



**Commission on Race and Ethnic Disparities**

**Ethnic Disparities and Inequality in the UK: Call for  
Evidence**

**Submission**

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## Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. By way of background, JUSTICE convened a working party in November 2019 to examine the causes of disproportionality in the Youth Justice System ("YJS") of England and Wales for Black, Asian and minority ethnic ("BAME") children and young people (the "Racial Disparity Working Party").<sup>1</sup> It will make practical recommendations with a view to reducing that disproportionality. In addition, it will seek to ensure that children are not needlessly criminalised by improving the attitudes, processes and procedures in the YJS. This report is due to be published by the beginning of 2021.
3. Further working parties have looked at the issues of school exclusions and increasing judicial diversity. Where relevant, these are referenced below. The recommendations and observations set out in this submission are not an exhaustive list of requirements to address racial and ethnic disparities in the UK. Rather, JUSTICE considers it can offer the Commission on Race and Ethnic Disparities (the "Commission"), with the benefit of this experience, certain emerging findings. On other equally important areas, we defer to other experts who will respond to the call for evidence. As such, our responses, set out below, address Questions 2, 3, 7, 8, 9 and 10.

## Legal Obligations

4. Criminal justice agencies are all subject to domestic and international obligations that bestow on them a legal duty to treat individuals equally and to ensure they are not discriminated against because of any characteristic they may possess. This includes a person's race, ethnicity and religion. In some cases, public bodies are required to proactively take steps to address racial inequalities.

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<sup>1</sup> <https://justice.org.uk/our-work/criminal-justice-system/criminal-justice-system/current-work-criminal-justice/racial-disparity-in-youth-justice/>

5. One key piece of legislation is the Equality Act 2010 (the “Equality Act”). The main purpose of the Equality Act is to provide protections for the individual<sup>2</sup> from both direct<sup>3</sup> and indirect discrimination<sup>4</sup> on the grounds of race and ethnicity. Race within the Equality Act can include the colour of your skin, nationality (including citizenship); or ethnic or racial group (a group of people that share the same protected characteristic of ethnicity or race).<sup>5</sup>
6. A criminal justice agency is in breach of its legal duties under the Equality Act if it:
  - a. directly discriminates by treating someone worse than another person in a similar situation because of their race;
  - b. indirectly discriminates by having a particular policy or way of working that puts people of a racial group at a disadvantage; or
  - c. harasses someone by making them feel humiliated, offended or degraded.<sup>6</sup>
7. Therefore, under domestic law, if a criminal justice agency fails to protect individuals from discrimination, by, for example carrying out a stop and search in a way which unfairly targets and puts black people at a disadvantage, they could be in breach.<sup>7</sup>
8. Under section 149, public authorities must have due regard to the need to:
  - a. eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act;
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

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<sup>2</sup> Women and Equalities Committee, *Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission*, Tenth report of session 2017-2019, (17 July 2019), page 9, available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/1470.pdf>

<sup>3</sup> The Equality Act 2010, s.13.

<sup>4</sup> The Equality Act 2010, s.19.

<sup>5</sup> Equality and Human Rights Commission, ‘Race Discrimination’ (*Equality Human Rights*, 19 February 2020), <https://www.equalityhumanrights.com/en/advice-and-guidance/race-discrimination>

<sup>6</sup> Ibid.

<sup>7</sup> <https://www.app.college.police.uk/app-content/stop-and-search/fair/>

- c. foster good relations between person who share a relevant protected characteristics and persons who do not share it.<sup>8</sup>
9. Public bodies are therefore required to take steps to remove or minimise disadvantages<sup>9</sup> as well as tackle prejudice and promote understanding.<sup>10</sup> Further, if any public body fails to address these issues, or indeed exacerbates them, the Equality and Human Rights Commission can sanction public bodies for any breach of the Equality Act.<sup>11</sup>
10. In addition, the issues addressed in this response also engage international obligations. The European Convention on Human Rights (“ECHR”) provides individuals with the following fundamental rights:

