EQUAL’s response to the ‘Tackling Racial Disparity in the Criminal Justice System: 2020 update’

EQUAL National Independent Advisory Group works collaboratively to improve outcomes for black, Asian and minority ethnic (BAME) and Muslim offenders and to help bring about race equality in the criminal justice system.

Last month the Ministry of Justice (MOJ) published ‘Tackling Racial Disparity in the Criminal Justice System: 2020 Update’. This update also sets out the work that has taken place since the Lammy Review recommendations published in 2017.

EQUAL welcomes the Right Honourable Robert Buckland QC MP - the Lord Chancellor and Secretary of State for Justice’s commitment to tackling the systemic racial inequalities in the Criminal Justice System (CJS). The Minister’s leadership matters greatly and without it we are unlikely to see the necessary transformation within Ministry of Justice (MOJ), Her Majesty’s Prisons and Probation Service (HMPPS) and Youth Justice Board (YJB) over the next four years (the period until the next General Election). Effective performance management and accountability on tackling race disparities within the MOJ and the CJS are fundamental requirements.

EQUAL recognises the important work that has been undertaken and we will continue to work with the MOJ/HMPPS to reduce racial disparities. This response is not comprehensive to the MOJ’s update and primarily focuses on EQUAL’s areas of focus: BAME young people in the youth justice and prisons and probation. EQUAL focuses on these because of the persistent and significant race disparities.

When does the Government expect CJS race disparities to start reducing?

September 2020 will mark three years since the publication of the Lammy Review and six years since the publication of The Young Review. The MOJ update states it will take time to see evidence of a reduction in racial disparities across the CJS. EQUAL would welcome a clear indication from the MOJ about when BAME communities can expect to see evidence of improvements for BAME individuals in the justice system particularly young people.

Resources to support equalities

EQUAL is concerned that the Lammy agenda continues to be seen as an add-on to a list of operational priorities particularly in the prison service where there is significant pressure on human resources. The update makes little reference to new resources being found to support the implementation and embedding of new measures and policy improvements, apart from the BAME Leaders Scheme.
Improved ethnicity data collection needs to be matched with improved support for leaders and managers so they can explain and discuss race disparities performance with their teams and, if necessary, implement interventions to support behaviour change. For example, each prison and probation unit should have a dedicated lead for race equality to support leaders, staff and offenders.

**Youth Justice**

Evidence shows that despite the serious concerns raised in the Lammy Review about the over-representation of BAME children in the youth justice system remains a serious problem. It is disappointing that the Youth Justice Board (YJB) is only now considering research into the Youth Justice System (YJS). The observations in the Lammy Review make it clear that further research should be undertaken; so a two year delay requires justification.

Over 50% of the children in custody are BAME. Black children are particularly over-represented and more likely to be placed in Youth Offending Institutions (YOIs) than Secure Training Centres (STCs) and despite the numerous different work streams BAME disproportionality in youth custody has increased since the publication of the Lammy Review. Reoffending rates also remain high, especially amongst black children (under 18).\(^1\)

Addressing disproportionality must be an on-going priority for the YJB and Youth Custody Service (YCS). The creation of the YJB Stakeholder Engagement Group and the YCS Oversight Group are welcome but we would encourage both the YJB and YCS to demonstrate there is sufficient external BAME expertise within these groups.

Acknowledgement of the multi-generational lack of trust in the CJS and how this may impact upon parental engagement with the YJS is important. It is our view that, trust, or a lack thereof is one of the primary reasons for BAME community disengagement with the CJS, so we welcome work to address this.

It is positive to see the collaborative approach being taken by the YJB in supporting the work of Alliance of Sport, encouraging the use of sport to deter BAME children from entering the YJS. The same goes for the collaborative work that is taking place with the National Police Chiefs Council (NPCC); it is encouraging to see that other key players in policy and decision making in policing have recognised the need for a focus on BAME disproportionality.

More generally, the Government has rightly made available significant funds through the **Youth Endowment Fund** and **Youth Futures Foundation** to support disadvantaged young people. However, there is no evidence that these funds are

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\(^1\) MOJ ‘Race Data Trends Summary’, Published 11 February 2020
supporting projects led by BAME organisations that help to keep BAME children and young people away from the CJS.

**YJS Data**

The HMIP Children in Custody 2017/18 report provides some more granular detail and shows that BAME children comprise 51% of boys in YOIs and 42% of children at STCs. Muslim children comprise 23% of boys in YOIs and 13% of children in STCs.

