that all cases were warranted, proportionate or de-escalated quickly enough.'<sup>252</sup>

Especially in the absence of data, governance must be exemplary. All prisons must have in place a Use of Force Committee to monitor and guard against any issues or problems with it.<sup>253</sup> Prisoner governors should maintain discretion over the precise membership of these committees, but should ensure that the committees are not ethnically homogenous and involve at least one individual, such as a member of the prison's Independent Monitoring Board (IMB), with an explicit remit to consider the interests of prisoners. Furthermore, there should be escalating consequences for officers found to be misusing force on more than one occasion. The innovative 'Reasonable

Grounds Panel' created by Northamptonshire Police force, described in Chapter 2, could provide a model of governance to deal with this. In Northamptonshire, police officers are initially required to undertake training if they are found to have misused Stop and Search powers, but risk having search powers withdrawn if they were used improperly.

**Recommendation 25:** Prison governors should ensure Use of Force Committees are not ethnically homogeneous and involve at least one individual, such as a member of the prison's IMB, with an explicit remit to consider the interests of prisoners. There should be escalating consequences for officers found to be misusing force on more than one occasion. This approach should also apply in youth custodial settings.

The ultimate backstop to address discrimination in prisons is the complaints system. Yet recent research, published jointly by the Prison Reform Trust and the Zahid Mubarek Trust suggests that the complaints systems in prisons cannot be relied upon. Researchers were invited in by eight prisons to 'provide external scrutiny of the complaints process in relation to allegations of discrimination' (p. v). They examined 610 investigations from eight prisons in 2014.<sup>254</sup> Prisoners submitted 70% of the discrimination reports and staff, 30%. The majority were about race (62%), but religion (15%) and disability (10%) were also reflected in the complaints. The results of the study show only 1% of prisoners alleging discrimination by staff had their case upheld. The researchers concluded that 'the system for handling discrimination complaints in prisons is neither fair nor impartial, does not have the confidence of prisoners, and is failing to provide prisons with the opportunity to learn and provide more equitable treatment'.<sup>255</sup>

## HOW PRISONS DEAL WITH COMPLAINTS

The system in prisons for handling allegations of discrimination begins with a discrimination incident reporting form (DIRF). Anyone – prison officers, prisoners, visitors to prisons, or others – can report discrimination.<sup>256</sup>

Prisoners witnessing or being subject to discrimination submit a complaints form or a DIRF.

DIRFs concerning serious incidents and/or allegations of misconduct by staff should be referred for investigation. The prisoner should be informed that this is what has happened, and the outcome of the investigation that is relevant to them. DIRFs concerning other issues should be handled by a manager.

### Logging/sign off and quality control

DIRFs should be logged on receipt and response, and the outcome should be noted on completion. To ensure effective responses, a sign off or quality control process involving a senior manager should be used.

### Management information

The DIRF log should be analysed and relevant information used to inform action. This should include trend analysis of the nature and location of incidents as well as patterns of involvement of particular individuals.<sup>257</sup>

**Recommendation 26:** HMPPs should clarify publicly that the proper standard of proof for assessing complaints is 'the balance of probabilities'. Prisons should take into account factors such as how officers have dealt with similar incidents in the past.

The Prison Reform Trust/Zahid Mubarek Trust report makes a further recommendation, that a 'problem-solving approach' could contribute to greater trust in the complaints system.<sup>260</sup> In practice, this means using the complaints process as an opportunity to fix problems, not simply make judgements about wrong-doing. For example, an investigation may conclude that a prisoner has been improperly denied their property, but not due to discrimination. A problem-solving approach would not just deliver a verdict, but ensure that the property is returned swiftly and make recommendations about how to avoid a repeat of the problem in the future. A simple way of encouraging this approach would be for all complainants to state what they want to happen as a result of the investigation. Simple measures like this would contribute to a change in culture in prisons, helping break down the 'us and them' mentality among many prisoners which can lead to poor behaviour and even disorder.

**Recommendation 27:** Prisons should adopt a 'problem-solving' approach to dealing with complaints. As part of this, all complainants should state what they want to happen as a result of an investigation into their complaint.

This Prison Reform Trust/Zahid Mubarek Trust study identified a number of problems, including the wrong standard of evidence being applied in some cases. Case files included one record which stated 'cannot conclude beyond reasonable doubt that discrimination took place'. The proper standard of proof should be 'the balance of probabilities' – whether is more likely than not that the alleged event occurred. This is not the first time a study has identified this problem of how prisons deal with complaints.<sup>258</sup> Her Majesty's Prison and Probation Service (HMPPS) should clarify that this standard of proof applies to allegations of discrimination.

The Prison Reform Trust/Zahid Mubarek Trust study also identified the challenge of addressing discrimination which can be difficult to prove. Objective evidence of discrimination can be rare, with actions open to different interpretations. This is a challenge faced by other public services and requires a sophisticated response. For example, a recent report by the Independent Police Complaints Commission (IPCC) recommended that investigation procedures should take into consideration how officers have dealt with similar incidents in the past.<sup>259</sup> This approach should also be adopted in prisons to ensure that complaints are dealt with rigorously and fairly.

## Changing culture

### Young Review Written submission to Call for Evidence: June 2016

*We now have several prisons with BAME majority populations based in rural areas with no BAME staff.*

### Clinks – Written submission to Call for Evidence: June 2016

*It is essential that services are provided that respond to the specific needs of BAME prisoners and have a good understanding of BAME experiences and cultures.*

### Transition to Adulthood (T2A) Alliance – Written submission to Call for Evidence: June 2016

*The 2008 National Offender Management Service (NOMS) race review recognised the importance of increasing the diversity of prison staff and made recommendations to achieve this, including improvements to the processes of selection, monitoring, leadership, staff training and support.*



One of the key drivers of prisons' culture and ethos is the make-up of the staff base. Currently, just 6% of prison officers come from BAME backgrounds.<sup>261</sup> When set against a population that was 14% BAME at the 2011 Census and a prison population that is 26% BAME overall, this only serves to accentuate the divide between those who enforce the rules and those who must comply with them.<sup>262,263</sup>

HMPPS has a unique opportunity to address this, with the recruitment of 2,500 prison officers. Surveys of the working-age population indicate that, in fact, BAME members of the public are as attracted to working in the prison system as their white counterparts. The challenge is for HMPPS to cast the net wide enough to attract talented BAME candidates – and ensure that the recruitment process neither disadvantages or discourages them if and when they do apply.

Other key public services have clear targets for BAME recruitment, agreed by Ministers and signed up to by the government. For example, the armed forces are committed to a target that, by 2020, 10% of all new recruits will come from BAME backgrounds.<sup>264</sup> Similarly, the police force is committed to 20% of new police officer recruits coming from BAME groups by 2020.<sup>265</sup> Given the evidence suggesting that the prison system is an attractive employer for BAME communities, prisons should be expected to recruit in similar proportions to the country as a whole from now on. Leaders of prisons with diverse prisoner populations should be held particularly responsible for achieving this when their performance is evaluated. IMBs are described in the Prison Safety and Reform white paper as the Secretary of State's 'eyes and ears' in prisons, but just 5% of IMB chairs are BAME.<sup>266</sup> IMBs should improve their recruitment in the same vein as the prisons they monitor.

