

## **Prison Reform Trust response to the Commission on Race and Ethnic Disparities consultation on ethnic disparities and inequality in the UK – November 2020**

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

[www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk)

### **Introduction**

We welcome the opportunity to respond to this call for evidence. Our evidence focuses solely on the issue of racial disproportionality in the criminal justice system and in prisons in particular. We welcome the establishment of the commission in so far as it gives renewed focus to an issue that has been neglected by prisons and other criminal justice agencies. This is despite a public sector duty to promote equality established in the 2010 Equality Act.

The [Lammy Review](#) has provided a detailed analysis of the causes of disparities in the criminal justice system from prosecution through to release, with concrete recommendations for change. We support Lammy's principle of 'explain or reform' for racial disparities across the criminal justice system; if criminal justice agencies and government cannot provide an evidence-based explanation for apparent disparities, reforms should be introduced to address those disparities. We hope the Commission will act as a spur to implement the outstanding recommendations in the Lammy review without further delay.

### **1. What do you consider to be the main causes of racial and ethnic disparities in the UK, and why?**

The [Lammy Review](#) provides a detailed analysis of the causes of ethnic disparities in relation to criminal justice. These are evident from the point of arrest through to prosecution decisions, the court process, sentencing, prison and release:

- Arrest rates were generally higher across all ethnic groups, in comparison to the White group

- Black, Asian and minority ethnic (BAME) defendants were consistently more likely than White defendants to plead not guilty in court
- At the Crown Court, BAME defendants were more likely than White defendants to receive prison sentences for drug offences
- In many prisons, relationships between staff and BAME prisoners are poor.<sup>1</sup>

Disparities are also a consequence of a lack of vigilance and failure to give tackling discrimination sufficient priority. Between the National Offender Management Service (NOMS) [Race Review](#) in 2008 and the Lammy Review in 2018, race equality virtually disappeared from the prison service's priorities. Much of what had been achieved leading up to the 2008 race review was lost and requires far more effort and resources to restore. It is clear from the fact that race disparities have become more acute.

## 2. What could be done to improve representation, retention and progression opportunities for people of different ethnic backgrounds in public sector workforces (for example, in education, healthcare or policing)?

The over-representation of Black, Asian and minority ethnic prisoners, service users or residents and the under-representation of staff from those backgrounds, particularly at senior levels, has been a barrier to promoting equality in prisons and other criminal justice agencies. Related to this is a lack of sufficient investment in improving racial awareness among HMPPS staff.

Staff-prisoner relations powerfully influence the person's experience of custody. A 2014 report by the prisons inspectorate on progress made on the recommendations of the Zahid Mubarek Inquiry found that Black and mixed race prisoners were less likely to believe that staff treated them with respect (adult males: white, 79%; Black, 73%; Asian, 71%; mixed, 68%). Among women, 75% of white women compared to 60% of Black women, believed that staff treated them with respect.<sup>2</sup>

The Lammy Review detailed the need for a culture change, so there is less of a 'them and us' division between prison officers and BAME prisoners.<sup>3</sup> The lack of diversity in prison staff, including at senior level, helps to perpetuate this culture of mistrust.

Mutual distrust between staff and prisoners can result in poorer outcomes. For example, statistics reported in 2014 under Section 95 show that prisoners from Black and dual heritage ('Mixed') were far more likely to face an adjudication than their white counterparts.<sup>4</sup> The Lammy Review revealed that, for similar offence groups, Black prisoners were far more likely than their white counterparts to be categorised in high security prisons. For the same offences, for every 100 white men placed in a high security prison, there were 120 mixed ethnic, 126 Asian, and 143 black men.<sup>5</sup>

The scale of disproportionate outcomes among BAME prisoners cannot possibly be caused solely by those who deliberately abuse their authority to exercise racist

<sup>1</sup> David Lammy (2017) [The Lammy Review](#)

<sup>2</sup> HM Inspectorate of Prisons (2014) [Report of a review of the implementation of the Zahid Mubarek Inquiry recommendations](#)

<sup>3</sup> David Lammy (2017) [The Lammy Review](#)

<sup>4</sup> Ministry of Justice (2014) [Statistics on race and the criminal justice system 2014](#)

<sup>5</sup> David Lammy (2017) [The Lammy Review](#), page 46.

attitudes; rather, disproportionate outcomes largely reflect decisions made by the majority of managers and staff. Their use of discretion persistently results in disadvantages for BAME offenders.