YJB/MOJ analysis shows that the number of black children First Time Entrants (FTEs) to the Youth Justice System has decreased since 2009 but the proportion they comprise of all child FTEs has doubled from 8% to 16%.²

As encouraging as it is to see a number of initiatives, programmes and research going ahead, there seems to be little evidence to show how these programmes have affected the disproportionality figures. We would like to see more captured data, data that looks at disparity in outcomes for example and would encourage the MOJ and the CJS to publish this data more widely. We know that trust and confidence is built via transparency and we would encourage the CJS embrace public scrutiny.

As with the YJS, more generally there is a lack of data to support the notion that the changes implemented by the MOJ have had the desired effect. This needs to be addressed so that scrutiny panels and external stakeholders like EQUAL can see clear evidence of change. Without sight of the data it is impossible to challenge the organisation to ‘explain or reform’.

**What are the drivers of increased Muslim representation in the prison system?**

We are concerned about the increase in Muslim prisoners and the lack of information about what is driving this trend. The consideration of the needs of Muslim men and women within the CJS extends further than Halal meat options and the right to attend Friday prayers; the real issue is wider and more complex. There is no evidence provided in the update of any improvement in the gathering of consistent data across the CJS, or any analysis of current data to understand and explain the disparities. It is imperative that work is undertaken to identify the drivers of increased Muslim representation in prisons.

EQUAL recently facilitated a roundtable with several Muslim-led organisations highlighting the issues leading to criminal activities, experiences within the system and the difficulties in rehabilitating and re-engaging with society on release. These insights went beyond the prison service; there is work to be done across the whole of the CJS, including the Home Office whose remit extends to the police force. It is

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² Youth Justice Board, ‘Youth Justice Statistics 2017/18’, published 31 January 2019
apparent that HMPPS, MOJ and YJB need to gather and explore feedback from within Muslim communities whilst ensuring any solutions are properly resourced.

**Service provision for BAME service users**

Service provision is specifically referenced in relation to BAME women but it should be considered more widely across the whole of the CJS. The Female Offender Strategy includes an action “requiring bidders for community provision grant funding to demonstrate how they will take the needs of BAME women into account when delivering their services.” It is not enough to ask bidders to provide context on how they will deliver services for BAME communities, it should be a requirement that at least one of the organisations be specifically BAME focused. We would like to see a tailored approach to community provision by BAME specific organisations, with a professional register or an approved supplier list allowing smaller service providers to be on the radar.

EQUAL does not feel that MOJ/HMPPS have made meaningful progress on Lammy Recommendation 31 in relation to involving small organisations with a focus on BAME issues. Returning the probation service to the public sector should be seized on as an opportunity to engage and commission BAME service providers so that they can effectively support the rehabilitation and resettlement of BAME young people into communities and the workforce. In 2018 HMPPS completed a rapid evidence assessment on the effectiveness of rehabilitative services for BAME people. After reviewing a range of research they found that cultural awareness and sensitivity influenced the positive experiences of BAME people engaging in rehabilitative services. It was also found that BAME individuals may be more resistant to treatment potentially as a result of their experiences or fear of racism/discrimination, or the perception that intervention will not be culturally relevant. This supports the notion that BAME individuals may feel that culturally incompetent service providers are not best placed to serve their needs. The evidence also suggests that that cultural competence amongst service providers may be crucial to successful engagement.³

We recommend the MOJ carry out research in this area to establish whether BAME service providers would have a significant impact on the experiences of BAME individuals in prisons and probation.

We appreciate the Minister’s positive statement about the involvement of BAME-led organisations and we now want to see this translated into grants and contracts for the BAME-led civil society sector.

³ HMPPS, ‘The effectiveness of rehabilitative services for Black, Asian and Minority Ethnic people: a rapid evidence assessment’ 2018
Reoffending rates

Disappointingly reoffending rates for black people remain the highest and the update provides very little by way of actions to address this issue. However, it is encouraging following a meeting between EQUAL and Dr Jo Farrar, Chief Executive of HMPPS, that further work has been planned to take place with Hannah Meyer, Executive Director, Reducing Reoffending, to explore ways of involving BAME/Muslim communities and businesses in the reducing reoffending through employment and engagement.

Incentive forums

The Lammy Review recommendation 24 stated that each prison governor should ensure that there is an Incentives forum with both BAME and white prisoners represented. Currently black and mixed prisoners have the highest number on basic and lowest number on enhanced incentives. We are aware that age plays a significant role in incentives, given that the younger you are the more likely you are to be on basic incentives, which indirectly disproportionately impacts on BAME people.

