



Ministry
of Justice

Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System

December 2017

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Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

December 2017



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Foreword

This Government believes that everyone in society should have the same opportunities in life and that nobody should be treated differently because of their background. That was the ambition set out by the Prime Minister on the steps of Downing Street in July 2016, and it remains this Government's mission to tackle social injustices.

Meeting this challenge requires taking a hard look at how people of all ethnic groups are treated across our public services. That's why in October 2017 we published the first Race Disparity Audit to examine and provide data on how people of different backgrounds are treated across areas including the criminal justice system.

Our justice system is envied around the world for its fairness and its independence. However, the Lammy Review, published in September 2017, serves as a sober analysis of discrepancies in how people of different backgrounds experience the criminal justice system. The criminal justice system belongs to, and serves, all of us and so these discrepancies are things we are determined to challenge and change.

I'd like to thank David Lammy for the important work he has undertaken as part of producing this review. Like the Race Disparity Audit, it is another important step in gaining a greater understanding of what is a complex and sensitive issue. The report gives a thoughtful diagnosis of the problems and powerfully articulates how those with Black, Asian and Minority Ethnic (BAME) backgrounds view their experiences with the justice system.

In our response, we set out how we can continue to understand what and where the problems are in the criminal justice system, how we can take action to make a difference and how we will hold ourselves accountable for progress. A key part is continuing to improve the collection and analysis of data that can inform and drive action, as well as allow us to get on and improve the experience and engagement of people from BAME backgrounds with courts, prisons and rehabilitation.

The Government accepts it will be judged on its actions, as well as its words. The Lammy Review and our response to it will build on the work already going on in the criminal justice system. It will promote better understanding and improve practice so that everyone in our country can have faith that they will be treated fairly whatever their background, whether as a victim, witness, or offender.

Rt Hon David Lidington CBE MP

Lord Chancellor & Secretary of State for Justice

Introduction

1. The Lammy Review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the criminal justice system was commissioned by the former Prime Minister in 2016, and was published on the 8th September 2017. The Government welcomes this independent review, and its thorough, incisive research and associated recommendations.
2. In responding to the Lammy Review, we are seeking to achieve three things. First, we want this document to set out as directly as possible what we will do in relation to each recommendation.
3. Second, we also want to signal, both internally and to our external stakeholders, the Government's ambition to build a fairer and more just society for all. Our response to the Lammy Review and work of the wider Race Disparity Audit are a renewal of the energy and attention that this agenda merits as something belonging to the mainstream; something lacking until we commissioned David Lammy to look afresh at where problems and solutions may lie.
4. Finally, we want to set out how we will hold ourselves and others to account. What makes a difference are practical steps that are diligently followed. The legacy of the Review, and this response, will be in the implementation.
5. We must aspire for equality of treatment and opportunity for all in society, and this means that where one group consistently fares worse than another, we must make every effort to understand these disparities, and then take action to tackle them. That is why, in October 2017, shortly after publication of the Review, the Government announced that it would embrace Lammy's underpinning principles, including that of "explain or change". Where an apparent disproportionate outcome is identified, our leadership, management, and operational staff must review and understand the drivers of these outcomes, so we can then change the process that is behind them. No longer should we allow ourselves the latitude to note a disparity, and not seek to fully understand and act on it.
6. A common element of the Review's recommendations is that they speak to better practice – enabling frontline staff to do their jobs as well as possible, which in itself will smooth disparities and uneven outcomes for everyone who may have been marginalised, regardless of ethnicity, geography, or class.
7. It is for these reasons that leadership and creating real cultural change are important. Noting and responding to disparities must be an ongoing process, that brings about change, aided by transparency and regular review. That is why the Prime Minister commissioned the Race Disparity Audit, to improve our understanding of these issues, and we must empower policy-makers and operational staff to contribute positively to this agenda through their work.

The Government's approach to the response

8. In responding we have looked at each recommendation and, equally, examined the surrounding commentary and the evidence on which the Review has drawn. We have also sought to mirror the pragmatic, “doable” tone of the Review by setting out how we will address the underlying issues behind recommendations where there are real constraints that prevent us from following it to the letter.
9. We believe that, in all areas of the Review, we have been able to respond positively, and these responses are fully supported by those expected to develop and implement them in the criminal justice system. Furthermore, we have sought ideas for further work which were not explicit recommendations, but were nevertheless suggested by the Review as meriting time and attention.
10. From the Review, we have recognised that there are a number of cross-cutting themes that have not been considered or treated as such to date. The one that stands out prominently is the importance of collecting, sharing and acting on good quality data.

The Youth Justice System

11. The imperative and urgency to get it right for young people and young adults appears throughout the Review. Here, the right investment in a well-targeted and well-designed intervention, with the confidence and engagement of the defendant or offender, is a route out of the criminal justice system that can repay a personal, organisational, and societal dividend.
12. The Government agrees with the importance David Lammy places on addressing disproportionality within the youth justice system (10-17 year olds), so that we do not see these patterns of offending continue into adulthood. Whilst the total number of young offenders has decreased significantly since the peak seen in 2007, the number of BAME children in the youth justice system has not decreased at the same rate as white children. This has led to a disproportionately high percentage of children in custody being from a BAME background. As the total numbers of children in custody continues to fall this disparity has widened, and there has been no systematic inquiry into what might be driving it.
13. Youth Justice in England and Wales is undergoing a significant period of reform across the whole system; both in relation to the young person's journey and experience, and to the organisations responsible for it. The significant reduction in overall numbers of those in the youth justice system over the last 10 years provides both a challenge and opportunity; we must avoid the marginalisation of the needs of young people and focus on the reduced numbers as an opportunity to deliver a person-centred approach that, in the words of the Taylor Review,¹ “sees the child first and the offender second”. The youth justice system must embody fairness, transparency and accountability, and we need all children, including those from BAME backgrounds, to have trust in it.

