

December 2017



CLINKS
RESPONSE

Clinks and the Young Review joint submission to the Women and Equalities Committee inquiry into the race disparity audit

About the Young Review

The Young Review published its report into improving outcomes for young black and Muslim men in December 2014. Its Independent Advisory Group, chaired by Baroness Young of Hornsey and supported by the Black Training and Enterprise Group, includes representatives from the voluntary sector, academia and probation providers. It has been working since the report's publication to support the Ministry of Justice to take forward its recommendations.

For more information see www.youngreview.org

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. 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 2014. Since then we have been a member of the review's steering group and Independent Advisory Group to the Ministry of Justice (MoJ).

For more information see www.clinks.org

The
Young
Review

CLINKS

supporting voluntary organisations that
work with offenders and their families

www.clinks.org



About this response

Clinks and the Young Review have drawn on our own and others' previous work on race and the criminal justice system to provide this response. In it we refer to both the Young Review's final report and David Lammy's recent independent review into the treatment of, and outcomes for, black, Asian and minority ethnic individuals in the criminal justice system.

We also refer to information from consultation events, which Clinks has previously held, to inform our submissions to the Lammy Review and to the committee's inquiry into improving outcomes for people from Gypsy, Traveller and Roma communities.

The response is structured around the questions posed by the committee's inquiry, which cover what the race disparity audit reveals, how the government should respond to the audit, and what the audit tells us are the most pressing policy issues. In providing answers to the inquiry's questions we have focused on the criminal justice data collated by the audit and commented where we have sufficient evidence to contribute constructively.

Introduction

Clinks and the Young Review welcome the intention of government, in undertaking the race disparity audit, to shine a light on how our public services treat people from different backgrounds. We support the principle of transparency reflected in making this data available and accessible to the public. This is vital to enabling the public and civil society organisations to hold government to account.

The criminal justice data gathered by the race disparity audit is not new and has existed in the public domain for some time. In fact, with regards to criminal justice data, far more information exists which provides a fuller picture of the racial disparities that exist within our criminal justice system than that exposed by the audit.

This data can, in most cases, be found on the Ministry of Justice website and has also been analysed by successive reports including most recently the Lammy Review into the treatment of, and outcomes for, black, Asian and minority ethnic individuals in the criminal justice system¹. These reports have repeatedly made recommendations as to how the racial disparities exposed by the data can be tackled but progress by government in implementing these recommendations has been too slow.

Gathering data must not be an end in itself. Clinks and the Young Review's primary concern is that action is now taken in response to the data gathered by the audit and to the other data held by the Ministry of Justice, taking account of the recommendations already made by repeated reviews and reports.

Executive summary

Throughout this briefing we make a number of key points and recommendations which are summarised below:

- i. The information collated and presented by the race disparity audit in relation to the criminal justice system does not reveal anything new and in fact omits a significant amount of relevant data. As such it does not provide a full and true picture of black, Asian and minority ethnic (BAME) experiences of the criminal justice system.



- ii. The audit should further collate and include this other relevant data. Where pertinent data has been produced by other official and trusted sources the audit should consider providing links to this information.
- iii. Where it can be, the data should be cross referenced with age and gender and the BAME category disaggregated as far as possible.
- iv. Clinks and the Young Review believe that in the criminal justice context the need isn't for further research and analysis to explain disparities but for clear and concerted action to implement the recommendations of successive reviews which have highlighted these disparities, analysed their causes and made recommendations to tackle them.
- v. The analysis provided by these previous reports and reviews can mitigate against the potential for the data sets to be misleading and the audit should therefore consider providing links to them.
- vi. With regards to future data collection and steps that should be taken by government to reduce disparities, Clinks and the Young review support the Lammy Review's recommendations and believe that the Ministry of Justice must now work to implement these.
- vii. There should be a governance group with responsibility for overseeing the proper consideration and implementation of the Lammy Review's recommendations. The voluntary sector, which has a clear contribution to make to a significant number of the recommendations, must be involved in this. There is clearly also a role for the Cabinet Office in such a group, and also in drawing together departments to identify areas of cross-over and support and to ensure that departments are making sufficient progress.
- viii. Clinks and the Young Review suggest that an independent scrutiny body should exist, including voluntary sector organisations and community representatives, to ensure that the 'explain or change' 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.
- ix. Given the critical nature of the inequalities in the criminal justice system, Clinks and the Young Review suggest that the committee considers an inquiry, in conjunction with the justice committee, to explore the issues we highlight further with a particular emphasis on how the Ministry of Justice plans to implement the Lammy Review recommendations.

Response

What the Race Disparity Audit reveals about Government data on equalities and outcomes across ethnic groups

How useful is the data for researchers, policy- makers, service providers and the public?