a. **Article 2 ECHR - The right to life**

BAME deaths are twice as likely to occur following police restraint.<sup>12</sup> In such situations, authorities are under a duty to protect persons in custody, who are already in a vulnerable position. It is incumbent on the state to provide a plausible explanation of how a person has been injured while in their care;

b. **Article 5 ECHR - The right to liberty and security**

Article 5 provides that no one should be deprived of their liberty in an arbitrary fashion. However, the proportion of Black first time entrants (“FTE”) to the YJS has doubled over the last ten years, yet the figures have decreased by 88% for White individuals.<sup>13</sup> This does not suggest fair application of powers to deprive liberty, and could suggest UK authorities act in contravention with this duty;

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<sup>8</sup> The Equality Act 2010, s.149 (1).

<sup>9</sup> The Equality Act 2010, s.149 (3).

<sup>10</sup> The Equality Act 2010, s.149 (5).

<sup>11</sup> These sanctions can include: conducting investigations into compliance; conducts assessments of compliance with the public sector equality duty and issue a compliance notice; enter into binding agreements with organisations who commit to take, or refrain from taking, specified action; apply to the court for an injunction restraining a person from committing an unlawful act; breach of a notice or court order can lead to an unlimited fine; bring judicial review proceedings. See: Women and Equalities Committee, *Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission*, Tenth report of session 2017-2019, (17 July 2019), page 10, available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/1470.pdf>

<sup>12</sup> INQUEST, *BAME deaths in police custody*, (11 June 2020), available at <https://www.inquest.org.uk/bame-deaths-in-police-custody>

<sup>13</sup> Youth Justice Board, ‘Youth Justice Statistics 2018/19’ (2020), page 11, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf)

c. **Article 6 ECHR - The right to a fair trial**

This requires that a court or tribunal operate without prejudice or bias. Prejudicial comments made in court have raised issues under Article 6. The Racial Disparity Working Party found one example of a young child who was referred to as a “*strapping black lad*,” for example. Therefore, the existence of prejudice and unfair treatment in court could engage these rights;

d. **Article 8 ECHR - The right to respect for private and family life**

In *Gillan and Quinton v the United Kingdom*,<sup>14</sup> it was found that stopping and searching someone in a public place without reasonable suspicion of wrongdoing was a violation of Article 8. The Racial Disparity Working Party will discuss the disproportionate outcomes resulting from stop and search in its upcoming report. However, it is worth highlighting at the outset that stopping someone because of their race or ethnicity would not constitute reasonable suspicion and would violate a person’s Article 8 rights;<sup>15</sup>

e. **Article 14 ECHR - The right to enjoy rights and freedoms without discrimination on any grounds such as race, colour, language, religion, national or social origin**

Discrimination on account of a person’s actual or perceived race is a form of racial discrimination.<sup>16</sup> To that end, it has been accepted that discrimination based on race could, in certain circumstances, amount to ‘degrading treatment’ within the meaning of Article 3 ECHR. In a 2005 case involving the destruction of Roma villagers homes, the European Court of Human Rights (“ECtHR”) found a violation of Article 14, where repeated discriminatory remarks were made by the authorities.<sup>17</sup> This behaviour is equally present in the UK, and JUSTICE has noted

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<sup>14</sup> *Gillan and Quinton v The United Kingdom*, (App No 4158/05) [2010] ECHR.

<sup>15</sup> For more information on JUSTICE’s response to SVROs, please see: JUSTICE, ‘Serious Violence Reduction Orders Consultation, Home Office Response’ (November 2020), available at <https://justice.org.uk/wp-content/uploads/2020/11/JUSTICE-Response-Home-Office-Serious-Violence-Reduction-Orders.pdf>

<sup>16</sup> *Sejdic and Finci v Bosnia and Herzegovina*, (Apps Nos. 27996/06 and 34836/06) [2009] ECHR and European Court of Human Rights, ‘Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention’ (*Council of Europe*, 31 August 2020), page 26, [https://www.echr.coe.int/Documents/Guide\\_Art\\_14\\_Art\\_1\\_Protocol\\_12\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf)

<sup>17</sup> *Moldovan and Others v Romania (no. 2)*, (Applications Nos. 41138/98 and 64320/01) [2005] ECHR and European Court of Human Rights, ‘Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention’ (*Council of Europe*, 31 August 2020), page 52, [https://www.echr.coe.int/Documents/Guide\\_Art\\_14\\_Art\\_1\\_Protocol\\_12\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf)

reports of such instances among the police and other public bodies, as noted in paragraph 86 below.

