

October 2020



CLINKS  
RESPONSE

## Submission to the Joint Human Rights Committee inquiry on black people, racism and human rights

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### About Clinks

Clinks is the national infrastructure charity for voluntary organisations working in criminal justice in England and Wales, supporting the voluntary sector's largest providers and its smallest. We have over 500 members and our network reaches 4,000 voluntary sector contacts across England and Wales. We also manage the National Criminal Justice Arts Alliance (NCJAA) which has a network of over 800 supporters and subscribers. NCJAA exists to promote the specific role of arts, and arts organisations, as a springboard for positive change for people in contact with the criminal justice system (CJS). We also support a network of women's centres and specialist women's services working in the CJS.

### About this response

Clinks welcomes the opportunity to respond to this inquiry. Our response specifically focuses on the institutional racism faced by black people in contact with the CJS, the impact this has on their treatment and experiences in the CJS and the discriminatory outcomes that result. Our response is informed by the information we have gathered through our ongoing engagement with the voluntary sector working in criminal justice, particularly black-led organisations, as well as our work leading the Young Review on outcomes for young black and Muslim men and our work to support the sector to engage with the development and implementation of the Lammy Review.

## Racism and discrimination in the criminal justice system: the experience, treatment and outcomes of black people

As extensively documented by both the Young<sup>1</sup> and Lammy reviews,<sup>2</sup> black people experience discriminatory treatment in, and are overrepresented throughout, the CJS from the numbers that receive cautions and convictions to the number of children and adults remanded and sentenced to prison and the length of time they are sentenced for, to their experience in custody. Black people are more likely to be segregated, subject to use of force, and to be put on the basic regime.<sup>3</sup>

Since the Lammy Review, the Ministry of Justice (MoJ) has published two annual updates on its progress in tackling racial disparity. Whilst there has been significant activity, there has been a lack of outcomes to show. In the youth justice system the proportion



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of black children in custody is actually growing. This highlights the need for bolder action and leadership to address the systemic racism within the CJS that leads to the racial disparities that are now well-documented. Below we highlight examples of areas that need to be addressed.

### Diversion from the criminal justice system

Tackling overrepresentation of, and discrimination against, black people in the CJS is a cross-government responsibility not limited to the MoJ. Recent consultation with black-led organisations highlighted how policies implemented by other government departments and policing approaches target and criminalise black people and undermine progress. For example, stop and search was expanded despite clear evidence of its disproportionate use against black people. Educational policy also has an important impact. Attendees at our consultation events stressed the damaging consequences the school to prison pipeline has on black children as they are more likely to be excluded from school.<sup>4</sup>

The gang narrative, and the approach to policing gangs in particular, is racialised and defines young black people as a risk. As of October 2017, more than three-quarters (78%) of the Gang Matrix – the Metropolitan Police database of suspected gang members – were black, whilst the Metropolitan police's own statistics said that only 27% of those responsible for serious youth violence were black.<sup>5</sup>

When this narrative combines with policies such as mandatory custodial sentencing aimed at deterring knife crime, which leads to many children imprisoned for possessing, but not using knives, and the Home Office's implementation of Knife Crime Prevention Orders (civil orders that carry the risk of imprisonment) it risks that they are disproportionately used against young black people and draws them further into the justice system. Policies like these and the approach to gangs makes it harder for organisations to deliver prevention and early intervention work that is aimed at minimising contact with the justice system.

These policies not only increase contact with the justice system but are also damaging to any trust that the justice system would try to build with young black people making them less likely to engage and impacting how their attitude is perceived by staff, reinforcing unfair and punishing treatment.

**A consistent cross government strategy is required to tackle racial inequality in the CJS and reduce criminalisation of young black people. This strategy must recognise how structural and institutional racism effects the implementation of policies and the impact specifically on black people, increasing the risk of them coming into contact with the CJS.**

Black-led organisations have raised concern with us about young black people being more likely to be excluded from diversionary opportunities, such as referral orders and restorative approaches, because their ethnicity is perceived through a lens of risk, leading to a perception that they are unmanageable. This perpetuates the belief that they are beyond reach of such initiatives, resulting in their rapid escalation through the youth justice system.

