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An exploratory estimate of the economic cost of Black, Asian and Minority Ethnic net overrepresentation in the Criminal Justice System in 2015

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In January 2016, the former Prime Minister David Cameron invited David Lammy MP to lead a review of the CJS in England and Wales to investigate evidence of possible bias against defendants who are Black, Asian or another ethnic minority¹. The Lammy Review considers the treatment and outcomes of Black, Asian and Minority Ethnic (BAME) individuals in the CJS, addressing issues arising from CPS charge onwards, including the court system, prisons, youth custody and rehabilitation in the community.

To explore the estimated economic cost associated with the net overrepresentation of BAME individuals in the Criminal Justice System (CJS) post-charge in 2015.

This short summary of economic analysis is intended to inform discussions around the wider Lammy Review and highlight particular areas of the CJS in 2015, where there was observed net overrepresentation of BAME defendants/offenders, relative to the general population. This analysis does not make recommendations regarding how the Ministry of Justice (MoJ) could change behaviour or make policy changes to realise estimated savings.

Key findings

- The estimated economic cost to the CJS of net overrepresentation of BAME youths and adults in 2015 is approximately £309m.² This estimate covers representation at the courts, prisons and probation stages.³
- Estimated cost associated with the courts stage is £50m (£3m attributable to youths and £47m attributable to adults). For triable either way offences this includes youths and adults tried in the youth/magistrates' courts⁴, and Crown Court, and committed for sentence to the Crown Court. For indictable only offences, this includes youths and adults tried and/or sentenced in the Crown Court. Relevant legal aid representation is included in this estimate for the aforementioned court activities.
- Estimated cost associated with the prisons stage is £234m (£26m attributable to youths and £208m attributable to adults). This includes the youth secure custodial estate population (aged 10–17) in Young Offender Institutions (YOIs), Secure Training Centres (STCs) and Secure Children's Homes (SCHs). The cost also includes BAME overrepresentation of adults aged 18+ in the prison population.
- Estimated cost associated with the probation stage is £25m (all attributable to adults). This includes the pre-sentence assessments conducted by the National Probation Service (NPS) and the probation services provided to high risk offenders by the NPS. Probation costs have **not** been calculated for youths or for adult offenders managed by Community Rehabilitation Companies (CRCs).⁵

¹ <https://www.gov.uk/government/news/review-of-racial-bias-and-bame-representation-in-criminal-justice-system-announced>

² All estimates are based on 2015/16 prices and have been rounded as appropriate.

³ The National Audit Office (NAO) have estimated that the total cost of the CJS to CPS, HMCTS, LAA and HMPPS, post charge, is £5.6bn a year. To note, this includes CPS and CRC activity, whereas analysis in this paper has not monetised the cost of BAME overrepresentation at these stages. 2016 NAO report, Figure 2, page 13 <https://www.nao.org.uk/wp-content/uploads/2016/03/Efficiency-in-the-criminal-justice-system.pdf>

⁴ The youth courts are a special type of magistrates' court for people aged between 10-17. Data for defendants tried in the youth courts have come from the CJS statistics. In line with the MoJ ASD approach, it has been assumed that any defendant aged 10-17 tried in the magistrates' court has been tried in the youth court.

⁵ Unit costs were unavailable for the CRCs due to there being 21 providers (private and third sector) delivering a contracted service, each with variation in the service model used to deliver probation services.

Methodology

Analysis undertaken by MoJ Analytical Services (AS) has addressed the project aims by defining, identifying, quantifying and monetising net overrepresentation of BAME individuals in the CJS, as follows:

Defining overrepresentation

BAME individuals were considered overrepresented if the proportion of BAME individuals at a CJS stage exceeded the BAME proportion of the general population, at the relevant age group. The BAME proportion of the general population aged 10+ in England and Wales ranges from 5% (aged 60+) to 20% (aged 25-29), as detailed in Table 1.

Identification

2011 Census data was used to calculate the BAME percentage of the general population at various age groups. The relevant CJS statistics were then analysed to calculate the BAME percentage of individuals at each stage, by age group. This was then compared to the BAME percentage of general population at each age group. Where the BAME percentage of a CJS stage exceeded the BAME percentage of general population, it was considered that there was over representation.