What is right for the prison service as a whole is right for its leadership. The prison workforce needs to become more diverse, to build trust in the system among prisoners, but this must go right to the top of organisational hierarchies. Ultimately, leaders set the tone in organisations and it is deeply unhealthy that so few BAME individuals have made it to positions of power in our prison system. The prison service should also set public targets for moving a cadre of BAME staff through into leadership positions over the next five years. This should sit alongside performance indicators for prisons that aim for equality of outcome for BAME and White prisoners.

**Recommendation 28:** The prison system should be expected to be recruit in similar proportions to the country as a whole. Leaders of prisons with diverse prisoner populations should be held particularly responsible for achieving this when their performance is evaluated. IMBs, should also match this target in their recruitment.

**Recommendation 29:** The prison service should set public targets for moving a cadre of BAME staff through into leadership positions over the next five years.

**Recommendation 30:** HMPPS should develop performance indicators for prisons that aim for equality of treatment and of outcomes for BAME and White prisoners.

## Conclusion

There are worrying disparities in the prison system and youth estate. Key aspects, how prisoners are assessed on reception, require urgent reform. There should also be more transparency and oversight over areas of prison life that are either controversial or important, including the IEP system and the use of force. Ultimately, there must also be more effective systems of redress when things go wrong.

There are many dedicated prison officers working in a service that is short of staff and must deal with challenging, and sometimes dangerous, individuals. In such challenging circumstances, though, it becomes more important, not less, that there are systems in place to ensure that decisions are taken rigorously and transparently, without bias – either conscious or unconscious – creeping in.

However, more than any of these individual reforms, the culture of prisons must change, so that there is far less of a 'them and us' division between prison officers and BAME inmates. The greatest contribution that can be made to this is diversifying the prison workforce, including leadership teams.

The next chapter examines how this process continues when prisoners are released from custody.

# Chapter 6: Rehabilitation



## Introduction

Reoffending is estimated to cost the taxpayer between £9.5 and £13 billion per year, with half of all crime committed by those who have already been through the criminal justice system (CJS).<sup>267</sup> The prize for ensuring that offenders who have been through the system do not slip back into old habits, is significant.

Black, Asian and Minority Ethnic (BAME) reoffending rates vary. For example, Asian men, women, boys and girls all reoffend at lower rates than their White counterparts.<sup>268</sup> Black women and girls also reoffend at lower rates than White women and girls.<sup>269</sup> However, Black men and boys reoffend at the highest rates<sup>270</sup>, with 45% of Black boys reoffending within a year of being released from custody, receiving a reprimand, a warning or a non-custodial conviction at court.<sup>271</sup>

Reoffending is particularly high for young Black boys, with over half (51%) of the 10-14 age group reoffending within a year, compared to 40% for White boys.<sup>272</sup> These figures for Black men and boys present a major challenge to probation services, Youth Offending Teams (YOTs) and to communities themselves.

This chapter focuses on rehabilitation in the community. It argues:

- That the reforms to probation services introduced in 2014 were intended to produce more responsive probation services, delivered by specialist providers attuned to the needs of particular groups. However, they have not lived up to their billing. Small providers have found themselves squeezed out, while objective judgements from inspectorates<sup>273</sup>, the National Audit Office (NAO)<sup>274</sup> and parliamentary select committees<sup>275</sup> all suggest that rehabilitation had not been transformed, at least not for the better.
- There is a lack of accountability for meeting the needs of those with protected characteristics, including BAME offenders – both adult and children. The equality duty too often produces only a superficial, tick-box approach. In future, all Community Rehabilitation Companies (CRCs) should publish detailed information about outcomes for different ethnic and religious groups.

- The youth system faces the biggest challenges on BAME reoffending, but has been slow to act. Since 2011, the Youth Justice Board (YJB) has been piloting BAME disproportionality tools to help YOTs identify problems in their areas – from spikes in particular offences, to the rate at which offenders from different ethnic groups breach license conditions.<sup>276</sup> However, not enough has been done to build on these pilots. Meanwhile, the proportion of BAME reoffenders has been growing.
- The youth justice system must do more to inform local communities about the problems in their areas, so that they can contribute insights and practical support. Statutory services are not the only ones who need the data. The lesson from other jurisdictions such as Canada and New Zealand, is that local communities can provide insight and vital support to reduce reoffending, when they are included in the conversation.
- The government must recognise that the efforts of probation services, YOTs and ex-offenders themselves are being hamstrung by a criminal records regime that is a real barrier to employment. This is a particular problem for young men and women at the start of their careers. Over the last five years 22,000 BAME under 18s have had their names added to the national police computer database.<sup>277</sup> The criminal records regime should not only make a sharper distinction between adults, there should also be an opportunity for ex-offenders to present the case, before a judge, that they should have their criminal record sealed.

## Probation

### IARS International Institute – Written submission to Call for Evidence: June 2016

*There is great potential for criminal justice agencies to utilise a restorative justice approach to improve relationships with BAME communities. Firstly, this would result in communities having increased trust and confidence in the system which would facilitate greater engagement and improved outcomes. Secondly, it would also lead to better understanding of communities and communities' needs by criminal justice agencies that could better inform service design and improve delivery.*

### Young Review/Black Training and Enterprise Group (BTEG) – Written submission to Call for Evidence: June 2016

*There is a need to ensure an analysis of the needs of BAME Muslim offenders, and actions to address them are built into the government's reform programmes to ensure equitable outcomes. Ministry of Justice (MoJ) and National Offender Management Service (NOMS) must ensure this opportunity for innovation and new approaches to address these negative perceptions that hinder rehabilitation and desistance among BAME offenders are fully utilised.*

### HM Inspectorate of Probation: An Inspection of Through the Gate Resettlement Services for Short-Term Prisoners

*We have found CRCs' efforts pedestrian at best. What is more, they are often hampered and frustrated by ineffective early screening of prisoners. These are done by busy prison staff and are simply not fit for the purpose they should serve. In our view, this system must change materially so that those responsible and accountable for rehabilitation (CRCs) can get off to a good start in each case.*

In 2014, adult probation services were fundamentally reformed. 35 probation trusts across England and Wales were replaced with a single National Probation Service (NPS), responsible for supervising the most high-risk offenders, and 21 CRCs dealing with low to medium-risk offenders.<sup>278</sup> Ownership of the CRCs was put out to competition, with potential suppliers bidding for contracts.

#### Payment by results for CRCs.<sup>279</sup>

The CRCs receive three main payments under their contracts:

1. A 'fee for service', for the satisfactory completion of contractually mandated activities with offenders;
2. A 'fee for use' to cover work done for other parties, particularly where the NPS commissions CRC to provide specific services for its own higher-risk offenders. It is forecast that fee for use payments to CRCs in 2015-16 will be some £20.6 million in England and £1.8 million in Wales<sup>280</sup>; and
3. Payment by results, calculated on an assessment of reductions in reoffending over a monitoring period of 12 months, based on scaled payments of up to £4,000 per offender who desists and £1,000 per offence avoided<sup>281</sup>.

Payment by results represents around 10% of total predicted payments to all CRCs.

