

September 2017



Briefing on the final report of the Lammy Review

An independent review into the treatment of, and outcomes for, black, Asian and minority ethnic individuals in the criminal justice system.

About Clinks

Clinks is the national infrastructure organisation supporting voluntary sector organisations working in the criminal justice system (CJS). Our aim is to ensure the sector and those with whom it works are informed and engaged in order to transform the lives of offenders and their communities. We do this by providing specialist information and support, with a particular focus on smaller voluntary sector organisations, to inform them about changes in policy and commissioning, to help them build effective partnerships and provide innovative services that respond directly to the needs of their users.

We are a membership organisation with over 500 members, including the voluntary sector's largest providers as well as its smallest. Our wider national network reaches 4,000 voluntary sector contacts. Overall, through our weekly e-bulletin Light Lunch and our social media activity, we have a network of over 15,000 contacts. These include individuals and agencies with an interest in the CJS and the role of the voluntary sector in rehabilitation and resettlement.

We have had a longstanding focus on issues relating to race and criminal justice. Clinks' submission to the Lammy Review¹ was based on two consultation events with the voluntary sector as well as knowledge and evidence regarding the experience of commissioning and funding for black, Asian and minority ethnic (BAME) specialist organisations. We also supported the Lammy Review to hold an event for the voluntary sector in the summer of 2017 and provided the Review team with a summary of the discussions at this event.

Between 2011 and 2013 we worked in partnership with the Black Training and Enterprise Group to lead the Young Review which published its final report in December 2013.² Since then we have been a member of the review's steering group and Independent Advisory Group to the Ministry of Justice (MoJ). In 2010 we published 'Double Trouble?', a research report into the resettlement experiences and needs of black, Asian and minority ethnic people in the criminal justice system.³ In 2008 we published 'Less Equal Than Others: Ethnic minorities in the Criminal Justice System',⁴ which highlighted the strength and value of voluntary and community-based organisations that challenge inequalities and provide a powerful network to address change.

Clinks thinks all sectors working in criminal justice must work to tackle racism and discrimination. Government should have a comprehensive strategy which

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gives race equality a central place in all policy making. Voluntary sector organisations working in criminal justice, including but not limited to BAME specialist organisations, also have an important role to play. There are more people working in the sector than in prisons and probation combined, meaning it has the potential to be a real force for change in this area. We hope that the Lammy Review will play an important role in driving action within government, criminal justice agencies and the voluntary sector.

About this briefing

This briefing provides a summary of the Lammy Review's main findings and recommendations at each stage of the individual's journey through the CJS, from the point of arrest onwards. It provides commentary and analysis on the potential outcomes of those recommendations as well as providing further suggestions that should be considered by the MoJ, Her Majesty's Prison and Probation Service (HMPPS) and criminal justice agencies. It highlights areas in which the voluntary sector can play a key role in supporting the implementation of the recommendations.

About the Lammy Review

In January 2016 Prime Minister David Cameron announced that he had commissioned a review of racial bias in the CJS, to be led by David Lammy MP.⁵ The Lammy Review published its interim findings in November 2016⁶ and its final report in September 2017.⁷

The Lammy Review follows other reviews and reports on this issue from both government and external independent bodies including the voluntary sector but has two distinctive features. Firstly, its breadth: it covers all adults and children from the point of charge through the courts, prisons and probation systems, up to and including resettlement. Secondly, the review had access to resources, data and information that previous reviews have not seen and as a result has been able to generate new data and analysis to provide further insight into the issues.

Clinks welcomes the Lammy Review and reiterates our belief that action to address the disproportionality and unequal outcomes faced by BAME people in contact with the CJS is long overdue.

Many of the recommendations made by David Lammy echo previous work in this area, in particular the recommendations of the Young Review.⁸ At the time of the Young Review's publication its recommendations were welcomed by the MoJ and National Offender Management Service (now Her Majesty's Prison and Probation Service [HMPPS]). However, action to implement those recommendations has been too slow. Other than the establishment of The Young Review's Independent Advisory Group, which continues to press for action, none of its recommendations have been fully enacted by the MoJ and HMPPS.

The Lammy Review should provide fresh impetus for this action and is an opportunity for all sectors including national and local government, politicians across the political divide in Westminster, criminal justice agencies and the voluntary sector to finally take the steps needed to tackle inequality.

The voluntary sector is key to doing this. Both as a voice for change - pushing for reform and holding government to account on The Lammy Review's findings - but also as a partner in implementing new policies and practices that will make a tangible difference to outcomes. These improved outcomes will benefit BAME people and the communities they are from but also others in the system.



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Overview

Like previous reviews and reports on this issue the Lammy Review paints a stark picture. BAME people make up:

- 14% of the general population
- 25% of the prison population
- 40% of young people in custody.

In addition:

- Arrest rates are higher for BAME people
- BAME people are more likely to plead not guilty
- BAME people are more likely to receive prison sentences for drugs offences
- BAME people report poor experience of prison.

If BAME people were not disproportionately represented in our CJS there would be 9,000 fewer prisoners, the equivalent of 12 average-sized prisons. The economic cost of this over-representation to our courts, prisons and probation service is estimated to be £309 million a year.

While many of the figures highlighted by the Lammy Review have been covered by previous reports, the review also commissioned research which provides new insight and rigour and should draw a final line under debate over whether people from BAME backgrounds experience differential treatment and outcomes in the CJS. Its analysis was able to pinpoint exactly points in the system where specific decisions lead to disproportionality (see page 5 for further detail).

As a result, the Lammy Review is clear that action in response to this evidence can no longer be delayed. It makes 35 clear, achievable and immediate recommendations. It identifies areas where more could be learnt through the improvement of data collection and analysis but in most cases also suggests action that can be taken in the meantime.

This call to action is best exemplified in the Lammy Review's recommendation that criminal justice agencies adopt a principle of 'explain or reform'; if they cannot provide an evidence based explanation for disparities between ethnic groups then reforms should be introduced. This principle has subsequently been adopted by Theresa May in her challenge to government departments when launching the Ethnicity Facts and Figures website.⁹

The Lammy Review is guided by three key principles:

- Fair treatment can be best achieved through open decision making that is exposed to external scrutiny.
- Trust in the CJS is essential. The Lammy Review points to a trust deficit in the CJS amongst BAME communities and suggests this has an effect on the number of BAME defendants pleading not guilty, therefore forgoing the opportunity to reduce their sentences. He also links this to safety and discipline in prison, as well as reoffending rates – drawing attention to a growing body of evidence showing that prisoners are more likely to respect rules and less likely to reoffend if they believe they are treated fairly.
- Responsibility beyond the boundaries of the CJS should not be ignored. The Lammy Review acknowledges that statutory services, while essential, cannot do everything



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alone and that the system needs to work more closely with local communities. It highlights the role that other services, communities and parents can play in supporting people in the CJS both before during and after their sentence.