It is possible that BAME groups might also be under represented in the CJS, relative to their share of the general population. The estimated economic cost of overrepresentation, therefore, considers **net overrepresentation**, whereby the volume of BAME offenders is adjusted upwards/downwards to reflect its share of the general population.

Quantification

This was considered the difference between prevailing volumes of BAME defendants/offenders in 2015 and the volume of BAME defendants/offenders that would have occurred had it represented the relevant proportion of the population for its age group, in line with the Census. The aim of the Lammy Review is to identify and reduce potential bias or prejudice in the treatment of BAME groups in the CJS. Given the focus on BAME groups, no adjustment is made to the volume of non-BAME

groups⁶. The annex figures and tables include a detailed breakdown of quantified net BAME overrepresentation at each CJS stage.

Monetisation

To estimate the economic cost of net overrepresentation, this analysis multiplied the calculated change in volumes described above by the relevant unit cost for that stage of the CJS⁷. A discussion around what is and is not included in unit costs is provided in footnotes and covered in the limitations section. The sum of these calculations was the estimated economic cost of net overrepresentation of BAME individuals at the relevant CJS stages.

The cost calculations associated with net overrepresentation in 2015 used a series of internal unit costs, in real 2015/16 prices, for each CJS partner included in the analysis. These include (and are detailed in subsequent sections):

- Her Majesty's Courts & Tribunals Service (HMCTS)
- Legal Aid Agency (LAA)
- Her Majesty's Prison and Probation Service (HMPPS)

⁶ Under or over representation of non-BAME (White) individuals was not assumed, meaning that there was no adjustment to the volume of White individuals at any stage of the CJS. Analysis estimated the change in volume of BAME individuals only to realign BAME proportion at each CJS stage with the Census.

⁷ Unit costs were mostly obtained internally from the relevant CJS agency analysts and are not published. HMCTS costs cover the average staff and judicial cost per sitting day in the criminal courts in 2015/16 and are adjusted according to the average length of case for each offence group, excluding estate costs. LAA unit costs, by offence type, were calculated following an exercise to match legal aid categories to Home Office offence groups, performed on a sample of 2012 legal aid data. Average cost per secure youth custodial place, excluding contracted services such as prisoner escorts, is held by the YJB. Average prisoner place costs for the adult population were taken from the published HMPPS 2015/16 annual accounts. National Probation Service (NPS) has provided unit costs for pre-sentence assessments and probation supervision, by sentence type, including a pro rata fee for usage, non-direct costs and additional interventions (where relevant for sentences greater than 12 months).

Table 1: Breakdown of BAME population aged 10+ in England and Wales, according to 2011 Census* (in millions)

Age group	Mixed /multiple ethnic group	Asian or Asian British	Black, African, Caribbean or Black British	Other ethnic group	Total BAME	Total population	BAME as a % of general population**
10-14	0.1	0.3	0.1	0.0	0.6	3.3	19%
15-17	0.1	0.2	0.1	0.0	0.4	2.1	18%
18-24	0.2	0.5	0.2	0.1	1.0	5.3	19%
25-29	0.1	0.5	0.1	0.1	0.8	3.8	20%
30-39	0.1	0.8	0.3	0.1	1.4	7.4	19%
40-49	0.1	0.5	0.3	0.1	1.0	8.2	13%
50-59	0.1	0.4	0.2	0.0	0.6	6.8	9%
60+	0.1	0.4	0.2	0.0	0.6	12.6	5%

* The latest ONS population estimate, released in June 2017, for the year to mid-2016 allows users to analyse pivot data by age and sex, but does not include ethnicity. The latest data including both age and ethnicity, therefore, is the 2011 Census data. Latest ONS population estimate can be found here: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesanalysisistool>

** Proportions may differ due to rounding.

This analytical approach does not mirror the methodology used in the Relative Rate Index (RRI) paper published on behalf of the Lammy Review in November 2016⁸. This is because the RRI identified, controlling for other factors, where overrepresentation at a CJS stage could be attributable to an individual's BAME status. The RRI approach is quite technically complex, whereas this analysis was simpler as it used available 2015 snapshot data that could be linked to CJS unit costs. The estimated economic cost therefore offers an order of magnitude estimate of the cost that would not be incurred if a specific group of BAME individuals were removed from the CJS.

Scope

Police activity is not in scope for the Lammy Review, and was therefore excluded from this analysis⁹. Approximately 70% of charge decisions are made by the police, with the CPS being responsible for the decision to charge in the remaining cases.

