



Ministry  
of Justice

# Tackling Racial Disparity in the Criminal Justice System: 2018 Update

Includes progress responding to the Lammy Review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System, one year on

October 2018





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## Foreword

As the Prime Minister has made clear, tackling the burning injustices in our society is one of the central aims of this government. One year on from David Lammy's review, the importance of taking action to address the disproportionate number of people from ethnic minorities within the Criminal Justice System, and disparities in their treatment, is ever more keenly felt. It is, of course, a complex issue but it is a social injustice that we are determined to tackle.

For the Criminal Justice System in this country to be viewed as effective and fair, it needs the trust, confidence, and engagement of citizens from all communities. The existence – or even the perception – of bias in how people of different backgrounds are treated erodes that trust and confidence. An effective, world-class justice system must do everything to counter that.

When we responded to David Lammy's review a year ago, we said government should be judged on its actions. I am pleased to now present this update on the steps taken by the Ministry of Justice – and our partners across government – to tackle racial disparities. We are driving work not only in direct relation to the 35 recommendations made by David Lammy, but also looking at how we can go above and beyond them to strengthen our enduring commitment to this agenda.

I am grateful to the many teams, agencies and partners in the justice system who are taking on disparities in practical ways. For example, to boost representation we have already increased the diversity of our new prison officers and are funding an education programme to prepare lawyers from a range of backgrounds to apply for judicial office. On data, we want to be more transparent than ever and have extended the range of sources in which we offer an ethnicity break down. And on plea decisions we are working with local police partners to develop 'deferred prosecution' pilots, which aim to rehabilitate offenders but still ensure there is redress from crime.

However, there is no place for complacency on an issue as important as this. We must commit ourselves constantly to stamping out disproportionality of race in the justice system. That includes the youth justice system, which is why we have created a new dedicated youth disproportionality team to take a holistic approach in tackling this issue throughout the system.

We must be ambitious about tackling the injustices within our society. Racial disparities don't just hold back individuals from minority backgrounds – they prevent us as a nation from realising our true collective potential. As we offer this update on our work to rise to the challenge set out by David Lammy in his recommendations, I want to re-state here my personal commitment to continuing to address the over-representation of people from Black, Asian and Minority Ethnic backgrounds in our criminal justice system – so that people from all backgrounds can put their faith in it.

**Rt Hon David Gauke MP**

Lord Chancellor & Secretary of State for Justice

## Introduction

1. The Lammy Review, published in September 2017,<sup>1</sup> identified racial disparities within the Criminal Justice System (CJS), arising from the point of arrest through to rehabilitation within custody and the community. The Review made 35 recommendations for the Government to consider and implement.
2. The Lammy review presents a major impetus and opportunity to make transformative change in tackling persistent inequality within the CJS. The Ministry of Justice (MoJ) committed as a result in December 2017 to take practical steps to address racial disparity in the CJS wherever it may be found.
3. We accepted the principle of “explain or reform” set out as a structured approach to identify and address racial disparities. MoJ is taking forward every recommendation in some way, and where a recommendation could not be implemented in full or exactly as set out, alternative approaches have been sought to achieve the same aim.
4. As our work and insight into racial disparities in the CJS develops, this update highlights that we are beginning to take wider leadership in this area and developing action over and above the commitments made in response to the Lammy review. Our work on ethnic and racial disparity in the Criminal Justice System is coordinated by a dedicated team and overseen by the Race and Ethnicity Board chaired by MOJ’s Director General for Justice Analysis and Offender Policy. Both were newly created following the Lammy review.
5. We are committed to transparency and accountability in our work. This report provides an overview of the achievements and work we have undertaken so far in 2018, and our plans to sustain progress. The structure follows a journey through the Criminal Justice System, with additional information on cross cutting measures which apply at any stage of the CJS at the start and more information on net steps at the end.
6. This report is supplemented by annexes showing an update against each of the 35 recommendations of the Lammy review (Annex 1), and a summary of available data on ethnicity in the CJS (Annex 2). MoJ has worked with our agencies and other organisations including the Crown Prosecution Service (CPS), Mayor’s Office for Policing and Crime, the judiciary and the voluntary sector, to take action on the recommendations and MoJ would like to thank them for their contributions to this report.
7. The work described in this report are elements of a far wider cross-Government effort to tackle racial disparities in many policy areas. The Prime Minister has committed to challenging disparities in how people from different backgrounds are treated within society through publication of the Race Disparity Audit in 2017, which has provided impetus for a wide range of subsequent data and policy initiatives.

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<sup>1</sup> Available at: <https://www.gov.uk/government/publications/lammy-review-final-report>



## Cross Cutting Work

### The Youth Justice System

8. Lammy highlighted the youth justice system as his biggest concern within his review. In the year ending March 2017, 24% of first time entrants<sup>2</sup> to the Youth Justice system were BAME and 54% of the remand population was BAME, 46% were white. Analysis of custodial sentences received by children and young people that built on that of the Lammy Review showed that, in 2016, BAME young people were more likely to be sentenced to custody than their White counterparts.<sup>3</sup> In the year ending 2017, 45% of children sentenced to custody were BAME.<sup>4</sup>
9. The rate of Restrictive Physical Interventions (RPI) in custody is also higher for non-White young people compared to White young people. Of those involved in RPIs in year ending March 2017, 22% were BAME young people compared to 17% White people.<sup>5</sup> Conversely, the rate for Single Separation incidents (where a young person is confined in a locked room as a means of control) were higher for White young people at 27%, than non-White, which was at 22% in year ending March 2017.<sup>6</sup> The rates of self-harm for White young people in custody remain more than three times higher than those for non-White ethnic groups.
10. Given the information above, it is vital to address disproportionality within the youth system, so that we do not see these patterns of offending continue into adulthood. We discuss progress on the specific issues highlighted by Lammy at the court stage below, and throughout this document as youth justice are a significant feature within the Lammy Review. However, our long-term commitment to this agenda goes far further.
11. In response to the Lammy Review and initial feedback from voluntary and BAME-focused organisations, we have created a small, dedicated team within the Youth Justice Policy Unit working closely with the Youth Justice Board on disproportionality. This Team is taking a broad view of how Government and others can tackle the causes of disproportionality in the youth justice system, identifying the key points where disparity is likely to impact in a child's life. This includes points before any engagement with the police, once a child has entered the youth justice system, and on their resettlement into the community.

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<sup>2</sup> Available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2016-to-2017>

<sup>3</sup> Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/669095/Race\\_and\\_the\\_CJS-youth-amended-01122017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669095/Race_and_the_CJS-youth-amended-01122017.pdf)

<sup>4</sup> Available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2016-to-2017>

<sup>5</sup> (ibid.)

<sup>6</sup> (ibid.)

## Data

12. Having accurate data, and making use of that data is central to identifying and tackling disparities wherever they arise in the criminal justice system. We are committed to improving collection and publication of data and using this data to identify and tackle disparities across the Criminal Justice System. We have been working closely with the Race Disparity Unit since its formation in 2016, and continue to add and update metrics on the Ethnicity Facts and Figures website as part of our commitment to transparency.
13. Annex 2 displays a summary of Criminal Justice System data published in 2018 which includes an ethnicity breakdown – this includes nine new additions which are being published for the first time. For example:
  - we have introduced a Relative Rate Index measure for judges as part of the Judicial Appointments Commission Statistics and for courts convictions as part of the Race and the CJS (Lammy recommendation 2).
  - we have extended the information we publish on prison population, releases on temporary licence, legal aid work and Parole board hearing outcomes; we have also released the data from the analysis to understand educational background of offenders and from the HM Inspectorate of Prisons Survey (Lammy recommendation 3).
  - we have included an ethnicity field in our data tools for the Criminal Justice Statistics for individual offences (Lammy recommendation 12).
14. Since late 2017, we moved to ensure that HM Courts and Tribunals Service (HMCTS), where possible, use the Self-Defined 18+1 standard in breaking down ethnicity in their datasets. This means that the groups “Arab” and “Gypsy or Irish Traveller” have been added to the preceding 16+1 standard.<sup>7</sup> Other CJS partners are currently drawing up plans to integrate this new standard code into their systems and when fully implemented across the CJS this will deliver greater precision when recording the defendant’s ethnicity status.
15. In addition, we have included a portal on our website allowing for both sentencing and offence tools, which sets out key data on the CJS to be broken down by demographic characteristics including ethnicity. We have begun to include Relative Rate Indexes, where possible, in statistical publications and are working across Government to create a common methodology for the use of Relative Rate Indexes. We continue to seek more data broken down by ethnicity that can be published, including Parole Board outcomes which were included for the first time in the Race in the Criminal Justice System Statistics 2016, published in November 2017.
16. Where we cannot explain the reason behind apparently disproportionate outcomes, our leadership, management, and operational staff must review understand the drivers of these outcomes, in order to reform the process that is behind those outcomes. We will actively and systematically work to identify issues that fall into this category and continue to invite any external groups who can highlight them to share their findings with us.