The Lammy Review's introduction takes the opportunity to highlight the particularly acute issues in the youth justice system. It rightly focuses a spotlight on this area, where the Youth Justice Board's (YJB) successful strategy to reduce the numbers of children in the system has completely failed to address disproportionality. While the overall numbers of children in the youth justice system have reduced, the number of BAME children has reduced at a slower rate and therefore the proportion of BAME children in the system has steadily increased.

Summary

This section of the briefing summarises each chapter of the Lammy Review, which follows the individual's journey through the CJS. It sets out the recommendations in each chapter and provides Clinks' views on the findings and recommendations as well as suggestions for how they might be implemented. It puts forward other actions that we believe should be considered alongside the Lammy Review's recommendations and importantly highlights the role the voluntary sector could play in supporting implementation.

Understanding BAME disproportionality

This first chapter of the Lammy Review explores the data collected by the CJS and the action taken in response to it. The Lammy Review states that although the CJS is meeting its obligations under the Public Sector Equality Duty, and publishes an annual set of figures detailing the over-representation and poorer outcomes experienced by BAME people, this does not go far enough.

Firstly there are gaps in the data in relation to faith and to specific groups within the BAME category which mean we do not have a full understanding of the extent of inequality in the system and how it manifests. For instance, Gypsy, Traveller and Roma people have not featured in official monitoring systems across the CJS, so while they are estimated to make up 5% of the male prison population, compared to just 0.1% of the wider population, these figures cannot be verified. Similarly, the number of Muslim prisoners has increased by almost 50% over the last decade but because other parts of the CJS do not record faith in the way that prisons do we cannot understand what is driving this trend.

Recommendation 1: A cross-CJS approach should be agreed to record data. 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 [Crown Prosecution Service] and the courts collect data on religion so that the treatment and outcomes of difference in religious groups can be examined in more detail in the future.

Clinks welcomes this recommendation which reiterates the Young Review's call for standardisation of data monitoring across the CJS. We would suggest that the CJS should adopt the census ethnicity categories which currently provide the most disaggregated categories for recording ethnicity. Alongside this, faith should be recorded and published data should allow for cross referencing between and across different characteristics.



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Even with the adoption of these categories, improved data monitoring is not an end in itself and must be accompanied by a robust strategy to respond to what the data shows, this must include ensuring that staff have the cultural competence to implement it. This requires a sensitive and nuanced understanding of the categories used and diversity within them. As the Young Review stated, these groups are far from homogenous and the intersection of ethnicity, faith and culture as well as age and gender makes these social identities multi-faceted.

Secondly, the data we do have is unable to provide the insight that tells us which decisions, at which stage of the system have led to the outcomes revealed by the data. To address this the Lammy Review commissioned research which, for the first time, isolates specific decisions in the criminal justice journey that lead to disproportionality.

For instance the most recent 'Race and the Criminal Justice System' publication reports that 'the Black ethnic group had the highest rate of prosecution'.¹⁰ However the analysis does not tell us whether this is down to the number of people being arrested or whether it is driven by charging decisions after arrest. The 'Relative rate index' used by the Lammy Review provides greater insight: it shows that once arrested Black women were less likely than white women to face prosecution, but once charged they were more likely to be tried at Crown Court than magistrates' court.

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

Recommendation 3: The default should be for the MoJ and CJS agencies to publish all datasets held on ethnicity, while protecting the privacy of individuals. Each time the Race Disparity Audit exercise is repeated, the CJS should aim to improve the quality and quantity of datasets made available to the public.

Clinks welcomes both these recommendations, which provide useful and practical suggestions for ensuring that existing data can be used to better understand the picture that it presents.

Concerns have been raised that the Relative Rate Index produces a snapshot analysis rather than looking at the system overall and that this form of analysis can imply that later stages in the process have no role or responsibility for seeking to redress unfair treatment of particular groups at earlier stages. It is therefore important that the data is understood in the context of the whole CJS and that agencies at each stage of the system take full responsibility for achieving the best possible outcomes for individuals they are working with – this includes addressing the effects of earlier disproportionate decision making. As the Lammy Review states with regards to the prison system "(it) inherits some of the disparities from other services... failing to serve BAME communities effectively. But it must do far more to rectify them..."

A first step towards implementing recommendation 3 would be for further criminal justice data to be added to the government's recently launched Ethnicity Facts and Figures website. The criminal justice section of this site



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does not currently present all of the data that exists on race and the CJS.

However as the Lammy Review rightly points out, while understanding and scrutiny are necessary, action is even more vital. It is in response to this challenge that David Lammy proposes what has been viewed by some as the one of the defining recommendations of his review:

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.

This is a laudable aim and one which has since been echoed by Prime Minister Theresa May in her challenge to government departments when launching the Ethnicity Facts and Figures website.¹¹ For too long statistics highlighting inequalities in the CJS have been produced and published but have not resulted in action to address them.

Operationalising this principle will not be without its challenges. Consideration will need to be given to what constitutes an acceptable explanation, who will hold agencies to account for that explanation and what timescale for reform would be acceptable. Placing the onus for ensuring this principle is put into practice solely on the institutions themselves is not sufficient.

Clinks suggests that an independent scrutiny body should exist, including voluntary sector organisations and community representatives, to ensure the proposed changes to data collection take place, to scrutinise the data, and to ensure that the explain or reform principle is being applied in all relevant cases. This body should also act as a critical friend to government in assessing explanations and developing necessary reforms. This body should report to government at a ministerial level.

Crown Prosecution Service

The Lammy Review's chapter on the role of the Crown Prosecution Service also covers issues relating to police arrest rates, gang policy and joint enterprise legislation.

Arrest rates

David Lammy's review does not cover policing and instead begins after the first stage of an individual's journey through the CJS, at the point of charging decisions. It rightly acknowledges the limitations of this remit.

Arrest rates determine the number of cases passed onto the CJS and arrest rates are generally higher for BAME people. As the Lammy Review states the system itself does add some degree of disproportionality after the point of arrest but rarely at the levels seen in arrest differences.¹²

There is a disproportionate use of stop and search against people from BAME backgrounds and, as well as driving numbers received into the system, this has a profound effect on trust in the CJS as a whole. The report highlights examples of good practice in response to this including Northamptonshire Police Force which now scrutinises the grounds for every recorded stop and search conducted and takes appropriate action against officers found to be using the power unreasonably.