The main CJS stages not covered in the cost estimate above are: police activity, CPS activity, youth community supervision and probation supervision where offenders are managed by CRCs.

Figures 1 and 2 in the technical annex show a visual representation of the stages of the CJS, including volumes of defendants/offenders included in the scope of this analysis. Boxes in white are those stages included in the summary costs above.

Detailed findings

Youths

Compared to trials for other offences, observations from the youth analysis indicated overrepresentation of BAME youths at the Crown Court for robbery, violence against the person and drug offence trials in particular. At the custodial stages, BAME youths were overrepresented in YOIs and STCs, accounting for 40% and above of the custodial population in these institutions. It is worth noting that the average cost per young offender in these institutions is comparatively higher than the average cost of an adult prisoner place. While the cost to the CJS of overrepresentation at the community supervision stage has not been monetised, the quantified BAME overrepresentation looks to increase, the more serious the sentence requiring YOT supervision, from Youth Rehabilitation Orders to Section 226b.¹⁰

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/568680/bame-disproportionality-in-the-cjs.pdf

⁹ Findings from the Race and CJS report 2014 have shown that stop and searches were more likely to be carried out on Black individuals than White. Arrest rates were also higher for the Black and Mixed groups, compared to white: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf

¹⁰ Young people can be sentenced to an indeterminate custodial sentence under section 226 of the Criminal Justice Act 2003 if they are convicted of a serious offence and the court has assessed them as being dangerous: <https://www.gov.uk/government/publications/custody-and-resettlement/custody-and-resettlement-section-7-case-management-guidance>

Adults

Observations from the adult analysis indicates overrepresentation of BAME adults at the Crown Court for drug offences, robbery, miscellaneous crimes against society and violence against the person trials in particular. Across the adult prison estate, BAME offenders were overrepresented at every age group relative to their share of the general population, with the greatest proportion of BAME offenders in the 18–24 age category (33% of the adult prison population of this age group is BAME).

At the probation stage, the analysis of estimated NPS caseload shows that the greatest extent of BAME overrepresentation was observed for 'On licence > 12 months' sentences, where BAME offenders are represented at all age groups. More generally, across starts and caseload analysis, BAME offenders aged 40+ look to be consistently overrepresented, relative to their share of the general population.

Table 2: Breakdown of estimated economic cost to the CJS in 2016 associated with net overrepresentation of BAME defendants/offenders (£m, 2015/16 prices)

CJS stage		Youths (aged 10 - 17)	Adults (aged 18+)	Subtotal, by stage	Total, by courts. Prison and probation
Courts	HMCTS – Tried at youth/magistrates' courts	-1	1	0	-50
	HMCTS – Tried at Crown Court	0	-11	-11	
	HMCTS – Committed for sentence from youth/ magistrates' courts to the Crown Court	0	0	0	
	Legal Aid Agency (associated with the above three stages)	-2	-37	-39	
	Crown Prosecution Service (associated with the above three stages)	0	0	0	
Prisons	Youth secure custodial estate	-26	N/A	-26	-234
	Adult prison population	N/A	-208	-208	
Probation	Youth community supervision	0	N/A	0	-25
	NPS new probation starts	N/A	1	1	
	NPS caseload	N/A	-26	-26	
	Electronic Monitoring	N/A	0	0	
Total		-29	-280	-309	

Limitations

In interpreting the above results, the ability to capture a full economic cost of net overrepresentation was limited by the following:

There are groups of defendants for whom net overrepresentation cannot be calculated. For instance, ethnicity was recorded for only 16% of defendants proceeded against in magistrates' courts (across indictable only (IO), triable either way (TEW) and summary offences) in 2015.¹¹ This is because the processing of high-volume summary motoring

and non-motoring offences in magistrates' courts does not necessarily result in the defendant's ethnicity being recorded. The majority of these defendants were tried for summary offences. The scope of this paper was, therefore, limited to TEW and IO cases tried in the criminal courts.

Analysis has included completed court trials only during 2015. It is possible, therefore, that costly trials that had not completed in 2015, finishing at a later period, may have been excluded from analysis.

¹¹ Statistics for defendants tried in the magistrates courts' have come from the published Convictions, Prosecutions and Remands data tool. The figure of 1.2 million excludes those defendants where charges have been dropped and proceedings have been discontinued.