11. Further, the UK is also a signatory to the UN Convention on the Elimination of all forms of Racial Discrimination (“CERD”)<sup>18</sup>. The CERD requires State signatories to take positive actions to eliminate racial discrimination throughout their institutions. The Joint Committee on Human Rights has highlighted in a recent report that this is particularly relevant to ongoing accusations of institutional racism in the UK.<sup>19</sup>
12. As it stands, there is ample evidence to suggest that the CJS, judiciary and education system face significant issues with respect to racial disparity. This is not only unsustainable with respect to such communities’ trust in institutions that their rights will be respected, but also a source of potential violations of multiple international and domestic legal obligations. In this submission, JUSTICE wishes to highlight choice examples, based on the experience of its working parties, of where improvements can be made, as well as shine a light on examples of best practice.

**Question 2 – What could be done to improve representation, retention and progression opportunities for people of different ethnic backgrounds in public sector workforces (for example, in education, healthcare or policing)?**

13. JUSTICE has published four Working Party reports on judicial diversity, the first in 1972,<sup>20</sup> followed by 1992,<sup>21</sup> 2017<sup>22</sup> and 2020.<sup>23</sup> Unfortunately, over this time, there has been little real change in the ethnic diversity of our judiciary, in particular in the senior courts. We are yet to see a non-white Supreme Court Justice (or Law Lord prior to the Supreme Court’s establishment), Lord Justice Singh is the first and only BAME Court of Appeal

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<sup>18</sup> International Convention on the Elimination of all forms of Racial Discrimination, 1969.

<sup>19</sup> Joint Committee on Human Rights, *Black People, Racism and Human Rights*, Eleventh report of session 2019-2021, (4 November 2020), page 7, available at: <https://committees.parliament.uk/publications/3376/documents/32359/default/>

<sup>20</sup> JUSTICE, *The Judiciary in England and Wales* (1972), available at <https://justice.org.uk/wp-content/uploads/2015/01/TheJudiciary.pdf>

<sup>21</sup> JUSTICE, *The Judiciary in England and Wales* (1992), available at <https://justice.org.uk/wp-content/uploads/2015/01/JudiciaryInEnglandWales.pdf>

<sup>22</sup> JUSTICE, *Increasing Judicial Diversity* (2017), available at <https://justice.org.uk/wp-content/uploads/2017/04/JUSTICE-Increasing-judicial-diversity-report-2017-web.pdf>

<sup>23</sup> JUSTICE, *Increasing Judicial Diversity: An Update* (2020), available at <https://justice.org.uk/wp-content/uploads/2020/01/Judicial-Diversity-Update-Report.pdf>

judge and Dame Linda Dobbs, who retired seven years ago, remains the only judge of Afro-Caribbean origin ever to have served in a salaried role on the High Court or above.

14. The very low number of BAME judges in the senior judiciary poses an acute challenge to the credibility and legitimacy of the judiciary, representing a challenge for trust and confidence with minority communities. This is critical in the criminal courts – the focus of David Lammy’s report<sup>24</sup> – but is equally important in the ‘constitutional’ courts of the High Court and above. Further, the quality of judgments is vastly improved as a result of different perspectives brought to decision-making by those with different characteristics and life experiences; the narrow demographic of the existing judiciary leads to a narrowing of experience and knowledge. Lastly, the consequence of not recruiting from a wide enough pool is necessarily that the institution is not benefiting from the best available talent.
  