The new model was intended to be more responsive to the needs of different groups of offenders. Suppliers were supposed to have incentives to find innovative solutions to reduce reoffending via a 'payment by results' mechanism, (see box below), whilst they would also have the option to subcontract with other organisations capable of offering specialist expertise. In theory, this should have helped meet the specific needs of different BAME groups, who may require services sensitive to cultural contexts or attuned to specific needs. For example:

- The Muslim Women in Prison project has found that 'there is a lot of stigma and taboo surrounding Muslim women in prison', whilst 'attitudes towards Muslim men and women offenders, for whatever reasons, are very different'.<sup>282</sup> The problem, the report argues, is not with attitudes in some parts of the Muslim community itself, but that some organisations have proven hesitant to work with Muslim women due to a mixture of stigma and ignorance of the cultural context. Successful services can only be delivered by organisations properly attuned to these issues.

- Many Gypsies, Roma and Travellers (GRT) have no fixed abode and have lived lives somewhat detached from public services. There is very little research into the needs of adult offenders from GRT backgrounds, but recent work looking at the needs of under 18s in custody found that GRT boys were less likely than others in custody to know who to contact for help with opening a bank account, finding accommodation to accessing healthcare services in the community. Probation services insensitive to these issues are always likely to fail – as the Traveller movement and others have argued, it is likely that GRT prisoners will need tailored support both in prisons and on release.<sup>283</sup>
- Some issues are not specific to a particular group, but may be more likely to be present for members of it. Black young men have the highest reoffending rates, for example (see box on next page).<sup>284</sup> Over half of Black boys have grown up in lone parent households and would benefit from male mentors in their lives. For many, these mentors will have credibility only if they understand the communities they live in.

### Chief Inspectors of Prison and Probation

*If Through the Gate services were removed tomorrow, in our view the impact on the resettlement of prisoners would be negligible.*

So far, the theory of CRCs has not matched the reality. A joint inspection by Her Majesty's Inspectorate of Probation and HM Inspectorate of Prisons (HMIP) published in 2017 found that offenders managed by the NPS were more likely to receive the types of support they needed than those managed by CRCs. The NPS was more likely to have helped offenders find accommodation, access training or employment or address problems with finance, debt or benefits.<sup>285</sup>

Meanwhile, the promise of larger providers sub-contracting effectively to those with specialist expertise has not materialised as many had hoped. BAME voluntary organisations, with specialist knowledge and networks, are among those who might have been expected to have been part of these supply chains. A report by the Baring Foundation on BAME voluntary sector organisations found that, 'funding for BAME organisations is around half the average, and surveys of BAME groups indicate they are experiencing more rapid reductions in their funds than mainstream charities.'<sup>286</sup>

If the CRC model is to continue, then more needs to be done to ensure that smaller, charitable providers have a place in the system. The MoJ, which commissions CRCs, should take the lead, bringing together a working group to discuss the barriers to more effective sub-contracting. The working group should involve the CRCs themselves and a cross-section of smaller organisations, including some with a particular focus on BAME issues, as well as umbrella

bodies like Clinks. The group should meet regularly and work through what is needed to make the system operate in the way it was intended to.

**Recommendation 31:** The MoJ should bring together a working group to discuss the barriers to more effective sub-contracting by CRCs. The working group should involve the CRCs themselves and a cross-section of smaller organisations, including some with a particular focus on BAME issues.

There is also a specific problem with accountability for BAME outcomes. As organisations delivering public services, CRCs are subject to the public sector equality duty<sup>287</sup>. Many produce annual equalities reports in response to this duty. It is a weak form of accountability. I have found the CRC reports to be variable in quality, with some rigorous and data-rich but others vague and impressionistic at best. Some offer only cursory accounts: as little as two sentences covering the ethnicity of offenders, and a complete absence of any data on outcomes. This tick-box approach is not good enough.

Some CRCs provide a detailed breakdown of services to different ethnic and religious groups<sup>288</sup> – this should be a requirement for them all. It will only happen on a consistent basis if government specifies, in detail, the data CRCs should publish. This should be written into contracts and enforced with penalties for non-compliance. The data should be published in a format that allows contract managers and those outside – from civil society campaigners to parliamentary select committees, or the NAO – to scrutinise CRCs' performance. As this report has argued throughout, the best results are achieved when actions are subjected to scrutiny.

**Recommendation 32:** The MoJ should specify in detail the data CRCs should collect and publish covering protected characteristics. This should be written into contracts and enforced with penalties for non-compliance.

## Youth reoffending

### Transition to Adulthood (T2A) Alliance – Written submission to Call for Evidence: June 2016

*BAME young adults face higher levels of deprivation and disadvantage which may make their offending and reoffending more likely. For example, young black men have the highest unemployment rate amongst young adults in the UK, with just under 50% being unemployed.*

### Prisoner Learning Alliance – Written submission to Call for Evidence: June 2016

*Relationships and building 'social capital' is a key element of desistance theory. In the recent thematic review by the Inspectorate of Probation into desistance for young people they found that 'The most consistent theme to emerge from the analysis of their responses was the importance of a positive, trusting working relationship with at least one member of staff.'*

By contrast with adult services, the youth justice system has been far quicker to identify and acknowledge the growing disparity in outcomes for BAME offenders. These differential outcomes are particularly stark for young Black offenders (see box below).

### Youth Reoffending rates<sup>289</sup>

In March 2015, the proportion of offenders aged 10-17 that reoffended varied by ethnic group, as follows:

- 46% for those recorded as Black;
- 38% for those recorded as White;
- 38% for those recorded as Other ethnic group;
- 33% for those recorded as Asian.

However, despite the undeniable success of the YJB and YOTs in reducing the overall number of first time entrants into the criminal justice system and the number of children in youth custody, progress in tackling differential outcomes for BAME young people has been alarmingly slow.

In 2010, the YJB published 'Exploring the needs of young Black and Minority ethnic offenders and the provision of targeted interventions'.<sup>290</sup> This report found 'there is a need to improve ethnicity recording practices across YOTs and the secure estate, in particular for Mixed ethnic young people. If the youth justice system is to respond appropriately to the needs of all young people, it is essential that it has the correct data with which to do this'. It went on to say 'accurate recording of a young person's ethnicity is an imperative, both at a national and local level, if services are to be planned and delivered effectively.'

In 2011 the YJB added an ethnicity aspect to its live-tracking monitoring tools and promoted it to practitioners in the sector.<sup>291</sup> As the YJB put it at the time, it 'was developed following requests from YOTs, and in recognition that addressing issues of disproportionality is central to YOTs' performance.'<sup>292</sup>

But at the time of writing, the Youth Justice Resource Hub, YJB's online resource for the youth justice community and 'one-stop-shop' for practitioners, has only four examples of best practice specific to working with BAME children, and a guide for restorative justice practitioners on working with BAME children'.

In 2014 the YJB began work on a pilot of a 'disproportionality toolkit' which was initially tested with 2 YOTs. In 2015 a further phase, with 14 YOTs taking part, was launched. Broadly the disproportionality toolkit aimed to pinpoint more substantive differences in outcomes for ethnic minorities at various stages during their journey through the CJS.

Using data from 2014-2015, the YJB conducted initial, high level, analysis of the findings of each YOT that took part. This identified some serious causes for concern for the individual YOTs. For example, there were cases where:

- BAME, and specifically Black children, were more likely to be remanded to youth detention (custody) than their White counterparts;
- There was evidence of BAME children committing less serious crimes, yet still receiving custodial sentences;
- There was evidence of BAME children entering the CJS at a younger age than their white counterparts; and,
- BAME children were more likely to reoffend than their white counterparts.



