

The Lammy Review: An independent review of the treatment of, and outcomes for, Black, Asian and Minority Ethnic (BAME) individuals in the Criminal Justice System (CJS)

In January 2016 the Prime Minister invited David Lammy MP to find out why official figures show that Black, Asian and Minority Ethnic (BAME) groups appear to be over-represented at most stages of the criminal justice system, and what can be done about it.

The Prison Reform Trust is an independent registered charity that works to create a just, humane and effective penal system. It aims to improve prison regimes and conditions, defend and promote prisoners' human rights, address the needs of prisoners' families, and promote alternatives to custody. The charity carries out research on all aspects of prison. Studies undertaken by the Prison Reform Trust encompass: prison education, mental health needs, older prisoners, prisoners with disabilities, prisoner councils, and the experience and perspectives of minority ethnic prison staff.

The Prison Reform Trust's activities also include advice and information, education, parliamentary lobbying and the provision of the secretariat to the All Party Parliamentary Penal Affairs Group. In October 2015, supported by the Big Lottery Fund, we launched a three year drive to reduce the unnecessary imprisonment of women. The *Transforming Lives* programme has as one of its objectives to reduce the over-representation of Black and Minority Ethnic women, and foreign national women in prison.

The Prison Reform Trust welcomes the opportunity to respond to the consultation.

18 [BAME defendants are less likely to have community service recommended than White defendants.] What action, if any, do you believe should be taken in response to this difference in recommendations for community service?

Community centres like Asha must be properly supported to ensure that they provide services for disadvantaged BAME women that are meaningful and appropriate to their particular needs. They should also aim at creating environments in which these women feel that they are not isolated or marginalised. Culturally sensitive provision is more likely to result in greater retention and more positive engagement and outcomes. Asha has trained staff in race relations issues and in the culture of the local Asian communities in Worcester.

21. BAME offenders are more likely to face prison sentences than White offenders. In your view, why is this?

Nearly one in three (31%) foreign national women in prison are serving a sentence for drug offences, compared to 12% of women of British nationality^(a). Baroness Corston's report (2007) argued for a distinct strategy for foreign national women in prison, most of whom are far from home, and often not native English speakers. Generally they are not drug users, their crimes were committed under duress or to support their families, and in ignorance of the likely penalties. The Sentencing Council has expressed the need for a sentencing guideline for cases involving the importation of controlled drugs. Sentencing guidelines should be reassessed, taking into account mitigating factors, welfare of dependent children and any evidence of coercion in compliance with CEDAW^(b).

19% of the women's prison population are BAME, compared to 14% of the general women's population^(c). Black British women made up 10% of the women's prison population compared to only 3% of all the overall women's population^(d). There are many reasons for the overrepresentation of BAME women in prison, including socio-economic inequalities. Another significant factor is the extent of mental health needs among BAME women. The Prisons Inspectorate believes there is currently under-reporting of mental illness among BAME people^(e).

Research found a perception, among some African women, that seeking help for mental health would be seen as a sign of weakness^(f). According to the Health and Social Care Information Centre, Black and Black British people were more likely than other ethnic groups to be detained under the Mental Health Act, at a rate of 56.9 per 100 mental health patients who spent time in hospital. Asian and Asian British people were the second largest ethnic group, at 50 per 100 people, to be detained and spend time in hospital^(g). Mind attributed the high rates to stigma and discrimination, and a failure in service provision. BAME women are disproportionately likely to have mental health needs identified as a result of contact with the criminal justice system.