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Since the Lammy Review's publication, the Ethnicity Facts and Figures website has also highlighted other data regarding policing. For instance the lower the proportion of BAME people in a police force area the higher the proportion of BAME people arrested. **In order to provide an understanding of race disparities across the whole CJS and respond to figures highlighted by the Ethnicity Facts and Figures website¹³ Clinks recommends that a similar review of racial bias in policing is carried out as soon as possible.**

Gangs

Police often link stop and search to suspicion of gang offending. The Lammy Review highlights the problematic nature of the gang narrative, stating "It is important that we recognise that not all groups of young people are gangs, and that we target the criminal and violent behaviour of individuals rather than the group". It points to surveillance tools such as the Metropolitan Police's Trident Matrix database.

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 Information Commissioner.

Clinks welcomes the recommendation for voluntary and community groups to be involved in the review of Trident and is clear that there is an appetite amongst the voluntary sector to support the Mayor's Office for Policing and Crime (MOPAC) in this way.

Clinks would also suggest that other police forces should learn from MOPAC's review of Trident and implement similar reviews of their own gang surveillance tools and databases, involving the voluntary sector as a matter of course.

The Lammy Review also highlights the problematic use of Joint Enterprise prosecutions¹⁴ which have disproportionately affected BAME people. Following a Supreme Court judgement in 2016 establishing that the law on Joint Enterprise had been misinterpreted, a higher threshold of proof is now required.¹⁵ However many experts remain concerned about the use of stereotyping and criminalisation by association in Joint Enterprise cases and the Lammy Review states clearly that 'People must be tried on the basis of evidence about their actions, not their associations – and the evidence put before juries must reflect this.'

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.

Clinks recognises that Joint Enterprise is an important part of the picture regarding disproportionate and unequal treatment for BAME people in the CJS. **We support this recommendation and would suggest that the CPS should consult with grass roots organisations who have undertaken significant campaigning in this area to improve their approach to gang prosecutions.**



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In particular many women involved in gang activity can find themselves controlled through threats and intimidation. David Lammy argues that responses to gang activity have focused too much on BAME children and young people and not enough on the criminal hierarchies who encourage them to carry weapons and sell drugs. He suggests that Modern Slavery legislation provides an opportunity to address this.

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.

CPS charging

The Lammy Review found a broadly proportionate picture of CPS decision making. However there were some areas of concern when looking at specific offence type. There were significant differences in prosecution and conviction rates for rape and domestic abuse – black and Chinese and other defendants had higher rates of prosecution for these offences. The CPS had identified this variation themselves and in their submission to the Lammy Review called for more research into this area. The Lammy Review welcomes further research but usefully also points to action which could be taken immediately:

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.

Clinks welcomes this focus on action that can be implemented immediately while further research is undertaken.

Learning lessons

The overall positive picture in relation to the work of the CPS has led the Lammy Review to identify a number of lessons that can be applied to other parts of the CJS:

- External scrutiny – Since 2000, a range of independent and external reviews have been published regarding how and race and ethnicity effects CPS decision making.
- Internal scrutiny – The organisation systematically reviews charging decisions to ensure rigor and balance.
- Diverse workforce – Compared to other CJS institutions the CPS workforce is notably more diverse.

These are points that are picked up throughout the Lammy Review in relation to its recommendations for other parts of the system.

Plea decisions

The role of plea decisions and BAME plea decisions

The Lammy Review highlights a glaring difference in plea decisions between BAME and white defendants. The relative rate index analysis conducted for the Lammy Review found that:



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- Black and Asian men were more than one and a half times more likely to enter a 'not guilty' plea than white men
- Black, Asian and mixed ethnic and Chinese/other ethnic women were all more likely than white women to enter not guilty pleas at Crown Court
- Young men from a black, Asian or mixed ethnic background were more likely to enter a not guilty plea than their white counterpart.

The Lammy Review suggests that this plays a significant role in driving BAME disproportionality later in the system. Because those who plead guilty can see their sentences, if convicted, reduced by a third or gain access to alternatives to custody.

Lack of trust

David Lammy identifies a lack of trust in the system as the primary reason for this difference, stating that BAME defendants are less likely to cooperate with the police or trust the advice of legal aid solicitors who are viewed as part of 'the system'.

Two potential solutions are suggested to address this issue. The first is to consider alternative approaches to explain legal rights and options to defendants.

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 into custody, giving people a choice between different duty solicitors, and earlier access to advice from barristers.

The voluntary sector could be a potential recruiter and trainer of community intermediaries. It has a long history of acting as a bridge between individuals and statutory agencies, including of recruiting and training Appropriate Adults to support children and vulnerable adults in police custody.¹⁶ This knowledge and experience could be utilised in this setting.

In considering different approaches to explaining legal rights it will be important to ensure that defendants still have proper access to justice otherwise such a scheme could exacerbate the issue it is trying to address. Steps must be taken to ensure that any community intermediary service is not seen by either defendants or anyone else in the CJS, as a replacement for legal representation. This is an important consideration in the context of reductions to funding for legal aid and the potential resulting effect on smaller defence firms, often those with BAME lawyers, who might engender greater trust amongst BAME defendants.¹⁷ Careful thought will also need to be given to how organisations and volunteers deal with disclosure in situations where they do not have legal professional privilege and how this is explained to defendants.

Given the expertise the voluntary sector could offer in recruiting and training community intermediaries, they should be engaged as key partners in any explorations of this recommendation by the Home Office, the MoJ and the Legal Aid Agency.

The second approach highlighted is deferred prosecution. The report cites international examples in New Zealand and California, as well as pilots in Durham and the West Midlands. Under such schemes defendants are required to cooperate but do not have to formally admit guilt. Upon



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successful completion of interventions their prosecutions are dropped. If the interventions are not successfully completed they proceed to court. Early evaluation of the Durham pilot has shown positive results; it has seen increased victim satisfaction compared to cases sent to court, reduced rates of reoffending and a 69% reduction in court cases, leading to cost savings.

Recommendation 10: The 'deferred prosecution' modelled 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.

Clinks welcomes expanding the use of alternatives to custody which would have benefits not just for BAME individuals but all groups in contact with the CJS. However, the creation of greater diversionary pathways will not necessarily address BAME disproportionality. In Clinks' consultations with voluntary sector organisations to inform our submissions to both the Lammy Review and Taylor Review, organisations raised concerns that BAME children and young adult were not referred to diversionary options because they were perceived to be of higher risk than their white counterparts. **There is therefore a need to target such schemes specifically at reducing disproportionality and to ensure that staff are not consciously or unconsciously engaging in racial stereotyping.**

There is a clear role here for the voluntary sector both as an intermediary explaining such a programme to potential participants and as a designer and provider of appropriate interventions. The voluntary sector already has a track record and expertise in delivering successful alternatives to custody and interventions in the community for people who have offended. This includes specialist services to support women in the community, family interventions, services to address drug and alcohol misuse, and support for mental health, housing and employment issues. **Therefore Clinks supports the recommendation to roll out further deferred prosecution models and suggests that in developing these voluntary sector partners must be identified and engaged as delivery partners.**

Courts

Fairness - Verdicts

The Lammy Review highlights juries as the success story of the justice system, citing analysis showing that, on average, juries do not discriminate on the basis of ethnicity. It is this evidence that leads David Lammy to one of his guiding principles throughout the report – the importance of open decision making that leaves no hiding place for bias or discrimination.