Despite these causes for concern, a comprehensive analysis of the findings was never carried out, leaving the opportunity to learn lessons across the youth justice system unrealised. Given that the overall proportion of BAME children reoffending has continued to increase since 2011, and the significant potential for many of this cohort to end up in the adult system through persistent reoffending, these lessons need to be identified and acted on with some urgency.

The YJB should set out not just what it has learned from the data about BAME disproportionality but also the most effective steps than YOTs have taken to address it. The report should be frank about the challenges that have arisen in the pilot stage, including when individual YOTs have been slow to act on the information they have been given.

**Recommendation 33:** The YJB should commission and publish a full evaluation of what has been learned from the trial of its 'disproportionality toolkit', and identify potential actions or interventions to be taken.

It is not just YOTs who need a fuller picture of the problems in their areas that lead to offending and reoffending behaviour. Communities need better and more readily accessible information too if they are going to become part of the solution to deep-rooted problems like knife or drug-related crime in England and Wales. Statutory services will never be able to solve these problems alone – they cannot unless they have the support of parents, teachers, doctors, community leaders, faith institutions and others who share the daily responsibility for young people.

One model for community involvement can be found in New South Wales, Australia. A ground-breaking project has seen a partnership built in the town of Bourke not just between different services, or even different sectors, but with the local community itself. This has meant much more than the standard model of consultation, in which policymakers set out their plans and invite others to comment. Rather, the Bourke project, led by an organisation named 'Just Invest', has involved a much more deep-rooted conversation about the problems in the area and how responsibility might be shared for resolving them (see box in next column). This approach can only work when communities themselves are given access to the data about life in their area. This connects their experience and insights with the bigger picture.

### NEW SOUTH WALES – COMMUNITY INVOLVEMENT<sup>293</sup>

Bourke, a small town in New South Wales, Australia, has been pioneering a new approach to involving the local community in finding the best ways to reduce crime and reoffending. The project began with the realisation that over \$4 million each year is spent locking up children and young people in Bourke (population 2,047).

Data has been collected to tell a story about a young person's passage through the CJS on measures such as offending, diversion, bail, sentencing and punishment, and re-offending rates. But the project has not just been confined to the CJS itself. Data has also been collected on outcomes in early life, education, employment, housing, healthcare, child safety, and health outcomes, including mental health and drugs and alcohol. The data has been shared and discussed with community members in forums led by local facilitators. The feedback from the community then informed the development of a plan setting out what success would look like and how it ought to be measured.

The programme also takes funding seriously. In the planning phase, a service map was put together to show where the flow of money goes, beginning in 'early years', and following through to the CJS. During the implementation phase, scheduled for 2016 to run until 2019, economic modelling will be undertaken to demonstrate the savings associated with the strategies they have identified to reduce offending. The next stage of the project is to agree pooled funding, for which they will need a strong business case and backing from the Treasury.

## Work, Education and Training

### Unlock – Written submission to Call for Evidence: June 2016

*People from all backgrounds struggle after they have left the CJS – this is often, in part at least, as a result of the criminal record that they carry with them. The stigma and discrimination by society generally towards people with criminal records, and the attitudes of employers, housing providers and insurers in particular, makes it difficult for people with criminal records to lead positive lives in the future.*

### Magistrates Association – Written submission to Call for Evidence: June 2016

*Given the impact of previous criminal records on pre-sentence reports (PSRs), any previous disproportionality in the CJS could in its turn feed into later recommendations.*

Ex-offenders need effective services and supportive communities, but above all else, they need work. A job removes dependence on criminality for income, and an opportunity for education or training boosts self-respect and gives ex-offenders a stake in society and in their own future.

Prisoners who find work on release are less likely to reoffend than those who do not.<sup>294</sup> Ethnic groups with higher unemployment rates also have higher reoffending rates.<sup>295</sup> For example, two years after a caution, conviction or release from custody, 28% of Asians were unemployed, compared with 40% unemployment among Black ex-offenders.<sup>296</sup> Black offenders have the highest reoffending rates and Asians the lowest.<sup>297</sup>

The prison and probation services spend millions of pounds each year on initiatives to increase offenders' 'employability', whether through education and training, CV help, work experience or coaching for interviews. Similarly, YOTs and their local delivery partners are tasked with achieving this for children. But one of the most significant barriers to any ex-offenders' prospects of employment is created by public policy: the criminal records regime.

The key legislation governing past convictions are The Rehabilitation of Offenders Act 1974 (ROA) and legislation establishing the Disclosure and Barring Service (DBS).<sup>298</sup> The ROA sets out how long offenders must wait after a conviction or prison sentence before a criminal record is 'spent' and need no longer be disclosed on a job application.<sup>299</sup> For example, any adult serving a prison sentence of more than 30 months but less than four years must wait seven years after their sentence has been complete for their criminal record to be spent.<sup>300</sup> Sentences of more than four years will never be 'spent' for either adults or children (see Table 8). In addition, there are some jobs for which offences may be 'spent', but will still show up on standard and enhanced criminal record checks – known as DBS checks. These include working in the care sector or becoming a licensed taxi driver.

**Table 8: Length of time for sentences to become spent<sup>301</sup>**

Type of sentence		Adult	Child
Prison sentence (including suspended sentence)	Over 4 years or public protection sentence	Never spent	Never spent
	Greater than 30 months and less than (or equal to) 4 years	Full sentence + 7 years	Full sentence + 3.5 years
	More than 6 months and less than (or equal to) 30 months	Full sentence + 4 years	Full sentence + 2 years
	Less than or equal to 6 months	Full sentence + 2 years	Full sentence + 18 months
Community order/Youth rehabilitation order		Full length of the order + 1 year	Full length of the order + 6 months

Employers may carry out either basic, standard or enhanced checks, depending on the job an individual is applying for (see Table 9) – some employers do not ask for checks at all. Since 2013, a new process of ‘filtering’ has been introduced, which means that even for standard and enhanced checks some old, minor convictions and cautions

will not be disclosed. For example, theft, and drunk & disorderly, are offences which will, after some years, be filtered (provided the applicant does not have multiple convictions). However, there are some offences, such as affray or supplying drugs, which can never be filtered.<sup>302</sup>

**Table 9: Types of Criminal Records Checks<sup>303</sup>**

Type	Revealed by:		
	Basic check	Standard check	Enhanced check
Unspent convictions	Yes	Yes	Yes
Spent convictions		Yes (unless filtered)	Yes (unless filtered)
Cautions		Yes (unless filtered)	Yes (unless filtered)
Relevant local police records			Yes
Information on barring lists relating to children/ adults			Yes
Jobs employers can require check for	<ul style="list-style-type: none"> <li>Government/ civil service positions</li> <li>Jobs in airports</li> <li>Office work</li> <li>Hospitality industry</li> <li>Retail, supermarkets</li> <li>Personal licence to sell alcohol</li> </ul>	<ul style="list-style-type: none"> <li>Security industry licence</li> <li>Solicitor or Barrister</li> <li>Accountant</li> <li>Veterinary surgeon</li> <li>FCA Approved roles</li> <li>Football stewards</li> <li>Traffic warden</li> <li>Locksmiths</li> </ul>	<ul style="list-style-type: none"> <li>Working with children and vulnerable adults</li> <li>Teacher</li> <li>Social worker</li> <li>NHS professional</li> <li>Carer</li> <li>Taxi driving licences</li> </ul>