¹ <https://www.gov.uk/government/publications/review-of-the-youth-justice-system>

Accountability

14. By necessity, the Review has covered a breadth of issues of varying complexity, with ownership shared by a range of organisations. Therefore, in some areas, this response sets out a direction of travel as our starting point. In order to ensure progress is sustained we will put in place a governance structure that promotes race disparity as a dynamic policy area, rather than one that is periodically revisited.
15. Together with the cross-Government work of the Race Disparity Audit and the transparency initiated by the ethnicity facts and figures website,² we want this to be an evolving policy area where we can review, revise, reinvigorate and extend our programme when required. We will also take the opportunity presented by the Lammy Review and the Race Disparity Audit to take account of what we are learning from those outside Government with different vantage points, experiences, and opinions.
16. We are setting up governance procedures to monitor our progress on the Lammy Review recommendations, and the wider agenda of race disparity. This will be driven through a Race and Ethnicity Board of senior officials, chaired at the level of Director General, which will update the Criminal Justice Board, chaired by the Lord Chancellor and Secretary of State for Justice. The Race and Ethnicity Board, with the same scope as the Lammy Review, will hold to account each of those with a responsibility for operational delivery and policy for the progress in their areas, and will also make sure that systemic problems are met with systemic responses. This group will ask the question as to whether a disparity in the data has been adequately explained, or whether it requires a more decisive, reforming response.
17. The Race and Ethnicity Board will consider and agree the scope and timelines for the work needed to reduce race disparities. This will include timings for the actions set out in this, the Government's response.
18. There is much good work already ongoing in the criminal justice system on race disparity, carried out by many exceptional and committed people. By promoting better operational practice, we expect better outcomes to follow. We hope the Lammy Review, our response, and the wider cross-governmental work around the Race Disparity Audit, will create an enduring imperative across the criminal justice system to stamp out racial disparity wherever it may be found.

² <https://www.ethnicity-facts-figures.service.gov.uk/>

Understanding data and BAME disproportionality

19. Improving the collection and use of data and increasing transparency are major themes that appear throughout the Review. The Government agrees with the key principle of the Review that “scrutiny is the best route to fair treatment”.
20. The Government aspires to be world-leading in its use of data to improve the lives of citizens. This includes using data to identify and tackle disparities wherever they arise in the criminal justice system.
21. The Government has demonstrated its wider ambition for the use of data to identify and tackle disparity of outcomes between people of different ethnic groups, through the recent publication of the Race Disparity Audit. The Ministry of Justice (MoJ) will continue to engage with the Race Disparity Audit, aligning with our commitment to collect and publish more and better data on ethnicity.
22. The Review in its chapter on “Understanding Data” specifically highlights the following issues:
 - i. Certain gaps in the data collected, for example data on religious identity is collected by prisons, but not by the courts or the CPS.
 - ii. The data analysis techniques employed to look at race disparity should be world-leading, for example the Relative Rate Index analysis used in the Review should be repeated regularly.
 - iii. The Government should invite external scrutiny of the data and thus the default position should be the publication of all data on ethnicity.
 - iv. If Government cannot produce an evidence-based justifiable explanation for apparent disparities, then reforms should be introduced to address them.

The Recommendations, and what we will do:

Recommendation 1

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

23. The MoJ will implement a consistent, cross-criminal justice system approach to recording and analysing ethnicity, building on the good practice that already exists in some parts of the criminal justice system. This complements the ambition of the Race Disparity Audit towards better interpretation of Government-held data. The MoJ are also exploring how to integrate religious identity data collection into this approach.

Recommendation 2

“The government should match the rigorous standards set in the US for analysis of ethnicity and the CJS. Specifically, the analysis commissioned for this review – learning from the US approach – must be repeated on a regular basis, to understand more about the impact of decisions at each stage of the CJS.”

24. The MoJ will expand and unify ethnicity data collection and use of data across the criminal justice system, and will include ethnicity breakdown with appropriate granularity in statistical publications. This approach is already used within the Judicial Appointments Commission (JAC) diversity statistics, and has been incorporated into the 2017 Race and Criminal Justice Statistics. It is important to note that this analysis is not appropriate for all data types, so this approach will complement rather than replace existing analysis. The MoJ aims to expand the scope of data included in future Race Disparity Audits.

Recommendation 3

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

25. The MoJ will publish more and better data on ethnicity where possible and we will welcome external analysis where it throws light on problems that need closer examination, especially where it relates to smaller minority groups. This will be implemented in statistics bulletins during 2018/19, or next annual publication after this date. For example, Gypsy, Roma, and Traveller defendants and offenders often have specific needs that are not met by the criminal justice system, because of a lack of data on their treatment and outcomes. We will review the potential further breakdown of data for this ethnic group as new data becomes available with the new criminal justice system data standard capture system 18+1 (18 ethnicity categories plus “other”). However, the numbers may be too small to conduct meaningful analysis.

Recommendation 4

“If CJS agencies cannot provide an evidence-based explanation for apparent disparities between ethnic groups than reforms should be introduced to address those disparities. This principle of “explain or reform” should apply to every CJS institution.”