It cannot be stated with confidence that the failure to record ethnicity happens purely at random, therefore the analysis focused on identified net overrepresentation amongst the groups with recorded ethnicity and does not extrapolate these proportions to the unrecorded groups.

The absence of ethnicity data precluded the cost of more granular elements of the CJS from the point of charge, for instance overrepresentation in fine revenue receipts in 2015 or offenders released on Home Detention Curfew (HDC) in 2015.

Some of the unit costs utilised did not capture the full economic cost of each particular activity, i.e. they are partial unit costs. For instance, no allowance was made for the costs to HMCTS related to providing a jury for Crown Court trials and unit costs are unavailable for the CPS and CRCs. As a result they may underestimate the full economic cost at certain stages of the CJS.

It was not possible to estimate the cost of net overrepresentation among defendants proceeded against but not tried (i.e. if proceedings were terminated early) in 2015 because unit costs used assume either a guilty plea or trial. The processing of these defendants would have imposed some costs on HMCTS, CPS and the LAA which it was not possible to quantify here.

This Census is becoming increasingly out of date with each passing year. Population data used in this analysis came from the 2011 Census and has been compared to 2015 CJS data, meaning that individuals may have moved between ethnic categories in the subsequent years. This analysis assumed that the ethnic makeup of the population in England and Wales has not changed substantially enough since 2011 to render comparisons of CJS individuals in 2015 to the 2011 Census irrelevant.

Conclusion

A causal link between ethnicity and CJS outcomes cannot be assumed in the analysis. Therefore, economic costs reported in this paper cannot be interpreted as the cost of discrimination in the CJS in 2015. The estimated economic cost does not represent cashable savings to CJS agencies.

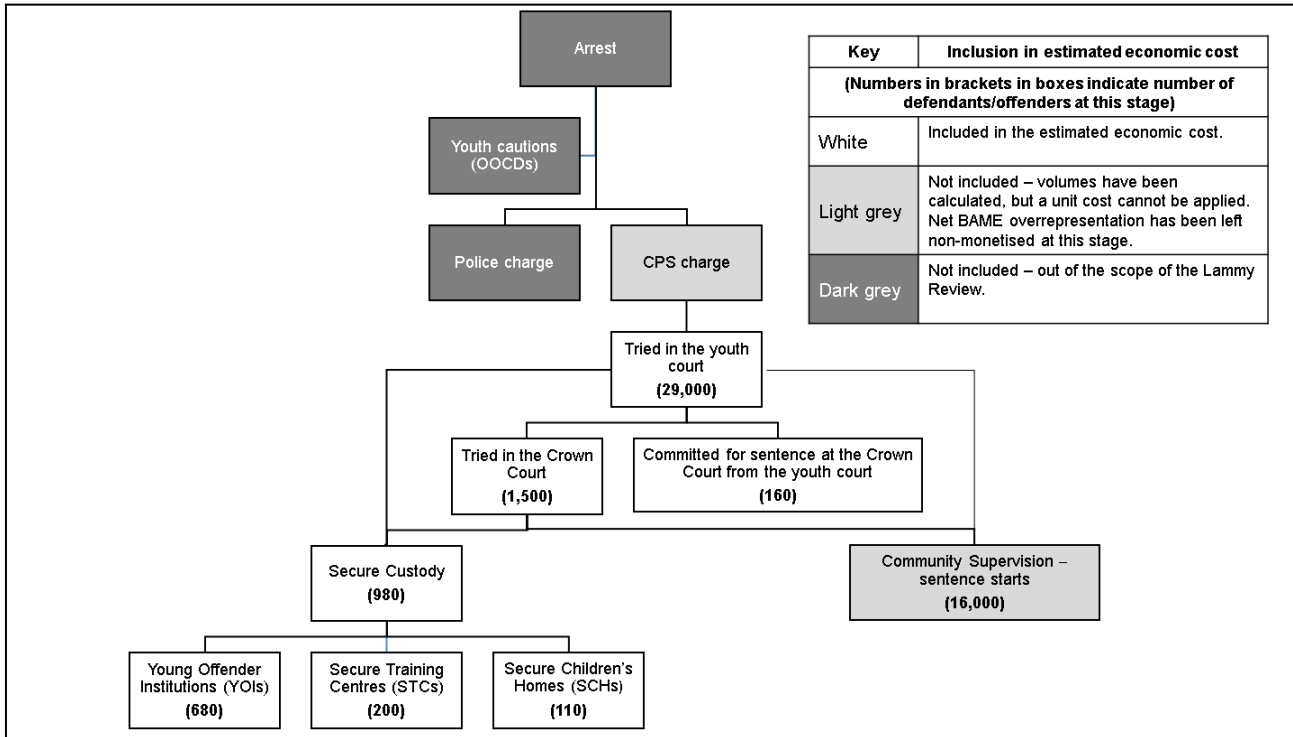
This analysis aimed to address the specific question regarding the economic cost of net overrepresentation in 2015. More bespoke analysis would be required for any cost-benefit analysis for potential interventions for addressing overrepresentation in future years.