The Lammy Review recommended the wider rollout of the deferred prosecution scheme. Whilst we see merit in this model, ethnicity is not a selection criterion for eligibility for such diversion schemes. Without this we are concerned that the creation of diversionary pathways will not in and of itself address the overrepresentation of black people in the justice system. It still enables racist stereotyping – whether conscious or unconscious – to affect decision-making. Diversionary pathways need to be

specifically available for young black people if they are to have a meaningful impact on overrepresentation and improve the outcomes of black people in contact with the CJS.

**We recommend specific strategies for implementing preventative and diversionary pathways for young black people, with the aim of reducing their criminalisation and exposure to the justice system, reducing disproportionality in the secure estate, and to ensure that staff are not consciously or unconsciously engaging in racist stereotyping.**

## **In custody**

Black children<sup>6</sup> and black adults<sup>7</sup> are more likely to be remanded in custody than their white counterparts. Analysis of youth custody data by our colleagues at the Standing Committee of Youth Justice (SCYJ) – which Clinks is also a member of – shows that across different age groups, black children are more likely to be placed in less welfare-based, higher security institutions. For example, older black children are more likely than their peers to be placed in young offender institutions (YOIs), rather than Secure Training Centres (STCs) or secure children's homes.<sup>8</sup> In the adult estate there is also a high proportion of black individuals in high security prisons.<sup>9</sup>

Evidence shows that the behaviour of black people in prison is also more heavily scrutinised. Year on year black people also report more negatively about staff treatment and the respect they are shown.<sup>10</sup> Through our engagement with the voluntary sector and the people they support, we have received feedback about black people being treated with suspicion when together on the prison landings and more likely to be told to separate. Other feedback includes black people being more likely to be given the harder jobs in the prison. It has been shown that black people are treated unfairly by the Incentives and Earned Privileges scheme and more likely to be on the basic level of the scheme, which has significant impact on social visits, time out of cell and other important aspects of prison life.<sup>11</sup> Black children and adults are also disproportionately segregated and the experience use of force in custody.<sup>12</sup>

These examples highlight how the racist risk management approach taken to policing black people in the community is institutionalised throughout the latter stages of the CJS and is embedded in the custodial estate. This impacts the assumptions made about – and labelling of – black people in custody as being gang-affiliated and more violent than their peers and this in turn impacts their treatment, the interventions provided, risk assessments, progression, and the way punishments are given.

This is particularly concerning in light of HMPPS recent decision to rollout the use of PAVA spray across the male estate during the pandemic, including providing it to 43 establishment that have not completed readiness assessments for its use. This is despite restraint being shown to be disproportionately used against black people and the fact that prior to this decision the data available, showed that PAVA has been drawn or used more against black, Asian and minority ethnic (BAME) prisoners.<sup>13</sup> If staff are more likely to perceive black people as risky and unmanageable, they are more likely to resort more quickly to using force against them.

## **Transparency and accountability**

According to the MoJ, the Lammy Review's recommendation to implement an explain or reform principle has been adopted by justice agencies as an overarching principle for cultural change. It is disappointing not to see specific structures being put in place to operationalise this principle. Without this there is a danger that it will be a principle in name only and will not provide any transparency or accountability, nor lead to any significant change.

**We recommend that structures are put in place to operationalise explain or reform, including systems in place to identify when something should be subject to the principle and policies stating who is responsible for explaining disparities and to whom and structures that provide clarity on who is able to decide when an explanation is sufficient and what form of change is appropriate.**

The use of technology in the CJS is growing and providing new ways to assess the risk that individuals could pose. For example, MoJ have introduced in the adult prison estate a new digital categorisation tool to assess the risks prisoners pose of violence, escape, or becoming involved in organised crime. However, any potential future use of technology in the CJS needs to be closely monitored to ensure that the bias and risk-based approach to black people described above does not become hardwired into the justice system. Scrutiny mechanisms need to keep pace with the development and use of technology to ensure transparency in decision making and accountability for any disparity of it might lead to.

Video calls in custody – a vital mechanism for maintaining contact with loved ones, particularly during the Covid-19 lockdown – also uses facial recognition to ensure that only authorised people are on the call. However, there are known issues with recognition technology recognising black people so the use of it in custody must be monitored to ensure it doesn't impact black people prison and their families.