15. The latest judicial diversity statistics show that in respect of applications to senior judicial roles, whilst there were a higher proportion of BAME applicants than there are BAME lawyers in the eligible pool, BAME candidates are less likely to be successful in their applications than their white counterparts (with the exception of appointment to the Circuit bench).<sup>25</sup> We are particularly concerned with the differential success rates for the roles of Deputy High Court Judge (success rates for BAME candidates were 75% lower than white candidates) and Recorder (success rates for BAME candidates 59% lower), as these are feeder roles to the senior judiciary.<sup>26</sup> The reasons for these differentials remain unclear.
  
16. The current approach to judicial diversity is clearly not working. We have seen a number of programmes and initiatives over the past few years, which have produced only marginal improvements in diversity. The concerted and laudable outreach efforts from the Judicial Appointments Commission (“JAC”) and the judiciary to lawyers from ethnic minorities appear to have been successful in so far as they have resulted in high application rates

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<sup>24</sup> D. Lammy, *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), p.37, available at <https://justice.org.uk/wp-content/uploads/2017/04/JUSTICE-Increasing-judicial-diversity-report-2017-web.pdf>  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643001/lammy-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf)

<sup>25</sup> Ministry of Justice, ‘Diversity of the judiciary: Legal professions, new appointments and current post-holders. 2020 statistics’, (17 September 2020), pages 21 and 22, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/918529/diversity-of-the-judiciary-2020-statistics-web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918529/diversity-of-the-judiciary-2020-statistics-web.pdf)

<sup>26</sup> *Ibid*, figure 12, page 22.



from BAME lawyers relative to their representation in the eligible pool. However, they have not resulted in the appointment of BAME judges.

17. It was suggested to us during the evidence gathering for our most recent report that outreach activities have attracted candidates who are, for some reason, unsuitable or unready for judicial appointment. Others intimated that the appointments processes themselves contain biases against BAME candidates. It is crucial that both of these possibilities are explored and addressed. To that end we are pleased to see that the judiciary will be conducting research to better understand the reasons why highly qualified, senior lawyers from minority ethnic backgrounds do not apply for senior judicial appointment and what practical steps can be taken to increase interest in and the attraction of a judicial career at this level.<sup>27</sup> However, it is also important to evaluate the appointment processes themselves. An in-depth, independent, expert review of the judicial appointment processes, focusing on where and why ethnic minorities and other underrepresented groups drop out during selection process is required. This should include identifying and addressing any inherent biases in selection materials and processes.

18. Our 2017 and 2020 reports made a number of further recommendations aimed at improving the success rates of the BAME candidates including, further improvements to feedback and “passporting” of candidates who had previously be successful in an early stage of the process, as well as greater diversity of selection panel members, in particular judicial members, and those conducting sifts. However, what is clear to us is that further programmes and initiatives within the current structures and framework are only likely to produce marginal improvements in diversity; large scale structural and cultural changes are therefore required to affect any meaningful improvement in judicial diversity.

### *Culture*

19. All cross-sectoral research shows that leadership at both the most senior levels and the ‘upper middle’ levels (i.e. those making the individual decisions about who gets ahead and how), is foundational in framing and changing the organisational culture needed to drive diversity. And this cultural change needs to be embedded. It is critical that those in leadership positions prioritise and commit to the cultural change necessary to transform

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<sup>27</sup> Judicial Diversity Forum Action Plan (September 2020), p.5, available at <https://judicialappointments.gov.uk/equality-and-diversity/diversity-and-equality-measures/judicial-diversity-forum/>

the demographics of our judiciary in a meaningful and sustainable way. At present, judicial diversity is still seen as tangential to quality in judging rather than fundamental to it. This must change if there is to be substantial and sustained improvement in the diversity of our judiciary.

20. At the senior levels of the judiciary there needs, first, to be genuine recognition and understanding of why a lack of diversity is problematic, the scale of the problem and of its severity. There therefore needs to be a public acknowledgement of the scale of the problem and its impact on the quality of justice. There needs to be a real commitment to change, backed up by action and practical steps rather than words. And the steps taken need to be monitored continuously in order to ensure and maintain progress. Unwritten rules and hidden barriers, such as the lack of access to fractional or flexible working, or a lack of clarity as regards the location of advertised vacant appointments, must be removed. A meaningful judicial career path needs to be established, allowing judges in the (more diverse) lower courts and tribunals to prove themselves worthy of senior appointment. To the extent that the senior judiciary is regarded as a ‘second career’, greater attention must be paid to the pipeline and to ensuring that recruitment to the key feeder roles – especially Recorder and Deputy High Court Judge – facilitates diversity rather than maintains the status quo.