- (a) Prison Reform Trust Bromley Briefings Autumn 2015
- (b) See the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, November 2000:
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>
 Also: Prison Reform Trust (2012) No Way Out: A briefing paper on foreign national women in prison in England and Wales, by Hibiscus and Dr Liz Hales, online:
<http://www.prisonreformtrust.org.uk/portals/0/documents/nowayout.pdf>
- (c) Gov.uk (31 March 2016), Offender Management Statistics Quarterly; NomisWeb, 2011 Census data, available at:
http://www.nomisweb.co.uk/census/2011/DC2205EW/view/2092957703?rows=c_sex&cols=c_ethpuk11
- (d) Women in Prison (2011), Breaking the Cycle for Women (London: Women in Prison); NomisWeb, 2011 Census data, available at:
http://www.nomisweb.co.uk/census/2011/DC2205EW/view/2092957703?rows=c_sex&cols=c_ethpuk11
- (e) Women in Prison (2011), Breaking the Cycle for Women (London: Women in Prison)
- (f) Mind and Nacro (2009), Information needs of women in prison with mental health issues, available at:
<http://www.ohrn.nhs.uk/resource/policy/InformationNeedsWomenPrisoners.pdf>
- (g) The Guardian, 23 October, 2015:
<https://www.theguardian.com/society/2015/oct/23/mental-health-act-detentions-rise-10>

22. BAME prisoners report a worse experience of prison than White prisoners. For example, BAME prisoners are less likely to report feeling safe in prison and more likely to report victimisation by staff. In your view, why is this?

BAME prisoners are not a homogenous group, and within each ethnic classification are individuals who have very different experiences of prison. Experience of prison is also affected by gender.

People in prison have experience of other sectors within criminal justice, including the police, courts, and – sometimes – probation. A 2004 survey of BAME prisoners explored their perceptions of racial bias prior to prison^(a). A majority – 63% - said they had experienced racism from the police, as against only 6% from probation (38% said they had experienced racism in the courts). People who had experienced racism from the police were more likely also to perceive racism in prison than those who said they had not seen racist treatment by the police (58% to 41%). This suggests that prison staff must overcome perceptions formed by discriminatory treatment earlier in the criminal justice system.

Reports by the prisons inspectorate since 2011 show that overall performance in delivering decency and equitable treatment in prison has fallen steadily. Reasons given for this vary, but inspection evidence shows that BAME prisoners consistently fare worse. We begin by examining respect from staff, and then outcomes for purposeful activities, incentives and earned privileges (IEP), families and mental health^(b).

Positive and constructive relations between officers and prisoners are a measure of prisoners' dignity. A 2014 report by the prisons inspectorate on progress made on the recommendations of the Zahid Mubarek Inquiry^(c) 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.

Staff-prisoner relations powerfully influence the person's experience of custody. The inspectorate's thematic report, *Parallel Worlds*, cited interactions in which Black prisoners perceived less respectful treatment. Black prisoners described: "being treated differently in the way they were spoken to, searched or 'put behind their doors'; the length of time they waited for valued jobs or enhanced status; where they were seated in the visits room; and the way their visitors were treated. They described being told to come back later or to put in an application when they asked for things that they saw white prisoners receiving straight away."^(d)

Such routine favouritism is difficult to identify, to investigate, to measure, and to counter. The situations are fleeting and leave little evidence on which to make a complaint. So they remain hidden. But, if they are not addressed, they contribute to a sense among BAME prisoners that they will always receive second class treatment in prison.

The Young Review observed:

"When asked what they found most discouraging in their efforts to change their lives, offenders' and ex-offenders' responses were remarkably consistent. All were intensely aware of the ways in which pernicious stereotyping affected the way they and their communities were perceived and the effect of such attitudes on their own perceptions and behaviour."^(e)

Mutual distrust can result in poorer outcomes. The Race Review 2008 illustrated the impact of reciprocal attitudes between white officers and BAME prisoners. A Black prisoner might perceive that a white officer lacks confidence in interacting with minority ethnic prisoners, and might avoid engaging with the officer. The officer might regard the prisoner's remoteness with suspicion, which could lead to the unfair use of discretion to the prisoner's disadvantage^(f). This description shows the links, embedded in everyday practice, between staff-prisoner relations and disproportionate treatment.

Two indicators of purposeful activity are having a prison job and time out of cell. The Prisons Inspectorate's Annual Report 2014-15 states that while 51% of white prisoners said they were currently working this was true of 41% of BAME prisoners and 45% of Muslim prisoners. In 2014-15, 15% of white prisoners said they spent 10 or more hours out of cell on a weekday compared to 11% of BAME prisoners and 9% of Muslim prisoners.