However this positive picture is not as clear for magistrates' verdicts. The Lammy Review's analysis found that while magistrates' decisions were broadly proportionate for BAME children, there were some disparities in adult verdicts. In particular black, Asian, mixed ethnic and Chinese/ Other women tried in magistrates' courts were more likely to be convicted than white women.

The Lammy Review states that any further analysis of this is hindered by a lack of data collection by magistrates' courts on a number of key issues including defendants pleas, the presence of legal representation and remand decisions.



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Recommendation 11: The MoJ should take steps to address key data gaps in the magistrates' courts 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.

Further data to help us better understand the issues is always welcome. However this should not be in place of immediate action to address these issues. **Given the specific finding in relation to sentencing and BAME women the MoJ should consider the recommendation in Agenda's submission to the Lammy Review that over-representation in prisons could be addressed in part by reviewing how sentencing is working and by a greater use of community based support and supervision. Further, we request that all of the Lammy Review's recommendations should be reviewed prior to finalisation of the MoJ's Female Offenders Strategy and that the voluntary sector including women's, BAME and faith organisations are involved in doing so.**

Fairness - Sentencing

The Lammy Review highlights findings from a MoJ study of Crown Court sentencing showing higher odds of imprisonment for defendants from black, Asian and Chinese or other backgrounds compared to white defendants. In particular, the odds of receiving a prison sentence for drug offences were 240% higher for BAME defendants.

The Lammy Review states that this is a deeply worrying statistic and may lead many to conclude that it is evidence of bias. The Lammy Review suggests that it is now incumbent upon the judiciary to produce an evidence based explanation for this. However no formal recommendation is made to this effect.

Clinks is disappointed that a finding as glaring as this does not illicit a recommendation for immediate action. **The judiciary must now respond, in the spirit of the Lammy Review's explain or reform principle, to the association between ethnicity and the likelihood of receiving a custodial sentence.** When launching the Ethnicity Facts and Figures website Theresa May adopted this principle as a challenge to government departments.¹⁸ Clinks suggests that the judiciary should take up this challenge also, despite its independence from government.

The existing mechanism for redress if an individual feels that their sentence was unfair is the Court of Appeal. However, judges have broad discretion in their sentencing decisions meaning that individually these cases would be unlikely to be altered on appeal. But as the Lammy Review outlines it is possible that discretion is exercised differently for BAME and white defendants. Such differences in decision-making may contribute to significant differences in incarceration rates and would not be picked up by the Court of Appeal. The Lammy Review therefore states that guarding against this risk requires a different form of scrutiny to the appeals process and suggests that the Open Justice Initiative, which is already in place and allows for sentencing patterns in different parts of the country to be examined, could be extended to do this.

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.



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The rationale for this is that it would identify if there are areas of the country, or even specific courts where BAME defendants are more likely to go to prison for the same offences. While this further scrutiny is welcome, it falls short of the necessary call to action to address the unequal outcomes that the data already exposes – this inequality is glaring in the category of drug offences. **As outlined above the judiciary now has an opportunity to lead the way in putting into practice the 'explain or reform' principle and should do so with the utmost urgency.**

Pre-sentence reports

The Lammy Review highlights the importance and use of pre-sentence reports (PSRs), which are provided to judges by the National Probation Service (NPS) and set out information about the character and circumstances of an individual. It points out that the information in these reports can act as a vital tool in mitigating the difference in backgrounds – both in social class and ethnicity – between the magistrates, judges and the defendants who come before them.

The review discusses the increasing move towards 'fast delivery' PSRs, as well as guidance to discourage the use of PSRs in certain cases including those involving drug offences (which the earlier section shows involve particularly stark sentencing disparities). The Lammy Review suggests that the MoJ should review the use of effectiveness of PSRs in light of this but again this does not constitute a formal recommendation.

Clinks is disappointed that no formal recommendation was included to suggest that better use of detailed PSRs could have a significant impact on sentencing. We hope that the MoJ will take seriously the suggestion made, despite the lack of a recommendation. **Given the sentencing disparities for drug offences, the MoJ should review the guidance to disregard PSRs for such offences. The MoJ should also review the use of 'fast delivery' PSRs for all offences.**

Alongside this, cultural competence training should be reviewed and provided for both the probation staff who prepare PSRs and the judiciary and magistracy who receive them. This would address issues such as a lack of understanding of the lifestyles of Gypsy, Traveller, Roma people which can result in information about them being unfairly perceived as an abscond risk and therefore more likely to be sentenced to custody.¹⁹

Trust – Demystifying courts

The Lammy Review argues that key to building trust in the CJS is both 'justice being done and being seen to be done'. It points to academic research that shows the link between respect for the law and confidence that it has been applied equitably; and between understanding the process behind a decision and accepting that decision. As such it argues that sentencing is a key area which needs demystifying.

Judges provide detailed sentencing remarks in court which explain how considerations such as plea decisions, previous criminal offences and mitigating factors are taken into account. However, convicted individuals often hear these remarks for the first and last time in court and no further formal explanation is given about the sentence they then go on to serve.

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.



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Steps to support people in contact with the CJS to understand their treatment better are welcome. However some concerns have been raised regarding this recommendation. There is a risk that making sentencing remarks publically available would undermine any attempts to support individuals to live a life free of their offending past after release. This could potentially undermine another recommendation of the Lammy Review regarding sealing criminal justice records (See page 24). **Clinks suggests that consideration is given to how sentencing remarks can be made available to those involved in a case without them being publically and indefinitely available.**

The Lammy Review highlights the responsibility of judges to ensure that all those in court understand the proceedings. It suggests that a feedback system could be utilised focusing on attributes such as courtesy, clarity and efficiency. Alongside recording respondents' demographic details it suggests that such a system could generate a useful picture over time of which judges communicate effectively and inspire trust, which could in turn be utilised for professional development.

Recommendation 14: The judiciary should work with HMCTS [Her Majesty's Courts and Tribunals Service] 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.

While Clinks has no objection to this, we feel that in light of the issues highlighted above regarding sentencing, **professional development for the judiciary and magistracy should include compulsory unconscious bias and cultural competence training which is delivered in partnership with specialist BAME voluntary sector organisations.**

Trust - Judicial Diversity

The Lammy Review suggests that a fundamental source of mistrust in the CJS among BAME communities is the lack of diversity amongst those who wield power within it. 20% of defendants appearing before courts in 2016 were from BAME backgrounds compared to just 11% of magistrates and 7% of court judges.