Glossary of terms

- *BAME* – Black, Asian and Minority Ethnic
- *CJS* – Criminal Justice System
- *CPS* – Crown Prosecution Service
- *CRC* – Community Rehabilitation Company
- *HMCTS* – Her Majesty's Courts & Tribunals Service
- *HMPPS* – Her Majesty's Prison and Probation Service
- *IO* – Indictable Only offence
- *LAA* – Legal Aid Agency
- *NPS* – National Probation Service
- *OOCD* – Out of Court Disposals
- *SCH* – Secure Children's Home
- *STC* – Secure Training Centre
- *TEW* – Triable Either Way offence
- *YJB* – Youth Justice Board
- *YOI* – Young Offender Institution

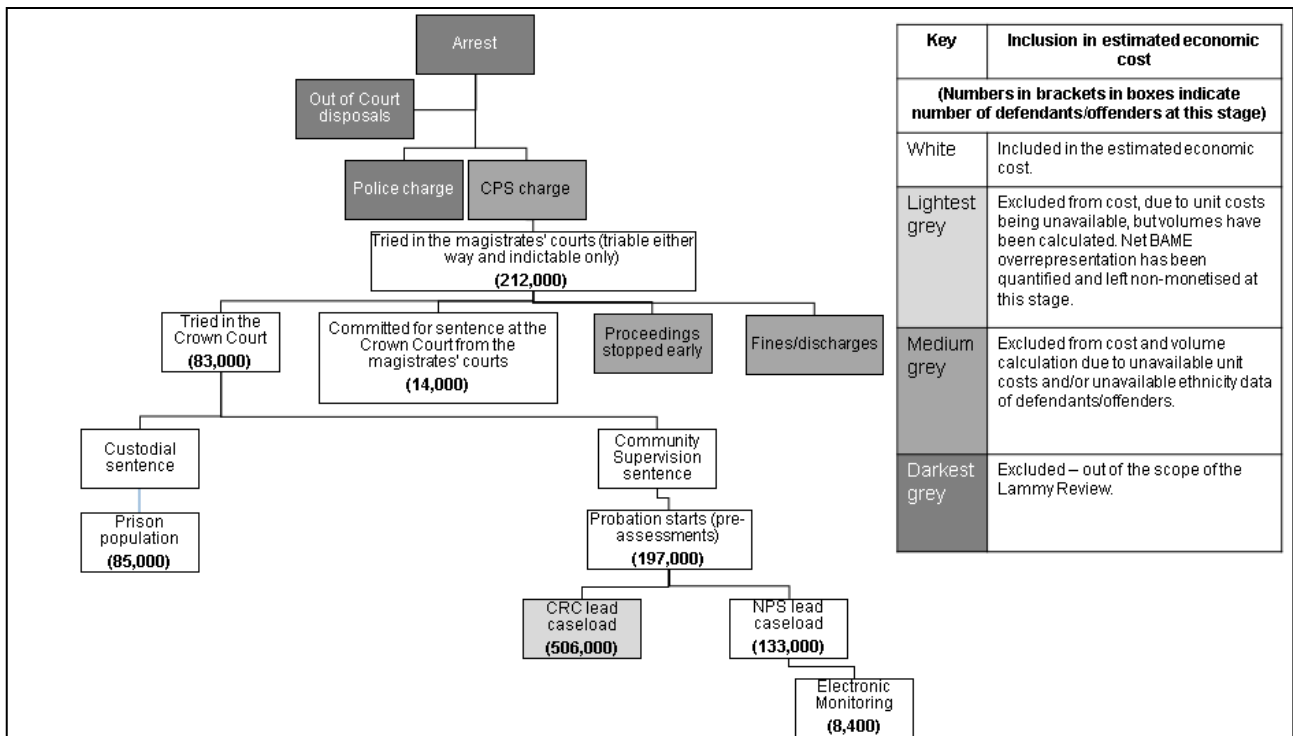
Annex figures and tables

Figure 1: Scope of BAME youth net overrepresentation analysis, using snapshot data to show number of defendants/offenders at each stage