26. The MoJ considers “Explain or Change” as an overarching principle for cultural change. Where an apparently disproportionate outcome is identified, MoJ leadership, management, and operational staff must review and understand the drivers of these outcomes, so the process behind them can be changed. The MoJ will actively and systematically work to identify issues that fall into this category and we are keen to listen to external groups on this matter. Progress in each case will be monitored by the Race and Ethnicity Board. This principle has already been accepted across government after the publication of the Race Disparity Audit and we identify a number of areas within the criminal justice system in this response where the “Explain or Change” principle should be applied.

Recommendation 11

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

27. We are conducting further analysis into data gaps in the magistrates’ court to identify how to best address them. As part of the cross- criminal justice system approach to data collection and analysis (Recommendation 1), we will seek to improve dataset quality to allow breakdown by ethnicity, where it is not currently possible to do so.

Recommendation 12

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

28. The MoJ has an ongoing Open Data Strategy, and is developing a new Data and Reporting portal to make statistical data available to the public, and we are establishing a secure access portal for experts to examine more sensitive data. Both tools will break data down by demographic characteristics, whilst preserving the privacy of individuals where sample groups are small. This will be implemented throughout 2018/19 as publications are updated and released.

Recommendation 22

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

29. The MoJ will collect and publish the new data outlined in the Prison Safety and Reform White Paper³ (published November 2016), and breakdown these measures by ethnicity where possible. This links to the commitment we have made to develop performance indicators for prisons, which was also raised in the Lammy Review. As part of the cross-criminal justice system approach to data collection and analysis (Recommendation 1), we will also seek to improve dataset quality to allow breakdown by ethnicity, where it is not currently possible to do so.

³ <https://www.gov.uk/government/publications/prison-safety-and-reform>

Recommendation 23

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

30. The Parole Board and the MoJ are working on ways to report release by sentence type divided by ethnicity. We are also looking at how we can link those released to their reoffending data, with a view to publishing reoffending rates by ethnicity.
31. Parole Board outcomes were included for the first time in the Race and Criminal Justice Statistics 2016, published in November 2017.

Recommendation 35

“To ensure that the public understands the case for reform of the criminal records regime, the MoJ should commission and publish a study indicating the costs of unemployment among ex-offenders.”

32. In early 2018, we will publish an employment and education plan which will look at the current picture and the barriers to employment, and will make the case to the public about employment and ex-offenders.

Crown Prosecution Service (CPS)

33. The findings of the Review show that the charging decisions taken by the CPS are broadly proportionate and that the CPS demonstrates good practice in areas such as openness to external scrutiny, systems of internal oversight, and diversity of the wider workforce, which other CJS institutions should learn from.
34. The Review in its chapter on the CPS specifically highlights the following issues:
- i. The approaches used to tackle and prosecute “gang” crimes are contributing to the sense of unfairness and distrust that many BAME groups feel towards the criminal justice system.
 - ii. The children and young people involved in “gang” activity are often exploited by hardened criminal adults, and thus should be treated as victims themselves.
 - iii. In the few but important exceptions where CPS charging decision rates do vary by ethnicity (rape and domestic abuse), “race-blind” prosecution decisions should be used to tackle this disproportionality.

The Recommendations, and what we will do:

Recommendation 5

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

35. The Mayor of London’s office has confirmed to the Ministry of Justice that they will be reviewing the Trident Matrix with specific reference to BAME disproportionality, and will be consulting widely with external stakeholders during this process.

Recommendation 6

“The CPS should take the opportunity, while it reworks its guidance on Joint Enterprise, to consider its approach to gang prosecutions in general.”

36. The CPS has reviewed and refreshed its guidance on Secondary Liability, Joint Enterprise and gang prosecutions, which was the subject of a public consultation until the end of September 2017. In the updated version, the draft guidance clarifies the evidence required to prove an associate participated in an offence. The draft guidance now contains two sections that address the approach to charging in cases of group / gang assaults, and a further section on the evidence required to prove an associate participated in an offence. Evidence of association with or membership of a group or gang, without any other evidence, will not be sufficient to charge an accomplice with an offence. The CPS is currently considering all consultation responses and this recommendation before publishing the final guidance in 2018.

Recommendation 7

“The CPS should examine how Modern Slavery legislation can be used to its fullest, in order to protect the public and prevent the exploitation of vulnerable young men and women.”

37. The CPS is reviewing how Modern Slavery Legislation may be used more effectively in the prosecution of gang-related offences. The wide range of criminal activity associated with ‘gang crime’ means that police and prosecutors, on a case by case basis, will continue to consider different legislation which fully reflects the criminal conduct and gives courts sufficient sentencing powers. The MoJ are engaging with the Home Office on how advice on ‘exploitation’ and ‘trafficking’ can be applied more consistently to reduce participation of youth in ‘county lines’ gang activities, where young people are used by gangs to transport and sell drugs in towns and cities across the UK.
38. In broader work around tackling Modern Slavery, the Welsh Government have established an Anti-Slavery Leadership Group, and have worked with CPS Cymru and other partners to develop joint training provision on this issue for Senior Investigating Officers, Crown Prosecutors, and Crown Advocates.

Recommendation 8

“Where practical the CPS should redact all identifying information from case information passed to them by the police, allowing CPS prosecutors to make ‘race-blind’ decisions.”