The Lammy Review outlines that there is no problem attracting BAME candidates to the magistracy and judiciary, the issue lies in the number getting through the process. BAME applicants were recommended for positions at lower rates than they applied in virtually every recent recruitment round. David Lammy therefore suggests that there is a danger that the current judiciary is recruiting in its own image.

Recommendation 15: An organisation such as the Judicial Training College or the Judicial Appointments Commissions 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 organisations could take on similar responsibilities for the magistracy. The organisation should be resourced appropriately to fulfil the broader remit.



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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.

Clinks welcomes both these recommendations and urges the MoJ to implement them as soon as possible.

Responsibility - Youth Justice

The Lammy Review states that the biggest challenge lies in the youth justice system. It reiterates a series of worrying statistics that show that while both the numbers of young people held in youth custody and the numbers of children in contact with the CJS who go on to reoffend have dropped overall, this success hasn't affected BAME children at the same rate. As a result the proportion of BAME children held in custody has risen to over 40%. The proportion of BAME children in contact with the CJS who go on to reoffend within a year has risen from 11% -18%, with the figure for black children at 45%.

The Lammy Review states that to play their full role in reducing reoffending youth courts must focus not just on young people but also on the responsible adults around them, including parents and communities. It highlights the appetite within BAME communities to assist in finding solutions to these issues and suggests what it describes as a more local, more family orientated approach concerned with bringing services together.

The Lammy Review proposes that youth offender panels, which currently are headed by two volunteers from within the community, should be renamed local justice panels and go further in emphasising shared responsibility. David Lammy proposes they should include parents, communities and key local services.

This would include holding parents and carers responsible for their children until they reach adulthood and requiring them to attend hearings alongside their children until the age of 18 (currently this is only required up to 16). The Lammy Review also suggests that parenting orders are under-utilised and that there is little faith in their efficacy amongst Youth Offending Teams (YOTS). It suggests that they should be reviewed to ensure that parents are properly challenged and supported.

Greater support for parents whose children are in contact with the CJS is welcome. However, Clinks is unsure whether it is correct to say that parenting orders are being under-utilised for BAME children or whether they are an intervention that would best address the problem.

The Lammy Review states that that parenting orders were issued in just 60 cases involving BAME children in 2016, out of 189 parenting orders issued altogether that year. This means that of all parenting orders issued 32% were issued to BAME children. To understand the use of parenting orders for this group properly it is necessary to look at whether they are issued to BAME children more or less often than their white counterparts. This would involve comparing the percentage of parenting orders issued to BAME children with the percentage of BAME children convicted of a crime. Clinks was only able to find data for the number of children who received a caution or conviction (22%²⁰) so were unable to make this comparison. We suggest that before consideration is given to using parenting orders more for this group this data should first be further investigated.

Given that parents from BAME backgrounds may well have experienced many of the negative interactions with the CJS or other forms of disadvantage because



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of their race, ethnicity or faith as highlighted by the statistics published on the Ethnicity Facts and Figures website, Clinks urges particular caution regarding punitive measures towards BAME parents in response to youth offending.

The Lammy Review recognises the importance of assessing maturity for young adult offenders up to the age of 21 and using this assessment to inform rehabilitative interventions.

Recommendation 17: The MoJ and 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.

Clinks welcomes any call for action which would further embed a consideration of maturity at all stages of the CJS. We note that the NPS is already instructed to take account of maturity in its PSRs and that the Transition to Adulthood Alliance guidance, *Taking Account of Maturity*²¹, is specified in the relevant probation instruction. Clinks would suggest that this recommendation could go further, and in line with the Justice Committee's report *The treatment of Young Adults in the criminal justice system*²², a distinct and comprehensive approach for all young adults aged 18-25, which would include specific courts, is necessary.

The Lammy Review raises concern about court closures and consolidations. This could result in courts becoming further detached and remote from the people they serve. It cites recommendations from the organisation Justice regarding the use of 'justice spaces' and suggests that youth court cases might be particularly suited to this approach.

It also suggests other ways of bringing the community into the process itself, encouraging those with direct responsibility for the child or an appropriate interest in their education, health, welfare or general progress to observe and advise the panel and understand their own responsibility in the child's rehabilitation. According to the Lammy Review this should include statutory services such as education or health.

Recommendation 18: Youth offender panels should be renamed local justice panels. They should take place in community settings, have 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.

Clinks welcomes the opportunity this could present for a holistic approach to the causes of a child's offending and the appropriate interventions in response to it. We suggest that voluntary sector agencies also have an appropriate role to play either where they are already engaged with a young person or where they could be brought in to provide an intervention. It is in this circumstance that the knowledge and expertise of BAME led, community based organisations, with an understanding of the lived experience of the child could be of particular value.

Voluntary sector organisations should be appropriately involved in any reconfigured local justice panels. The Youth Justice Board should also work with YOTs to



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improve their mechanisms for community engagement and partnership working with such organisations, including through grants and commissioned services.

David Lammy's review reiterates the concern expressed by Charlie Taylor's review of the youth justice system²³ that there is a gap between the knowledge of magistrates and youth offending panels, meaning that magistrates do not have sufficient understanding of a child's needs or the impact of a custodial sentences on children.

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 evaluate whether their continued attachment to these cases has any observable effect on reoffending rates.

Clinks welcomes this recommendation which would improve collaboration across the CJS so that all those involved with a person who has been convicted understand that the key purpose of their involvement should be to progress that person's rehabilitation.

The Lammy Review's earlier suggestions about the use of PSRs and their potential to bridge the gulf of experience between magistrates and the people who come before them, could be brought to bear on this issue. Clinks therefore reiterates our recommendation that the MoJ should review the use of 'fast delivery' PSRs.

Prisons

The Lammy Review restates the well-established statistics showing BAME over-representation in the prison system. If the demographics of our adult prison population reflected those of England and Wales:

- There would be 9,000 fewer people in prison
- Resulting in the possible closure of 12 average sized prisons
- Which would provide the CJS with a saving of £234 million a year.

In the youth justice system, while the overall population in custody is much smaller, the proportion of BAME children is over 40%.

Outcomes for BAME people in prison are poorer:

- Evidence suggests they are less likely to be identified with learning difficulties or mental health concerns
- On average they have poorer relationships with staff
- They are less likely to report having a prison job or to participate in offender behaviour programmes
- Just one in 100 cases of prisoners alleging discrimination by prison staff are upheld.

In addition there are a number of BAME groups who are particularly over-represented and whose needs continue to go unmet, such as Gypsy, Traveller and Roma people. The Lammy Review rightly points out that ensuring the treatment and outcomes for these groups are as good as they possibly can be is not just a legal necessity but a key part of running an effective prison.



