

Review of Racial Bias and BAME representation in the Criminal Justice System

A review to consider the treatment of, and outcomes for Black, Asian and Minority Ethnic (BAME) Individuals within the criminal justice system (CJS) in England and Wales

16 November 2016

Cc: Rt Hon Elizabeth Truss MP,
Lord Chancellor and Secretary of State for Justice

Dear Prime Minister,

I am writing to provide a formal update on my review of race and the criminal justice system. As you know, the review was announced earlier this year and is due to report in Spring/Summer 2017.

Disproportionate representation

On the day that you entered No.10 Downing Street you expressed concern that 'If you're Black you are treated more harshly by the Criminal Justice System'. It is clear to me that this is a widespread concern within Black, Asian and Minority Ethnic (BAME) communities. Analysis commissioned for my review has found that, among those born in the UK, a majority (51%) from BAME backgrounds believe that 'the Criminal Justice System discriminates against particular groups or individuals'. This compares with 35% of the White population born in the UK. Our Criminal Justice System has a trust deficit.

BAME communities are over-represented in our prisons: approximately 25% of prisoners are from a BAME background, compared with 13% of the wider population. The situation is worse for under 18s. Over 40% of those in secure youth institutions are from BAME backgrounds – up significantly from 25% a decade ago. Unless we reverse this trend, the over-representation of BAME communities in our prisons will worsen in the next generation. I do not believe that all the causes of over-representation lie in the Criminal Justice System, or that all the answers do either. However, we must make sure that the system is scrupulously fair and that it does everything it can to help offenders turn their lives around.

The term 'Black, Asian and Minority Ethnic', of course, covers a range of backgrounds and experiences – and includes the different experiences of men and women in the system. Some groups are heavily over-represented in prison – for example, 12% of prisoners are Black compared with just 3% of the wider population. Other groups, such as Asian and Mixed race prisoners are also over-represented, although to a lesser degree. Within broad categories such as 'Black' or 'Asian' there is also considerable diversity. Some groups, such as the Muslim population, do not fall within one ethnic category – but we know that the number of Muslims in our prisons has nearly doubled in the last decade. Other groups, such as Gypsies and Travellers, represent less visible minorities but nevertheless are substantially over-represented. Wherever possible, my review seeks to work with this complexity, rather than ignore it.

Emerging findings

My review is evidence-led. It is underpinned by statistical analysis, some of which is published in an analytical paper today. This analysis breaks new ground in our understanding of race and the Criminal Justice System in England and Wales. For the first time, it establishes what impact each stage of the Criminal Justice System has on the disproportionate representation of ethnic minorities. It seeks to pinpoint areas of possible concern, for further analysis and exploration in the second half of my review.

The analysis published today finds that arrest rates are generally higher for the BAME population in comparison to the White population. For example, Black boys were just under three times more likely than White boys to be arrested, while Black men were more than three times more likely to be

arrested than White men. This affects the number of defendants proceeding through the courts system and ultimately into prison if convicted and sentenced.

My focus is on issues arising from the involvement of the Crown Prosecution Service (CPS) onwards, including the court system, prisons and young offender institutions and rehabilitation in the community. Nevertheless, I have had significant representation over the last six months about policing practices. It is clear to me that your reforms, as Home Secretary, to Stop and Search were an essential part of a wider agenda. I am pleased to see the College of Policing now focussing on bias in the use of Stop and Search in its training regime.

The results for the rest of the Criminal Justice System are mixed. The analysis finds that CPS charging decisions were often proportionate or slightly favoured BAME groups relative to the White group. A similar finding emerged in analysis of conviction rates at both Magistrates and Crown Court. However, the analysis found some disparities in sentencing. Looking at all those defendants at Crown Court, the paper found Black men and women more likely to receive custodial sentences than the White group. This was not the case for every offence type, but was particularly the case for drugs offences, which are high in volume. This finding reflects other research, published by the MoJ, which has also identified sentencing disparities. This is an issue I intend to look very closely at.

Prison is also an area of some concern. The statistical analysis found that Black men were more likely than White men to be placed in high security prisons for some offence groups. As you will know, this can restrict access to opportunities like work experience on day release. Men in prisons from ethnic minority backgrounds are also less likely than White prisoners to report having a prison job or access to offending behaviour programmes. I am concerned about the impact of these findings on reoffending rates.

Concerning rehabilitation in the community, I have had significant representation on the impact of the criminal records regime, which many ex-offenders feel limits their chances of finding work. The regime has been described to me as a 'second sentence'. The danger is that this locks in existing patterns of disproportionality by making it harder for offenders to break the cycle. I am particularly concerned about this with regards the youth population.

I have spent the first half of the review in listening mode. In addition to the statistical analysis referred to here, I have held an open call for evidence, visited courts, prisons and youth offending institutions around England and Wales, engaged academics, practitioners, prisoners, ex-offenders and voluntary sector groups. I have travelled to other jurisdictions to draw on leading international practice. I am also grateful to organisations like Catch 22, Clinks, Cambridge University and UCL who have committed their own resources to conduct research and engage in consultation work.

Key themes

In the remaining months of the review, I intend to develop my thinking around a number of cross-cutting themes. The first of these is the use and misuse of data. It is to the Government's credit that an independent review was commissioned into this subject. In future, I want journalists, academics, campaigners and others to be able to scrutinise the workings of our Justice system to a much greater degree. I will examine in detail what data is missing about our justice system – and what more can be placed in the public domain. I also intend to look more closely at the growing use of Big Data and algorithmic decision-making in justice systems. This presents both risks and opportunities for the future.

Second, I plan to explore other forms of oversight and accountability. For example, I have been impressed by some of the practices in the Crown Prosecution Service, which systematically reviews charging decisions to ensure rigour and balance. This culture of peer review is commonplace in other public services, such as education and health, and may be something that other institutions in the Criminal Justice System could learn from.

Third, I will focus on how best to build trust in our justice system among minority communities. It is important that our justice system is seen as legitimate. This can have tangible consequences – for example, ethnic minority defendants appear more reluctant than the White population to cooperate and plead guilty before arriving in court. This costs the justice system money, with more cases going through the courts, and results in longer sentences for those who are found guilty. I will examine how

to enhance trust in the Justice System, including the urgent need to increase the diversity of our judges.

Fourth, I plan to look more closely at a number of vulnerable groups, including children in care, and individuals with learning difficulties or mental health problems. We already know that these groups are at risk of entering the justice system, but initial evidence suggests that ethnic minorities may also be over-represented within these vulnerable groups. This may well be linked to income and is likely to impact on White working class communities too. Ensuring the Criminal Justice System is equipped to deal with these vulnerable individuals could reduce racial disparities whilst also benefitting other groups.

Fifth, I want to examine what those beyond government can do to contribute. This includes local communities, faith groups, the voluntary sector, family members and, of course, offenders and ex-offenders themselves. Government has a responsibility to respect the rule of law and to address the underlying causes of crime, but others must also play their part. I sense an eagerness among many ethnic minority communities for this. I want, therefore, to examine ways in which the justice system might form closer partnerships with local communities and non-statutory organisations, particularly with a view to reducing reoffending.

This is not an exhaustive list and I remain open to representation on a range of other issues. However, I hope this letter gives an indication to you and others of the emerging evidence base and my thinking at this stage in the review.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'D. Lammy', written in a cursive style.

The Rt Hon David Lammy MP