39. The CPS is fully committed to ensuring its decisions are free from racial bias. The CPS is currently investigating the very limited number of offences where the review showed evidence of disproportionality - in the charging decision for rape and domestic abuse offences. The CPS will continue to quality assure decisions to check for racial bias in instances where identifying information cannot be removed for practical reasons, and it will consider next steps in light of the findings of its investigations into rape and domestic abuse offences.

Plea Decisions

40. The criminal justice system provides incentives for those who have committed crimes to admit guilt, to prevent further distress for the victim and to save public time and money on investigations and trials.
41. The key findings of the Review around plea decisions are:
- i. Black, Asian and Mixed ethnic defendants in police custody are all more likely to request legal advice than white defendants. However, it appears that BAME defendants do not trust the advice they are given.
 - ii. BAME defendants are consistently more likely to plead not guilty than white defendants, and then change their plea to guilty later in the process; and
 - iii. BAME defendants are also more likely to elect for a jury trial at the Crown Court, rather than be tried in a Magistrates' court, despite the higher sentencing powers available at the Crown Court.
42. The Review attributes these disparities to the lack of trust BAME people have in the criminal justice system, and the perception that they will be unfairly treated during the trial process. These are difficult issues to address, but we recognise the importance of having a justice system where not only is justice done, but where justice is seen to be done.

The Recommendations, and what we will do:

Recommendation 9

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

43. The MoJ and Legal Aid Agency are investigating a number of approaches that could be used to explain legal rights and options, using appropriate language and communication methods to defendants in custody, and to the public as part of a community education programme.
44. The options suggested in the recommendation - community intermediaries, choice of duty solicitor, and earlier advice from Barristers – require further feasibility investigation and cost-benefit analysis. However, we believe there is scope to improve the legal support available to suspects in custody and are engaging with the Law Society and the Bar Council on how best to move forward. We are also observing with interest the development of the Digital Rights Project, a prototype app that explains legal rights, pioneered by the University of Nottingham.
45. In the youth court, youth magistrates already receive specialist training on using appropriate and effective communication with young people appearing in court. The Bar Standards Board is seeking to improve advocacy standards in youth court proceedings.

Recommendation 10

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

46. Tackling race disparity was not the original aim of the deferred prosecution models we have reviewed and we are not aware of any evidence to show that removing the requirement of a guilty plea improves outcomes for BAME defendants. However, we agree these models warrant further investigation into whether they improve outcomes for BAME defendants, and the wider merits of a deferred prosecution approach.
47. Deferred prosecution may be particularly relevant in the case of youths, given the potential alignment with the Government’s aim of keeping young people out of the formal criminal justice system where possible. Deferred prosecution raises a complex set of issues and so a fully tested, evidence-based approach is appropriate.
48. We are looking at the findings from Operation Turning Point and other related projects to evaluate the evidence base and justice system implications of a deferred prosecution approach. Based on this evidence, we will explore opportunities to extend testing of a deferred prosecution model in other Police and Crime Commissioner (PCC) areas, which would help understand wider impacts including for BAME individuals. As part of this, we are in discussions with the Mayor’s Office for Policing and Crime (MOPAC) about a potential trial in London.

Courts

49. Courts are responsible for the administration of justice and applying the rule of law, from deciding on guilt or innocence to passing a range of sentences. The Review compares decision-making processes in magistrates' courts and Crown Courts and points to the jury system as an example of best practice; panels representative of the local population, openly deliberating as a group.
50. The Review in its chapter on the courts specifically highlights the following issues:
- i. Sentencing decisions should be scrutinised further to ensure bias is not affecting marginal decisions, adding up to disparity over time.
 - ii. To help build trust and respect for the rule of law justice must not only be done – it must be seen to be done. There is currently a “us and them” perception in some BAME groups around the judiciary, which would be improved by increasing the diversity of judges and magistrates.
 - iii. Improving access to sentencing remarks, and establishing a system of feedback would help improve the perception of “procedural justice”, which would help to build trust in the system.
 - iv. There are significant concerns around the Youth Justice System. The proportions of BAME young people in the youth estate has increased from 25%-44% from 2006-2016, and no explanation has been given for this stark disparity.
 - v. There is a lack of power for current systems to hold local services to account for their role in a child’s rehabilitation, and that this rehabilitation should be more embedded in the community.

The Recommendations, and what we will do:

Recommendation 13

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

51. We are looking at increasing the availability of written sentencing remarks to victims, witnesses, and offenders, for specific offences in the Crown Court, as providing written sentencing remarks in every case is costly.

Recommendation 14

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

52. Candidates selected for judicial office by the Judicial Appointments Commission must have demonstrated their ability to communicate respectfully with diverse communities and vulnerable individuals. The judiciary provides ongoing professional training for

judges and is making increased use of appraisal including through observation of how judges hear cases. An online feedback system would be likely to be used primarily as a vehicle for dissatisfied parties to complain about the decision and would not be consistent with the principle of judicial independence.

Recommendation 15

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

53. It is important for the quality, independence and impartiality of our judges that we always appoint the most talented candidates on merit, and we know that there are many talented potential candidates from a diverse range of backgrounds. We want to encourage and support even more of them to apply for judicial office. The MoJ strongly supports the work of the Judicial Diversity Forum, and works as part of the forum alongside legal professional bodies, judicial representatives and the Judicial Appointments Commission (JAC) to coordinate action to increase judicial diversity including ethnicity. The JAC, judiciary and legal professions undertake a range of outreach events, shadowing programmes, pre-application support and mentoring to attract and support eligible candidates, which includes programmes specifically targeted at underrepresented groups.