The prison service is rightly intolerant of deliberate and blatant racism – it is an abuse of authority. However, it has done too little to develop race awareness in staff. Methods of eradicating inequalities due to racial differences need to be designed for, and targeted at the majority of staff, who are professional, anti-racist and dedicated to treating everyone with decency. Staff should model respect for different cultures and show sensitivity to people who share different protected characteristics.

In 2006 PRT produced a report on the experiences of minority ethnic prison staff. We found three things – people felt their career progression was stymied by attitudes; BAME staff were more worried about racist behaviour from their peers (other prison officers) than from prisoners; and BAME staff were twice as likely as their white counterparts to say that they had witnessed racism at work in the past six months.<sup>6</sup>

## **8. What could be done to enhance community relations and perceptions of the police?**

We have had the benefit of seeing a response from Equal and support their answer to this question.

## **9. What do you consider to be the main causes of the disparities in crime between people in different racial and ethnic groups, and why?**

The Lammy Review highlighted a profound lack of trust between the criminal justice system and BAME communities. Poor use and interpretation of statistics, which fail to account for biases in the way in which figures are collated, merely adds to this lack of trust and the disproportionate outcomes we observe. We fear this question is an example of such unexamined bias. It is unfortunate that a Commission intended to reduce racial inequality should, in this way, contribute to the problem. We ask that the commission reflect carefully on its starting assumptions and avoid uncritical acceptance of an apparent link between crime and ethnicity.

Taking reoffending rates as an example, official data suggest that people from Black ethnic groups are more likely to re-offend than other groups. However, these figures provide misleading evidence about the effects (if any) of ethnicity on post-release behaviour. A lack of explanation about methods and the distortion of a narrow analysis present a racially skewed interpretation of the risk of reoffending.

Proven reoffending rates are reconviction rates. They reflect offending behaviour and the activities and decision-making of statutory agents including police, the Crown Prosecution Service, and courts. The published reoffending rates presume that the impact of policing, prosecution and court decisions are ethnicity-neutral. Yet official data undermine this assumption:

---

<sup>6</sup> Prison Reform Trust & Barrow Cadbury Trust (2006) [Experience of minority ethnic employees in prisons](#): A briefing on a PRT survey of the views of black and minority ethnic prison staff

- Between April 2018 and March 2019, there were 4 stop and searches for every 1,000 White people, compared with 38 for every 1,000 Black people.<sup>7</sup>
- Over the last 5 years, the proportion of suspects who were stopped and searched from White ethnic groups has decreased from 75% in 2014/15 to 59% in 2018/19, and increased across all minority ethnic groups. The proportion of suspects who were stopped and searched increased from 13% to 22% for the Black ethnic group, from 8% to 13% for the Asian ethnic group, from 3% to 4% for the Mixed ethnic group and from 1% to 2% for the Chinese or Other ethnic group.<sup>8</sup>
- Black people were over 3 times as likely to be arrested as White people – there were 32 arrests for every 1,000 Black people, and 10 arrests for every 1,000 White people.<sup>9</sup>
- Courts are three times more likely to prosecute someone from a Black ethnic group than from a White group.<sup>10</sup>

Black people appear to present a higher rate of reoffending, but this partly reflects the fact that they are more likely to be arrested and more likely to be prosecuted. Reoffending statistics by ethnicity are influenced by the disproportionate treatment of Black people. Hence, the partial analysis of reoffending institutionalises discrimination in official data, understating the likelihood of offending post-sentence by people from a white ethnic background.

Nonetheless, it is also true that many people from BAME backgrounds are released back into neighbourhoods which offer comparatively fewer legitimate opportunities and less support.

“Eighty per cent of Black African and Black Caribbean communities live in Neighbourhood Renewal Fund areas, those identified as England's most deprived areas. According to the ACORN classification, which places people in one of five groups according to their neighbourhood's level of affluence, 45.5% of Black African and 38.1% of Black Caribbean pupils in maintained primary and secondary schools live in areas classified as 'hard pressed', the most deprived category in the scale. We also know that Black people of Caribbean origin experience, on average, significantly higher unemployment and lower earnings than white people.”<sup>11</sup>

BAME women face the same barriers in accessing services to help with resettlement and rehabilitation on release from prison as white women but they are further disadvantaged by racial discrimination, stigma, isolation, cultural differences, language barriers and lack of employment skills.<sup>12</sup> Effort is needed to promote diversity in criminal justice agencies to reach BAME and other minority groups of women.