Indicators for education or vocational training are more mixed. The inspectorate's prisoner survey found that 11% of BAME prisoners and 12% of white prisoners were learning vocational skills.

Hamlyn and Lewis noted that BAME women reported less choice (58%) than white women (67%) in the work that they did in prison. BAME women were less likely than white women to believe that prison work gave people new skills which could help them on release, and were more likely to believe that prison work might be used as a form of punishment^(g). The Prison Service Women and Young People's Group found that BAME women prisoners were more often employed in contract workshops whereas white women were more likely to be employed in jobs offering learning and skills training with vocational qualifications attached. This may hinder BAME women offenders in their resettlement efforts. Contract work will do little to develop skills or increase confidence and self-esteem which are essential in attempts to re-enter the labour market^(h).

Prisoners from minority ethnic groups were significantly less likely to believe that the incentives and earned privileges system was fair: 46% of white, 37% of BAME, 35% of Muslim, and 33% of foreign national prisoners believed they were treated fairly under IEP.

NOMS equalities data for 2014-15 show differences in status:

White prisoners and Asian prisoners were less likely than average to be on Basic.

Black prisoners were more likely to be on Basic (5.8% compared to the average rate of 4.2%) as were people from mixed backgrounds (6.7%)

Asian people were more likely than average to have Enhanced status (43.2% Asian to 35.8% average). Only 31.2% of people from mixed ethnicity were enhanced.

Muslim people were also more likely to be on Basic (6.0% v 4.2% average)⁽ⁱ⁾

The Race Review (2008) explained that a prisoner's treatment and their access to purposeful activities and other rehabilitation depend upon officers:

"It is impossible to run a well-ordered and safe prison without staff and managers being able to use their discretion in their daily work. Being a good prison officer means making choices about the interpretation of rules, and managing effectively requires flexibility in applying policies to individual cases. However, there is still much evidence that some BME groups are more likely to experience disproportionately negative outcomes compared to White British prisoners, and this is at least in part the result of the inappropriate use of discretion by staff and managers."^(j)

The scale of disproportionate outcomes among BAME prisoners cannot possibly be caused solely by those who deliberately abuse their authority to exercise racist attitudes; rather, disproportionate outcomes largely reflect decisions made by the majority of managers and staff.

Family contact is another area of prison life exhibiting disproportionate outcomes. BAME and foreign national women reported more problems ensuring dependants were looked after while they are in custody (HMCIP prisoner surveys). In 2007,

Hibiscus estimated that over 1000 children of foreign national prisoners were separated from their mothers and often left to fend for themselves.^(k)

There are also different outcomes within health care in custody. "BME women and foreign nationals are more likely to experience isolation in custody leading to increased levels of depression but may be less likely to seek help from mental health care staff."^(l) Women from particular minority ethnic groups may view mental health needs as a sign of weakness and may be reluctant to seek help.^(m)

- (a) Edgar, K and Martin, C (2004) Perceptions of Race and Conflict: perspectives of minority ethnic prisoners and of prison officers, Home Office Online Report 11/04
- (b) We discuss feelings of safety under question 24, below, as it is linked to the role that discipline should play in keeping prisoners safe.
- (c) HMCIP (2014) Report of a review of the implementation of the Zahid Mubarek Inquiry recommendations.
- (d) HM Chief Inspector of Prisons (2005) *Parallel Worlds*: A thematic review of race relations in prison, <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/06/Parallel-Worlds.pdf>
- (e) The Young Review: Improving outcomes for young black and/or Muslim men in the criminal justice system, by Jess Mullen: http://www.youngreview.org.uk/sites/default/files/clinks_young-review_report_dec2014.pdf
- (f) NOMS (2008) Race Review 2008: Implementing race equality in prisons five years on: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294157/100439crace_review_part_1.pdf
- (g) Justice Committee (Sept 2012), Written evidence submitted by Prison Reform Trust available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/92/92we12.htm>
- (h) Justice Committee (Sept 2012), Written evidence submitted by Prison Reform Trust available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/92/92we12.htm>
- (i) Ministry of Justice: National Offender Management Service Offender Equalities Annual Report 2014/15: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479966/noms-offender-equalities-annual-report-2014-15.pdf
- (j) NOMS (2008) Race Review 2008: Implementing race equality in prisons five years on: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294157/100439crace_review_part_1.pdf
- (k) Baroness Jean Corston (2007) The Corston Report: <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>
- (l) NOMS, Prison Service Order 4800: Women prisoners
- (m) MIND and NACRO (2009) Information needs of women in prison with mental health issues: <http://www.ohrn.nhs.uk/resource/policy/InformationNeedsWomenPrisoners.pdf>