Much more can also be done to listen to and act upon the views and experiences of black people in the CJS. Black people and their families should have a formal voice in every institution enabling them to be involved in the scrutiny and accountability of custodial practice and be actively involved in finding solutions, decision making and reforms. Pathways for inclusion could include forums, committees and scrutiny panels.

**We recommend the current requirements for each institution to establish a forum for reviewing the Incentives and Earned Privileges scheme<sup>14</sup>, be expanded. All institutions should establish scrutiny panels or forums which review a wider set of outcomes for black people in custody and for the membership requirements to be expanded. Current requirements are for only one BAME prisoner from the whole prison to be on the forum. This is not representative and does not ensure the different experiences of people that fall under the BAME label will be heard. Black-led voluntary sector organisations, governors and officials should also be involved. There should be a formal mechanism for providing feedback to people in prison on the topics raised at the panels and the actions taken to respond to the concerns or complaints raised.**

## **On release**

Black people also face greater challenges moving on from the CJS because of how the barriers created by having a conviction combine with structural and institutional racism in society, resulting in unequal access to education and employment opportunities, housing, and healthcare. The added impact of continued racist targeting, stereotyping and disproportionate policing tactics putting them at greater risk of the revolving door of the CJS.

## **In the context of Covid-19**

### **Responding to Covid-19 in custody**

The approach to managing Covid-19 in the CJS is exacerbating concern that the wellbeing and lives of black people, as well as addressing racial discrimination, is not being sufficiently prioritised by officials and criminal justice agencies.

Emerging evidence has also shown a disproportionate impact of Covid-19 on black communities, with black people most likely to be diagnosed and death rates from highest among black and Asian groups. Prison also presents a high-risk environment for transmission of the virus, due to the overcrowding and poor conditions in the prison estate and the close proximity that people must live in, including having to share cells.

Despite the heightened risk this creates for black people in prison, Her Majesty's Prison and Probation Service (HMPPS) have not been transparent about the number of black staff and prisoners that have tested positive for Covid-19.

**We recommend that on a regular basis HMPPS should publish statistics on positive Covid-19 cases and related deaths broken down by ethnicity.**

To minimise the impact of Covid-19 in prisons and prevent outbreaks, HMPPS implemented a highly restricted prison regime across the estate, cancelling all physical visits and keeping people locked in cells for 23 hours a day. The voluntary sector have growing concern about the long term impact of such a restrictive regime on the wellbeing and mental health of those in prison and their families. The restricted regime has also meant that voluntary sector services have not been able to enter prisons to deliver their vital services that support people's wellbeing and mental health at a time when they are most needed.

Prior to Covid-19, the Lammy Review highlighted that BAME people in prison are less likely to be recorded as having a mental health concern and less likely to be identified as at risk of self-harm. We are concerned that black people's mental health needs are not being recognised, which in turn prevents access to mental health support and other services. Lockdown and its impact on people in prison risks exacerbating this issue. Criminal justice agencies need to recognise not just the physical risk of Covid-19 for black people, but the long term implications on mental health and wellbeing, as well as the exacerbating effects of poverty and disadvantage that disproportionately impact black communities.

The government created temporary release schemes with the intention of reducing the prison population to facilitate social distancing. However, not everybody who meets the eligibility criteria for the schemes is necessarily released, with a level of prison governor and HMPPS discretion built into the process.

As already highlighted, successive reviews and reports have shown that outcomes in the justice system based on discretionary decision making can be impacted by conscious and unconscious racism, leading to discriminatory outcomes for black people. A risk averse approach to releasing black people could exclude them from release schemes. It is vital to have transparent data on this to scrutinise release decisions and hold decision makers to account.

**We recommend that the data on the ethnicity of those eligible for early release and those released be collected and published to monitor whether release opportunities have been equitably applied.**

### **Recovery from the pandemic**

HMPPS published its framework for easing lockdown in prisons<sup>15</sup> and a roadmap to recovery for probation.<sup>16</sup> Neither document mentions the disproportionate impact of Covid-19 on black people. Nor does there appear to have been an equality impact assessment for either document, reinforcing concern that the safeguarding of black people is not being prioritised. As court activity begins to increase more people will enter prisons and swell the prison population again. If, as a result, the management of Covid-19 becomes more challenging and the number of positive cases rise, it is likely, given the known disproportionate impact in the wider community, that black people in prison will be hit hardest by this.

