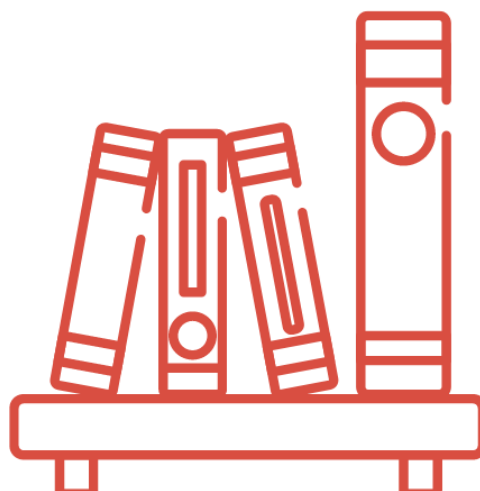


# Ethnic Inequalities in the Criminal Justice System

A policy briefing by EQUAL  
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Dr Kitty Lympelopoulou



# **ETHNIC INEQUALITIES IN THE CRIMINAL JUSTICE SYSTEM: RESEARCH EVIDENCE AND RECOMMENDATIONS FOR POLICY AND PRACTICE**

## **A POLICY BRIEFING**

### **Foreword:**

This briefing summarises research findings from the ESRC-funded project ‘Ethnic Inequalities in the Criminal Justice System (CJS)’ and provides recommendations for policy and practice in addressing ethnic disparities in remand and sentencing.

The project, led by Dr Kitty Lympelopoulou and supported by EQUAL, a national independent advisory group part of the charity Action for Race Equality, aimed to generate new evidence on the extent and drivers of ethnic inequalities at different stages of the CJS.

The research, developed in response to the call for evidence by the Lammy Review to explain ethnic disparities in the CJS, examined the extent of ethnic disparities in remand and sentencing drawing on unique administrative data on defendant appearances in magistrates’ courts and the Crown court in England and Wales.

**Five years on from the Review, the findings offer compelling evidence that race and ethnicity play an important role in remand and sentencing decisions and that defendants from ethnic minority groups are treated more harshly than white British defendants in the court system.**

While considerable government commitment and efforts have been made to implement the recommendations of the Lammy Review on driving forward race equality, the extent of ethnic disparities evidenced in the research is concerning and must be addressed. Implementing rigorous monitoring systems and publishing progress in tackling disparities to ensure the specific needs of ethnic minority people in the justice system are met should be a priority. Crucially, policies to address ethnic disparities in the CJS cannot be effective without acknowledging differential treatment and systemic racism as a cause of these disparities.

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### **For more information, please contact:**

Jeremy Crook OBE, Chief Executive – [Jeremy@actionforraceequality.org.uk](mailto:Jeremy@actionforraceequality.org.uk)

Dr Kitty Lympelopoulou - [Kitty.lympelopoulou@mmu.ac.uk](mailto:Kitty.lympelopoulou@mmu.ac.uk)

[www.equalcjs.org.uk](http://www.equalcjs.org.uk) | [www.actionforraceequality.org.uk](http://www.actionforraceequality.org.uk)

## About Action for Race Equality and EQUAL

For over 30 years [Action for Race Equality](#) has been working to end race inequality for Black, Asian, Mixed heritage and ethnic minority communities. ARE is a Black and Asian-led organisation working collaboratively and in partnership with grassroots, voluntary and community organisations.

In 2014, following a recommendation from the Young Review, [EQUAL](#) was set up as a national independent advisory group set up to tackle racism in the UK's criminal justice system. Made up of members with various insights, expertise and experience of the criminal justice system, ARE provides the Secretariat support function for the advisory group.

## About this briefing

This policy briefing is based on research developed as part of the project Ethnic Inequalities in the Criminal Justice System funded by ADR UK (Administrative Data Research UK), an Economic and Social Research Council investment (part of UK Research and Innovation). (Grant number: ES/V015613/1). The project was supported by Action for Race Equality (ARE) and CLINKS. The analysis presented in this briefing was carried out by Dr Kitty Lympelopoulou (Principal Investigator), with support from Dr Patrick Williams (Manchester Metropolitan University, EQUAL advisory member) and Professor Jon Bannister (Manchester Metropolitan University).

## Who is this briefing for and what does it cover?

This briefing is aimed at government Ministers, officials and policymakers who are responsible for race disparity in the criminal justice system. It will also be useful for others working across the criminal justice system including crown prosecutors, judges, magistrates, probation and police officers and legal professionals.



## Key findings:

### **Ethnic disproportionality exists to varying levels at different stages of the CJS and over particular defendant and case characteristics.**

Defendants from ethnic minority groups are more likely to be sent to Crown Court for trial, to plead not guilty, and to be remanded in custody when they appear in the Crown Court than the White British group.