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Categorisation

Analysis conducted for the Lammy Review reveals that BAME prisoners are more likely to be held in high security prisons than white male prisoners convicted of similar offences. This difference is particularly striking for public order offences.²⁴

In response to this the Lammy Review suggests that the prison service should publish further research on which of the two groups of prisoners held in high security prisons – individuals classed as Category A (deemed as presenting the highest risk) and individuals held on remand awaiting trial – is driving these statistics. However the Lammy Review publishes statistics from its own analysis that clearly show that BAME people are more likely to be placed in high security prisons than white people convicted of the same.

Given this evidence, there should be no delay in responding. MoJ must, in line with the 'explain or reform' principle, explore these findings and publish information that explains these disparities or immediately review the categorisation and allocation system and the categorisation of existing BAME prisoners.

Identifying problems

The Lammy Review highlights a range of contributions from its call to evidence which outline the significant needs of the prison population in general. It outlines a range of statistics that support these submissions.

In the youth system:

- 33% of children have mental health issues
- One third of children in prison have spent time in the care system
- 45% have substance misuse issues
- 61% have a track record of disengagement with education.

In the adult estate:

- 62% of men and 57% of women are diagnosed with a personality disorder
- 32% are recorded as having a learning difficulty or disability.

Data from the youth estate, which has more detailed data collection methods, shows that BAME children are less likely than white children to be recorded as having health, educational or mental health problems. This may indicate unidentified needs. The only area where BAME young people were over-represented was in relation to concerns about the risks they pose to other young people. There is evidence of similar patterns in the adult estate.

As the Young Review previously highlighted, this racialised stereotyping²⁵ which causes BAME people to be viewed through a lens of violence is particularly problematic. **It again highlights the need for improved cultural competence and unconscious bias training amongst the staff working with prisoners and responsible for assessing needs.**

Assessment

The Lammy Review points to innovation taking place within the youth justice system that may improve needs assessments and ensure that prisons and secure institutions have



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access to assessments made by other services. The Comprehensive Health Assessment Tool (CHAT) developed by The Offender Health Research Network and the University of Manchester is a standardised approach to screening and assessment of health problems, which builds on information already held about an individual without relying on it entirely.

Recommendation 20: Leaders of institutions in the youth estate should review data generated by the CHAT and evaluate its efficacy in all areas to services across ethnic groups. Disparities in the data should be investigated thoroughly at the end of each year.

Recommendation 21: The prison system working with DH [Department for Health], should learn from the youth justice system and adopt a similar model to the CHAT for both men and women prisoners with built in evaluation.

Clinks welcomes the development of improved tools to assess prisoners' needs. Any such tools should also consider how they can incorporate needs beyond the health of prisoners. There is also a need to ensure clear pathways and sequencing of appropriate interventions once such needs have been identified.

Clinks' current work piloting voluntary sector coordinators in three prisons in the South West provides some important learning for how both prisoners and staff can be kept fully informed about the services available in a prison, in order to enable those in prison to access services appropriately²⁶. In the context of these recommendations, the role of voluntary sector coordinator has the potential to provide significant support in identifying and engaging with organisations in the community, including specialist BAME organisations, that could be brought into prisons to provide specialist services in response to the needs identified. **HMPPS should consider how the role of voluntary sector coordinator can be utilised to ensure that services appropriate to the needs of the population are brought into prisons and prisoners receive those services in a timely fashion.**

Treatment in prison

The Lammy Review highlights research which shows that the treatment of prisoners by staff and perception of this treatment has a significant effect on prisoners' behaviour, compliance and reoffending. Alongside this, it outlines the results of the Her Majesty's Inspectorate of Prisons' (HMIP) annual survey of prisoners, which shows that BAME prisoners report the worst treatment and outcomes in prison. This includes poorer outcomes with regards to feeling safe, access to prison work, access to offender behaviour programmes, association time and to relationships with staff.

The Lammy Review highlights that Gypsy, Traveller and Roma prisoners report needing to access support across a range of problems but were less likely to receive it than other groups. At the same time Muslim prisoners report a more negative prison experience than other prisoners, particularly with regards to safety.

The Lammy Review suggests that individual prisons should be making better use of this data. It also welcomes the plans outlined in the Prison Safety and Reform white paper²⁷ to collect further data, which the Lammy Review believes will provide greater transparency in prison life.



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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.

The Lammy Review also raises the lack of transparency around the treatment and outcomes of BAME prisoners by the Parole Board, which carries out risk assessments and manages early release for prisoners serving fixed length sentences of four years or more. Currently there is no data published showing the proportion of prisoners released through this process by ethnicity.

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 the ethnicity who go on to reoffend.

Clinks agrees that all data collected in the CJS should include a breakdown by ethnicity.

As recommended previously by the Young Review, where we already have data on inequality in the justice system, the MoJ and HMPPS must create and publish a clear equalities strategy and accompanying delivery plan to address those issues effectively and efficiently.

The data that is collected and collated by criminal justice agencies must lead to action and interventions that address the needs of BAME people in the system. Her Majesty's Inspectorate of Prisons and Probation and the new board within MoJ, recently announced by David Lidington, to respond to the inspectorates' reports²⁸ must hold the system accountable for this.

The Lammy Review's analysis showed that adjudications brought by individual officers are disproportionately brought against adult male BAME prisoners and that these adjudications were less likely to be upheld when reviewed by a panel. It highlights this as an example of oversight providing a corrective and suggests that external scrutiny and oversight be utilised to increase the fairness of the Incentives and Earned Privileges (IEP) system.

Recommendation 24: To increase the fairness and effectiveness of the IEP 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 ultimate decisions on this area.

The further utilisation of prisoners' forums is welcome. People who have experience of the CJS are a vital source of intelligence about how to improve services. Involving these 'experts by experience' is key to the difference we can make in the lives of people in the CJS - improving the quality and impact of the services on offer, and enabling services users to build a new identity which supports their journey to desistance from crime. **Prisoners' forums are often supported by voluntary sector organisations. Such organisations should be engaged with regarding plans to review IEP through the forums they support.**



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There is a need to address the issue highlighted by the Lammy Review's analysis of adjudications being brought disproportionately against BAME prisoners. **Where cases brought by individual officers are regularly found by a review panel to be unfounded there must be consequences for those officers.**

The Lammy Review makes a similar recommendation with regards to use of force which the prison inspectorate has highlighted as an area of concern.

Recommendation 25: Prison governors should ensure Use of Force Committees are not ethnically homogenous and involve at least one individual, such as a member of the prison's IMB [Independent Monitoring Board], 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 apply in custodial settings.

Clinks supports this recommendation and suggests that a member of the IMB or another voluntary sector representative, in particular from a BAME organisation would play a useful role on the committee. The IMB should commit to ensuring that it can and will recruit volunteers from a diverse range of BAME communities to make sure that it can go some way to meeting the needs of prisoners from those diverse communities.