Over the last five years, 127,000 children have had their names added to the national police computer database.<sup>304</sup> Of these, 22,000 were BAME. These will cover a wide range of offences, including minor offences, involving a police caution or reprimand. Their names could show up in the future on record checks for careers ranging from being an accountant or lawyer to working as a traffic warden or football steward.<sup>305</sup>

Our criminal records regime was created to protect the public but it is having the opposite effect. By putting barriers in the way of employment, the system is trapping offenders in their past, denying dependents an income, and costing the tax-payer money. A 2016 YouGov survey found that half of respondents would not consider employing an offender or ex-offender.<sup>306</sup> Meanwhile, offenders themselves are discouraged from applying for jobs. One survey of inmates at HMP Nottingham found that 91% wanted to work upon release, but only a third of respondents said they would apply for a job with a conviction history box on the application form.<sup>307</sup>

The impact of our criminal records regime on children and young adults is a particular concern. As the Taylor Review of Youth Justice acknowledged, the evidence is that most young people grow out of crime. Maturity comes at different ages for young people but, on average, an individual in their mid-20s is significantly less likely to reoffend than they were just a few years earlier (see Figure 7). For BAME young people there is a double penalty, with studies showing that simply having a name associated with a Pakistani, Bangladeshi, Indian, Chinese or Black Caribbean background can reduce the chances of candidates gaining a job interview.<sup>308</sup>

People can change quickly but their criminal record does not. For example, an 18 year-old serving a seven-month sentence will wait until their mid-20s before their conviction is spent – and even then, only for some jobs.

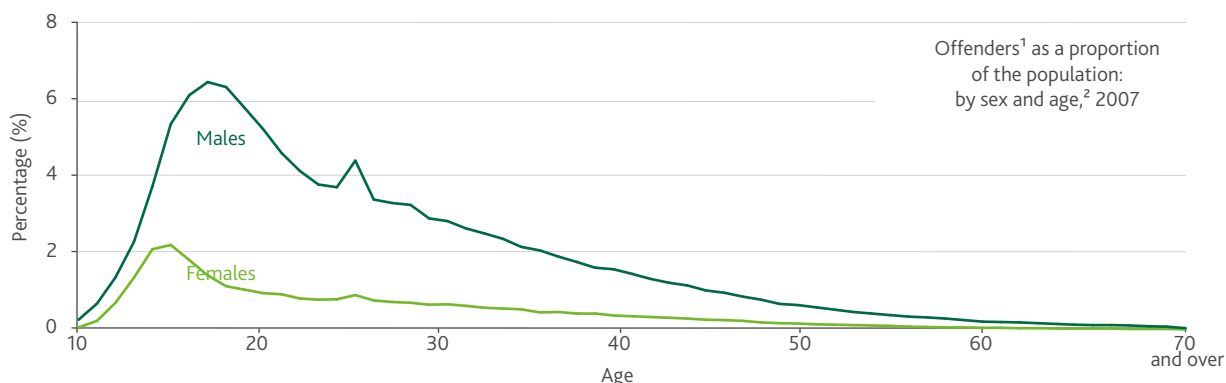
Selling drugs as a teenager could prevent you becoming a plumber or licensed taxi driver in your thirties. Often young adults can find a criminal record holding them back in the key period in their working lives.<sup>309</sup>

The criminal records system needs reform and a growing number of voices recognise this. There is a nationwide campaign to 'Ban the box', which seeks to remove the criminal record disclosure tick box from job application forms. The idea is that criminal records are considered later in the job application process, giving ex-offenders an opportunity to demonstrate their skills and abilities first, rather than be written off at the outset. The initiative is voluntary, but picking up support in England and Wales, with the civil service having recently signed up.<sup>310</sup>

However, the 'ban the box' campaign deals with when criminal record checks are made during the recruitment process, rather the bigger question of whether criminal records are relevant and need to be disclosed as often as the current system prescribes. It is this question that needs to be tackled – especially for young people who have such a significant period in their working lives ahead of them – as the Taylor Review has also recognised.<sup>311</sup>

Previous reform proposals have focused on making a one-size fits-all criminal records system more generous, normally to young people. Proposals tend to involve reducing the time taken before various offences are considered 'spent'. I strongly support the Taylor Review's recommendations, set out in the box in the next column. However, I regard the one-size fits-all system itself to be unfit for purpose. A new approach is needed.

**Figure 7: Offenders as a proportion of the population: by sex and age 2007**



<sup>1</sup> People found guilty of, or cautioned for, indictable offences in 2007.

<sup>2</sup> Age 25 includes those offenders for whom age is not known.

### The Taylor Review on criminal records<sup>312</sup>

*As a point of principle, I believe that rehabilitation periods for childhood offending should be far shorter than for adult offenders. My proposals to replace existing court sentences with tailored Plans developed by Children's Panels (see Chapter 4) will necessitate changes to the relevant legislation. I believe the government should take this opportunity to reduce further the periods before which childhood convictions become spent.*

*I also believe that once childhood cautions and convictions have become spent, they should very quickly become non-disclosable, even on standard and enhanced Disclosure and Barring Service checks. In my view, the system should provide for all childhood offending (with the exception of the most serious offences) to become non-disclosable after a period of time. This would not prevent the police and courts having access to the information in future, but would protect irrelevant childhood criminality from disclosure, even if a further offence is committed after the qualifying period has elapsed.*

In other countries, there is much greater flexibility built into the system. In the US State of Massachusetts, for example, offenders who believe that they can demonstrate that they are reformed and are no longer a threat to others can petition to have their criminal records expunged (see box in next column).

### MASSACHUSETTS – SEALING CRIMINAL RECORDS<sup>313</sup>

The process of expungement in Massachusetts begins with an applicant making a formal written request to the commissioner of probation. After petition and any supporting documents have been filed with the clerk's office, the case file will be given to a District Court judge to review. A court hearing is then held if the judge determines that the application meets the preliminary legal standard for sealing.

When a date for the hearing is set, the clerk's office provides notice to the district attorney's office and probation department. At the hearing, the applicant is given an opportunity to tell the court why there is 'good cause' to seal the record and how it outweighs the public's general right to be aware of it. The court weighs up several different factors including:

- The problems for the applicant arising from their criminal record;
- Evidence of rehabilitation, indicating that the applicant would take proper advantage of their record were sealed;
- Relevant circumstances at the time of the offence that suggest the applicant will not reoffend; and
- The passage of time since the offence.

At the end of the hearing, the judge makes a decision. The clerk's office then provides a copy of the signed order to the individual and to the chief probation officer. If the decision goes the applicant's way, their record is sealed. This means that, whilst the record still exists, and can be considered by judges if an individual breaks the law again in the future, individuals do not need to disclose it in job applications.

2014 evidence from the US is that reform of criminal records regimes can boost employment rates, increasing the tax take and reducing the cost of welfare.<sup>314</sup> It is time for the next wave of reform in this country. The CJS should learn from the approach taken in Massachusetts, acknowledging that its more flexible approach gives ex-offenders, who have changed, the chance to start afresh. Each case should be judged on its own merits, either by a judge or a body like the Parole Board, but there should be a presumption in the system to look favourably on those who committed crimes either as children or young adults but who have since made every effort to reform. To ensure that the public understands the case for reform, The MoJ and the Department for Work and Pensions (DWP) should commission and publish a study indicating the costs of unemployment among ex-offenders.