HMPPS should gather data to show that the prisons Incentive forums have BAME prisoner representation and that they have been supported to understand and comment on race disparities in the Incentives and Earned Privileges system. This 2020 update provides no evidence that this is happening. Research should also be undertaken to assess the significance of age in incentives and the indirect impact on particular groups.

PAVA incapacitant spray

EQUAL/BTEG, as a member of the HMPPS External Advice and Scrutiny Panel, has raised a number of issues with the current PAVA rollout in prisons. It seems that far more scrutiny of each prison’s use of force in relation to BAME prisoners is needed before a full-scale rollout goes ahead. The readiness assessments described in the update require development and a more in-depth analysis of how prisons are complying with the Equality Act’s public sector equality duty. It remains a concern that a disparity in PAVA use exists but has not been explained before its rollout.

Gypsy, Roma and Traveller

Gypsy, Roma and Traveller (GRT) communities have often been overlooked when discussing issues of racial disparity in the CJS. This was highlighted in the Lammy Review. It is encouraging to see how much work has been done in the last two years to help identify these groups and try to recognise the challenges that they may face. The introduction of GRT as a category in the 2021 census, the National Scrutiny Panel to consider hate crime against GRT communities and revisions to the Equal Treatment Bench Book are all positive steps towards ensuring equal treatment of GRT communities throughout the CJS.
We are keen to see how the use of new, more sophisticated data collection methods will impact on national action plans.

**HMPPS Workforce**

*Professional development*

A significant area of concern for EQUAL remains the training provided for HMPPS’s frontline workforce and the level of awareness and understanding of the HMPPS’s commitment to implement Lammy recommendations. We recognise unconscious bias and de-biasing training is necessary to raise awareness of how bias and discrimination occurs but we do not feel it is sufficient to drive behaviour change. To tackle the racial disparities and ethnic biases in the CJS the workforce needs to receive on-going training on how to deal with race disparities, racial discrimination, and cultural competence.

The content and delivery of training must be relevant and appropriate to reflect the intersectionality of people in the justice system. For example a black female in custody could also be Muslim and have a disability. It’s important that these multiple characteristics are taken into account when meeting an individual’s needs and when analysing equalities data. Current training provision for staff, including induction of new staff, should be evaluated and assessed against ethnic and faith diversity in the CJS and the challenges that this presents. Online training needs to be reviewed for its effectiveness and adapted to reflect the operational challenges set out above. It’s important that the staff delivering the training reflects the ethnic/faith diversity of the working age population.

*Ethnic representation*

HMPPS’s commitment to increase BAME representation in the workforce is positive. However, we think MOJ/HMPPS should be far more ambitious on the timeline set to increase the number of BAME leaders and we call on the Minister to make progress by 2025 to increase the number of BAME leaders. The appointment of four senior BAME staff Development Leads to support BAME staff progression is very important and should be given sufficient time and resources to make an impact.

Encouragingly, there has been an increase on the Parole Board from 5% self identification as BAME to 13%. EQUAL would urge any learning from their recruitment strategy to be shared more widely across the CJS.

**Judiciary**

It is disappointing to see what feels like a lack of appetite from the Judiciary to embrace some of the kinds of changes that have taken place elsewhere in the CJS. Little seems to have been done to address unconscious bias in recruitment. The lack of enthusiasm for national targets to achieve a representative judiciary is discouraging.
We recognise targets can be rigid and inflexible but given the current situation and the success HMPPS have had with targets, the judiciary may want to reconsider this position. There is an abundance of evidence that suggests merit-based recruitment does not eliminate unconscious bias and whilst we understand the need for merit to play a role in judicial appointments there seems to be a lack of understanding of the impact that lived experience and diversity of thought can have on judicial decision making.

Conclusion

Overall, there are some important pieces of work taking place and some impressive work strands including work around GRT communities. However, it is evident that there is still so much more to do. Affecting systemic issues around race/ethnicity was always going to be difficult, and it is important for the MOJ, YJB and HMPPS to recognise that such issues will not be resolved via ad hoc programmes of work but an overall appetite to consider race equality throughout everything the organisation does day in and day out.

Leaders in prison and probation have a responsibility to lead the culture and behaviour change that is necessary if the services are to become fairer and more inclusive. With the increased numbers of new prison officers it is vital that their training is fit for purpose and existing staff are provided with refresher training that clearly reflects the Government’s commitment to improving outcomes, including specific training on race and discrimination.

EQUAL continues to work closely with organisations existing within the CJS to improve outcomes for BAME communities and we look forward to supporting the MOJ to continue to embed the Lammy recommendations beyond the current programme of work.

EQUAL welcomes the responses provided by Barrow Cadbury Trust and the Criminal Justice Alliance on this update.

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