However Clinks does not believe that this is an adequate solution to the 'absence of data' regarding use of force referred to in the Lammy Review. As we understand it, the MoJ collects data on use of force, which shows that BAME prisoners are disproportionately subject to use of force, and regularly provides this to prisons. HMPPS and prisons need to respond to the existing data with robust action.

We welcome the Lammy Review's recommendation that there should be 'escalating consequences for officers misusing force is. **However, we seek clarification that any misuse of force, including an initial or isolated incident, and in particular towards a child, is treated seriously and results in appropriate consequences.**

The Lammy Review highlights recent research published by the Prison Reform Trust and Zahid Mubarek Trust suggesting serious failing in the prisons complaints system.²⁹ The results showed that only 1% of prisoners alleging discrimination had their complaints upheld and concludes that 'the system for handling discrimination complaints in prisons is neither fair nor impartial, does not have the confidence of prisoners, and is failing to provide prisons with the opportunity to learn and provide more equitable treatment.'³⁰

One of the issues identified by the research was the incorrect standard of proof being applied to allegations of discrimination. Another was that objective evidence of discrimination can be hard to find. This review highlights that this challenge is faced by other public services and a cites a recent report by the Independent Police Commission³¹ that has suggested that investigation should take into account how officers have dealt with similar incidents in the past.

Recommendation 26: HMPPS should clarify publicly that the proper standard of proof for assessing complaints is 'the balance of probabilities'. Prisons should take into account factors such as how officers have dealt with similar incidents in the past.



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The Lammy Review also supports another recommendation of the Prison Reform Trust and Zahid Mubarek Trust research: that prisons should use the complaints system as an opportunity to fix problems rather than make judgement about wrongdoing.

Recommendation 27: Prisons should adopt a problem solving approach to dealing with complaints. As part of this, all complaints should state that what they want to happen as a result of an investigation into their complaint.

These recommendations regarding the complaints system need to be put into place as a matter of urgency in order to ensure that there is a corrective to the other shortcomings in the prison system.

Changing culture

The Lammy Review highlights the lack of diversity in the prison workforce and suggests that the current recruitment of 2,500 prison officers offers an opportunity to redress this. It also highlights the need for BAME staff within the prison service to be better represented in leadership positions.

Recommendation 28: The prison system should be expected to be recruit [sic] 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. IMBs, should also match this target in their recruitment.

Recommendation 29: The prison service should set public targets for moving a cadre of BAME staff through into leadership positions in the next five years.

Clinks welcomes these recommendations and would highlight the role that BAME voluntary sector organisations might be able to play in support the MoJ to devise outreach strategies to BAME recruits. This is work that the Black Training and Enterprise Group, for example, is already developing.

Alongside implementing these recommendations, Clinks reiterates the need for improved training for prison officers to ensure that the entire workforce has the necessary cultural competence with which to carry out their duties, as recommended by the Young Review. Again the BAME voluntary sector is an essential partner in delivering such training.

Recommendation 30: HMPPS should develop performance indicators for prisons that aim for equality of treatment and of outcomes for BAME and White prisoners.

This recommendation could form a part of HMPPS' forthcoming Equalities Strategy and accompanying implementation plan. **As stated earlier, the Young Review previously called for this strategy to be published and we reiterate that recommendation in the context of the Lammy Review's principle of external scrutiny.**



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Rehabilitation

The Lammy Review summarises the cost of reoffending and highlights the significant savings that could be made if reoffending rates were improved – between £9.5 and £13 billion per year.

Reoffending rates vary for BAME people, with Asian men, women, boys and girls, as well as black women and girls, all less likely to reoffend than their white counterparts. However:

- Black men and boys reoffend at a higher rate than their white counterparts
- 45% of black boys reoffend within a year
- Reoffending is particularly high for young black boys with 51% of 10-14 year old black boys reoffending within a year.

These figures represent a serious challenge for the probation service and YOTs.

The Lammy Review highlights that the 2014 reforms to probation were intended to deliver a service more responsive to the needs of different groups of offenders through the incentive to Community Rehabilitation Companies³² (CRCs) to reduce reoffending via payment by results.

In practice this has not led to tailored services sensitive to the cultural contexts or specific needs of BAME offenders. Her Majesty's Inspectorates of Probation and Prisons' joint report in 2017 found that individuals were more likely to receive the support they need from the NPS than from CRCs.

Alongside this, we have not seen an increase in BAME organisations with specialist knowledge and networks being incorporated into the CRCs' supply chains in order to deliver services. Instead, as the report highlights, BAME organisations receive less funding than other voluntary organisations and are experiencing more rapid reductions in funds than other voluntary sector organisations.

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

Clinks welcomes this recommendation and is working alongside the MoJ to fulfil it. We are especially concerned about the position of specialist BAME organisations which our most recent State of the Sector survey showed were 30% more likely to be at risk of closure than other voluntary sector organisations working in criminal justice³³. **In order for this recommendation to be successful there will be a need to consider what mechanisms are available to encourage more effective sub-contracting or grant funding that go beyond the incentives already built into the contracts.**

We also suggest that improved partnership working with voluntary sector organisations, including specialist BAME organisations, would improve outcomes for other parts of the system beyond CRCs. **The scope of this recommendation should therefore be widened to include prisons, the NPS and youth justice community and custodial services.**

Clinks will also work alongside larger voluntary organisations to understand how they



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might change their approaches to better support people from BAME communities, including the development of partnerships with BAME voluntary organisations.

The Lammy Review also draws attention to the inadequate way in which some CRCs are responding to their Public Sector Equality Duty, describing some of the approaches to this as a 'tick box exercise'.

Recommendation 32: The MoJ should specify in detail the data CRCs should collect and publish covering protected characteristics. This should be written into contracts and enforced with penalties for non-compliance.

Clinks welcomes this recommendation, which echoes the recommendations of the Young Review.³⁴ We would note that a similar specification does exist for women's services within the CRCs' contracts with the MoJ, but that this has not necessarily led to improved outcomes for women under probation supervision. **CRCs should be required to not only collect and publish data but to show that they are responding to it in line with the 'explain or reform' principle.**

Youth Reoffending

The Lammy Review highlights that the reoffending rate for black children convicted of an offence is particularly stark and, despite the success of the YJB and YOTs in reducing the overall number of first time entrants into the CJS and the numbers in youth custody, the BAME proportion of young people in the system has been rising.

The YJB has recognised this issue and undertaken a variety of activity since 2010 to collect and understand the data. In 2014-15 the YJB conducted a high level analysis of the findings of each YOT that took part in its disproportionality toolkit pilot, aimed at pinpointing where substantive differences in outcomes for different ethnic minorities exist in their criminal justice journey. However there was no subsequent comprehensive analysis.

Recommendation 33: The YJB should commission and publish a full evaluation of what has been learned from the trial of its disproportionality toolkit and identify potential actions and interventions to be taken.