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<sup>7</sup> Available at: <https://www.ethnicity-facts-figures.service.gov.uk/ethnicity-in-the-uk/ethnic-groups-and-data-collected>

## **BAME Women**

17. The Female Offender Strategy,<sup>8</sup> published on 27 June 2018, sets out the Government's commitment to a new programme of work for female offenders. We recognise that there are unique challenges for BAME and foreign national female offenders in the criminal justice system both in custody and the community, and that these may differ between different faiths and cultures. Therefore, as we deliver the Female Offender Strategy, we will be looking closely at what further action can be taken to identify and address issues specific to BAME women. We are already taking some steps, as set out below.
18. Applicants to our £3.5m Community Investment Fund must demonstrate how they will increase engagement and support women, including BAME women, as well as women with other protected characteristics, who may find it more challenging to access local services.
19. We will provide more culturally-informed training for staff in offender management and rehabilitation to increase awareness of the impact that culture, faith and sustaining family relationships have for BAME and foreign national women.
20. We will look at how we might support voluntary sector and other organisations who work with BAME and foreign national female offenders to share best practice and learning. and form networks through facilitated events and more structured communication of policy developments.
21. We will also look to engage directly with BAME women with lived experience of the CJS to inform our policy development in this area.

## **Gypsy, Roma and Traveller**

22. Following the publication of the Lammy Review we are making efforts to explore and address specific disparities among the Gypsy, Roma and Traveller (GRT) communities. We have set up an internal working group of justice officials as well as representatives from the Police and PCCs to explore disparities and issues facing the community within the justice system. One early outcome is that HM Prison and Probation Service (HMPPS) are creating a GRT action plan to analyse how, for each of their recommendations from the Lammy Review, particular consideration ought to be given to GRT needs or issues. We are also developing relationships with external stakeholders to help assess the viability and effectiveness of any future projects.

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<sup>8</sup> Available at: <https://www.gov.uk/government/publications/female-offender-strategy>

## **International engagement**

23. MoJ and the Attorney General's Office are contributing to international collaboration to address overrepresentation of ethnic minorities in the justice system, as part of a working group established at the 2017 annual meeting of Attorneys General from the UK, US, Canada, Australia, and New Zealand. We have shared the findings of the Lammy Review and the UK's proposed action to address racial disparities, including deferred prosecution pilots and the 'explain or reform' approach. We have also heard from other nations on their innovative actions to address racial disparities. This cumulative work fed into a final report presented to the Attorneys General at the end of August this year, which will be used to influence our thinking and shape future work around tackling race disparities.

## Early Stages – Prevention to Charging Decisions

### Prevention

24. The Lammy review looked at issues from the point of charging decisions, once an individual has been arrested. However, it is clear that the impact of race disproportionality in the CJS goes much wider. As a Government, we are committed to developing a more rounded approach to prevent individuals from BAME communities getting caught up in a crime and serious violence and protecting the wider community as well as themselves.
25. The Government's Serious Violence Strategy (April 2018)<sup>9</sup> sets out our response to tackling serious violence including the recent increases in knife crime, gun crime and homicide. The Strategy stresses the importance of early intervention to tackle the root causes of serious violence and provide young people with the skills and resilience to lead productive lives free from violence. The Strategy sets out the overrepresentation of young males in relation to certain serious violence offences including knife crime and homicide and sets out 61 commitments in our response to tackle serious violence.
26. The Strategy outlines a wide range of measures around early intervention and prevention, including: a £22m Early Intervention Youth Fund to support targeted early intervention and prevention programmes with young people, as victims and/or perpetrators; more rounds of the anti-knife crime community fund; and continued funding for Redthread, to expand their Youth Violence Intervention Programme to Nottingham and Birmingham. These initiatives all stand to benefit BAME individuals.
27. We are interested to better understand, share and promote local preventative activities which specifically address BAME disproportionality. We have engaged with police and PCCs who have described a range of emerging work. For example, in Derbyshire the PCC is funding Al-Hurraya to deliver crime reduction workshops to the Muslim community in Derby City and the Enthusiasm Trust to work with the police to develop and run a targeted knife crime and youth violence prevention programme for 11-18-year olds including youth club sessions, community outreach work, educational workshops and specialist youth crime prevention mentoring. The Metropolitan Police are actively pursuing outreach to BAME individuals as part of efforts to improve engagement and legitimacy, and to promote police careers.

### Charging Decisions

28. As recognised in the Lammy Review, the overall charging decisions taken by the Crown Prosecution Service (CPS) are proportionate. However, we have taken significant further steps this year to promote fairness and equality across the Criminal Justice System.

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<sup>9</sup> Available at: <https://www.gov.uk/government/publications/serious-violence-strategy>

29. CPS have published more specific guidance on evidence relating to gangs.<sup>10</sup> They advise prosecutors to be cautious about describing a group as a “gang”, and to only do so if there is an evidential basis to support the assertion. CPS now advise that prosecutors should distinguish between explanatory evidence and evidence of propensity when seeking to introduce evidence relating to gangs.
30. In addition to this, the CPS published a typology about ‘county lines’<sup>11</sup> offending in November 2017, which sets out the approach of the police and the CPS to the safeguarding of vulnerable persons involved in this type of crime and the prosecution of criminal offences of this type. The typology has a particular focus on the relevance of the Modern Slavery Act 2015, and matters to be addressed by investigators and prosecutors in using that legislation. The first successful prosecution in relation to the Modern Slavery Act 2015 was sentenced on Friday 13th April 2018 in Swansea.
31. Beyond addressing the recommendations made by the Lammy review, in May 2018, the CPS published a new Inclusion and Community Engagement strategy.<sup>12</sup> This strategy is based on an independent review of CPS work on inclusion and community engagement which sought the views of a wide range of CPS staff and external stakeholders. The strategy emphasises the importance of the link between a diverse workforce and inclusive culture, and public confidence and trust in the CPS. This is particularly important for BAME groups where trust in the criminal justice system is low. The strategy will enhance CPS work to deliver a prosecution service that is fair and transparent, while addressing barriers and issues of disproportionality. As part of this strategy, the CPS will:
- Embed community engagement activity so that it becomes business as usual and supports improvements in casework quality, public confidence and the diversity of its workforce,
  - Review its Local Scrutiny and Involvement Panels to support improvements to casework quality, locally and nationally;
  - Review prosecution data, such as charge rates, to identify any disproportionality and take action appropriately, and
  - Areas, Divisions and Directorates across the CPS will develop and implement local diversity and inclusion action plans as part of their wider people agenda to ensure their local workforce is reflective of the communities it serves.

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<sup>10</sup> Available at: <https://www.cps.gov.uk/legal-guidance/secondary-liability-charging-decisions-principals-and-accessories>

<sup>11</sup> Available at: [https://www.cps.gov.uk/sites/default/files/documents/legal\\_guidance/County-Lines-typology.docx](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/County-Lines-typology.docx)

<sup>12</sup> Available at: <https://www.cps.gov.uk/publication/cps-2020-inclusion-and-community-engagement-strategy>

## Metropolitan Police Service Gangs Matrix

32. The Mayor of London confirmed in his manifesto commitment as well as in the police and crime plan and knife crime strategy, to review the Metropolitan Police Service Gangs Matrix (which identifies the most harmful gang members). The Mayor's Office for Police & Crime (MOPAC) have undertaken extensive analytical work to assess how the matrix is being used by Metropolitan Police and the impact on individuals that feature on the Matrix.
33. MOPAC has also established a community reference group to further engage with community leaders to promote transparency and openness around the use of the Matrix, but also gain a steer from the community into the most effective methods of engagement. MOPAC has engaged with the Information Commissioner's Office on their findings and is working with the Metropolitan Police on responses to initial findings from the MOPAC analysis. Disproportionality is a key theme of the analysis. Recommendations will be published in Autumn 2018.