**Recommendation 34:** Our CJS should learn from the system for sealing criminal records employed in many US states. Individuals should be able to have their case heard either by a judge or a body like the Parole Board, which would then decide whether to seal their record. There should be a presumption to look favourably on those who committed crimes either as children or young adults but can demonstrate that they have changed since their conviction.

**Recommendation 35:** To ensure that the public understands the case for reform of the criminal records regime, the MoJ, HMRC and DWP should commission and publish a study indicating the costs of unemployment among ex-offenders.

## Conclusion

The causes of reoffending are complex and preventing reoffending is a challenging job. However, organisations from the private sector that take on the responsibility of running probation services need to demonstrate that they are doing everything they can to make a difference. This includes for groups with protected characteristics, such as BAME offenders. The MoJ should take the lead in ensuring greater transparency and accountability in this area.

The youth justice system has identified BAME disproportionality as a problem for some time, but too little has been done to draw together the lessons of promising early work. The YJB should address this with some urgency. Meanwhile, local communities need to be enlisted to provide insights and practical support to reduce reoffending.

Finally, it must be recognised that a job is the foundation for a law-abiding life for ex-offenders, but that our criminal records regime is making work harder to find for those who need it the most. The system is there to protect the public, but is having the opposite effect if it sees ex-offenders languishing without jobs and drawn back into criminality. A more flexible system is required, which is capable of recognising when people have changed and no longer pose a significant risk to others.





# Conclusion



Given the sheer number of people from Black, Asian and Minority Ethnic (BAME) backgrounds in our criminal justice system (CJS) a review like this was overdue. Many of those who watch the CJS closely, including some of those who work in it, report that race has slipped down the list of priorities. This is reflected in policy documents that bear only passing mentions of race, ethnicity or religion.<sup>315</sup>

It is true that, in wider society, overt racial prejudice is declining. For example, the proportion of people who say that they would mind if a relative married someone from a West Indian or Asian background has fallen significantly over the last two decades.<sup>316</sup> It is also the case that younger generations, who have grown up in a more diverse country, report lower levels of prejudice than their parents and grandparents' generation.<sup>317</sup> Social norms are changing.

Nevertheless, some prejudice that was overt is now covert. A recent study in the US found one particular racial slur against African Americans is searched for on Google seven million times a year.<sup>318</sup> Sometimes, prejudice can be subtler. Consider, for example, when the word 'gang' is used, rather than 'group', in public discourse about crime. It can be used to signal ethnicity rather than to describe the links between a group of suspects.

There is also the newer field of study on 'unconscious' or 'implicit bias', which examines the risk that individuals act upon prejudices that they may not even be aware of.<sup>319</sup> This kind of bias is used to explain everything from organisations overlooking talented minority candidates,<sup>320</sup> to armed police shooting more unarmed Black than White people.<sup>321</sup> The methods used to identify unconscious bias are the subject of heated scholarly debate,<sup>322</sup> but the concept itself is increasingly mainstream.

It must be acknowledged that different stakeholders have different views on the role of these three forms of prejudice – overt, covert and unconscious – in today's CJS. Accusations of racism featured strongly in both the review's call for evidence and in qualitative research commissioned for the review.<sup>323</sup> Covert racism is a major concern for leading experts in the field.<sup>324</sup> Meanwhile, senior figures in the justice system have called for an increased focus on tackling unconscious bias.<sup>325</sup>

My conclusion is that BAME individuals still face bias, including overt discrimination, in parts of the justice system. Prejudice has declined but still exists in wider society – it would be a surprise if it was entirely absent from criminal justice settings. My focus, however, is primarily on the treatment and outcomes of BAME individuals rather than decoding the intentions behind countless decisions in a range of different institutions.

It is treatment and outcomes that I am most concerned with not least because the prescriptions for fair treatment are remarkably similar, whatever the diagnosis of the problem. As this report has argued, the best way to ensure fair treatment is to subject decision-making to scrutiny. Bringing decisions out into the open achieves two things at once. First, it encourages individuals to check their own biases. Second, it helps identify and correct them. In practice, this can mean different things in different settings, from publishing more data to allowing outside scrutiny, to governance arrangements that hold individuals to account within organisations.

As technology develops, the nature of scrutiny will need to evolve too. New decision-making tools, such as algorithms, are likely to be used more and more in the coming years – for example, to assess the risk individuals pose to others. If and when this happens, the CJS will need to find new ways to deliver transparent decision-making. In the US, there are examples of individuals being sentenced partly on the basis of software that is proprietary and therefore not open to challenge and scrutiny.<sup>326</sup> We must avoid this at all costs. This matters enormously if mathematical models inadvertently disadvantage particular groups – as some already appear to.<sup>327</sup> To pre-empt such problems, work should begin now on what accountability should look like in a world of much more high-tech decision-making.

Fairness is essential to ensure proportionate treatment, but not enough. The CJS must also be trusted by those who engage with it, if outcomes are to improve. The difference in plea decisions between BAME and White defendants is the most obvious example of this – with BAME defendants pleading not guilty to 40% of charges, compared with White defendants doing so for 31% of charges.<sup>328</sup> As this report has argued, not guilty pleas are of course appropriate when defendants are not guilty. But when an offence has been committed, a 'not guilty' plea is bad for everyone, resulting in distress for victims, expensive trials and harsher sentences for those found guilty. Plea decisions currently exacerbate disproportionate representation.

Lack of trust is a problem not just in the courts, but also in our prison system. It links directly to better behaviour and, according to international evidence, to reduced reoffending.<sup>329</sup> In adult prisons in England and Wales, BAME prisoners are less likely than White prisoners to agree they have been treated fairly by the Incentives and Earned Privileges scheme (IEP) – the primary mechanism by which prison staff manage and incentivise conduct in prison. It is no coincidence that they are also less likely to agree that IEP encourages them to change their behaviour.<sup>330</sup> Low trust leads to poor outcomes.

To build trust, the challenge is to demystify decision-making processes and bring them out into the open, so they can be better understood. Every prisoner, for example, should have access to the sentencing remarks that explain the length of their sentence. In prisons themselves, there should be forums for prisoners to discuss grievances with staff and leadership teams, as is already the case in many institutions. Alongside this, the institutions across the CJS must do much, much more to diversify staff at all levels. This should include clear, national targets to measure progress against in the coming years. Without more progress in this area, a culture of ‘them’ and ‘us’ will persist.

Building trust will take time, however. The CJS should acknowledge this and find ways to ensure that racial disparities are not magnified by it. For example, schemes that divert non-violent offenders away from custody should not rely on the traditional requirement for an admission of guilt – that way, more BAME individuals will benefit from the opportunity to turn their lives around. The evidence shows that such schemes can also improve satisfaction for victims, reduce the harm caused by reoffending and cost less in the process.<sup>331</sup> Critically, this can be done with fewer children and young adults picking up criminal records that hold them back in the future.