23 What action, if any, do you believe should be taken in response to these differences in experience of prison across ethnic groups?

A wealth of analysis already exists to understand the problems that create disproportionate outcomes, as well as models of good practice. Conversely, disproportionate outcomes by ethnicity persist, despite all of the valuable work

previously done to tackle it. To achieve lasting change to make criminal justice practice more equitable, it is vital to find different solutions, or at least to change the focus.

In 2000, the then Director General of the Prison Service acknowledged institutional racism in prisons. Tackling the problem of institutional racism requires organisational change.

First, this means accepting that the disproportionate outcomes cannot possibly be caused solely by racist 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. 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, the prison service has done too little to develop race awareness in staff. In particular, responses to discrimination should focus on what can be learned and applied in future, and on making people aware of unconscious bias.

Second, it requires prison governors/directors and senior management teams to accept that prisoners from BAME groups have expertise which most managers lack, namely the capacity to negotiate the racial dimensions of social life. Service user consultation in the area of race equality has fallen, and its purpose has become less clear. Managers and staff are often unaware of the subtle influence of racial differences which leads to disproportionate outcomes. As Damian Evans, Governor of HMP Whitemoor, explained:

“We all have duties under the Equalities Act and in respect of race, we have to ask ourselves why certain ethnic minorities are so disproportionately represented in the prison system and why they feel less well treated. This requires an ongoing commitment to dialogue with these groups.”

(Damian Evans, Prison Service Journal, Issue 222, page 27.)

Prisoner consultation is not ‘special treatment’; rather, it applies to all effective management of prisons. A well-functioning team of reps can comment on the impact policy decisions will have on race equality. They can also raise and discuss the quality of staff-prisoner relations, as well as relations between particular groups of prisoners. Effective consultation with prisoners from all protected characteristics is vital to the third Equality Duty, to foster harmonious relations between people who share a protected characteristic and those who do not.

Third, it means that governors/directors must work on attitudes and the quality of relationships. Much subtle racial bias cannot be captured by quantitative methods. What behaviour undermines trust between white staff and BAME prisoners? What leads BAME prisoners to feel they are given less respect? Why would an officer see four new prisoners arrive and feel suspicious about the one who is Black? Governors/directors need to pay attention to sources of evidence that reveal BAME experiences and perceptions, including MQPL, prison inspection surveys, and

DIRFs. Leaders who recognise the impact of trust and respect, and who appreciate the value of diversity will work to increase dialogue between staff and BAME prisoners; improve styles of communication (e.g., emphasising the importance of staff providing explanations in working with BAME prisoners); and give support to processes that bring conflicts to light and help to resolve them. (See Edgar, K and Martin C Home Office Online Research Study 11/04.)

Making a difference requires a shift of resources. The fact that 64% of complaints about discrimination are about race provides evidence in support of dedicated resources. Race equality should have a dedicated budget in every prison, which covers: recruitment, training, and retention; a race equality champion; and better-supported equality meetings.

In addition, NOMS must work to improve monitoring, analysis, and strategic responses to imbalances within each prison. Support has declined rapidly in prisons for monitoring outcomes by ethnicity and for using race reps (now diversity reps) to access the perceptions of BAME prisoners.

The Chief Inspector's Annual Report 2014-15 records:

"Monitoring to ensure equality of outcomes was also often inadequate. Most prisons monitored data on race and ethnicity, but few looked at the treatment of prisoners from all the protected characteristics."