The audit has collated together and presented only a fraction of the data which exists with regards to race, ethnicity and the criminal justice system. As a result the audit does not provide a full picture of the experiences of people from different backgrounds in the criminal justice system.

Where are the most significant gaps in data?

There is a range of data regarding race and criminal justice which is collected and/or available but that is omitted from the race disparity audit. Below we highlight some of the most significant information missing under each of the categories used to present the criminal justice data.

Courts, sentencing and tribunals

There is no data specifically on sentencing. The data provided regarding conviction rates is not broken down by offence type or sentence type.

As recently highlighted by the Lammy Review, statistics from a 2016 Ministry of Justice study on ethnicity and sentencing² show an association between ethnicity and being sentenced to prison. In particular for drug offences, receiving a prison sentence was around 240% more likely for BAME offenders, compared to white offenders.

Prison and custody

There is no data on ethnic make-up of the adult prison population. This is despite the fact that there is greater disproportionality in the number of black people in prisons in the UK than in the United States, with 13.1% of prisoners self-identifying as black, compared 2.9% of the population³. If the demographics of our prison population reflected that of England and Wales, there would be 9000 fewer people in prison – the equivalent of 12 average-sized prisons⁴.

Similarly there is no data presented on a range of aspects of prison life which reveal particularly poor outcomes for BAME people in the criminal justice system. For instance:

- Analysis commissioned for the Lammy Review found that BAME male prisoners are more likely to be placed in high security prisons than white males committing similar offences⁵.
- The same analysis also found that adjudications were disproportionately brought against adult male BAME prisoners from black or a mixed ethnic background⁶.
- HM Inspectorate of Prisons' annual prisoners survey found in 2015/16 that BAME adult male prisoners reported reduced access to opportunities and interventions that support rehabilitation⁷
- The same survey found that BAME prisoners are more likely to report being unfairly treated under the Incentives and Earned Privileges (IEP) Scheme, which is designed to reward and punish prisoners' behaviour.⁸ A 2013 National Offender Management Service (NOMS) document⁹ makes reference to data relating to this fact but that data is not publically available.
- The same survey also found in 2015/16 that prisoners from BAME backgrounds are less likely to report positive relationships with staff or feeling safe – this is particularly acute for certain ethnic minority groups¹⁰.
- HM Inspectorate of Prisons has also raised concerns about use of force¹¹. Clinks understands that the Ministry of Justice holds data regarding this which shows that use of force is used disproportionately against BAME prisoners but which is not publically available.

Clinks recognise that the Ministry of Justice may not have direct ownership of all of the data highlighted above which will provide some explanation for why it is not included by the audit. However, it is vital to a full understanding of the different treatment experienced by people from different backgrounds within the criminal justice system. Clinks and the Young Review suggest that the audit should consider how it might include or provide links to other sources of official and trusted data pertinent to these issues. We also suggest that the Ministry of Justice



CLINKS and the Young Review joint submission to the Women and Equalities Committee inquiry into the race disparity audit

December 2017

should undertake its own analyses of prison categorisation and the IEP scheme with regards to ethnicity and publish this data along with the data it holds on use of force in adult prisons.

Crime and reoffending

Reoffending data exists in the summary document but not on the website. In addition there is no data regarding recall rates for individuals under probation supervision.

The other gaps in the data concern information that is not collected by the Ministry of Justice or criminal justice agencies but which is necessary to fully understand the experience of people from different backgrounds in the CJS. For instance Gypsies, Roma and Travellers (GRT) are estimated to account for 0.5% of the prison population compared to just 0.1% of the wider population but these figures remain estimates because there has been no consistent official monitoring of these groups across criminal justice agencies. This is despite a wide body of research by GRT voluntary sector organisations highlighting the poorer outcomes people from GRT communities face in the CJS – see Clinks' response to the committee's inquiry into improving outcomes for GRT communities for further information¹².

Similarly, standard ethnicity monitoring across criminal justice agencies ignores faith. However, the prison system does monitor faith and as a result we know that the number of Muslims in prison has increased by almost 50% over the last decade¹³ and that they are more negative about prison life than non-Muslims¹⁴. But we are unable to gain a full understanding of what is driving this because data on faith is not collected at earlier stages of the criminal justice system.

What issues arise in terms of consistency, robustness and the ability to disaggregate and to analyse inequalities caused by more than one characteristic?

To provide a full picture of the experience of people from different backgrounds within the criminal justice system there is a need to be able to cross reference ethnicity with faith, gender and age and to also be able to disaggregate different ethnic groups within the BAME category.