The justice system can also do more to share responsibility beyond its own boundaries. In recent years, other public services have developed much more sophisticated strategies for doing this. The health service focuses not just on treating illness, but also on promoting healthy living;<sup>332</sup> schools focus not only on their own teaching but also on working with parents;<sup>333</sup> police services have sought to protect a tradition that sees local communities as partners to work with – even when this is imperfect, and doesn’t go as far or fast as some members of the community would like.<sup>334</sup>

The youth justice system, in particular, can do more to ensure parents – and carers of looked after children – are ready to take responsibility for children who find themselves caught up in trouble; while lessons can be learned about involving local communities in reducing reoffending rates. More emphasis must also be placed on the adults who exploit many BAME and White working class children and young adults, drawing them into gang life. Tools such as the Modern Slavery Act, which is designed to tackle exploitation, should be used to their fullest.

These core principles – delivering fairness, building trust, and sharing responsibility – underpin the recommendations of this review. Together they offer a comprehensive approach to addressing BAME over-representation in the CJS that wastes lives and money – an economic cost estimated at £309 million a year.<sup>335</sup>

There is one final precondition for progress: leadership. This review was sponsored by two Prime Ministers and has enjoyed cross-party support. My report has necessarily focused principally on the role that public policy can play in improving the treatment and outcomes of BAME individuals. However, policy prescriptions alone ‘deliver’ nothing. Each branch of the CJS must decide on its own appetite for change. Reform must be taken on by courageous and determined leaders. This applies to politicians in charge of departments, chief executive officers in charge of agencies, as well as all the institutions of the CJS – including Youth Offending Teams (YOTs), Community Rehabilitation Companies (CRCs) and the judiciary.

I have seen for myself the difference that this can make in the best parts of our CJS. I hope that all those in leadership positions will recognise the scale of the change needed and rise to meet that challenge.



# **Annex A – Terms of reference**



## Independent Review of Black, Asian and Minority Ethnic (BAME) men and women in the Criminal Justice System.

### Terms of reference\*

1. An independent review to consider the treatment of, and outcomes for, BAME individuals within the criminal justice system (CJS) in England and Wales.
2. The purpose of the review will be:
  - I. To develop an accurate understanding, based on analysis of quantitative and qualitative data, of the factors affecting the treatment of and outcomes for BAME individuals within the CJS in England and Wales.
  - II. To identify areas for reform and examples of good practice, in the UK and beyond
  - III. To make recommendations for improvement with the ultimate aim of reducing the proportion of BAME offenders in the CJS and making sure that all suspects and offenders are treated equally, whatever their ethnicity.
3. In scope, this review will
  - I. Address all issues arising from the CPS's role onwards. As such, the review will include consideration of BAME individuals and:
    1. the prosecutorial and court systems
    2. prison and all secure institutions; and
    3. rehabilitation in the wider community
  - II. Address issues concerning both over-18 and under-18 BAME people in the criminal justice system. In doing so, it will work closely with the Youth Justice Review led by Charlie Taylor.
  - III. Work within parameters agreed by the Treasury and Ministry of Justice (MoJ) in the 2015 spending review.
4. The review will be led by the Right Honourable David Lammy MP and supported by a panel of expert advisers. It will be sponsored by the MoJ.
5. The reviewer will hold regular update meetings with ministers and will share interim findings with Secretary of State for Justice, before submitting a final report to ministers. The final report will be published and the Government will respond appropriately.

\*In November 2016, the Justice Secretary, the Right Honourable Elizabeth Truss MP, asked the Right Honourable David Lammy MP to broaden his review, in order to consider judicial ethnic diversity across tribunals, civil and family courts.

# **Annex B – Call for Evidence**

An online Call for Evidence was opened on 21 March and closed on 30 June 2016; there were over 300 responses, including members of the public, academics, individuals working in the voluntary and community sector, businesses and judicial and legal professionals. Responses were also received from the following organisations:

- Agenda
- All Party Parliamentary Group for Gypsy, Roma, Travellers
- Arts Council England
- Association of Black Probation Staff
- Association of Panel Members
- Association of YOT Managers
- Bar Council
- Baroness Corston and the Corston Independent Funders Coalition (CIFC)
- The Bell Foundation
- Catholic Association for Racial Justice and CSAN (Caritas Social Action Network)
- Centre for Crime and Justice Studies
- Children's Rights Alliance for England
- Christian's Working Together
- Clinks
- Crown Prosecution Service
- Deputy Mayor for Policing and Crime and Chief Operating Officer (London)
- Friends, Families and Travellers
- Gender Identity Research & Education Society
- Hibiscus Initiatives
- Her Majesty's Inspectorate of Prisons
- IARS International Institute
- London Criminal Courts Solicitors' Association
- Magistrates' Association
- Nacro
- National Alliance for Arts in Criminal Justice
- Prisoner Learning Alliance
- Prisons and Probation Ombudsman
- Prison Reform Trust
- Release
- Revolving Doors
- Roma Support Group
- Seetec - Kent, Surrey and Sussex Community Rehabilitation Company
- Stop Trafficking and Exploitation of Women, Children and Vulnerable Adults
- StopWatch
- Touchstone
- Transition to Adulthood (T2A) Alliance
- Unlock
- Way4ward
- Young Review supported by the Black Training and Enterprise Group and Clinks
- Youth Justice Board
- Zahid Mubarek Trust

# Annex C – Glossary of Terms

**Acronym/Term Definition**

<b>BAME</b>	Black, Asian and Minority Ethnic – this report has also considered the treatment and outcomes for Gypsies, Roma and Travellers and Muslims. This is due to their significant over representation in the criminal justice system.	<b>MQPL</b>	Measuring the Quality of Prison Life
<b>BTEG</b>	Black Training and Enterprise Group	<b>MoJ</b>	Ministry of Justice
<b>CAP</b>	Conviction Alternatives Program	<b>NHS</b>	National Health Service
<b>CARA</b>	Caution Against Relationship Abuse	<b>NHS England</b>	National Health Service, England
<b>Categorisation</b>	Prisoners are categorised according to their security risk and the threat they might pose to the public if they were to escape	<b>NOMS</b>	National Offender Management Service – became the Her Majesty's Prison and Probation Service in April 2017
<b>CHAT</b>	Comprehensive Health Assessment Tool	<b>NPS</b>	National Probation Service: a statutory criminal justice service that supervises high-risk offenders released into the community
<b>CJS</b>	Criminal Justice System	<b>OTP</b>	Operation Turning Point
<b>CPS</b>	Crown Prosecution Service – The CPS is the independent public authority responsible for prosecuting people in England and Wales who have been charged by the police with a criminal offence	<b>PFP</b>	Proportionate Force Panels
<b>CRC</b>	Community Rehabilitation Company	<b>P-Nomis</b>	Prison Service IT system for holding the data collected about each individual prisoner
<b>DBS</b>	Disclosure and Barring Service	<b>PPO</b>	Prisons and Probation Ombudsman
<b>DCMP</b>	Director's Case Management Panel	<b>PRT</b>	Prison Reform Trust
<b>DH</b>	Department of Health	<b>PSI</b>	Prison Service Instruction. There are a number of rules, regulations and guidelines by which prisons are run. These are outlined in Prison Service Instructions (PSIs) and Prison Service Orders (PSOs)
<b>DIRF</b>	Discrimination incident reporting form	<b>PSO</b>	Prison Service Order. As above, these have largely been replaced by PSIs but there are still some in use
<b>DRCJs</b>	Diversity and Community Relations judges	<b>PSRs</b>	Pre-sentence reports – produced by the National Probation Service to assist the sentencing court
<b>DWP</b>	Department for Work and Pensions	<b>RDA</b>	Race Disparity Audit
<b>GRT</b>	Gypsies, Roma and Travellers	<b>RGP</b>	Reasonable Grounds Panel
<b>HMCIP</b>	Her Majesty's Chief Inspector of Prisons	<b>RRI</b>	Relative Rate Index
<b>HMCTS</b>	Her Majesty's Courts and Tribunals Service	<b>ROTL</b>	Release on Temporary Licence
<b>HMIP</b>	Her Majesty's Inspectorate of Prisons	<b>STC</b>	Secure Training Centre – holds children under the age of 18 who have been given a custodial sentence or who are being remanded in custody
<b>HMP</b>	Her Majesty's Prison	<b>TTG</b>	Through the Gate – this term is used to encompass services for offenders leaving prison custody and returning to the community
<b>HMPPS</b>	Her Majesty's Prison and Probation Service	<b>TWP</b>	Together Women Project
<b>IEP</b>	Incentives and Earned Privileges; an internal prison policy for incentivising behaviour	<b>YJB</b>	Youth Justice Board
<b>IMB</b>	Independent Monitoring Board	<b>YOI</b>	Young Offender Institution
<b>IPCC</b>	Independent Police Complaints Commission	<b>YOT</b>	Youth Offending Team
<b>IQA</b>	Individual Quality Assessment	<b>UCL</b>	University College London
<b>JAC</b>	Judicial Appointments Commission		
<b>JE</b>	Joint Enterprise		
<b>JPEC</b>	Judicial Performance Evaluation Commission		
<b>LCMPs</b>	Local Case Management Panels		
<b>LDD</b>	Learning Difficulties and Disabilities		