## Legal advice

34. Recommendation 9 within the Lammy Review suggested that different approaches to explaining legal rights be explored. We have expanded our response to this recommendation by exploring ways in which those involved in the first point of contact can build trust and improve the experiences of BAME children and parents. The Legal Aid Agency and MoJ are working with key agencies involved in explaining legal rights at the police station, including the police, Home Office, Crown Prosecution Service, defence practitioners and National Association of Appropriate Adults, to explore ways of improving experiences at the police station, build trust and secure the best outcome for BAME children.
35. MoJ are currently working with police national custody leads and the Solicitors Regulation Authority (SRA) to identify means by which legal rights and options can be explained, including by distributing leaflets which highlight the importance of seeking legal advice in the police station to every custody suite. These leaflets would be targeted specifically at young people in custody.
36. We are supporting the SRA to include a focus on trust with a view to targeting children and young people from BAME backgrounds, including by updating the SRA tool kit for solicitors working in the youth court, to include support and guidance on how to build trust with young people.
37. Beyond this, The Legal Education Foundation has provided funding to the University of Nottingham to research the most effective methods to present legal rights to young people in an App. MoJ has liaised with Dr Vicky Kemp from Nottingham University, who has interviewed children and young people, including those in care, BAME youth groups, and those who are being dealt with in the criminal process, and asked them about their understanding of their rights and how they exercise those rights. Their experiences are being used in designing the App. We continue to work with Dr Kemp on this.
38. Nottingham University are also liaising with police and Legal Aid Agency to develop a basic App for the police to use when undertaking voluntary interviews. In addition to this, the University and police are exploring the possibility of linking data collected

through the App to the police database (using a unique identifier to ensure anonymity) so that monitoring information can be used to conduct an analysis of suspects based on their personal characteristics, including age and ethnicity, and case outcomes. This should enable an ongoing analysis of case outcomes to examine the potential for racial bias in the CJS.

## Deferred Prosecution

39. The Lammy Review advocated for wider use of a 'deferred prosecution' model in which a person accused of committing an eligible crime is given an opportunity to complete specified conditions (for example rehabilitative activity, reparation to the victim and/or unpaid work) instead of being prosecuted, without being required to admit guilt.
40. This approach also has potential to reduce disproportionality since Lammy notes that BAME defendants are consistently more likely to plead not guilty and so face more punitive outcomes. However, further evidence is required before any decision to promote wider use of this model.
41. The Ministry of Justice has partnered with police forces, Police and Crime Commissioners and the Mayor's Office for Policing and Crime in London to develop pilots of this model in 4 areas: London (North West Borough Command Unit), Surrey, Cumbria and West Yorkshire. We are working with these areas as well as national partners on the pilot design and sharing best practice around implementation and data collection. Although ethnicity is *not* a selection criterion for being offered a 'deferred prosecution', areas will monitor this with the aim of understanding any impact on disproportionality. We expect pilots to go live in police areas during 2019. All of the pilot areas propose to include youth. This work is a strong fit with our aims for youth of intervening early to divert individuals from the CJS and secure the best outcomes for BAME youth.
42. Note this model is completely separate from Deferred Prosecution Agreements for *organisations* (overseen by the Serious Fraud Office and CPS), and we use the term 'deferred prosecution' in this section to reflect the language used in the Lammy Review.



## Courts

43. Whilst an independent and impartial Courts and Tribunal system is one of the cornerstones of the justice system, it is of vital importance that justice must not only be done – it must be seen to be done.
44. Our data tells us that overall the number of defendants prosecuted for indictable offences decreased for all ethnicities in the last year. Black defendants saw the smallest decrease (by 6%) whereas the other ethnic groups decreased by between 10% and 11%, however the proportion of prosecutions represented by each ethnicity remained stable between 2016 and 2017.<sup>13</sup>
45. Convictions for indictable offences have fallen for all ethnicities, broadly in line with the trends seen for prosecutions. The conviction ratios for each ethnicity have also fallen, decreasing most for defendants of Mixed ethnicity (a decrease of 2.2 percentage points) and the least for Chinese and Other defendants (a decrease of 0.2 percentage points).<sup>14</sup>
46. Between 2016 and 2017, the custody rate for indictable offences has increased slightly for all ethnicities, by between 1 and 2 percentage points. The custody rate was highest for Asian offenders (36%) and lowest for Mixed offenders (32%) in 2017.<sup>15</sup>

## Trust in the system

47. An effective justice system depends on procedural fairness. Equitable treatment at every stage in the criminal justice process is essential. And a society that cannot trust its institutions to protect the people and treat them fairly cannot effectively control the crime that we rightly fear. Our courts are charged with guaranteeing our fair and equal treatment before the law. While the British judicial system has a reputation as one of the fairest in the world, the Lammy review highlighted that our criminal justice system does not command the trust of our Black, Asian, and Minority Ethnic (BAME) citizens.
48. The Review raised several specific concerns in relation to lack of trust and BAME communities (especially young black men) and their engagement with the CJS. The Review found that a high proportion of young black men have a greater likelihood of pleading not guilty in triable either way offences, apparently because they are less likely to have confidence in the legal advice they receive post arrest. Furthermore, many young black men opt to have a trial at the Crown Court instead of the Magistrates Court as it is presumed there is a greater likelihood of being found not guilty and being relieved of a criminal conviction. Evidence has also demonstrated that there is a large proportion of young black men who plead guilty at the last minute on the day of trial once the reality of their case is brought home, instead of pleading guilty at the first available opportunity and receiving the benefits that are attached to that

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<sup>13</sup> Available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>

<sup>14</sup> (ibid.)

<sup>15</sup> (ibid.)

such as reduced penalties. This, Lammy suggests, is attributable to the lack of trust in the advice they are given in the police station, and the belief that they will not receive a fair hearing from Magistrates.

49. To begin tackling the issue of trust in the legal system, MoJ have actively engaged with specialist BAME led voluntary organisations who work directly with young BAME people. Spark2Life are an innovative organisation that work with young people who are in prison, transitioning in the community.
50. MoJ, Spark2Life and Emery Halil & Brown Solicitors are working in collaboration to organise school workshop programmes in six schools within the London borough of Newham and Waltham Forest. It is hoped that this new six-month initiative will be a foundation for engendering trust with young people, but will also start a conversation with young people to dispel negative perceptions about the Criminal Justice System and Magistrates Court. In addition, the programme will aim to educate and inform young people about the realities of the court system as a whole, especially around the difference between the two jurisdictions, youth and adult court. An evaluation of the programme will also be completed to measure success.
51. Spark2Life will go further and undertake detached work within the two boroughs and in conjunction with EHB solicitors firm, to engage directly with the young people within the community, and continue the legal discussions in the young people's space to build trust.
52. We recognise that this is just part of the picture and although some work has been planned, it is clear there is still some way to go to address the issue of trust in the CJS. As a stepping stone, a Ministerial roundtable will be taking place later this month with key BAME led organisations, as well as those who have lived experience of the system. We will continue to work with BAME led voluntary organisations and other Government Departments building towards solutions.

## **The Judiciary**

53. In the 2018 Judicial Office statistics,<sup>16</sup> 8% of judges are BAME. This is a 1 percentage point increase since 2017 for tribunal judges (11%) and is steady for courts judges (7%). BAME representation among court judges aged 40 or over (98% of judges) was slightly below that of the working age general population in each age band, while BAME representation among tribunal judges was higher than that of the working age general population at all age bands from 40 and over. 12% of magistrates are from BAME backgrounds, representing a 4% increase since 2012. When age is taken into account, magistrates are broadly representative of the general population. However, it is clear that continued efforts are needed to ensure the judiciary as a whole becomes more representative of society.

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<sup>16</sup> Available at: <https://www.gov.uk/government/statistics/judicial-diversity-statistics-2018>

54. The judiciary and the Government remain strongly committed to its aim of achieving greater diversity within its ranks. In the past 12 months, the judiciary have continued to pursue a variety of initiatives and challenged itself to explore whether more might be done to accelerate progress, as set out in the Judicial Diversity Committee of the Judges' Council Report on Progress and Action Plan.<sup>17</sup>
55. To encourage and support more talented candidates from a diverse range of backgrounds to apply for judicial office, in April 2018, the Lord Chancellor announced funding for a pre-application judicial education programme (PAJE), a joint initiative of the Judicial Diversity Forum (JDF). The JDF is chaired by the JAC which includes MoJ, the judiciary, and organisations from across the legal sector and works to identify ways to improve judicial diversity.
56. The programme will be offered to diverse candidates (including BAME lawyers) in the first instance and will ensure that candidates are informed on the role of a judge and the transferrable skills which need to be demonstrated in the application process. Participants will be able to take advantage of the programme in early 2019.
57. The Judicial Appointments Commission is reviewing how they can improve their feedback to unsuccessful candidates, supporting those with potential to re-apply in the future. The JAC also keeps its broader selection processes under continual review, with the support of independent experts, to ensure they are in line with good practice and do not disadvantage under-represented groups.
58. A working group with representation from HMCTS, Judicial Office, the Magistrates Association, and advisory committees recently convened to look at ways in which the magistracy can be promoted to target more diverse groups, which includes ethnic diversity.