Recommendation 16

“The government should set a clear, national target to achieve a representative judiciary and magistracy by 2025. It should then report to parliament with progress against this target biennially.”

54. We want our world class judiciary to be more diverse. We can do more to improve judicial diversity but we do not think targets are the right approach. We have a world class judiciary because judges are recruited as qualified lawyers with extensive experience in professional practice. The requirement for judges to be qualified lawyers with many years’ legal experience, who are appointed on merit, means that many lawyers apply for judicial office later in their legal careers, resulting in an applicant pool that is less diverse than society as a whole. Judges taking up office now will typically be drawn from the peer group of lawyers who entered the professions around 20 years ago. In recent years, there has been progress in achieving greater diversity in terms of both gender and ethnicity but it remains a complex picture and there is more to be done. The MoJ is committed to working with the Lord Chief Justice and Chair of the Judicial Appointments Commission to consider all practical actions that would impact positively on diversity, assess the impact of our existing activities and measure progress.

Recommendation 17

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

55. Her Majesty’s Prison and Probation Service (HMPPS) is currently piloting an assessment tool to identify the levels of maturity in offenders aged 18-25 to assist with more effective targeting of interventions.

Recommendation 18

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

56. We agree that the rehabilitation of young people should be embedded in their local community. This may require different regional approaches, and we recognise that a number of services that support rehabilitation are devolved in Wales. Youth Offender Panel members are drawn from their local community and are recruited and supported by youth offending teams. Youth offender panels may allow anyone to attend who they believe is capable of having a good influence on the young person. This could include teachers or other members of the community.
57. Panel member recruitment is a matter for local authorities. However, we believe that ensuring appropriate diversity of panel membership is of key importance. We encourage local areas to put in place strategies to ensure that panels are fully representative of the communities they serve. We will also look at the demographics of current panel members with the aim of identifying areas where more diverse representation is needed and whether MoJ can do more to support diversity of panel membership.
58. We have no plans to change the formal powers of Youth Offender Panels but we are clear that children who offend should receive the support they need to address their offending. Panel meetings may provide a valuable opportunity for services to come together and review their support for the young person. Where appropriate, panels may wish to challenge services where it appears that a young person is not being supported effectively.

Recommendation 19

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

59. We have no plans to require magistrates to follow an agreed number of individual cases each year, though youth offending teams and magistrates may do so on a voluntary basis in their local areas.

60. We agree that there is scope to strengthen the involvement of courts and magistrates with young people who offend. We are considering how improved information sharing and engagement with young people and local services throughout the system can improve outcomes for children and young people as well as magistrates' understanding of the process. For example, better knowledge around local intervention programmes and activities, what works to support young people away from offending behaviour and the outcomes of referral orders.

Other developments that link to the Review's analysis:

61. The Government and the judiciary share the aspiration that the judiciary is more reflective of society. Most cases go before magistrates, and while as with judges, magistrates are appointed on merit, there is no requirement for magistrates to have a legal career prior to office. This means the recruitment pool for magistrates is far larger and more diverse than that for judges. Magistrates are recruited and selected by a network of local advisory committees made up of serving magistrates and local non-magistrates, and appointed by the Lord Chief Justice, who has delegated this function to the Senior Presiding Judge for England and Wales. The Judicial Office is working with the National Bench Chairs' Forum, the Magistrates Association and others to review the attraction, recruitment, selection, welfare and development of magistrates. This will include ensuring potential candidates from all backgrounds become aware of vacancies and the skills required to succeed as a magistrate.
62. The Review suggests that we should take advantage of the particularly diverse pool of CPS lawyers by exploring ways to encourage them to apply for judicial office. Other government lawyers are also a diverse pool. The MoJ agrees that we should encourage more CPS and other government lawyers to apply for judicial office. The MoJ will work with the judiciary, the CPS and Government Legal Departments and the Judicial Appointments Commission to review and, where possible, enable CPS lawyers and other government lawyers to apply and be appointed as judges, recognising the need to ensure this does not lead to perceptions of conflict or bias arising from their continued work as government lawyers while serving as fee-paid judges.
63. The Review highlighted research that demonstrated disparities in sentencing for drug offences, but it acknowledged that a number of caveats apply. The MoJ is working with partners to identify any further evidence in relation to this area, and will consider commissioning further research if necessary, in line with our commitment to explain or change disparities where they arise.
64. Pre-sentence reports (PSRs) assist the courts in determining the most appropriate way to deal with an offender, and are prepared by probation officers. The Review raises concerns that the newer model of PSRs – “fast delivery” or same day reports – do not contain the same level of detail as the “standard PSR” model, researched and written over a longer period of time. The MoJ will review the use and effectiveness of PSRs in close consultation with Her Majesty's Courts and Tribunals Service (HMCTS), the Probation Service, and the Judiciary.
65. The Review presents some worrying disparities affecting BAME women in the Justice System. Within the demographic of BAME women there are some groups that have specific needs compared to the rest of the offender population. The MoJ is reviewing how this vulnerable group of offenders can be best supported. A strategy on female offenders will be published in due course by the Ministry of Justice.