21. This commitment to change also needs to include a much greater willingness to make diverse appointments from non-traditional pools, including appointing Court of Appeal and Supreme Court judges from outside the serving judiciary. In this context, we were pleased by the recent appointment of an academic barrister directly into the Supreme Court, though we also note that the making of appointments from non-traditional pools was said to be likely to increase diversity at the senior levels of the judiciary. We regret that so far that has not occurred.<sup>28</sup> We are pleased to see that applicants from a wide range of backgrounds are being encouraged to apply for the vacancy which will be left by Lady Black’s retirement in 2021,<sup>29</sup> and welcome Lord Reed’s stated desire to appoint a BAME Supreme Court justice before he retires.<sup>30</sup> However, words must be translated into actions.

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<sup>28</sup> ‘Professor Andrew Burrows appointed to the Supreme Court’, (24 July 2019), available at <https://www.ox.ac.uk/news/2019-07-24-professor-andrew-burrows-appointed-supreme-court>

<sup>29</sup> <https://www.supremecourt.uk/news/judicial-vacancies.html>

<sup>30</sup> ‘UK supreme court should have a BAME justice ‘within six years’ ( *The Guardian*, 5 October 2020), available at <https://www.theguardian.com/law/2020/oct/05/bame-justice-should-be-appointed-to-uk-supreme-court-within-six-years>

22. This all requires the judiciary urgently to adopt diversity as a pillar of its culture, with every judge understanding and acknowledging its importance, and making efforts to increase inclusion. Embedding diversity into the culture means championing a vision which recognises that in order to fairly administer and deliver justice, the bench must better reflect the population it serves. Judges need greater support to understand and challenge their own biases, not only in appointments processes but also in the execution of their judicial roles. Our judicial leaders have a critical role in setting the cultural tone and in accepting their organisational and personal responsibility for driving diversity.

### *Structure*

23. In order to overcome systemic barriers to diverse recruitment and ensure that recruitment is focused on the benefits that diversity will bring to the bench, we recommended in our 2017 report, the introduction of “appointable pools” i.e. talent pools for each court. Pools would allow for proactive, efficient recruitment, and would put the institutional need for greater diversity at the forefront of selectors’ minds. The first step is the creation of an appointable pool for a particular court, for which there would be regular and predictable recruitment exercises. Candidates would have to meet a very high threshold of appointability, measured objectively against a fixed benchmark rather than comparatively.<sup>31</sup> Once a pool was created candidates would be selected from the pool by the JAC or a new Senior Selections Committee (see paragraph 28 below), as vacancies arose. At this stage institutional needs, including the need for greater diversity would take precedence. In light of the diversity crisis, at least in the short to medium term, we would expect that BAME candidates (along with those from other underrepresented groups) would be given priority appointments, as well as people with specific expertise. However, everyone in the appointable pool would also be guaranteed an appointment within a reasonable period of time, although candidates from ‘overrepresented’ groups may spend longer in the pool.

24. We appreciate that the creation of appointable pools would mark a significant structural change to processes of judicial appointment but believe that it is necessary to increase diversity. It is important that the appointable pool would be recognised as strengthening the appointment process as a whole and would not act as a disincentive to excellent white candidates, who would continue to be appointed to the bench.

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<sup>31</sup> This means that the standard remains consistent year on year, rather than getting the “top-ranked” people of a bad bunch or missing out on excellent people in an exceptional year.