NB: Boxes are shaded according to which stages are and are not included in estimated economic cost. For those stages included in the analysis, only the defendants/offenders with known ethnicity have been included in the cost estimation. The above figure does not represent the flow of a single cohort, but rather a snapshot of youths at a particular CJS stage in 2015.

Figure 2: Scope of BAME youth net overrepresentation analysis, using snapshot data to show number of defendants/offenders at each stage



NB: Boxes are shaded according to which stages are and are not included in estimated economic cost. For those stages included in the analysis, only the defendants/offenders with known ethnicity have been included in the cost estimation. The above figure does not represent the flow of a single cohort, but rather a snapshot of youths at a particular CJS stage in 2015.

Youth tables

Table 3: Estimated under and over representation in youth courts and Crown Court according to offence in 2015 by age group

Offence category	Youth courts		Crown Court	
	10–14	15–17	10–14	15–17
01: Violence against the person	-8	-78	-7	-61
02: Sexual offences	-7	1	0	-8
03: Robbery	-113	-362	-2	-83
04: Theft offences	18	57	-1	-12
05: Criminal damage and arson	34	86	0	2
06: Drug offences	-35	-570	0	-48
07: Possession of weapons	-60	-341	0	-17
08: Public order offences	6	-23	0	-13
09: Miscellaneous crimes against society	-9	-70	0	-5
10: Fraud offences	1	-14	0	-3
Total	-173	-1,314	-10	-248
Total (by court)	-1,487		-258	

NB: Figures show the change in case volumes required to align the BAME % of defendants with the BAME percentage of general population. LAA costs are calculated in accordance with the above figures.

Table 4: Estimated youth BAME overrepresentation in the secure youth custodial population

Age group	BAME percentage of general population	BAME percentage of secure custodial estate population	Change in offenders to adjust for BAME overrepresentation
Young Offender Institutions (YOIs)			
10 - 14	19%	N/A - YOIs accommodate 15-17 year olds only	
15 - 17	18%	43%	-207
Secure Training Centres (STCs)			
10 - 14	19%	45%	-5
15 - 17	18%	43%	-55
Secure Children's Homes (SCHs)			
10 - 14	19%	32%	-4
15 - 17	18%	16%	3
Total			-268

Table 5: Reduction in the volume of BAME youths that would align the BAME proportion of youths receiving sentences requiring YOT supervision with the observed Census split (April – December 2015) – data not available for January – March 2015

Sentence type	10–14 year olds		15–17 year olds	
	BAME percentage of youths receiving each sentence	Change in volume of BAME youths that would align the BAME percentage with the Census	BAME percentage of youths receiving each sentence	Change in volume of BAME youths that would align the BAME percentage with the Census
Conditional Discharge	22%	-5	21%	-36
Referral Order	24%	-112	25%	-518
Reparation Order	7%	2	22%	-3
Youth Rehabilitation Order	28%	-78	27%	-490
Detention and Training Order	31%	-15	34%	-224
Section 90-91 Detention	63%	-4	53%	-91
Section 226b	100%	-2	65%	-12
Total		-214		-1,374

Youths and adults – Legal Aid Agency representation tables

Table 6: Estimated youth and adult BAME overrepresentation in committal for sentence from the youth courts to the Crown Court, including those with LAA representation

Youths/adults	Estimated change in volume of cases involving BAME defendants if net overrepresentation was removed	Estimated change in volume of cases involving BAME defendants committed for sentence and receiving LAA representation
Youths	-32	-29
Adults	-67	-59

Adult tables

Table 9: Estimated under and over representation of BAME adults in magistrates' courts according to offence in 2015 among adults, by age group