## Youth justice

59. The Government recognises the importance of embedding rehabilitation of young people in their local community and of strengthening the involvement of courts and magistrates with young people who offend – both being areas which are particularly highlighted in the Lammy review.
60. The Youth Justice Board have reviewed and on October 9, published a revised 'Referral Order guidance'<sup>18</sup> intended for use by Youth Offending Teams (YOTs), Magistrates, panel members, and others within the referral order process. This includes a stronger emphasis on recruiting from diverse communities as well as establishing diverse panels for BAME children where possible.

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<sup>17</sup> Available at: <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/diversity/judicial-diversity-committee-of-the-judges-council-report-on-progress-and-action-plan-2018/>

<sup>18</sup> Available at: <https://www.gov.uk/government/publications/young-offenders-referral-orders>

61. The YJB will also put a call out to the sector on good practice examples for the retention of diverse members using the Youth Justice Resource Hub,<sup>19</sup> and support in demonstrating referral order good practice to build confidence with regard to sentencing. Additional enhancements to the referral order tools on the Youth Justice Resource Hub went live in April 2018 and will be kept under review to reflect good practice gathered from the sector. The YJB will also publish their final disproportionality toolkit this month which will focus on reoffending and help YOTs to identify, analyse and compare data on ethnicity and disproportionality.

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<sup>19</sup> Available at: <https://yjresourcehub.uk/>

## Prisons and rehabilitation

62. The total prison population at 30 June 2018 was 82,773.<sup>20</sup> Over the last five years self-identified ethnicity proportions of prisoners have remained largely unchanged (White, 73%; Black, 13%; Asian, 8%; Mixed, 5% and Chinese or Other, 2%). Whilst remaining unchanged overall at a population level, we know that there are issues within the prison system we are working to address as discussed below.
63. Her Majesty's Prison and Probation Service (HMPPS) is determined to achieve transformational change and has embraced the principle of 'explain or reform' where disproportionality is identified. HMPPS have seized the opportunity to deliver against the Lammy recommendations for which they are responsible, as well as three additional thematic areas of work to meet the needs of Gypsy, Roma and Traveller groups and Foreign National service users and to review Pre-Sentence and Parole Reports.
64. The prison and probation service is committed to addressing the issues highlighted within the Lammy Review. HMPPS seeks to institute a culture of excellence, empowering staff and acknowledging that if disparities are to be tackled, we need to set measurable plans and priorities for action; and that we remain accountable for the results. That is why there has been progressive work conducted to tackle disparate outcomes for BAME prisoners, but to also address issues relating to a representative workforce. We summarise some highlights of HMPPS' wide-ranging work below.

## Transparency

65. Perceptions of transparency, fairness and trust affect the wellbeing and rehabilitation of all prisoners, with particular implications for those who are from BAME backgrounds. While fair treatment is an important concern for everyone, its importance is intensified for those who are held in institutions like prisons.
66. Building on the principles of transparency and scrutiny of decision making highlighted by the Lammy Review, HMPPS has established an External Advice and Scrutiny Panel. Members of the Panel represent a range of organisations, to ensure stakeholder expertise and advice both informs and constructively challenges HMPPS in their response and delivery against each of the recommendations.
67. HMPPS and MoJ are developing indicators within the performance framework for prisons to assess equality of outcomes for prisoners of all ethnicities. An equalities performance measure has been included into the 2018/19 Prison Performance Framework using BAME outcomes from the Measuring the Quality of Prison Life survey responses. HMPPS and MoJ are also reviewing and improving the data quality of other management information in order to develop a more comprehensive measure

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<sup>20</sup> Available at: <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2018>

for future years. The intention is to have an overall equalities measure containing indicators for the equality of both prisoner treatment and outcomes.

## Workforce

68. With regard to workforce, HMPPS is committed to recruiting a more representative workforce in prisons. HMPPS have committed to a target of 14% of all staff recruited being from a BAME background by December 2020. HMPPS are tailoring recruitment campaigns to focus on attracting increased numbers of BAME candidates amongst new recruits and will ensure appropriate focus on race and other protected characteristics through all recruitment processes. With regards to prison officer entry level recruitment, between January 2017 and June 2018, 11% of formal offers accepted were by BAME candidates. Over the same period, for recruitment to Youth Custody Service, 20% of formal offers accepted were by BAME candidates. For the first time this year, HMPPS published experimental statistics on Prison Officer and Operational Support Grade recruitment by ethnicity which show there has been an overall increase in the proportion of BAME candidates applying and accepting formal offers, with variations throughout the 18-month period dependant on the geographical location of the campaign. A new assessment and selection tool for prison officer recruitment will be implemented from October 2018. HMPPS are working on a process to strengthen the systems for capturing protected characteristics data for new joiners and ensure that these are transposed into staff records.
69. HMPPS agrees there is more to be done to work towards a representative senior leadership. HMPPS intend that by 2030 the senior leadership cadre will reflect the BAME working population in the country as a whole. The first step is to align the senior leadership with the current 14% BAME working population figure. There are two priorities: increasing the numbers of high quality new entrants; and, developing the existing talent. To increase external recruitment of BAME staff, HMPPS are working on a number of initiatives to attract staff into senior roles. With regards to developing our current talent, HMPPS have held one-to-one interviews and focus groups with senior leaders and BAME staff in prisons to gather their views on barriers to progression and how we can remove these. This information is helping to develop a range of initiatives to help to increase the number of BAME senior leaders across the business: more diverse recruitment panels; the recruitment of a senior Lammy lead in all 4 parts of the business (Custody, Probation, Wales & HQ) who will lead on the initiatives in their area; a development programme for high-potential BAME middle-managers to encourage them to consider progression; mentoring of BAME staff by senior leaders and a commitment to recruit more BAME managers via both the direct entry senior leaders scheme and the Unlocked graduate programme. We will continue to monitor our progress to achieving a more diverse senior leadership in line with the BAME working age population.

## Incentives and Earned Privileges

70. The Lammy Review highlighted the lack of transparency and evidence of disproportionate outcomes in prison procedures, particularly in regard to decision-making through the Incentives and Earned Privileges (IEP) scheme. This is a system enabling people to earn benefits in exchange for responsible behaviour and encourages prisoners to engage with sentence planning. It ensures a more disciplined and controlled environment which is safer for staff and prisoners. To improve the

fairness and effectiveness of the IEP system, prisons were instructed to establish a forum to review IEP by July 2018. The forums involve both BAME and White prisoners and staff and use the principles of procedural justice to improve the trust and confidence among the men and women in the IEP system. Establishments will be expected to listen and where appropriate act on the feedback from their forums, and to keep a robust grip on IEP outcomes to ensure there is not any disproportionality. The data on IEP levels and proportionality will be monitored through the Equalities Monitoring Tool and via internal assurance mechanisms.

## Complaints

71. HMPPS are updating the current complaints and discrimination incident reporting processes, to fulfil the recommendations made by the Lammy Review, whilst making sure the needs and requirements of prisoners who have literacy difficulties or for whom English is not their first language are met. A revised Prisoner Complaints Framework and guidance for the operational delivery of an effective prisoner complaints process has been developed and is currently under consultation. It is expected to be published in Spring 2019, embedding a problem-solving approach into both the submission and response stages of complaints as well as reinforcing to staff that 'balance of probabilities' is the standard of proof for investigating prisoner complaints. Following a separate consultation with staff, prisoners and external stakeholders on the Discrimination Information Report Form (DIRF), a series of recommendations have been agreed and work is underway to make the process more accessible and transparent and to build trust amongst prisoners.

## Sports

72. The Independent Review of Sport in Youth and Adult Prisons report,<sup>21</sup> highlighted data showing the apparent disproportionality in the ethnic breakdown of those who participated in activities outside education/training hours. This is an area the Government takes seriously, as highlighted in our response published in August 2018. We have committed to improving the way in which we monitor and evaluate outcomes from sports based programmes by ethnicity, to enable us to build a stronger evidence base and inform how we can best create effective practice in future.

## Rehabilitation

73. Proven reoffending results by ethnicity have shown little change to date, but we intend to publish at the end of October, subject to suitable disclosure testing, further breakdowns of proven reoffending rates by offence type for indeterminate sentenced prisoners released by the Parole Board.
74. We believe that effective rehabilitation is crucial to supporting an offender to turn their life around. The Government is committed to improving the access of BAME people to

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<sup>21</sup> Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/733184/a-sporting-chance-an-independent-review-sport-in-justice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733184/a-sporting-chance-an-independent-review-sport-in-justice.pdf)

effective rehabilitation services, but also to assisting young BAME people to turn around patterns of offending as they move into adulthood.