## *Accountability*

25. Alongside these cultural and structural changes, a system of proper accountability is required to ensure that the commitment to change is backed up by practical steps and, importantly, results. We therefore continue to call for the introduction of targets “with teeth” and the creation of a permanent “Senior Selections Committee” (“SSC”) dedicated to appointments to the Court of Appeal, Heads of Division and UK Supreme Court, as set out in our 2017 report.
26. Policy-makers and selectors should set ambitious “*targets with teeth*” for every court lacking diversity. These targets could be laid out in statute, but in the short term could be non-statutory. The “teeth” for composition targets are transparency, monitoring and reporting to Parliament (we suggest the Justice Select Committee). Accountability for targets will be ensured through the “comply or explain” model: if the JAC or SSC has not achieved a particular target, it must set out in detail the reasons why not and what is being done to meet it as soon as possible. Targets are voluntary goals, but they can change behaviour in the right circumstances. Though they are aspirational, targets will focus the minds of everyone involved on the importance of diversity. They will also set a transparent benchmark against which annual progress can be easily (and externally) measured. Targets will force the selectors to look beyond the obvious candidates, prompt judges to encourage applications from a much wider group, and support the careers of future candidates from currently underrepresented groups. However, if there is persistent failure to meet targets over the next decade, strong consideration should be given to the introduction of quotas.
27. Efforts to increase judicial diversity are hampered by the range of actors involved in judicial appointments and promotions – none of whom are directly responsible for increasing diversity of the judiciary. In terms of the senior judiciary, the JAC is responsible for Recorder, Circuit bench, Deputy High Court and High Court appointments. Senior selections (Court of Appeal, Heads of Division and UK Supreme Court) are not within the JAC’s remit, and are instead made by ad hoc panels, albeit convened by the JAC.<sup>32</sup> HMCTS, the Judicial Office, the JAC, the Lord Chief Justice and the Lord Chancellor all have different roles to play, in work allocation, attracting talent, and appointments.

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<sup>32</sup> Constitutional Reform Act 2005, Section 79; 70; Schedule 8.

28. Without a JAC equivalent for senior appointments a new panel is assembled whenever a vacancy arises which results in a lack of constancy of a membership or approach and an inability to take into account longer term institutional needs. There is little institutional memory, so each appointment is made largely in isolation from the last and the next. The lack of a specific standing body responsible for senior selections makes scrutiny of, and accountability for, diversity of appointments almost impossible. We therefore propose a permanent, high-profile committee specifically charged with selection of Court of Appeal, Heads of Division and UK Supreme Court Justices – a Senior Selections Committee. This would bring visibility and accountability to the recruitment of the most senior and constitutionally important judges, whilst a mixed membership of judicial, lay and non-judicial expert members would bring a wider range of perspectives.<sup>33</sup> The most significant selection decisions in our country surely merit a proper, permanent committee of this stature.

**Question 3 – How could the educational performance of school children across different ethnic and socio-economic status groups be improved?**

29. Close to half a million fixed term exclusions were issued by English schools in the academic year 2018/19,<sup>34</sup> whilst there were nearly 8,000 permanent exclusions.<sup>35</sup> Over the past six years there has been a continuous rise in the rate of fixed term exclusions in England, whilst the rate of permanent exclusions has remained constant at 0.10 since 2016/17, having risen from 0.06 in 2012/13. By comparison in Wales in 2018/19 246 pupils were permanently excluded<sup>36</sup> and in Scotland, only 3 pupils were permanently excluded.<sup>37</sup>

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<sup>33</sup> We propose that SSC be constituted of (i) three judicial members (the President of the Supreme Court, the Lord Chief Justice (for England Wales appointments and equivalents in Northern Ireland and Scotland for relevant Supreme Court appointments) and a third judge not sitting in the Court of Appeal or above, for example, a Circuit judge, High Court judge, senior Tribunal judge; (ii) three lay members; and (iii) three non-judicial expert members – one / two chosen by CILex, the Bar Council and the Law Society and one/two independent of the judiciary with expertise in furthering equality and inclusion, for example the chair of the Equality and Human Rights Commission, senior academics or retired civil servants.

<sup>34</sup> 438,265 fixed period exclusions were issued in 2018/19.