A sample of recent inspections found:

"Strategic management of equality and diversity was weak. The policy and action plan did not identify specific measures that should be taken to meet the population's diverse needs. Equalities monitoring data were too basic to provide any insight into outcomes for protected groups.

"Poor data collection, monitoring and consultation with minority groups left the prison unable to provide assurances that minority groups were not disadvantaged."

NOMS should do more to promote equality, through:

- visible leadership by governors and DDCs demonstrating that race equality is a priority for them
- recruitment of staff which positively favours values of diversity, and
- training, especially on the effects of unconscious bias.

24 Adjudication for breaches of prison discipline is higher for Mixed and Black offenders than White and Asian offenders. In your view, why is this?

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.

"Mixed ethnicity offenders have consistently had the highest rates of adjudication (169 per hundred prisoners in 2014), followed by Black (126 per hundred prisoners),

White (105 per hundred prisoners) and Asian offenders (70 per hundred prisoners).^(a)

The inspectorate's prisoner surveys from 2014 show that BAME prisoners were more likely to report having been subjected to use of force by staff: 11% of Black prisoners, as compared to 8% of white prisoners.

In 2014-15 foreign national prisoners and Muslim prisoners were more likely to feel unsafe (46% compared to 42% for British and non-Muslim prisoners). 28% of Asian Muslim women said they had experienced victimisation from other prisoners because of their ethnicity (compared to 23% of non-Muslim women and those of other ethnic groups).

BAME prisoners were far more likely to state that they had been victimised by staff because of their race or religion. 10% of Black prisoners stated that they had been victimised by staff due to their ethnicity (compared to 2% of white prisoners). And 16% of Muslim prisoners said they had been victimised by staff due to their faith (compared to 2% of non-Muslims).^(b)

The fact that Black prisoners are more frequently subject to charges under prisoner discipline across the prisons estate has a parallel in policing. Marian Fitzgerald and Rae Sibbitt found that the police were more likely to overlook illicit behaviour by white people. Discretion results in under-enforcement. As Fitzgerald and Sibbitt commented, "Some minorities (and black people in particular) are significantly less likely to benefit from this exercise of discretion than others."^(c)

Their insight into disproportionate enforcement could mean that many prison officers feel more confident about managing the behaviour of white prisoners without recourse to the formal disciplinary process. Further support for this interpretation comes from a reflection on IEP in the NOMS Race Review 2008: "There was a widespread perception of favouritism and of differential treatment of BME prisoners, with White prisoners being able to 'talk officers round' to avoid receiving an IEP warning in a way that BME prisoners could not."

In the Home Office study from 2004, a quarter (24%) of BAME prisoners said they had been charged with an offence, accused of bullying, or given a behaviour warning which they felt reflected racial bias. Prisoners were more likely to perceive racism when they felt that officers:

- failed to explain their decisions
- stereotyped them
- acted in a disrespectful or provocative manner; and
- over-reacted to their judgements being questioned.

53 officers were interviewed and expressed views that:

- prisoners quite often raised questions about racism when officers confronted them about their behaviour;
- prisoners used allegations of racism to inhibit officers; and
- that officers had to stand up to intimidation in order to maintain credibility.^(d)

- (a) Ministry of Justice (2014) Statistics on race and the criminal justice system 2014: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf
- (b) HMCIP, Annual Report 2014-15: http://www.justiceinspectores.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/07/HMIP-AR_2014-15_TSO_Final1.pdf
- (c) FitzGerald M and Sibbitt, R (1997) Ethnic Monitoring in Police Forces, Home Office Research Study 173
- (d) Edgar K and Martin C (2004) Perceptions of race and conflict; Home Office Online Research Study 11/04.

25 What action do you believe should be taken in response to these differences in adjudication rates across ethnic groups?

Following the Equality Act 2010, NOMS developed the Discrimination Incident Reporting Form (DIRF) which was designed to encompass nine protected characteristics:

Age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity.