While ethnic minority defendants have lower or similar conviction rates than the White British group, if convicted, they are more likely to receive a custodial sentence and a longer sentence length than defendants in the White British group.

The extent of disproportionality varies considerably between ethnic subgroups within the Asian, Black, Mixed and White ethnic groups.

Custodial sentences for drugs offences are more disproportionate than custodial sentences for other offences. Disproportionality in custodial sentencing for drugs offences is highest among defendants in the Chinese and the Other White group.

Ethnic disproportionality is much more pronounced among young male defendants. Black Caribbean young males are far more likely to receive a custodial sentence compared to young males from all other ethnic groups.

### **Sentencing outcomes are determined by legal factors such as offence severity, plea proposal and pre-trial detention.**

Plea has a strong effect on sentencing outcomes with those entering a Not Guilty plea being 3 times more likely to be imprisoned and receive 95% longer sentences.

Pre-trial detention holds a strong association with the likelihood of imprisonment, with defendants remanded in custody being 7.5 times more likely to receive a custodial sentence.

Defendants with custodial sentences for more serious offences (with a starting point sentence of 3 years) receive 260% longer sentences than those convicted of less serious offences.

The association between poorer plea bargaining and pre-trial detention outcomes and harsher sentencing outcomes, combined with the higher Not Guilty pleas and pre-trial detention rates amongst ethnic minority groups suggests that ethnic minorities are subject to 'cumulative disadvantage'.

**Ethnic disparities in remand and imprisonment remain or become more pronounced after important legal factors affecting these outcomes are taken into account.**

There is a consistent association between ethnicity, remand and imprisonment and ethnic disparities become more pronounced after controlling for legal factors.

The likelihood of remand is 60% higher for defendants in the Chinese group and 37% higher for those in the Other White group compared to the White British group. Remand for defendants in Black groups was between 15% and 18% higher than the White British group and between 22% and 26% higher for defendants in the Mixed group compared to the White British group.

A custodial sentence is 41% more likely for Chinese defendants, and between 16% and 21% more likely for defendants from Asian groups, compared with White British defendants. Similarly, a custodial sentence is between 9% and 19% more likely for defendants in the Black groups, and 22% more likely for White and Black African defendants than White British defendants after adjusting for other characteristics.

**Ethnic disparities in sentence length are largely explained by legal factors, and after adjusting for these factors, observed differences between most ethnic minority groups and the White British narrow or disappear.**

There are no differences in sentence length between defendants from most ethnic minority groups and the White British after legal factors are taken into account. The exceptions are defendants from Pakistani, Bangladeshi and Black Caribbean groups who have worse sentencing outcomes receiving between 4% and 11% longer sentences than the White British.

**The existence of ethnic differences in remand and sentencing net of other important factors affecting these outcomes indicate biases in the CJS.**

Ethnic differences in remand and imprisonment net of other factors indicate that even if people from ethnic minority groups share the same demographic, social and case characteristics in courts as the White British, they will not have equal CJS outcomes. Disparate impacts of criminal justice policies and practices on ethnic minorities and the existence of systemic and individual bias by criminal justice officials are likely causes of these disparities.<sup>i</sup> The unequal treatment of ethnic minority people in the CJS cannot be attributed solely to individual CJ actors who make (conscious and unconscious) decisions based on stereotypes which cause certain groups to be viewed as more dangerous and blameworthy for their offences<sup>ii</sup>. Individual decisions are embedded within systemic, institutional, political, and cultural processes which interact to produce racism and ethnic inequalities in the CJS<sup>iii</sup>.

**Differences in the extent of disparities in imprisonment and sentence length suggest differences in the ways imprisonment and sentence length decisions are made.**

The principal sentencing factors in determining sentences are the seriousness of the offence, the culpability of the ‘offender’ and the harm caused to victims. Judges and magistrates follow sentencing guidelines in choosing an appropriate sentence but exercise discretion in varying degrees depending on the level of information available to them. Inadequate and poor-quality information about ethnic minority defendants’ circumstances in pre-sentence reports<sup>iv</sup> can result in ambiguity about the seriousness of the offence which determines the decision to imprison, and potentially biased ‘perceptual shorthands’<sup>v</sup> which increase the risk of ethnic minority individuals receiving more punitive sentences. In contrast, decisions regarding sentence length taken after the decision to imprison has been made, are determined by the maximum penalty for the crime allowed by law including mandatory minimum sentences passed by Parliament which act to limit discretion of judges and magistrates’ in determining sentence length.