For instance, reoffending rates are provided in the summary findings document but these are not broken down by age. If they were they would show that:

- Asian men, women, boys and girls reoffend at lower rates than their white counterparts¹⁵
- Black women and girls also reoffend at lower rates than white women and girls¹⁶
- Black men and boys reoffend at the highest rates¹⁷, with 45% of black boys reoffending within a year¹⁸
- Reoffending is particularly high for young black boys with 51% of the 10-14 age group reoffending compared to 40% of white boys of the same age.¹⁹

These figures relating to age are particularly important because a growing body of evidence shows that the maturity of an individual must be taken into account when sentencing and delivering interventions to help keep them out of criminal activity²⁰.

Similarly, the data does not cross reference ethnicity and gender in a number of important areas. This is particularly striking in regards to the data it presents on self harm. It is well established that women in prison have much higher rates of self harm than men, therefore it is important to be able to examine the ethnicity data regarding self harm in light of this.

In many cases the ethnicity categories used are very broad and do not allow for



Clinks and the Young Review joint submission to the Women and Equalities Committee inquiry into the race disparity audit

December 2017

an understanding of, or comparison between, the different experiences of, for instance, a black Afro-Caribbean person and a black Somali person. Such broad categories risk homogenising people's experiences and may be concealing important differences and disparities such as the disproportionate numbers of GRT people in the criminal justice system and the poorer outcomes they face.

What steps are necessary to begin to explain the reasons for particular disparities? Can the effects of current or historic race discrimination and socio-economic disadvantage usefully be distinguished?

Much analysis of the data revealing the disparities which exist in the CJS has already been done by successive reviews and reports. Most recently the Lammy Review analysis isolates specific points where decision making leads to disproportionality within the CJS. The Review makes 35 clear and actionable recommendations to address the racial disparities it highlights and many of these recommendations echo those of previous reports and reviews including the Young Review's final report.

Clinks and the Young Review believe that in the CJS context the need isn't for further research and analysis to explain disparities but for clear and concerted action to implement the recommendations of successive reviews that have highlighted these disparities, analysed their causes and made recommendations to tackle them.

The Race Disparity Audit has potential, as a repository for the data that exists, to drive forward this overdue action but its ability to do so is currently limited by the small amount of relevant CJS data that it includes.

Do any of the data sets risk being misleading without additional context?

The data sets that are currently presented are misleading in that they do not include all of the data available and therefore present possibly a more positive picture of BAME people's experiences of the criminal justice system than is the reality. There is therefore a need to consider how the data can be added to in order to provide the fuller picture and mitigate the omissions outlined above.

In addition, the criminal justice system inherits many disparities in outcomes for BAME people, and others, from the failure of other areas of public policy—for instance the care system, mental health services or the education system. Data regarding race and the criminal justice system always risks interpretations which ignore the societal causes of people's contact with the system and instead fall back on deterministic racialised stereotyping.

As already highlighted, a significant amount of work already exists which provides analysis and commentary on the data regarding race and the criminal justice system, including a review commissioned by the Prime Minister, and providing links to such reports could mitigate against both of the challenges we raise in response to this question.

How should the audit inform future Government data-gathering?

Clinks and the Young Review support the Lammy Review's recommendations that:

- 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.

- 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.
- 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.

Once implemented the data that this generates should then be included in the race disparity audit.

How the Government should respond to the audit

What would be the most effective way of identifying priorities and taking steps to reduce disparities across departments and public services, and where should responsibility lie?

The MoJ have known about racial disparities in the criminal justice system for many years and the audit does not reveal anything new, in fact it provides only a partial picture. Despite this and despite repeated calls for action we have seen little concerted response.

The Lammy Review provides a clear plan for how these issues could be tackled but recommendations such as these have been made before. There is a need for leadership and direction from central government that race equality should have a central place in all policies—neither can it be an add-on nor mainstreamed in such a way that it becomes an after-thought or tick-box exercise. It must be a central concern of all policy making.

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

There is clearly also a role for the Cabinet Office in such a group and also in drawing together departments to identify areas of cross-over and support and to ensure that departments are making sufficient progress.

The Government has said that its approach will be 'explain or change', and that it will work with partners to change significant disparities between ethnic groups that "cannot be explained by wider factors". How should the Government go about doing this?

This is a laudable aim; 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 and the Young Review suggest that an independent scrutiny body should exist,



Clinks and the Young Review joint submission to the Women and Equalities Committee inquiry into the race disparity audit

December 2017

including voluntary sector organisations and community representatives, to ensure that the 'explain or change' 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.

What the audit tells us about the most pressing policy issues

What is new in the data? Are there particular sectoral or geographical issues, or issues relating to specific communities, that have become visible through or been reinforced by the audit?

Are these areas of particularly stark or persistent inequality, areas where disparities are emerging or increasing, or areas in which further investigation is needed to determine the causes of a disparity? Which of these issues would benefit from further work by the Committee or particular focus by the Government?