75. As recommended within the Lammy Review, HMPPS held workshops about more effective sub-contracting in probation with Community Rehabilitation Companies (CRCs), Clinks and the Black Training and Enterprise Group (BTEG). HMPPS are currently reviewing the work plans developed, alongside the Annual CRC Equality and Diversity Reports to address barriers to BAME front line services. HMPPS are also working closely with members of the Young Review Independent Advisory Group to assist with the development of an industry-based charter mark for race equality in the sector. Following the recent announcement of the early termination of the current CRC contracts, HMPPS and the CRCs are working with the Probation Programme about how to increase the diversity of sub-contractors and delivery partnerships, particularly with smaller and community based organisations and those whose focus is on BAME issues.
76. Lammy highlighted the need to address the issues relating to unemployment among ex-offenders. The MoJ therefore published the Education and Employment Strategy on 24<sup>th</sup> May 2018. The Strategy will create a system in which each prisoner is set on a path to employment, with prison education and work geared towards employment on release from the outset. We expect this to improve employment opportunities for all cohorts of offenders. In addition to this, in March 2018, the Prime Minister launched an innovative new £90 million youth programme to address ethnic disparities in youth unemployment and to help disadvantaged young people get into work.



## Next steps

### How we are working

77. We are committed to continue our work in better understanding and challenging racial disparity within the CJS. There is work we are doing immediately (and we need to monitor the impact of this) but many issues need a continued long-term focus, and to ensure we systematically consider disparities in future work. We believe culture change, and a growth in trust of the CJS by BAME individuals, will occur by demonstrating the sustained, practical and visible implementation of reform on the ground over time.
78. We recognise that, as time and progress on our work resulting from the Lammy recommendations continue, we will increasingly focus on work above and beyond the recommendations made. We are in a continuing process of refreshing and building our programme of work to identify the next challenges and areas of focus for future years, in partnership with our stakeholder, Departmental groups and operational agencies.
79. Since the issues involved are often complex and responsibility for them is shared by a range of organisations, good governance and good engagement of wider partners is critical.
80. We will continue to have a dedicated team in MoJ coordinating work on ethnic and racial disparity in the CJS and for this to be overseen by the Race and Ethnicity Board chaired by MOJ's Director General for Justice Analysis and Offender Policy. The membership of the Board is at Director level with representation from departmental groups and operational agencies as well as the Welsh Government. We have recently added external representatives to provide additional challenge and scrutiny to this group.
81. We remain committed to strengthening our relationships with external and specialist stakeholders to test our thinking and how our work can be of most benefit. Since January 2018 the Parliamentary Under Secretary of State has hosted quarterly roundtables with community organisations including BAME focused / BAME led organisations. The roundtables are thematic in nature, and have discussed issues including youth justice, intersectionality, health and sports and trust in the justice system. More broadly we are working to ensure key stakeholders remain regularly updated on progress and live issues in relation to tackling race disparity, as any point in time update will not be exhaustive. If you are an organisation we are not in touch with already and would like to share relevant work or expertise, we welcome approaches to [Race\\_and\\_Ethnicity@justice.gov.uk](mailto:Race_and_Ethnicity@justice.gov.uk).
82. The MoJ will also continue to collaborate and align our work with that of the Race Disparity Audit and the work currently on going across Government to address race disparity in wider policy areas.
83. We commit to publish an update on progress in work tackling racial disparities in the CJS again – we anticipate aligning this in future with our Race and Ethnicity in the CJS data publication, which is next expected in Autumn 2019.

## Annex 1 – Update on each recommendation of the Lammy Review

### Data recommendations

**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 collect data on religion so that the treatment and outcomes of different religious groups can be examined in more detail in the future.*

**UPDATE:** We have developed a data scorecard for our Race and Ethnicity Board senior governance group as a means to track progress on those recommendations which lend themselves to measurement and where we currently hold relevant data including key cross-CJS data on ethnicity.

The CPS and the courts continue to explore opportunities to collect data on religion, so that the treatment and outcomes of different religious groups can be examined in more detail in the future. Our aim is to update existing data systems to capture necessary information and where necessary explore the possibility of new data systems as part of the HMCTS reform programme. A Data Governance Authority is being established within HMCTS, intended to support common data standards and opening up data to external researchers and the public.

**Recommendation 2:** *The government should match the rigorous standards set in the US for the analysis of ethnicity and the CJS. Specifically, the analysis commissioned for this review – learning from the US approach – must be repeated biennially, to understand more about the impact of decisions at each stage of the CJS.*

**UPDATE:** The MoJ are working with representatives from the Race Disparity Unit, Government Statistical Service Good Practice Team and as well as Office for National Statistics Methodology, with the involvement of academic statisticians, to develop a best practice approach for the use of Relative Rate Indexes. These enable us to compare the likelihood of a certain outcome for different groups, where this would be suitable and statistically robust. The MoJ is already seeking where possible to add Relative Rate Indexes into forthcoming publications. From March 2019 we will implement this approach for all statistical bulletins featuring suitable rate data broken down by ethnicity and other protected characteristics.

**Recommendation 3:** *The default should be for the Ministry of Justice (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.*

**UPDATE:** Significant progress to date with existing Race DA measures are being updated and new measures being created from new ethnicity data being published in areas ranging from Legal Aid to offenders released on temporary licence. Progress improving data available on ethnicity can be followed on the Race Disparity Audit website with new and updated measures and planned measures dashboards.

**Recommendation 4:** *If CJS agencies cannot provide an evidence-based explanation for apparent disparities between ethnic groups then reforms should be introduced to address those disparities. This principle of “explain or reform” should apply to every CJS institution.”*

**UPDATE:** The MoJ considers ‘explain or reform’ 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. Unless there is an evidence-based explanation for an apparent disparity, then we expect the process behind the disparity to be changed. In many areas to date MoJ does accept the need to change and thus we are taking action to challenge and change disparities, examples of which have been explained within this report.

**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.*

**UPDATE:** MoJ now publishes both sentencing and offence tools which break data down by demographic characteristics, whilst preserving the privacy of individuals where sample groups are small. This was implemented in May's Criminal Justice Statistics publication and will be updated annually.

**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.*

**UPDATE:** In October 2018, the Parole Board will publish data on all those released from indeterminate sentences, showing:

- a) A one-year reoffending rate;
- b) An index offence by reoffence table – to give an indication of reoffence seriousness;
- c) and reoffending rates by ethnicity.

This would be based on 2013/14 reoffending data. We will also investigate the possibility of linking Public Protection Unit Database (PPUD) data with Police National Computer data (PNC).

## Youth Justice Policy

**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.*

**UPDATE:** In the Government response to Lammy, we stated that we had no plans to change the formal powers of Youth Offender Panels. However, we recognise the underlying principles of embedding rehabilitation of young people in their local community and of strengthening the involvement of courts and magistrates with young people who offend.

The Youth Justice Board (YJB) have analysed the regional break down of demographics of Youth Offending Team (YOT) volunteers, to inform diversity of recruitment. They have

also developed and are launching a 'Referral Order guidance',<sup>22</sup> intended for YOTs, Magistrates, panel members, and others within the referral order process. This includes a stronger emphasis on recruiting from diverse communities as well as establishing diverse panels for BAME children where possible.

The publication of the revised referral order guidance published on October 9, includes good practice recruitment strategies for recruiting from diverse communities. The YJB are currently approaching YOTs regarding examples of successful recruitment strategies for diverse communities. The guidance will reinforce the importance of volunteers on referral order panels being representative of their community and cohort of young people.

**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.*

**UPDATE:** As stated within the Government response, we have no plans to require magistrates to follow an agreed number of individuals cases each year. However, we agree that information sharing between courts, YOTs and local services should be strengthened. We have taken steps to improve information sharing between magistrates, courts and services via the upcoming revision to the referral order guidance.

Additional enhancements to the referral order tools on the Youth Justice Resource Hub<sup>23</sup> went live in April 2018 and will be kept under review to provide good practice examples gathered from the sector. This content is intended for YOTs, Magistrates, panel members and others working within the referral order process and is aimed to support improvements in practice more widely.

**Recommendation 33:** *The Youth Justice Board (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.*

**UPDATE:** The Youth Justice Board will publish a full evaluation of what has been learned from the trial of its disproportionality toolkit this month.