**Key policy and practice recommendations:**

**Re-evaluate guidelines and practices which have the potential to contribute to harsher sentencing outcomes for ethnic minority groups**

- Greater transparency and accountability in Police remand processes is needed to enable closer scrutiny in subsequent remand decisions during trial and to enable better assessments regarding risks posed by defendants.
- Review and monitor plea bargaining decisions to increase understanding of how plea negotiations are made in cases involving ethnic minority defendants.
- Sentencers should consider ethnic disparities that emerge through disparate impacts before sentencing such as that ethnic minority defendants are less likely to benefit from guilty plea discounts because of distrust in the CJS including Police, Probation, court actors and legal representatives.

**Introduce changes in the legislative framework for pre-sentence reports**

- Ensure high quality standard delivery pre-sentence reports are obtained in all cases where sentencers are considering a sentence of imprisonment.
- Guidelines on pre-sentence reports should be revised to ensure they contain adequate information about the personal, cultural, and offending circumstances of individuals and pay attention to experiences of discrimination, racism, and victimisation.

- In preparing pre-sentence reports increased attention should be paid on the needs of, rather than the risks posed by individuals.

### **Revise Guidelines in the Equal Treatment Bench Book**

- Revise guidelines to address issues of systemic racism and social disadvantage of ethnic minority groups to allow sentencers to consider how these issues contribute to an individual's criminal justice system involvement.
- Introduce the requirement for courts to consider the overall effect of its orders and whether the sentence was proportionate in cases involving ethnic minority individuals.

### **Provide targeted efforts to raise awareness of, and responses to racial bias and ethnic inequalities in the CJS**

- Provide high quality training and support for CJS practitioners including judges, magistrates, probation and police officers to understand race and ethnicity and how it relates to the CJS.
- Improve organisational cultural competence to address biases in practices and responsibilities.
- Improve engagement and trust building with ethnic minority people in the justice system facilitated by culturally aware non-statutory organisations.

### **Improve monitoring and reporting of outcomes by race and ethnicity in the CJS**

- Introduce reforms in legislation to improve the recording of ethnicity in CJS data collection systems, including the mandatory collection of ethnicity data for individuals with justice involvement. This will help address evidence gaps on the extent and drivers of ethnic disparities at earlier stages of the CJS and increase understanding about the experiences of defendants appearing in magistrate's courts for less serious offences.
- Criminal justice agencies should report and monitor ethnicity outcomes in sufficient depth to identify the unique experiences of ethnic minority groups. Reporting should be based on the 18+1 ethnicity classification which includes Gypsy and Irish Travellers to ensure greater cultural sensitivity in designing interventions to tackle disparities.

## Learn more about the “Ethnic Inequalities in the Criminal Justice System” project:

Read the ADR UK report

[Ethnic Inequalities in Sentencing in the Crown Court - Evidence from the MoJ Data First Criminal Justice datasets](#)

Read the Data Comic

[Ethnic Inequalities in the Criminal Justice System](#)

Read about the Data First criminal justice linked data

<https://www.gov.uk/guidance/ministry-of-justice-data-first>

Visit the project website

<https://ethnicityandcriminaljustice.co.uk/>



## Disclaimer:

This work was produced using administrative data accessed through the ONS Secure Research Service. The use of the data in this work does not imply the endorsement of the ONS or data owners (e.g. Ministry of Justice and HM Courts and Tribunals Service) in relation to the interpretation or analyses of the statistical data. This work uses research datasets which may not exactly reproduce National Statistics aggregates. National statistics follow consistent statistical conventions over time and cannot be compared to Data First linked datasets.

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<sup>i</sup> Clair M & Winter AS. 2016. How Judges Think About Racial Disparities: Situational Decision-Making in the Criminal Justice System, 54 *Criminology* 332:353-54.

<sup>ii</sup> King, RD., & Light MT. 2019. Have Racial and Ethnic Disparities in Sentencing Declined? In *American Sentencing: What Happens and Why?*, edited by Michael Tonry. Chicago: University of Chicago Press.

<sup>iii</sup> Rucker, J.M. & Richeson, J.A. (2021) Toward an understanding of structural racism: implications for criminal justice. *Science*, 374(6565), 286–290. <https://doi.org/10.1126/science.abj7779>

<sup>iv</sup> HMIP (2021) *Race Equality in Probation: The experiences of black, Asian and minority ethnic probation service users and staff*. Manchester: Her Majesty's Inspectorate of Probation.

<sup>v</sup> Ulmer JT (2019) Criminal courts as inhabited institutions: Making sense of difference and similarity in sentencing. *Crime and Justice* 48(1): 483–522.



## **ACTION FOR RACE EQUALITY**

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Action For Race Equality



hello@actionfornraceequality.org.uk