Among service providers in the criminal justice system, there also appears to be a lack of awareness of the socio-cultural norms and sanctions, as well as the religious

---

<sup>7</sup> Home Office (2020) Ethnicity facts and figures: Stop and search. 14 September, 2020. At <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest#by-ethnicity>

<sup>8</sup> Ministry of Justice (2018) [Statistics on Race and the Criminal Justice System 2018](#)

<sup>9</sup> Home Office (2020) [Ethnicity facts and figures: Arrests](#), 17 September, 2020

<sup>10</sup> Ministry of Justice (2014) [Statistics on race and the criminal justice system 2014](#)

<sup>11</sup> House of Commons Select Committee on Home Affairs, Second Report (2007) [The causes of over-representation](#)

<sup>12</sup> Home Office (2007) The Corston Report, Home Office: London

governance that affects the lives of Muslim women offenders, therefore engagement can often be limited and ineffective.<sup>13</sup> To provide effective rehabilitation and help for Muslim women, women-only provision is needed for Muslim women who cannot easily access mixed groups. A recommendation is that 'women-only' environments are important for women, especially Muslims as they could have experience and history of male abuse or violence.<sup>14</sup>

The Muslim Hands Project in HMP New Hall found that women leaving prison had profound personal problems, including rejection by their family and/or children. Many expressed a fear of violence or reprisal from their families for 'shaming' the family name by going to prison. Particular challenges, including Islamic divorce, inheritance, access to children, legal matters in countries of origin and immigration status, require specialist intervention. Pro-bono legal help would give these women awareness of their rights and the support to move on with their lives. One-to-one support on self-esteem/personal and life development skills is also needed.

A joint Clinks and Prison Reform Trust report, Double Trouble, explored the resettlement needs of BAME offenders. A number of respondents in prison spoke of their need for acceptance. Here again, an important dimension of race relations, a significant contributor to disproportionate outcomes, is a value, acceptance, which is difficult to measure.

Double Trouble began with a question: should there be distinct resettlement services for minority ethnic offenders? It found that most resettlement needs were generic, not specific to any ethnic group. The prisoners interviewed consistently reported that the existing provision for resettlement (in 2010) was completely inadequate.<sup>15</sup>

Most Double Trouble respondents said that ethnicity affects resettlement:

- Racism amplifies other discrimination ('double trouble')
- Resettlement is hindered by continuing discrimination within the CJS
- Their experiences of discrimination inhibit engagement and de-motivate
- A perception that some cultural groups have harsher attitudes towards offenders and offending than others

Double Trouble concluded that resettlement outcomes could be improved by enhancing cultural competence among staff providing services. This should include an understanding of the possible impact of ethnicity on practical matters such as housing and employment.

**10. Can you suggest other ways in which racial and ethnic disparities in the UK could be addressed? In particular, is there evidence of where specific initiatives or interventions have resulted in positive outcomes? Are there any measures which have been counterproductive and why?**

The Lammy review provides detailed recommendations for how racial disparities in the criminal justice system from the point of prosecution can be addressed. The government accepted many of the recommendations but progress in implementing

---

<sup>13</sup> Muslim Hands (Dec 2014) [Muslim Women in Prison](#)

<sup>14</sup> Home Office (2007) The Corston Report, Home Office: London

<sup>15</sup> Clinks and Prison Reform Trust (2010) [Double Trouble: Black, Asian and Minority Ethnic Offenders' Experiences of Resettlement](#)

them has been patchy.<sup>16</sup> We ask that the commission use its influence to progress implementation of the outstanding recommendations of the Lammy review without further delay.

In addition, we draw attention to the following issues which need addressing as a priority in order to reduce racial disparities in prisons:

### **Persistent failure by the prison service to recognise racial discrimination.**

Evidence from a range of sources, over two decades, consistently shows an inability within prisons to recognise discrimination on the basis of ethnicity

- A 2004 Home Office Research study on racist incidents in prison concluded that the officers interviewed for the study tended to see racism only in its blatant forms and were less likely to recognise racism in attitudes or the use of discretion. 79% of the officers interviewed said that they had not seen colleagues acting in a racially discriminatory way.<sup>17</sup>
- In 2006, the Zahid Mubarek Inquiry found that: “The failure to recognise racist abuse for what it is was the most obvious manifestation of an even more serious malaise – the lack of intuitive skills on the part of staff to see things against the background of their racial dimension.”<sup>18</sup>
- In 2017, Tackling Discrimination, a report published by the Prison Reform Trust and the Zahid Mubarek Trust, established that investigators of discrimination complaints (DIRFs) rejected the vast majority of complaints made by prisoners, with only 8% of prisoners’ discrimination reports upheld; when a prisoner alleged discrimination by an officer, only 1% were upheld.<sup>19</sup>
- In 2020, the HM Chief Inspector of Prisons’ report on ethnicity and rehabilitation found that whereas about a third of BME prisoners interviewed believed that their rehabilitation and release planning had been affected by their ethnicity, almost none of the staff interviewed considered that ethnicity had an influence.<sup>20</sup>