66. As previously discussed, we have accepted the Review's overarching principle of "explain or change". As part of this commitment to tackle stubborn disparities in the justice system, we will be asking the Youth Custody Service to investigate the issues of disproportionality in youth custody (experiences and outcomes), and identify where reforms can be made if any disparities cannot be adequately explained.
67. The Review highlighted that, in practice, children in care can be unaccompanied to hearings even under the age of 16 and there is anecdotal evidence of this occurring on rare occasions. We believe children should always have appropriate support throughout the youth justice system and we will engage with the relevant agencies to ensure this is the case.
68. The Review emphasises the importance of community and parental responsibility for young people. David Lammy notes that parenting orders are one way of helping parents to support their child, but these are not widely used. Effective parenting is vital to a child's well-being and we support working together with the whole family as an effective way of reducing offending in young people, where appropriate. We believe that voluntary engagement by parents with youth offending is effective and youth offending teams (YOTs) should offer voluntary interventions before seeking a parenting order through the court.
69. The experience of being tried in a court, with its formal language and protocols, can be mystifying to children and young people. We want to ensure young people understand what is happening to them in a court room, so that they feel they have had a fair hearing. Whilst the youth court has a number of modifications to help young defendants engage with proceedings (including, specialist training for youth magistrates, seating on the same level, informal furniture arrangements and remaining seated during the court hearing), we recognise that these adjustments do not always go far enough. We are exploring what further measures we can take to make hearings more accessible and easier to understand. We are also considering what support can be made available to assist children and young people in court so that they can give their best evidence and engage with legal professionals who are in court with them.

Prisons

70. The Government recognises that the BAME prison population is disproportionately high, and there is evidence of disparity of outcomes for some BAME prisoners. Perceptions of transparency, fairness and trust will affect the wellbeing and rehabilitation of all prisoners with particular implications for those who are from BAME backgrounds.
71. In its chapter on prisons the Review notes that around a quarter of adults in custody are BAME, and that if the demographics of our adult prison population reflected those of the general population of England and Wales, the prison population would be reduced by 9,000. The chapter highlights, that:
- a. BAME individuals are less likely to be identified with learning difficulties or mental health conditions upon reception into custody.
 - b. The quality of relationships with staff is reported as poorer for BAME prisoners. 11% BAME male prisoners and 7% BAME female prisoners report being victimised by staff compared with 2% and 1% respectively for white prisoners.
 - c. Key aspects of prison life, for example the Incentives and Earned Privileges system (IEP), do not have adequate governance to ensure fair decision making. 35% of BAME male prisoners and 38% BAME female prisoners feel they have been treated fairly by the IEP scheme compared with 44% and 59% respectively for white prisoners.
 - d. Systems of redress where discrimination is perceived or alleged need urgent review; a recent study found that only 1% of discrimination complaints made by prisoners are upheld.
 - e. Currently, just 6% of prison officers are from a BAME background. The lack of diversity among prison officers and the prison senior leadership team contributes to the lack of trust in the system felt by many BAME prisoners.

The Recommendations, and what we will do:

Recommendation 20

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

72. The management, collection and use of patient information to maintain the quality of health services and to ensure continuous service improvement is a core part of NHS England’s commissioning responsibility for health services in the Children and Young People’s Secure Estate. Central data collection on key aspects of health delivery in secure settings which have a clinical information system, has taken place since 2016.

73. The HMPPS Youth Custody Service will work with NHS England, and the Welsh Government Health and Social Services department to explore how this data can be used to best effect in the future, in order to ensure the equitable treatment of BAME children and young people in secure settings, whilst ensuring that personal information is managed in a safe and appropriate way that maintains patient confidentiality.

Recommendation 21

“The prison system, working with the Department for Health, should learn from the youth justice system and adopt a similar model to the Comprehensive Health Assessment Tool (CHAT) for both men and women prisoners with built in evaluation.”

74. We understand the benefits of the Comprehensive Health Assessment Tool (CHAT) and its relationship to the broader assessment of an offender’s needs, which informs sentence planning. Work already underway will establish how an equivalent level of evaluation can apply in our work with adult offenders. We will work with the Welsh Government Health and Social Services department to explore how this recommendation can be implemented within Wales.

Recommendation 24

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

75. As a strategic priority, HMPPS is strengthening accountability and transparency mechanisms at key decision-making points, including in the operation of the IEP system, use of force, adjudication and complaints. Drawing on the best available evidence, we are developing an approach to decision making which will embed procedural justice, with the principles of fairness and transparency at its core. HMPPS will continue to hold prison governors to account in terms of working to prevent and address disproportionate outcomes locally and nationally, strengthened performance metrics are developed, as discussed under recommendation 30.
76. As a first step, prison governors have been required, with immediate effect, to set up diverse forums in every prison to review the fairness and effectiveness of the IEP system, consistent with Recommendation 24. In addition, HMPPS are currently looking at the operation of the IEP policy and as part of this examination will strengthen reference to race disproportionality and to position the IEP system firmly in a procedural justice structure. The framework policy will set an expectation that local systems are reviewed annually, with action taken to explain or change imbalances. The operational instructions and guidance in respect of IEP, use of force and complaints are currently subject to review and this affords an opportunity to fully respond to the relevant recommendations.

Recommendation 25

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

77. HMPPS have asked prison governors to ensure with immediate effect that they have appropriate, diverse forums to review the use of force, with an authoritative member on each panel to represent prisoners’ interests. The data collection, and hence record of which staff members have used force, is being strengthened to identify apparently anomalous behaviour.
78. Use of force and adjudication will be monitored routinely by the HMPPS equalities sub-committee in the first instance, which reports to the HMPPS executive committee, and will feed into the Race and Ethnicity Board. HMPPS’s conduct and discipline procedures already provide pathways of escalation, with a range of options including the dismissal of staff under gross misconduct for ‘acts of racial or sexual harassment or discrimination’. HMPPS is reviewing the wider framework for use of force which will ensure that the current conduct and discipline procedures are adequate. It will also look at whether current procedures for examining the use of force appropriately feed into outcomes for procedures such as adjudication.