PRT is working with the Zahid Mubarek Trust to analyse the handling of DIRFs in eight London prisons. The full report will be published in September, 2016. A total of 610 DIRFs from 2010 have been analysed. The majority of these DIRFs were about race (64%). 15% were about religion and 10%, disabilities. DIRFs submitted by staff were far more likely to be upheld (54%) than those submitted by prisoners (9%). Regardless of who submitted it, 56% of DIRFs accusing prisoners of discrimination were upheld; whereas allegations against staff were upheld in 2% of cases.

40 of the 610 DIRFs were submitted by officers in reaction to a prisoner's allegation of discrimination by that officer. This is a longstanding abuse of the system.

54% of the DIRFs about race raised a problem of verbal racial abuse; the second most common problem was the regime (17%). These DIRFs arose when, it was alleged, officers failed to unlock someone for an activity, or when the complainant perceived that officers treated white prisoners differently. Other DIRFs about race concerned job discrimination, the IEP scheme, or prison discipline.

DIRFs that were managed well by the investigator showed:

- Empathy for the complainant
- Even-handed interpretation of the known facts
- Clear communication of the reasons for a decision
- A problem-solving approach

Conversely, for a small number of DIRFs, the investigator's handling of the complaint was unhelpful, sometimes disrespectful, and unfair. In one, a prisoner

made a verbal complaint about an officer to the investigator. The investigator placed the prisoner's name on a list of suspected racist prisoners. It is a basic principle of managing complaints that the complainant should not suffer victimisation as a result; and in this case, the victimisation came from the investigator.

An effective system of responding to DIRFs can help governors/directors to learn about serious misconduct. Patterns in DIRFs can alert managers to aspects of staff-prisoner relations and of the regime that need improvement. However, adversarial tools are not well-suited to respond to situations in which an officer unwittingly caused offence.

Mediation is a powerful means of bringing diverse perceptions to light so that both parties can learn from each other's point of view. It is also most likely to enhance mutual understanding. As mediation favours a problem-solving approach, it can encourage both parties to discuss what they would like to happen to resolve the conflict. Voluntary participation and acceptance of the final agreement encourage both parties to commit themselves to improving race relations.

The Inspectorate of Prisons' report, *Parallel Worlds*, advocated mediation in response to discrimination. Reporting on two prisons that used mediation for disputes about racism, the inspectorate commented:

"Both these approaches were consistent with the Prison Service violence reduction strategy that aims to promote a safe and healthy prison environment by dealing with incidents of conflict in a positive and timely manner. They are also examples of how race equality can be mainstreamed to become part of the daily responsibilities of all staff. We support the use of mediation in this context . . ."

(HM Chief Inspector of Prisons (2005) *Parallel Worlds: A thematic review of race relations in prison*, <http://www.justiceinspectrates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2014/06/Parallel-Worlds.pdf>)

A fair and effective system of responding to reports of possible discrimination, and mediation in response to perceived bias among managers, officers and other staff, would help to address the imbalances that arise through efforts to maintain safety in prison.

26 On average, Black offenders are more likely to reoffend than other ethnic groups. White offenders are the group second-most likely to reoffend. In your view, what explains this?

Reoffending statistics provide misleading evidence about the effects (if any) of ethnicity on post-release behaviour. Official data suggest that people from Black ethnic groups are more likely to re-offend than other groups.

It is a misnomer to refer to these data as reoffending rates, as they actually represent reconvictions. The Section 95 report, *Statistics on Race and the Criminal Justice System* explains that:

“A proven re-offence is defined as any offence committed in a one year follow-up period that leads to a court conviction, caution, reprimand or warning in a one year follow-up or within a further six month waiting period (to allow the offence to be proven in court).”