## HM Courts and Tribunals Service

**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.*

**UPDATE:** The CJS in England and Wales use a commonly agreed set of data standards to support communications between the different IT systems used by criminal justice organisations. From March 2018 the Self-Defined 18+1 standard was introduced adding "Arab" and "Gypsy or Irish Traveller" to the preceding 16+1 standard.<sup>24</sup> CJS partners are

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<sup>22</sup> Available at: <https://www.gov.uk/government/publications/young-offenders-referral-orders>

<sup>23</sup> Available at: <https://yjresourcehub.uk/>

<sup>24</sup> Available at: <https://www.ethnicity-facts-figures.service.gov.uk/ethnicity-in-the-uk/ethnic-groups-and-data-collected>

currently drawing up plans to integrate this new code into their systems and when fully implemented across the CJS this new standard will deliver greater precision when recording the defendant's ethnicity status. Investigation is continuing to provide assurance on the scale of ethnicity data recorded in HMCTS IT systems.

Research into current processes does not reveal evidence to indicate plea and remand decision data gaps. HMCTS standard operating processes, supported by IT case management systems applying data integrity and validation checks, satisfy the court's duty under Part 5 of the Criminal Procedure Rules to make records. However, plea data is not available for a considerable volume of summary only non-imprisonable cases as a consequence of the defendant failing to engage with the court process, rather than HMCTS failing to record the plea. One of the ways HMCTS is making it easier for defendants to engage with the court process is for defendants to respond online via the 'make a plea service.' Furthermore, while most defendants arrive in the magistrates' court on bail or in custody, remand decision data is not available for those cases arriving at court (first hearing) by way of postal requisition, summons or single justice procedure notice because, as a matter of law, these defendants are not on remand.

**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.*

**UPDATE:** As stated in our Government response, this recommendation is of a complex nature, and is likely to have high costs associated with it. We continue to explore range of ways we may be able to pursue this recommendation, but are not yet in a position to confirm our next steps.

## Plea Decisions

**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.*

**UPDATE:** The Lammy Review advocated for wider use of a 'deferred prosecution' model in which a person accused of committing an eligible crime is given an opportunity to complete specified conditions (for example rehabilitative activity, reparation to the victim and/or unpaid work) instead of being prosecuted, without being required to admit guilt.

Interim results from existing trials of similar approaches (Operation Turning Point in the West Midlands, Operation Checkpoint in Durham) show promise for this approach to reduce re-offending as well as achieving victim satisfaction and cost savings. This approach also has potential to reduce disproportionality since Lammy notes that BAME defendants are consistently more likely to plead not guilty and so face more punitive outcomes. However, further evidence is required before any decision can be made to promote wider use of this model – particularly on outcomes for BAME participants and the impact of not requiring a guilt admission.

The Ministry of Justice has partnered with police forces, Police and Crime Commissioners and the Mayor's Office for Policing and Crime in London to develop pilots of this model in 4 areas: London (North West Borough Command Unit), Surrey, Cumbria and West

Yorkshire. We are working with these areas as well as national partners on the pilot design and sharing best practice around implementation and data collection. Although ethnicity is *not* a selection criterion for being offered a 'deferred prosecution', areas will monitor this with the aim of understanding any impact on disproportionality. We expect pilots to go live in police areas during 2019. All of the pilot areas propose to include youth. This work is a strong fit with our aims for youth of intervening early to divert individuals from the CJS and secure the best outcomes for BAME youth.

In addition, through our engagement with local areas we are aware of additional 'deferred prosecution' initiatives under consideration by police, inspired by this Lammy recommendation. This includes initiatives focused on specific cohorts of female offenders or drugs offences. We will share insights and resources from our work with these areas, and if they come to fruition we will of course be interested in their results.

Note this model is completely separate from Deferred Prosecution Agreements for *organisations* (overseen by the Serious Fraud Office and CPS), and we use the term 'deferred prosecution' in this section to reflect the language used in the Lammy Review.

## HM Prison and Probation Service

**Recommendations: 17, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32**

**Recommendation 17:** *The MoJ and Department of Health (DH) 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.*

**UPDATE:** HMPPS have developed a maturity screening tool, which can help commissioners and providers quantify demand for services and interventions that help young adult males to mature, and which can help practitioners in managing the needs of those who require help in this area. The tool uses ten Offender Assessment System (OASys) items to identify whether individuals fall into a low maturity group, helping to identify those in most need of support to identify their maturity. The tool is available as a standalone tool for use on an individual level, and it has also been incorporated into the MoJ Segmentation Tool to be used on a population level to help prison and probation providers determine how many young adults are likely to require services or interventions to promote maturation. In addition, a resource pack has been developed to support staff identify and work with 18–25-year old males with low levels of maturity. Following feedback from testing at four prisons, the resource pack was launched in July 2018 across England and Wales for use in custody and/or in the community. The resource pack is designed to support staff and promote maturity with young people by developing self-sufficiency and independence; building resistance to peer influence; developing a stable, pro-social identity; enhancing family support; increasing future orientation; and building skills to manage emotions and impulses.

**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.*

**UPDATE:** 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 Secure Estate. NHS England's Children and Young People Informatics Group have considered the functionality of local clinical Information Technology (IT) system as they do not currently allow for the CHAT data to be extracted and reviewed to construct a profile of the needs of young people broken down by ethnicity, as the recommendation suggests. There is a commitment to explore how the data would be provided through the next generation of clinical health IT systems, which will be rolled out in 2020. In the interim, Youth Custody Service have proposed to use data generated through AssetPlus (a common assessment framework used across youth justice), to identify and explain or reform differences in the assessed needs of young people in custody. The Government believes this alternative proposal meets the spirit of the recommendation whilst being a better response in terms of timing and adequacy of data.

**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.*

**UPDATE:** There are currently significant challenges associated with using the CHAT tool across the adult prison estate. HMPPS and Department of Health and Social Care with NHS England are continuing to work together to look at what can be achieved. Since the recommendation was made, NHS England have revised prison clinical assessment templates, and significant improvements to prison health IT are underway which support the intention behind this recommendation. We will continue to work together to understand what further action would be required to further improve systems and the reporting it is possible to generate to ensure equitable access to services.

**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.*

**UPDATE:** Work is ongoing to improve the quality and breakdown of HMPPS data. HMPPS currently provides a staffing breakdown by ethnicity in the HMPPS quarterly workforce statistics, with breakdown by ethnicity and grade presented in the annual HMPPS staff equalities reports (released in November of each year). For the first time this year, HMPPS published experimental statistics on Prison Officer and Operational Support Grade recruitment by ethnicity, and work is ongoing to ascertain whether this can be extended to other areas and other protected characteristics. To strengthen the accuracy of this data, further work is ongoing to increase staff declaration rates across all protected characteristics, with an aim to increase HMPPS staff declarations against ethnicity to at least 80% by December 2020.

Data on disproportionality in offender outcomes can be explored using the Equalities Monitoring Tool (EMT) available internally in HMPPS. The EMT provides reporting by ethnicity against IEP, complaints & adjudications. Work is on-going to improve the timeliness, functionality and breadth of this data and to allow for comparisons. HMPPS have commissioned a dashboard for the EMT which will provide a more timely understanding of disparity of outcome for any group, within any prison establishment across England and Wales. Externally, analysis and data breakdown by ethnicity is available within the annual HMPPS offender equalities report (released in November each year).

**Recommendation 24:** *To increase the fairness and effectiveness of the Incentives and Earned Privileges system, each prison governor should ensure that there is 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.*

**UPDATE:** All prisons were instructed to establish a forum to review IEP by July 2018. The draft Incentives Policy Framework also mandates Governors to ensure there is a forum to review the fairness and effectiveness of IEP. The forums will involve both BAME and White prisoners and staff and use the principles of procedural justice to improve the trust and confidence among the men and women in the IEP system. Internal assurance mechanisms have been established to track the implementation and effectiveness of the forums, and all prisons are now running forums or have imminent plans to put them in place. The data on IEP levels and proportionality will be monitored through the Equalities Monitoring Tool and in 2018/19 we will publish revised guidance for prisons to help them maximise the benefit of the forums.

**Recommendation 25:** *Prison governors should ensure Use of Force Committees are not ethnically homogeneous and involve at least one individual, such as a lay prison observer, 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.*

**UPDATE:** A systematic review of Use of Force committees and minimising restraint meetings has taken place within prisons and the youth estate across England and Wales, to highlight areas of good practice and areas for improvement. This will inform revised guidance and the new Use of Force Policy Framework which is expected to be rolled out in implemented in early 2019. There are suitably robust policies in place to provide Governors with support to enact escalating consequences for officers misusing force (Conduct and Discipline Policy PSI 06/2010); however, work is ongoing to improve implementation and application of these measures. Work is ongoing to explore the use of digital reporting tools to improve the collection and analysis of use of force data.