Offence group	18–24	25–29	30–39	40–49	50–59	60+	Total
01: Violence against the person	203	151	179	-35	-18	-11	469
02: Sexual offences	-14	-28	-58	-44	-21	-10	-175
03: Robbery	-13	0	0	-1	0	0	-14
04: Theft offences	847	1,363	2,307	63	-252	-50	4278
05: Criminal damage and arson	498	371	267	-20	-39	-6	1071
06: Drug offences	-1,855	-516	-306	-105	-121	-26	-2929
07: Possession of weapons	-332	15	50	-14	-27	-5	-313
08: Public order offences	24	59	12	-65	-56	-22	-48
09: Miscellaneous crimes against society	-187	96	161	-36	-25	-7	2
10: Fraud offences	-95	-52	-69	-56	-26	-6	-304
Total (by age group)	-924	1,459	2,543	-313	-585	-143	
Total (all ages and offence groups)	2,037						

NB: Figures show the change in case volumes required to align the BAME percentage of defendants with the BAME percentage of general population. LAA costs are calculated in accordance with the above figures.

Table 4: Estimated overrepresentation of BAME adults in the Crown Court, by age group, according to offence in 2015

Offence group	18–24	25–29	30–39	40–49	50–59	60+	Total
01: Violence against the person	-291	-71	-230	-197	-102	-17	-908
02: Sexual offences	-36	-61	-172	-139	-55	-36	-499
03: Robbery	-369	-73	-38	-21	-16	0	-517
04: Theft offences	26	114	175	-49	-66	-4	196
05: Criminal damage and arson	7	10	7	11	-5	-1	29
06: Drug offences	-993	-413	-252	-93	-68	-18	-1837
07: Possession of weapons	-179	-45	-54	-27	-26	-6	-337
08: Public order offences	-95	9	-16	-29	-23	-6	-160
09: Miscellaneous crimes against society	-228	-172	-339	-198	-70	-15	-1022
10: Fraud offences	-105	-109	-152	-84	-33	-10	-493
Total (by age group)	-2,263	-811	-1,071	-826	-464	-113	
Total (all ages and offence groups)	-5,548						

NB: Figures show the change in case volumes required to align the BAME percentage of defendants with the BAME percentage of general population. LAA costs are calculated in accordance with the above figures.

Table 11: Estimated BAME overrepresentation in the adult prison estate in 2015

Age group	BAME percentage of general population	BAME percentage of prison population	Change in offenders to adjust for BAME overrepresentation
18-24	19%	33%	-2,850
25-29	20%	28%	-1,710
30-39	19%	26%	-2,293
40-49	13%	21%	-1,500
50-59	9%	18%	-809
60 and over	5%	8%	-135
Total			-9,297

Table 12: Estimated change in probation starts to adjust for BAME over-/under representation among supervised offenders in 2015, by age group

Order type	18-24	25-29	30-39	40-49	50-59	60+	Total (by order type)
Community orders	584	979	972	-185	-303	-72	1,975
Suspended sentence orders	-200	282	208	-259	-163	-56	-188
On license < 12 months	157	348	417	-91	-119	-15	697
On license > 12 months	-672	-72	0	-236	-84	-9	-1,073
Total (by age group)	-131	1,537	1,597	-771	-669	-152	
Total (overall)	1,411						

Table 13: Estimated change in probation caseload to adjust for BAME over-/under representation among supervised offenders in 2015, by age group (total caseload allocated to both NPS and CRCs)

Order type	18-24	25-29	30-39	40-49	50-59	60+	Total (by order type)
Community orders	1,633	3,011	2,667	-341	-543	-117	6,310
Suspended sentence orders	-630	874	738	-653	-420	-125	-216
On license < 12 months	257	508	641	-164	-172	-23	1,047
On license > 12 months	-6,681	-2,441	-1,965	-1,614	-583	-99	-13,383
Total (by age group)	-5,421	1,952	2,081	-2,772	-1,718	-364	
Total (overall)	-6,242						

Table 14: Summary of total estimated change in starts and caseload volumes, once adjusted for BAME net overrepresentation, by age group and allocation to NPS/CRC

Order type	Starts (NPS)	Caseload (NPS)	Caseload (CRCs)
Community orders	1,975	631	5,679
Suspended sentence orders	-188	-22	-194
On license < 12 months	697	200	847
On license > 12 months	-1,073	-6,946	-6,437
Total	1,411	-6,137	-105