‘Offending’ refers to the behaviour of individuals; ‘reconviction’ also entails 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, published under Section 95 undermine this assumption:

- The police are 4.5 times more likely to use stop and search procedures on people from Black ethnic groups than on White groups.
- The police are nearly three times more likely to arrest people from Black ethnic groups than White groups.
- Courts are three times more likely to prosecute someone from a Black ethnic group than from a White group.^(a)

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.”^(b)

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.^(c) 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 governance that affects the lives of Muslim women offenders, therefore

engagement can often be limited and ineffective.^(d) 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.^(e)

Desistance theory explains that central to maintaining a law abiding lifestyle is a self-image which is about being a constructive member of society. The impact of socio-economic deprivation on offending interacts with the ways some BAME people respond to their situation. Professor Gus John told the Select Committee on Home Affairs about 'active social exclusion', where a young person chooses a role in response to social exclusion:

"when young people lay claim to particular identities and make choices about lifestyles which compound their disadvantage and their existence on the margins of the society."^(f)

Beth Weaver and Fergus McNeill summarised the influence of social networks on resettlement. It involves:

"Access to social capital, engagement in social institutions, the significance of social bonds to family, and employment."^(g)

Adam Calverley (2013) explored the role of social networks in desistance for men from Bangladeshi, Black, Indian, and dual heritage backgrounds.^(h) In *Cultures of Desistance*, he describes differences in these communities. In particular, among Indians and Bangladeshi men, desistance built on close engagement with their families and social networks, who maintained their aspirations and gave support for their economic and educational development. In contrast, the experience of Black and dual heritage offenders was much more individual experience, often involving cutting themselves off from previous relationships and pursuing self-improvement. His work suggests the need for a nuanced awareness of the cultural milieu in which resettlement occurs.

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/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.

Others have concluded that values such as respect and acceptance are crucial aspects underlying offending and desistance. A 2005 study, by Danny Dorling, which looked at crime as a public health problem, included these insights on homicide:

“There is no natural level of murder . . . For murder rates to rise in particular places ... people have to be made to feel more worthless. Then there are more fights, more brawls, more scuffles, more bottles and more knives and more young men die. These are the same young men who saw many of their counterparts, brought up in better circumstances, and in different parts of Britain, gain good work, or university education, or both, and become richer than any similarly sized cohort of such young ages in British history.”⁽ⁱ⁾

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.⁽ⁱ⁾

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.

(a) Ministry of Justice (2014) Statistics on race and the criminal justice system 2014: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf

(b) House of Commons Select Committee on Home Affairs, Second Report (2007) The causes of over-representation:

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmhaff/181/18106.htm>

(c) Home Office (2007), The Corston Report (Home Office: London)

(d) Muslim Hands (Dec 2014), Muslim Women in Prison, available at:

https://muslimhands.org.uk/ui/uploads/87djpw/MWIP_Report.pdf

(e) Home Office (2007), The Corston Report (Home Office: London)

(f) Gus John, testimony, House of Commons Select Committee on Home Affairs, Second Report (2007) The causes of over-representation

(g) Weaver, B and McNeill, F (2010) “Travelling hopefully: desistance theory and probation practice”, in Brayford, et al, eds. What else works: creative work with offenders, pages 36-60.

(h) Calverley, A (2013) Cultures of Desistance: Rehabilitation, Reintegration and Ethnic Minorities, London: Routledge.

(i) Danny Dorling (2005) 'Prime suspect: murder in Britain', in P. Hillyard et al, eds., Criminal Obsessions: Why Harm Matters More Than Crime, London: Crime and Society Foundation, pages 36-37.

(j) Clinks/Prison Reform Trust (2010) Double Trouble: Black, Asian and Minority Ethnic Offenders' Experiences of Resettlement:

<http://www.clinks.org/sites/default/files/'Double%20Trouble'.pdf>

34 To what extent do you believe the ethnic diversity of staff working in the CJS, including lawyers, judges, and professionals working in prisons and offender management services, has a bearing on outcomes for BAME defendants/offenders?

In 2005-06, the Prison Reform Trust conducted a survey of minority ethnic prison staff as well as white associate members of RESPECT, the support network for minority ethnic prison staff. The study found that, overall, 61% of minority ethnic respondents said that they had experienced direct racial discrimination while working in the prison service. Two-thirds felt that institutional racism was a problem in their workplace. Respondents were more likely to say that they had experienced racism from their colleagues (45%) than from prisoners (33%) or managers (32%).