Recommendation 26 & 27

“HMPPs should clarify publicly that the proper standard of proof for assessing complaints is ‘the balance of probabilities’. Prisons should take into account factors such as how officers have dealt with similar incidents in the past.”

“Prisons should adopt a ‘problem-solving’ approach to dealing with complaints. As part of this, all complainants should state what they want to happen as a result of an investigation into their complaint.”

79. HMPPS is reviewing the complaints processes in prisons and will strengthen the process for dealing with discriminatory incidents. HMPPS will remind governors of the importance of making clear the avenues through which complaints can be made.
80. HMPPS is reviewing the complaints process in order to embed a problem-solving approach and reaffirm ‘the balance of probabilities’ as the relevant standard of proof. Allied to this, HMPPS also plan to change the manner in which complaints of discriminatory incidents are dealt with in order to restore trust and confidence in our systems of redress.

Recommendation 28

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

81. HMPPS has set an objective of 14% of our recruits being BAME, by December 2020. This reflects the proportion of working age BAME people in the wider population, and levels of interest and applications currently support this target. This target applies across HMPPS as a whole as well as the main delivery arms, including prisons.
82. All stages of the routes to appointment for operational staff are being analysed to ensure fairness in the application process. Local recruitment activity is being monitored with reference to race, and direct contact has been made with those governors who do not appear to be recruiting at levels consistent with the local demography. The target will deliver a pipeline of recruits more representative than the current workforce and we are exploring further ways to drive the pace at which the overall HMPPS workforce becomes more diverse.

Recommendation 29

“The prison service should set public targets for moving a cadre of BAME staff through into leadership positions over the next 5 years.”

83. HMPPS are determined to increase the senior leader cadre and has set a target of 12% by December 2020, subject to refinement as baseline data improves. A number of initiatives are being put in hand to achieve this, including developing an accelerated development scheme for eligible staff from under-represented groups. A direct recruitment scheme is showing early promise in attracting BAME participants.

Recommendation 30

“HMPPS should develop performance indicators for prisons that aim for equality of outcome for BAME and white prisoners.”

84. HMPPS recognises the benefits of performance indicators and their relationship to accountability, and agree that there should be a clear way of measuring equality of outcome. As such, HMPPS are working to introduce performance indicators to assess outcomes against protected characteristics. Progress can be made on some aspects quickly, such as the outcomes from the annual prisoner survey, with others requiring more complex work. HMPPS will continue to strengthen our data to lay the ground for these metrics, which, once developed, will make outcomes for BAME prisoners part of the overall gauge of performance. Once established, information from performance indicators will be looked at systematically alongside other data to strengthen our understanding of prisoner outcomes. Additional audit work is already underway to identify distinctions between the experiences of white and BAME prisoners, which will be a further strand in understanding and working to improve their experiences.

Other developments that link to the Review's analysis

85. HMPPS want to go further than a direct response to each of the Review's recommendations. In practical terms, more National Probation Service staff will now be based in custodial environments and in direct contact with prisoners, potentially improving perceptions of staff diversity, as the National Probation Service workforce are significantly more diverse than the current prison workforce.
86. Information gained by Probation staff when preparing a pre-sentence report can improve an understanding of the needs of newly-sentenced prisoners and flag vulnerabilities such as those related to mental health, learning disability or difficulty.
87. Work will be undertaken with a view to implement a consistent and rigorous approach to help identify and support those prison learners with Learning Difficulties and/or Disabilities (LDD), with governors expected to tailor a regime to their particular needs.
88. Within the BAME population there are ethnic groups which are numerically small who may be less likely to be identified, but potentially more likely to have significant disparities in terms of their experience and outcomes. This is most marked for those identifying as from a Gypsy, Roma, or Traveller (GRT) background and there is evidence to suggest that mental ill health and suicide are more prevalent among this group, compared to the wider community. The Prisons and Probation Ombudsman (PPO) has produced "lessons learned" guidance for prisons around GRT mental health and wellbeing,⁴ and HMPPS believe this advice should be implemented in standard operational practice. HMPPS are attentive to recent research on engagement with those from a GRT background. The principle of 'explain or change' must extend to prisoners from GRT communities.
89. Within HMPPS as with the wider MoJ, the Lammy Review has lent further impetus to our programme of equality-related work. More broadly, we have begun systematically to refresh the training and development of our staff to fully embed equality and inclusion. This will equip staff to engage with a diverse cohort of offenders and improve the quality of staff/prisoner relationships. An equivalent series of actions are underway to refresh the content and delivery of offending behaviour programmes to maximise inclusion and hence promote engagement. A strengthened focus on equality data is underway and this will enable better internal monitoring of progress, and will encourage staff to "explain or change" where continued disparity is brought to light. As part of this, we are looking at ways to ensure that prisons have access to suitable data about their own performance on diversity to enable them to scrutinise that data and take appropriate action.

⁴ Prisons and Probation Ombudsman, Learning Lessons Bulletin: Deaths of Travellers in Prisons 2015.