This is welcome, in particular the identification of actions and interventions which Clinks would argue are now vital. For too long the proportion of BAME young people in the CJS has been rising, with the only action in response being further monitoring. It is clear that the strategy to reduce numbers within the youth justice system, while being a success overall, has failed to address racial disproportionality.

We are therefore surprised that the Lammy Review has made just one recommendation in relation to this disproportionality, which falls somewhat short of a call to action for the YJB. **There is now a need for a clear strategy, specifically targeted at how to translate the successes seen amongst the wider population of young people to the BAME population. This should be focussed on testing bespoke interventions and staff training to support improved outcomes for BAME children. The voluntary sector, including specialist BAME organisations, should be a key partner in**



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delivering such interventions. Once evaluated these services could form the basis for changing the approach services have to BAME children in the CJS.

Work, education and training

The Lammy Review makes the important link between employment and reduced reoffending. Ethnic groups with higher unemployment rates also have higher reoffending rates. It identifies the criminal records regime as one of the most significant barriers to any ex offender's employment prospects.

Under the current regime an adult serving more than 30 months but less than four years must wait seven years before their conviction is spent and no longer need be disclosed on a job application. Sentences of more than four years are never spent for either adults or children. In addition, over the last five years, over 127,000 children have had their names added to the national police computer database and their names could show up on future record checks.

The Lammy Review asserts that, rather than protecting the public as it was created to do, the Criminal Records Regime is having the opposite effect by putting barriers to employment in the way of people with convictions and trapping them in their past. It also reiterates concerns about the criminal records regime and children raised in the Taylor Review³⁵ which highlighted that while most young people grow out of offending behaviour as they mature they will often have to wait much longer for their convictions to be spent.

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 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.

Recommendation 35: To ensure that the public understands the case for reform of the criminal records regime, the MoJ, HMRC [Her Majesty's Revenue & Customs] and DWP [Department for Work and Pensions] should commission and publish a study indicating the costs of unemployment among ex-offenders.

Clinks welcomes any moves towards a system which would better support an individual's desistance from crime. The proposed changes to the criminal records regime would not only support this by removing barriers to employment but also by lifting the stigmatising 'offender' label.

Next steps

For too long, all sectors working in criminal justice have known of the disproportionate numbers of and poorer outcomes for BAME people in our CJS with little action being undertaken to address the causes.

Clinks hopes that the offers and ideas we have highlighted throughout this briefing begin an ongoing dialogue with policy makers and politicians across the political divide, at a national



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and local level and with criminal justice agencies to ensure that action is now taken.

We also hope that this call to action is heard by our own sector who can act as a critical friend to government and work to improve practice and outcomes through the services they directly deliver.

We suggest that there should be a governance group with responsibility for overseeing the proper consideration and implementation of the Lammy Review's recommendations and that the voluntary sector, which has a clear contribution to make to a significant number of the recommendations, is involved in this.

We will continue to work with our partners, as part of the Young Review's Independent Advisory Group, and on behalf of our members to ensure that the opportunity presented by the Lammy Review to finally see progress in response to these issues is now taken.

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CLINKS

Clinks supports, represents and campaigns for the voluntary sector working with offenders. Clinks aims to ensure the sector and all those with whom they work, are informed and engaged in order to transform the lives of offenders.

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12. Ministry of Justice, The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the criminal justice system (2017) p18 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
13. <https://www.ethnicity-facts-figures.service.gov.uk/>
14. Joint enterprise legislation means that an individual can be convicted of a crime if they are present when that crime is committed, or for being with those persons who commit the crime and not trying to stop them. Even if an individual is not present at the crime scene they can be found guilty of the main offence if they had the foresight that it might happen. In modern times this law has been rarely used, until the last ten years or so when it has been increasingly employed in response to serious crimes, usually murder, and often where these crimes are believed to be connected to gang activity. According to the Joint Enterprise: Not Guilty by Association Campaign almost 80% of prisoners convicted under this legislation are BAME.
15. <https://www.supremecourt.uk/cases/uksc-2015-0015.html>
16. <http://www.appropriateadult.org.uk/>
17. <http://www.irr.org.uk/news/the-lammy-review-will-it-change-outcomes-in-the-criminal-justice-system/>
18. <https://www.gov.uk/government/news/prime-minister-launches-world-leading-project-on-impact-of-ethnicity-on-everyday-life>
19. See Clinks response to Women and Equalities committee inquiry into improving outcomes for Gypsy, Roma, Traveller communities for further details: https://www.clinks.org/sites/default/files/basic/files-downloads/clinks_wec_grt-inquiry_v1.pdf
20. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585897/youth-justice-statistics-2015-2016.pdf
21. Institute for Applied Social Studies, University of Birmingham, Taking Account of Maturity https://www.t2a.org.uk/wp-content/uploads/2013/07/T2A-Maturity-Guide_online.pdf
22. House of Commons Justice Committee, The treatment of young adults in the criminal justice system (2016) <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/169.pdf>
23. Ministry of Justice, Review of the youth justice system (2016) <https://www.gov.uk/government/publications/review-of-the-youth-justice-system>
24. Among prisoners serving prison sentences for public order offences, 417 black offenders and 631 Asian offenders are placed in high security prisons, for every 100 white offenders.
25. Mullen, J The Young review: Improving Outcomes for Young Black and Muslim Men in Prison (2014), p 31 <https://www.clinks.org/resources-reports/young-review>
26. <https://www.clinks.org/criminal-justice-working-prisons/clinks-prison-work>
27. Ministry of Justice, Prison and Safety and Reform (2016), <https://www.gov.uk/government/publications/prison-safety-and-reform>
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29. Edgar, K. and Tsintsadze, K. Prison Reform Trust, Zahid Mubarek Trust, Tackling Discrimination in Prison: still not a fair response (2017) <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Tackling%20discrimination.pdf>
30. Ministry of Justice, The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the criminal justice system (2017) p55 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
31. Police handling of allegations of discrimination, Independent Police Complaints Commission (2014), pg 3, www.ipcc.gov.uk/sites/default/files/Documents/guidelines_reports/IPCC_report_police_handling_of_allegations_of_discrimination_June2014.pdf
32. The reform replaced the previous 35 individual Probation Trusts with a single National Probation Service, responsible for the management of high-risk offenders; and 21 Community Rehabilitation Companies (CRCs) responsible for the management of low to medium risk and for supervising short-sentence prisoners after release.
33. Clinks, The State of the sector 2017 (2017), https://www.clinks.org/sites/default/files/clinks_state-of-the-sector-2017_final-web1.pdf
34. Mullen, J The Young review: Improving Outcomes for Young Black and Muslim Men in Prison (2014), <https://www.clinks.org/resources-reports/young-review>
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