The most frequently cited forms of racial discrimination were:

- Being isolated or harassed
- Verbal abuse
- Promotion, job assignments
- Abused by prisoners

Covert and structural discrimination were more widespread causes of concern than blatant racism. The report concluded: "The finding that racial discrimination is more likely to come from work colleagues demonstrates the importance of changing attitudes and increasing cultural awareness through education. Training in diversity and cultural awareness is vital."

Interviewed members tended to feel that, over time, direct and blatant forms of racism have become less frequent, and that now covert and structural forms are the main concern.

[Prison Reform Trust: Experiences of minority ethnic employees in prisons:

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/experiences%20of%20minority%20ethnic%20employees%20in%20the%20prison%20service.pdf>]

36 In your view, is the collection of data on BAME outcomes in the CJS sufficient and consistent? If not, what are the principle gaps? What might be done differently?

A dependence on quantitative data skews the lived experience of BAME offenders and fails to generate positive solutions. Quantitative data directs the focus to what is easily measurable. A tendency to target blatant racism has meant that the

institutional racism which drives disproportionate outcomes has not been addressed.

Quantitative data are vital in revealing areas of concern in the ethnic distribution of outcomes. But they cannot explain why disproportions occur. The Home Office's submission to the Select Committee on Home Affairs' inquiry summarises the problem:

"Due to the complexity of the relationship between race, ethnicity and crime and the lack of reliable data, we are unable to say with confidence whether people are being treated differently by the system because of their ethnic group or why disproportionality occurs."

[House of Commons Select Committee on Home Affairs (2007)

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmhaff/181/18106.htm>]

As we stated above in response to Q 23:

Much subtle racial bias cannot be captured by quantitative methods. What behaviour undermines trust between white staff and BAME prisoners? What leads BAME prisoners to feel they are given less respect? Why would an officer see four new prisoners arrive and feel suspicious about the one who is Black? Governors/directors need to pay attention to sources of evidence that reveal BAME experiences and perceptions, including MQPL, prison inspection surveys, and DIRFs.

To tackle disproportionate outcomes, a better understanding is needed of how policy and management structures affect outcomes; the use of discretion by staff; and the perspectives of BAME prisoners about the factors that influence their equitable access to regimes and fair treatment.

37 What examples are there of good practice – in the UK or abroad – that different parts of the CJS could learn from, to address the over-representation of BAME individuals?

Measures that contribute to equitable outcomes and improved relations that should be considered by the Review:

1. Emphasise the moral benefits of race equality at each stage of criminal justice.
2. Discrimination undercuts the core business of criminal justice agencies: to improve public safety.
3. Judges, magistrates, prison governors/directors and NOMS headquarters need to demonstrate that race equality is central to the organisational culture.
4. Leadership applies throughout the criminal justice system: race equality is everyone's responsibility.

5. Professionals across all sectors of the criminal justice system must understand that institutional racism is collective.
6. Race equality can be effectively promoted by the proper use of existing policies and tools.
7. Make a good business case for race equality: agencies in which racial discrimination thrives are performing poorly.
8. Deputy Directors of Custody must enquire into race equality in every prison.
9. Race equality should not be seen as requiring a new set of skills: treating people fairly and with respect is simply good practice.
10. Values are essential: the way staff treat prisoners is related to the way they are treated by managers.

38 What more can be done to stimulate innovation and high performance from within the CJS where the treatment of BAME individuals is concerned?

The Corston Report (2007) found that services need to be appropriate and coordinated to meet the profiled needs of women, including the special needs of BAME women. A key factor is effective liaison between all organisations and agencies, not just with criminal justice agencies like the police, courts, Crown Prosecution Service (CPS), probation and prisons but also with community agencies and voluntary organisations providing community interventions and services for women, for example, healthcare, drug treatment, counselling, childcare, housing advice and so on. Prison Reform Trust recommends that international co-operation and proactive steps must be in place to ensure compliance with CEDAW, the Bangkok Rules and the UN Protocol for the Protection of Victims of Trafficking.

Prison Reform Trust
30 June 2016