**We recommend that the recovery planning process for criminal justice institutions give relevant consideration and recognition to the disproportionate impact of Covid-19 on black people. This should include consideration of the disparity in treatment and outcomes of black people in the CJS and include a clear action plan of how the needs of black people will be identified and met. Black-led organisations should be engaged for their expertise in developing this process and to improve transparency, all plans and equality considerations should be published.**

### **Engaging and supporting the black-led voluntary sector**

Voluntary sector services led by and for people from black communities are vital for ensuring black people in the CJS have access to specialist support that understands and can better respond to the experiences of, and barriers faced, by black people, particularly as a result of the racism against them.

Collectively black-led voluntary organisations offer significant resources tailored for their service users. However, black-led initiatives are often small, specialist and grass-roots community organisations and face being squeezed out by larger organisations and companies that offer more competitive prices, or risk having their core mission diluted by contractual requirements within tightly defined parameters.

Black-led voluntary organisations have reported that they feel undervalued and that the scope for them to act as key strategic partners is underestimated. They highlight a lack of communication and information sharing with them. Organisations that deliver services in the secure estate have reported that they and their organisation are treated with suspicion and disrespect due to their ethnicity, indicating that the institutionalised racism extends to those that work in criminal justice and seek to support those impacted by it. As a result, they find it difficult to access the secure estate in the first instance, or to deliver particular programmes.

A paper prepared by a group of BAME-led organisations on the experience of BAME people in prison and the organisations that support them, highlights how the power imbalance that black-led organisations face has been exacerbated by the crisis. Clinks support the paper's recommendations for the justice system and have sent the recommendations to HMPPS' Chief Executive Officer, Dr Jo Farrar, to support the group's call for action.<sup>17</sup> The BAME-led sector have found communication with statutory services at a local and national level to be



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particularly challenging during this crisis, leaving them isolated and creating additional barriers in coordinating support for their service users and their sustainability has been put at even greater risk, with organisations struggling to access emergency funding and financial support.

**We recommend that in the recovery from the pandemic, in recognition of the structural and overt racism in the CJS against black people and the disproportionate impact of Covid-19 on black communities and the organisations that work to support them, CJS funding should prioritise black-led services.**

**We also recommend that government departments ensure regular engagement with black-led voluntary sector organisations to maintain consistent information flow about changes that will impact their delivery and to ensure organisations understand the available support and how it applies to them.**

## Conclusion

Clinks will continue to prioritise tackling racism in the CJS and work to create systemic change for black people. In doing so we recognise the agency of black-led organisations to create and drive change and will aim to continue working in partnership with – and as an ally to – them so that we amplify their voice, expertise and work. We will also continue to work to provide practical support to black-led organisations to continue delivering their vital services during and beyond the pandemic.

Clinks is committed to tackling racism whatever form it takes and whoever it effects. As such Clinks will also continue to highlight discrimination in the CJS directed against other ethnic minority groups and the diversity of people that fall under the BAME label. This includes Muslim and Gypsy Roma Traveller communities who are often excluded from this, but are subject to institutionalised racism within the CJS that enables discriminatory treatment and creates unequal outcomes.





**Clinks supports, represents and advocates for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.**

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### End notes

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3. For example compared to their white counterparts, young black adults are twice as likely to receive a caution; 8.4 times more likely to receive a conviction; 1.5 times more likely to be sent to prison and less likely to get a community sentence; and be given prison sentences that are 80% longer than those given white young adults who commit similar offences. Source: Revolving Doors Agency (2020). *Evidence briefing: Racial bias is pulling Black young adults into the revolving door*. Available at: [www.revolving-doors.org.uk/file/2484/download?token=lf0mA6Ox](http://www.revolving-doors.org.uk/file/2484/download?token=lf0mA6Ox) [accessed 18 August 2020].
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