# **Annex D – Lammy Review Expert Advisory Panel**



During the review, the Right Honourable David Lammy MP was supported by a group of experts with knowledge spanning the full spectrum of the criminal justice system (CJS). The aim of the panel was for members to bring their experience to the review by providing constructive challenge and offering advice and guidance. Ultimately the views expressed and the recommendations in this report are those of David Lammy.

**Advisory Panel members:**

- Lord Victor Adebawale CBE
- Shaun Bailey AM
- Dame Sally Coates DBE
- Dame Linda Dobbs DBE
- Suella Fernandes MP
- David Isaac CBE
- Professor Binna Kandola OBE
- Baroness Ruby McGregor-Smith CBE
- Sir Martin Narey DL
- Dame Anne Owers DBE
- Sarah Payne CBE
- Trevor Phillips OBE
- Matthew Ryder QC
- Sir Keir Starmer KCB QC MP
- Simon Woolley
- Baroness Lola Young OBE

# Annex E – Fact Finding Visits

Over the course of the review, the Right Honourable David Lammy MP undertook the following fact finding visits and roundtables to inform the final report. He would like to thank the Governors, Magistrates, Judges and staff of the following:

#### **Prison visits**

- HMP Belmarsh
- HMP Brixton
- HMP Bronzefield
- HMP Cardiff
- HMP Feltham
- HMP Grendon
- HMP Leeds
- HMP Pentonville
- HMP Styal
- Oakhill Secure Training Centre

#### **Court visits**

- Cardiff Crown Court
- Glasgow Drug Court
- Haringey Youth Court
- Highbury Magistrates' Court
- Sheffield Crown Court
- Stoke-on-Trent Combined Court
- Wood Green Crown Court

#### **Other visits**

- Assunnah Islamic Centre (Tottenham)
- The Beth Centre (Lambeth)
- Cardiff Probation Service
- Hackney Council for Voluntary Service
- Hammersmith and Fulham Youth Offending Services
- Haringey Youth Justice Service
- London Family Drug and Alcohol Court
- St Mary Magdalene Community Centre (Bradford)

#### **International visits**

- Australia
- Canada
- France
- New Zealand
- Scotland
- USA

#### **Roundtables were held on the following subjects**

- BAME Magistrates (organised by the Ministry of Justice)
- BAME Network Diversity Judges (organised by the Judicial Office)
- BAME practitioner's experiences and Barriers to BAME judicial diversity in CJS (organised by the Law Society)
- Community rehabilitation projects for Muslim Offenders (organised by Mosaic)
- Development of rehabilitation services for Women (organised by Ministry of Justice)
- Diverse and inclusive workplace and workforce (organised by KPMG)
- Ex-offenders (organised by Black Training & Enterprise Group)
- Gangs and Youth Violence (organised by Greater Manchester Combined Authority)
- Gangs/youth violence, YOS links to the BAME community, and Interventions on Youth Offending (organised by Haringey Youth Justice Service and Integrated Gangs Unit)
- London YOT Managers (organised by Black Training and Enterprise Group)
- Mental Health (organised by Black Training and Enterprise Group and Lankelly Chase)
- Problem Solving Justice (organised by Greater Manchester Combined Authority)
- Rehabilitation, Economic Cost and Gaining Community Investment (organised by the University of Cambridge)
- BAME Prison Governors (organised by HMPPS and the Rise Network)
- Unconscious Bias in the Criminal Justice System (organised by Kings College London)
- Trust in the criminal court process (organised by Centre for Justice Innovation)
- Youth Justice Services (organised by Ministry of Justice)

#### **Speeches**

- Centre for Education in the Criminal Justice System (8 July 2016)
- London Councils (15 July 2016)
- Trust in the CJS (8 September 2016)
- National Police Conference (16 November 2016)
- Royal Society of Arts (3 July 2017)

#### **Events**

- Community Event (organised by Clinks)
- Trust in the CJS (organised by Ministry of Justice)

# Annex F – Acknowledgments

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- Sam Gyimah MP
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- Nick Hurd MP

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- Mark Blake (Black Training & Enterprise Group)
- The Right Honourable Baroness Browning
- Rob Butler JP (Board Member YJB)
- HH Judge Jonathan Carroll
- Peter Clarke CVO OBE QPM (HM Chief Inspector of Prisons)
- Sonia Crozier (National Probation Service)
- Kate Davies OBE (NHS England)
- Eila Davis (Her Majesty’s Prison and Probation Service)
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- HH Judge David Fletcher CBE
- Nick Folland (Crown Prosecution Service)
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- Anthony Green (Ministry of Justice)
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- Richard Heaton CB (Permanent Secretary, Ministry of Justice)
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- The Right Honourable David Laws (Education Policy Institute)

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- Martin Lomas (Deputy Chief Inspector of Prisons)
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- Bob Neill MP (Chair of the Justice Select Committee)
- Rob Neil (Ministry of Justice)
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- Sir Ernest Ryder (Senior President of Tribunals)
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- Alison Saunders CB (Director of Public Prosecutions)
- Dr Tony Sewell CBE (Board Member YJB)
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- Alliance for Women and Girls at Risk
- Association of Youth Offending Team Managers
- Bar Council
- Black Training and Enterprise Group
- Burns Institute
- Catch22
- Centre for Education in the criminal justice system
- Centre for Justice Innovation
- Clinks
- Criminal Bar Association

- Equality and Human Rights Commission
- Friends, Families and Travellers
- Howard League for Penal Reform
- Inquest
- Justice
- Koestler Trust
- The Law Society
- Magistrates Association
- Metropolitan Black Police Association
- National Black Police Association
- Partners of Prisoners
- Prison Reform Trust
- Probation Institute
- Spark 2 Life
- Transform Drug Policy Foundation
- Transform Justice
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## International

### Australia

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# Endnotes

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