As stated throughout this response, the data presented by the race disparity audit does not reveal anything new with regards to the criminal justice system and there has been significant analysis and investigation of both the data presented by the audit and the other data that the Ministry of Justice and other agencies hold.

Clinks and the Young Review believe that the situation for people from BAME communities within the CJS is one of the most pressing policy issues for the Ministry of Justice and Government more widely. As we have previously stated, the criminal justice system is where many disparities in other areas of public policy converge and conflate and this combined with the current pressures on our prison and probation service combines to create toxic levels of inequality. BAME people who have been in contact with the criminal justice system then face a double disadvantage in being treated differently both because of their ethnicity and because of their criminal record—one third of people who receive Jobseeker's Allowance have a criminal record.

Clinks and the Young Review are concerned that the race disparity audit alone doesn't indicate the urgency of this issue because of the data that is omitted. We suggest that the committee considers an inquiry, in conjunction with the justice committee, to explore the issues we highlight further with a particular emphasis on how MoJ plan to implement the Lammy Review recommendations.



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.

Published by Clinks

© 2018

All rights reserved

Author: Firstname

Lastname

Clinks is a registered charity no. 1074546 and a company limited by guarantee, registered in England and Wales no. 3562176.

Tavis House

1-6 Tavistock Square

London WC1H 9NA

020 7383 0966

info@clinks.org

🐦 @Clinks_Tweets

www.clinks.org/policy

Clinks and the Young Review joint submission to the Women and Equalities Committee inquiry into the race disparity audit

December 2017

End notes

1. 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) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
2. Hopkins, K., Uhrig, N., and Colahan, M. Ministry of Justice Associations between ethnic background and being sentenced to prison in the Crown Court in England and Wales in 2015, (2016), <https://www.gov.uk/government/statistics/associations-between-ethnic-background-and-being-sentenced-to-prison-in-the-crown-court-in-england-and-wales-in-2015>
3. Mullen, J The Young review: Improving Outcomes for Young Black and Muslim Men in Prison (2014), <https://www.clinks.org/resources-reports/young-review>
4. 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) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
5. ibid
6. ibid
7. HM Chief Inspector of Prisons annual report 2015–16, (2016) – <https://www.gov.uk/government/publications/hm-chief-inspector-of-prisons-annual-report-2015-to-2016>
8. HM Chief Inspector of Prisons annual report 2015–16, pg 110–113 (2016) – <https://www.gov.uk/government/publications/hm-chief-inspector-of-prisons-annual-report-2015-to-2016>
9. NOMS (2013) Descriptive document: Grant Funding opportunity - Improving outcomes for BAME prisoners to improve equality, safety and decency within prisons, p.1. Online: <http://www.government-ONLINE.net/prison-grant-fundingopportunity/> [last accessed: 29.09.2014].
10. HM Chief Inspector of Prisons annual report 2015–16, pg 110–113 (2016) – <https://www.gov.uk/government/publications/hm-chief-inspector-of-prisons-annual-report-2015-to-2016>
11. HM Chief Inspector of Prisons annual report 2015–16, pg 24 (2016) – <https://www.gov.uk/government/publications/hm-chief-inspector-of-prisons-annual-report-2015-to-2016>
12. https://www.clinks.org/sites/default/files/basic/files-downloads/clinks_wec_grt-inquiry_v1.pdf
13. 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) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
14. Mullen, J The Young review: Improving Outcomes for Young Black and Muslim Men in Prison (2014), <https://www.clinks.org/resources-reports/young-review>
15. Ministry of Justice, Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales, table 5.8 (2016) – <https://www.gov.uk/government/publications/black-asian-and-minority-ethnicdisproportionality-in-the-criminal-justice-system-in-england-and-wales>
16. Ministry of Justice, Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales, table 5.8 (2016) – <https://www.gov.uk/government/publications/black-asian-and-minority-ethnicdisproportionality-in-the-criminal-justice-system-in-england-and-wales>
17. Ministry of Justice, Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales, table 5.8 (2016) – <https://www.gov.uk/government/publications/black-asian-and-minority-ethnicdisproportionality-in-the-criminal-justice-system-in-england-and-wales>
18. Ministry of Justice, Youth Justice Board. Youth Justice Statistics 2014/15 England and Wales, pg 69 (2016) – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495708/youth-justice-statistics-2014-to-2015.pdf
19. Ministry of Justice, Proven Reoffending Statistics Quarterly Bulletin, July 2014 to June 2015, table C1b (2017) <https://www.gov.uk/government/statistics/proven-reoffending-statistics-july-2014-to-june-2015>
20. See <https://www.t2a.org.uk/about-us/t2as-approach/>