**Recommendation 26:** *Her Majesty's Prison and Probation Service should clarify publicly that the proper standard of proof for assessing complaints is 'the balance of probabilities'.*

**Recommendation 27:** *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.*

**UPDATE:** HMPPS are updating the current complaints and discrimination incident reporting (DIRF) processes to meet the requirements of Recommendation 26 and 27, whilst making sure the needs and requirements of prisoners who have literacy difficulties or for whom English is not their first language are met. A revised Prisoner Complaints Framework and guidance for the operational delivery of an effective prisoner complaints process is undergoing consultation and is expected to be published in the Spring next year. This will embed a problem-solving approach into both the submission and response stages of complaints as well as reinforcing to staff that 'balance of probabilities' is the standard of proof for investigating complaints. Following a separate consultation with staff, prisoners and external stakeholders on the Discrimination Information Report Form (DIRF), a series of recommendations have been agreed and work is underway to make the process more accessible and transparent and to build trust amongst prisoners.



**Recommendation 28:** *The prison system should be expected to be recruiting 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.*

**UPDATE:** HMPPS is committed to recruiting a more representative workforce in prisons. HMPPS have committed to a target of 14% of all staff recruited being from a BAME background by December 2020. HMPPS are tailoring recruitment campaigns to focus on attracting increased numbers of BAME candidates amongst new recruits and will ensure appropriate focus on race and other protected characteristics through all recruitment processes. With regards to prison officer entry level recruitment, between January 2017 and June 2018, 11% of formal offers accepted were by BAME candidates. Over the same period, for recruitment to Youth Custody Service, 20% of formal offers accepted were by BAME candidates. For the first time this year, HMPPS published experimental statistics on Prison Officer and Operational Support Grade recruitment by ethnicity which show there has been an overall increase in the proportion of BAME candidates applying and accepting formal offers, with variations throughout the 18-month period dependant on the geographical location of the campaign. A new assessment and selection tool for prison officer recruitment will be implemented from October 2018. HMPPS are working on a process to strengthen the systems for capturing protected characteristics data for new joiners and ensure that these are transposed into staff records.

**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.*

**UPDATE:** HMPPS agrees there is more to be done to work towards a representative senior leadership. HMPPS intend that by 2030 the senior leadership cadre will reflect the BAME working population in the country as a whole. The first step is to align the senior leadership with the current 14% BAME working population figure. There are two priorities: increasing the numbers of high quality new entrants; and, developing the existing talent. To increase external recruitment of BAME staff, HMPPS are working on a number of initiatives to attract staff into senior roles. With regards to developing our current talent, HMPPS have held one-to-one interviews and focus groups with senior leaders and BAME staff in prisons to gather their views on barriers to progression and how we can remove these. This information is helping to develop a range of initiatives to help to increase the number of BAME senior leaders across the business: more diverse recruitment panels; the recruitment of a senior Lammy lead in all 4 parts of the business (Custody, Probation, Wales & HQ) who will lead on the initiatives in their area; a development programme for high-potential BAME middle-managers to encourage them to consider progression; mentoring of BAME staff by senior leaders and a commitment to recruit more BAME managers via both the direct entry senior leaders scheme and the Unlocked graduate programme. We will continue to monitor our progress to achieving a more diverse senior leadership in line with the BAME working age population.

**Recommendation 30:** *HMPPS should develop performance indicators for prisons that aim for equality of outcome for BAME and white prisoners.*

**UPDATE:** HMPPS and MoJ are developing indicators within the performance framework for prisons that enable the assessment of equality of outcomes for prisoners of all ethnicities. HMPPS have included an equalities performance measure into the 2018/19 Prison Performance Framework using BAME outcomes from the Measuring the Quality of Prison Life (MQPL) survey responses. HMPPS and MoJ are also reviewing and improving the data quality of other management information in order to develop a more

comprehensive measure for future years. The intention is to have an overall Equalities measure containing indicators for the equality of both prisoner treatment and outcomes.

**Recommendation 31:** *The Ministry of Justice (MoJ) should bring together a working group to discuss the barriers to more effective sub-contracting. The working group should involve the CRCs themselves and a cross-section of smaller organisations, including some with a particular focus on BAME issues.*

**UPDATE:** HMPPS held workshops with CRCs which were attended by the 8 parent organisations, Clinks and the Black Training and Enterprise Group (BTEG). HMPPS are currently reviewing the work plans developed, alongside the Annual CRC Equality and Diversity Reports to address barriers to BAME front line services. HMPPS are also working closely with members of the Young Review Independent Advisory Group to assist with the development of an industry-based charter mark for race equality in the sector. Following the recent announcement of the early termination of the current CRC contracts, HMPPS and the CRCs are consulting with the Probation Programme about how to increase the diversity of sub-contractors and delivery partnerships, particularly with smaller and community based organisations and those whose focus is on BAME issues.

**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.*

**UPDATE:** We are working with CRCs to improve the collection and publication of data on protected characteristics. Due to the announcement of early termination of the current CRC contract providers, discussions have begun with the design team to include the requirement within the new round of the contracts to set clear expectations and data recording/reporting requirements regarding the publication of equalities data on the probation population, for both National Probation Service and CRCs data.

## Judiciary Policy

**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'.*

**UPDATE:** As stated within our Government response last year, we do not consider that the use of an online feedback system is the best approach in the professional development of the judiciary. However, to further support the professional development of judges, the judiciary are working to further extend use of appraisals across the judiciary which includes observations of how judges hear cases.

**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 organisation should be resourced appropriately to fulfil this broader remit.*

**UPDATE:** To encourage and support more talented candidates from a diverse range of backgrounds to apply for judicial office, in April 2018, the Lord Chancellor announced funding for a pre-application judicial education programme (PAJE), a joint initiative of the Judicial Diversity Forum. MoJ is working with the judiciary including the Judicial College, Judicial Appointments Commission (JAC), Bar Council, Law Society and the Chartered Institute of Legal Executives to make PAJE available from early 2019. Through an on-line course, PAJE will provide in-depth information to lawyers to develop their understanding of the role and skills required of a judge, and how their legal experience has prepared them for judicial office, prior to making an application. PAJE will offer targeted support through judge facilitated discussion groups to lawyers from under-represented groups including black and minority ethnic lawyers. The judiciary and the legal professions continue to offer programmes to support aspiring judges which also support the shared aim of increasing diversity.

The JAC is currently reviewing how it can improve feedback to all unsuccessful candidates from each stage of the application process. It is currently conducting three pilots to test the use of enhanced feedback reports at different stages of a recruitment exercise. New approaches will be trialled in the use of published feedback reports providing candidates with information on the relative performance of candidates across the selection exercise, as well as general information on how performance can be improved. 'Near miss' candidates will receive enhanced feedback after interview, with a view to assisting future application. An internal evaluation of these pilots will be undertaken in early 2019 and will inform how feedback is provided in the future. The JAC also keeps its broader selection processes under continual review, with the support of independent experts, to ensure they are in line with good practice and do not disadvantage under-represented groups. Further measures taken in 2018 include the trialling of 'name-blind' sifting of applications; all online tests are already assessed on a 'name-blind' basis. The JAC has also increased the diversity of its cadre of panel members.

**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.*

**UPDATE:** As stated in the Government response, it is our view that although we want our judiciary to be more diverse, we do not think that targets are the right approach as it is important for the quality, independence and impartiality of our judges that we always appoint the most talented candidates on merit. As well as supporting programmes including PAJE, MOJ is reviewing policy areas that impact on judicial diversity, as we committed to do in the government's Dec 2017 response to the Lord's Report into Judicial Appointments. The JAC and judiciary are working with the professional bodies to offer regional seminars to support a greater number of candidates from under-represented groups to prepare for the selection process. The judiciary are developing strategies to enable career development and progression within the judiciary. The government supports the judiciary's continued dialogue and engagement with BAME lawyers to better understand the barriers they face and what other support they need to successfully apply for a judicial appointment.

In the 2018 Judicial Office statistics,<sup>25</sup> 8% of judges are BAME. This is 1 percentage point increase since 2017 for tribunal judges (11%) and is steady for courts judges (7%). BAME representation among court judges aged 40 or over (98% of judges) was slightly below that of the working age general population in each age band, while BAME representation among tribunal judges was higher than that of the working age general population at all age bands from 40 and over. However, there is still progress to be made.