During this time, the prison service has introduced cultural awareness training for staff, developed training to reduce unconscious bias, and published a number of equality strategies. The persistence of the problem shows the need for systematic change in the basic processes by which prisons are run, and new approaches to give greater validity to the perspectives of minority ethnic prisoners.

### **Discrimination Incident Report Forms (DIRFs)**

Discrimination complaints are inadequately investigated ‘all too often’ according to the Prisons and Probation Ombudsman.<sup>21</sup> Investigations are subject to long delays, staff lack training and confidence, and prisons often fail to collect the equalities data

---

<sup>16</sup> Ministry of Justice (2020) [Tackling Racial Disparity in the Criminal Justice System: 2020 Update](#)

<sup>17</sup> Home Office (2004) [Perceptions of race and conflict: perspectives of minority ethnic prisoners and of prison officers](#)

<sup>18</sup> The Zahid Mubarek Inquiry (2006) [Report of the Zahid Mubarek Inquiry](#)

<sup>19</sup> Prison Reform Trust & Zahid Mubarek Trust (2017) [Tackling Discrimination in Prison: still not a fair response](#)

<sup>20</sup> HM Inspectorate of Prisons (2020) [Minority ethnic prisoners’ experiences of rehabilitation and release planning](#)

<sup>21</sup> Prisons & Probation Ombudsman (2018) [Learning lessons bulletin](#): Complaints investigations, Issue 9



needed to conduct a meaningful investigation.<sup>22</sup> The current process of investigating discrimination reports is not equipped to tackle subtle discrimination. Lammy recommends that investigations from DIRFs should be conducted under the proper standard of proof and a response must include a problem-solving component so the practical grievance that can be resolved wherever possible. This problem-solving approach has been implemented in the complaints process but is yet to be in DIRFs.

### **Risk assessments**

The management of risk in prisons should be rigorously examined to determine the extent to which it drives disproportionate outcomes. This will require a change in culture to produce a better balance between security requirements and HMPPS Public Sector Equality Duties.

Evidence about the bias in risk assessments shows that the problem Lammy identified of a 'trust deficit' in criminal justice is reciprocal: BAME communities do not trust criminal justice services and criminal justice services do not trust BAME service users. The first step in getting BAME service users to trust criminal justice services is to address the structure of those services that extends trust inequitably. Alison Liebling [found](#) that white prisoners generally reported lower levels of anger and alienation, whereas Black prisoners and Muslim prisoners tended to report higher levels. Liebling explained that this lack of trust was mutual. Black and Muslim prisoners were subjected to greater suspicion from staff and responded by feeling alienated.

### **PAVA**

We are concerned that the introduction and roll out of PAVA during the Covid-19 pandemic is likely to increase ethnic disparities in the use of force and should be reversed. Previously, the equality impact of equipping staff with PAVA was assessed prior to its introduction by a 'readiness assessment', which determined whether the prison was monitoring use of force for disproportionality and had remedial plans if it was. Of the 81 prisons that had PAVA in June 2020, 43 had not completed a readiness assessment. The decision to equip officers with PAVA spray during a Covid-19 pandemic, without proper preparation to prevent discrimination was likely to undermine trust and condone discriminatory practice. Expanding availability of PAVA to prisons that had not completed a readiness assessment was a clear failure of the HMPPS' equality duties to eliminate discrimination and to foster good relationships.

This concern has been echoed in the government update on progress in the implementation of the Lammy review. After engagement with the HMPPS External Advice and Scrutiny Panel (EASP) on the disproportionality considerations which have been incorporated into the readiness assessment for the rollout of PAVA, the panel argued 'evidence shows racially disproportionate outcomes in use of force which persist, are unexplained, and, in their view are therefore very likely to occur in the use of PAVA'.

---

<sup>22</sup> Prison Reform Trust (2020) [Bromley Briefings Prison Factfile](#): Winter 2019