Rehabilitation

90. Reoffending costs the taxpayer £15 billion annually, and around 76% of all crime is committed by those who are not first-time offenders.⁵
91. The Review showed that while many BAME demographics reoffend at lower rates than their white counterparts, black boys reoffend at the very highest rates – 45% reoffend within a year of being released from custody, or receiving a reprimand, warning, or non-custodial court sentence. The Government accepts the need to better understand and address this issue, and improve the access of BAME people to effective rehabilitation services.
92. The Review in its chapter on rehabilitation specifically highlights the following issues:
- a. Improved accountability is needed for meeting the needs of those with protected characteristics by Community Rehabilitation Companies (CRCs).
 - b. The piloting of the disproportionality toolkit needs to be built on to tackle growing disparity in the youth estate.
 - c. Data should be shared more readily with local communities to enable them to become more involved in the rehabilitation of their young people.
 - d. The current criminal records regime is a barrier to employment and provision should be made to allow ex-offenders to apply to a judge to have their records sealed.

The Recommendations, and what we will do:

Recommendation 31

“The Ministry of Justice (MoJ) should bring together a working group to discuss the barriers to more effective sub-contracting by CRCs. The working group should involve the CRCs themselves and a cross-section of smaller organisations, including some with a particular focus on BAME issues.”

93. In consultation with stakeholders representing BAME community groups, we will set up a new group, or make use of an existing advisory group, to support the BAME voluntary sector’s role in providing rehabilitation services, where we know they can be effective. The remit of the group will be wider than just CRC sub-contracting. Information from this group will be built into the commissioning process in England and Wales.

⁵ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2017>

Recommendation 32

“The Ministry of Justice should specify in detail the data CRCs should collect and publish covering protected characteristics. This should not just be written into contracts but also enforced with penalties for non-compliance”

94. The MoJ will work with CRCs to improve the collection and publication of data on all protected characteristics, building on contractual agreements and legal requirements. The MoJ will also use commissioning intelligence to assess the quality of probation services, and to monitor and analyse outcomes. The MoJ will, within contractual arrangements, require providers to reform their services where necessary to improve rehabilitation services for BAME offenders.
95. HMPPS will also encourage CRCs to take the lead in publishing data as part of their commitment to equality and inclusion and under the requirements of the Public Sector Equality Duty.

Recommendation 33

“The YJB should commission and publish a full evaluation of what has been learned from the trial of its ‘disproportionality toolkit’, and identify potential actions or interventions to be taken.”

96. The Youth Justice Board (YJB) has commissioned and will publish a full evaluation of the disproportionality toolkit trial. This toolkit uses local data and identifies where disproportionately may be - such as assessments, entry age, and seriousness of offending. This allows YOTs to focus resource and address particular areas where it is deemed disproportionately exists.

Recommendation 34

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

97. The Government is currently involved in litigation relating to the existing criminal records regime. We consider that it is important to consider the different aspects of the disclosure regime in the round, and we will therefore consider these recommendations, along with recommendations on criminal records made in Charlie Taylor’s Review of the Youth Justice System and the concerns raised by others, once the litigation is concluded.

Governance

98. We recognise that the undertakings that we have outlined in response to the Review must be carried through. As such, a governance structure needs to apply that monitors and drives progress. This should expect and provide leadership and accountability at all levels.
99. The Government is therefore keen to create a structure that can cover the agenda articulated by David Lammy, and also contribute to the wider work around tackling race disparities across all areas of Government.
100. Such a structure must have the appropriate level of leadership, operational authority and accessibility to make sure that it is dynamic and responsive. It should provide a mechanism to decide where the “explain or change” principle might apply, and be able to commission system owners to respond and report back. While the Lammy Review has given us the components for a programme, it would be a mistake to allow ourselves to be limited to just its 35 recommendations. We must try to enable a broader approach capable of accommodating new evidence and ideas.
101. We will therefore establish a Race and Ethnicity Board, chaired by a Director General from the Ministry of Justice. Membership will include Director-level representation from the departmental groups and operational agencies, as well as representation at an appropriate grade from other relevant departments, the Youth Justice Board and the Welsh Government. This Board will regularly update the national Criminal Justice Board, which is chaired by the Secretary of State for Justice and attended by the Home Secretary, the Attorney General, senior judiciary and others. The Race and Ethnicity Board will consider and agree the scope and timelines for the work needed to reduce race disparities. This will include timings for the actions set out in this, the Government’s response.
102. While new structures may be needed at senior management level, to work effectively, accountability must exist at all levels and stages, and never be delegated to others. The imperative to collect, share and use data, combined with the principle of “explain or change” means that equality strategies must be current, and responsibility for their delivery owned, assured and regularly reported on in each area of our business.
103. We anticipate that the statutory, independent scrutiny organisations involved in criminal justice will be part of this mechanism, identifying and exploring where they find disparities or differential outcomes in their investigations.
104. The above is underpinned by the Equality Act 2010 and the Public Sector Equality Duty, to which the Government and its agencies are bound.

Conclusion

105. In his review, David Lammy challenged the Government to re-examine its approach to identifying and tackling disparities in the treatment and outcomes for BAME people within the criminal justice system. In this response, we have embraced this challenge and committed to taking data-driven, practical steps to address disparity wherever it may be found.

106. Our intention has been to respond as quickly as we can to the Review, moving this agenda forward as rapidly as possible. This is therefore not an exhaustive response, and in some places we have only been able to set out a direction of travel as an initial position. However, the governance arrangements we will put in place should provide the drive and critique to ensure sustained progress. Our aim is to signal a cultural change around race disparity, in which people can confidently engage, building a fairer system in which every group and every individual can have confidence.

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