## MOPAC

**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.*

**UPDATE:** The Mayor of London confirmed in his manifesto commitment as well as in the police and crime plan and knife crime strategy, to review the Metropolitan Police Service Gangs Matrix (which identifies the most harmful gang members). MOPAC have undertaken extensive analytical work to assess the how the matrix is being used by Metropolitan Police and the impact on individuals that feature on the Matrix. MOPAC has also established a community reference group to further engage with community leaders to promote transparency and openness around the use of the Matrix, but also gain a steer from the community into the most effective ways of engagement. MOPAC has engaged with the ICO on their findings and are working with the Metropolitan Police on responses to initial findings from the MOPAC analysis. Disproportionality is a key theme of the analysis. Recommendations will be published in Autumn 2018.

## CPS

**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.*

**UPDATE:** The final guidance on Joint Enterprise and a summary of consultation responses was published on May 21, 2018. The guidance clarifies 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 guidance also contains two sections that address the approach to charging in cases of group / gang assaults.

To ensure we met this recommendation, CPS have provided more specific guidance on evidence relating to gangs: they advise prosecutors to be cautious about describing a group as a “gang”, and to only do so if there is an evidential basis to support the assertion; CPS advise that if evidence of gangs is to be used in a case, prosecutors should refer to the Lord Hughes warning in *Myers v R* [2016] AC 314 that prosecutors should distinguish between explanatory evidence and evidence of propensity when seeking to introduce evidence relating to gangs.

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<sup>25</sup> Available at: <https://www.gov.uk/government/statistics/judicial-diversity-statistics-2018>

**Recommendation 7:** *The CPS should examine how Modern Slavery legislation can be used to its fullest, to protect the public and prevent the exploitation of vulnerable young men and women.*

**UPDATE:** The CPS published a typology about ‘county lines’ offending in November 2017 which sets out the approach of the police and the CPS to the safeguarding of vulnerable persons involved in this type of crime and the prosecution of criminal offences of this type. The typology has a particular focus on the relevance of the Modern Slavery Act 2015 and matters to be addressed by investigators and prosecutors in using that legislation. The first successful prosecution was sentenced on Friday 13th April 2018 in Swansea, following a guilty plea late last year.

**Recommendation 8:** *Where practical all identifying information should be redacted from case information passed to them by the police, allowing the CPS to make race-blind decisions.*

**UPDATE:** The CPS has committed, as part of its new Inclusion and Community Engagement strategy, to publish data on ethnicity and charging decisions to monitor disproportionality. CPS analysis of its own data did not identify disproportionality for overall charging decisions, with the exception of rape and domestic abuse. The CPS has assessed its most recent prosecution data for rape and domestic abuse, and will take further action to identify whether there is unjustifiable disproportionality with respect to CPS practice.

From an operational perspective it is not feasible to redact all identifying data from case information passed to the CPS by the police or other investigators. For example, the CPS frequently gives Early Investigative Advice to the police before charge, particularly in rape cases, where the ethnicity of the defendant will be known to the prosecutor. Victim and witness statements may also refer to defendant ethnicity, and many cases will involve ABEs, social media, CCTV or body worn camera footage.

In certain circumstances, understanding the ethnicity of the defendant and victim is relevant to a case. For example, members of a CPS Hate Crime Scrutiny Panel (comprising community representatives, academics and voluntary sector organisations) have raised their concerns with the principle of race blind prosecutions, noting that the ethnicity of defendants can be relevant evidence in hate crime cases.

Even if these challenges could be overcome, removing ethnicity data from files passed to the CPS by the police and other investigators would mean that the CPS would no longer be able to undertake its own analysis of disproportionality in charging decisions and deliver on its commitment in the Inclusion and Community Engagement strategy to publish this data.

## Explaining Legal Rights

**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.*

**UPDATE:** Work to date has centred on the principle of experimenting with different approaches to explaining legal rights and options. The Legal Aid Agency (LAA) is working with police national custody leads to understand the range of products currently used by police forces to explain legal rights in different formats (e.g. easy read). The LAA has also worked with the Solicitors Regulation Authority (SRA) to disseminate to individual police forces an information leaflet aimed at young people in custody explaining the value of seeking legal advice in the police station and courts. In addition, we are also supporting work by the University of Nottingham on the development of a digital tool tailored to youths and other vulnerable groups for use in custody suites. Cross-agency workshops have taken place with a further roundtable workshop on this issue between the Home Office, Ministry of Justice, Legal Aid Agency and other CJS stakeholders taking place in October.

## Criminal Records

**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.*

**UPDATE:** The Supreme Court recently heard arguments regarding the current criminal records regime and we are awaiting judgment which will provide findings later this year. As such, we are not yet able to respond to this issue however, after the judgement we will consider any recommendations to review the system along with recommendations on criminal records made in Charlie Taylor's Review of the Youth Justice System.

**Recommendation 35:** *To ensure that the public understands the case for reform of the criminal records regime, the MoJ, HMRC and DWP should commission and publish a study indicating the costs of unemployment among ex-offenders.*

**UPDATE:** The Education and Employment Strategy was published on 24<sup>th</sup> May 2018. The Strategy will create a system in which each prisoner is set on a path to employment, with prison education and work geared towards employment on release from the outset. We expect this to improve employment opportunities for all cohorts of offenders. We will continue to explore what data is readily available on this with OGD colleagues.

## Annex 2 – MoJ Ethnicity Data Sources

This table highlights and links to key data sources about the CJS which include information on ethnicity. MoJ publishes a full compilation of statistics every two years entitled Race and Criminal Justice System which will next be published in November 2019.

Race disparity data	RDA theme and web link	Next update
Proven reoffending	Crime and reoffending	Jan-19
Young people in custody	Courts, sentencing, tribunals	Jan-19
Violence involving prisoners	Prisons and custody incidents	Nov-19
Self-inflicted deaths in prison custody	Prisons and custody incidents	Nov-19
Self-harm in prison custody	Prisons and custody incidents	Nov-19
Self-harm by young people in custody	Prisons and custody incidents	Jan-19
Use of force on young offenders in custody	Prisons and custody incidents	Jan-19
Single separation incidents for young people in custody	Prisons and custody incidents	Jan-19
Restrictive physical interventions involving young people in custody	Prisons and custody incidents	Jan-19
Assaults carried out by young people in custody	Prisons and custody incidents	Jan-19
Release on temporary licence*	Prisons and custody incidents	Jul-19
Prison population by ethnicity*	Prisons and custody incidents	Jul-19
Remand status at crown court	Courts, sentencing, tribunals	May-19
Average length of custodial sentences	Courts, sentencing, tribunals	May-19
Legal aid work*	Courts, sentencing, tribunals	Jul-19
Youth cautions	Policing	Jan-19
Prosecutions and convictions	Courts, sentencing, tribunals	May-19
Understanding educational background of offenders**	Race and the CJS	Nov-19
HM Inspectorate of Prisons Survey**	Race and the CJS	Nov-19
Parole board hearing outcomes**	Race and the CJS	Nov-19
Judicial Diversity Statistics	Courts, sentencing, tribunals	Jul-19
Judicial Appointments Commission's Judicial Selection statistics	Courts, sentencing, tribunals	Jun-19
HMPPS Workforce Quarterly Statistics*	Crime, Justice and the Law	Nov-17
HMPPS Offender Equalities Report*	Crime, Justice and the Law	Nov-18
HMPPS Annual Staff Equalities Report*	Crime, Justice and the Law	Nov-18

\* to be updated on the ethnicity facts and figures website GOV.UK Ethnicity facts and figures so links are to original data publications

\*\* published in the Race in the CJS bulletin on a biennial basis

## Annex 3 – Guide to acronyms

BAME – Black, Asian and Minority Ethnic  
CHAT – Comprehensive Health Assessment Tool  
CJS – Criminal Justice System  
CPS – Crown Prosecution Service  
CRCs – Community Rehabilitation Companies  
DIRF – Discrimination Information Report Form  
DWP – Department for Work and Pensions  
EMT – Equalities Monitoring Tool  
GRT – Gypsy, Roma and Traveller  
HMCTS – Her Majesty’s Courts and Tribunals Service  
HMPPS – Her Majesty’s Prison and Probation Service  
HMRC – Her Majesty’s Revenues and Customs  
ICO – Information Commissioner’s Office  
IEP – Incentives and Earned Privileges  
JAC – Judicial Appointments Committee  
JDF – Judicial Diversity Forum  
LAA – Legal Aid Agency  
MoJ – Ministry of Justice  
MOPAC – Mayor’s Office for Policing and Crime  
MQPL – Measuring the Quality of Prison Life  
NHS – National Health Service  
OASys – Offender Assessment System  
PAJE – Pre-application Judicial Education programme  
PCC – Police and Crime Commissioner  
RDA – Race Disparity Audit  
SRA – Solicitors Regulation Authority  
YOT – Youth Offending Team  
YJB – Youth Justice Board







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