<sup>35</sup> 7,894 permanent exclusions were issued in 2018/19. This is a small decrease in numbers from 2017/18 when 7,905 were issued.

<sup>36</sup> Welsh Government, 'Permanent and fixed term exclusions from Schools: September 2018 to August 2019', table 1, available at <https://gov.wales/permanent-and-fixed-term-exclusions-schools>

<sup>37</sup> Scottish Government, Exclusions from Schools 2018/19 – Supplementary Data, table 1, available at <https://www.gov.scot/publications/school-exclusion-statistics/>

30. Being excluded from school can be a life changing event for a pupil with profoundly negative consequences for their educational outcomes; in 2018/19 the average Attainment 8 score for pupils in state-funded schools in England was 46.7, for those in alternative provision (where many excluded pupils end up) it was 6.8.<sup>38</sup> The statistics show that pupils with gypsy Roma, traveller of Irish heritage and Caribbean heritage, as well as those from lower socio-economic backgrounds are far more likely to be excluded. The comparative rates of exclusion are as follows:

Type of exclusion	Rate of exclusion 2018/19					
	Whole school population	White and black Caribbean	Black Caribbean	Gypsy Roma	Traveller of Irish heritage	Eligible for Free School Meals
<b>Fixed-term</b>	5.36	10.69	10.37	21.26	14.63	13.76
<b>Permanent</b>	0.10	0.24	0.25	0.39	0.27	0.27

31. As well as being from certain ethnic groups and being eligible for free school meals, being supported by social care, having special educational needs (“SEN”) and being a boy also increase the likelihood a child will be excluded. Many pupils will have multiple layers of vulnerability further increasing their risk of exclusion. For example, children on free school meals are twice as likely to have SEN<sup>39</sup> and Black children are more likely to be living in poverty.<sup>40</sup>

<sup>38</sup> DfE, Key stage 4 performance 2019 (revised), National Tables, Table 2, available at <https://www.gov.uk/government/statistics/key-stage-4-performance-2019-revised>; DfE ‘

<sup>39</sup> Gill, Quilter-Pinner and Swift, ‘Making the Difference: Breaking the Link between School Exclusion and Social Exclusion’ Institute for Public Policy Research (2017) page 17, available at <https://www.ippr.org/files/2017-10/making-the-difference-report-october-2017.pdf>.

<sup>40</sup> Office for National Statistics, *Child poverty and education outcomes by ethnicity* (25 February 2020), available at <https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/compendium/economicreview/february2020/childpovertyandeducationoutcomesbyethnicity>

32. In 2019, JUSTICE published a report which looked at the process for challenging school exclusion decisions as well as the procedural aspects of the initial decision to exclude.<sup>41</sup> The report recognised that there is a place for exclusion as part of a head teachers' powers to respond to behavioural incidents in school. However, it must only be used lawfully, reasonably and fairly and, in the case of permanent exclusions, only as a last resort, where absolutely necessary. We believe that robust procedures for issuing an exclusion and a robust review process is crucial to ensuring that this is the case and that every child, irrespective of their background or individual circumstances receives the same opportunity to be educated.
33. The report made a number of recommendations for ways to help reduce unnecessary, unlawful and unfair exclusions. Given the disproportionate exclusion of pupils of certain ethnicities and lower socio-economic backgrounds, these recommendations would have a particular impact on those children and, by keeping them in school wherever possible, improve their educational outcomes.
34. First, it was clear from our evidence gathering that teachers do not always fully understand their duties relevant to exclusions, including exclusions legislation and Statutory Guidance itself and the Equality Act 2010. Black and minority ethnic children can be subject to different treatment as a result of racist stereotyping and labelling by teachers. They are sanctioned for behaviour which would not be treated in the same way if it was a white child acting similarly.<sup>42</sup> Institutional racism can also shape schools' views on what is acceptable behaviour or appearance which is then translated into behaviour policies. For example, policies which ban 'kissing teeth', wearing afros or fist bumping.<sup>43</sup> A number of consultees we spoke to for the report thought that schools were not fully aware of, or had simply failed properly to apply, the second limb of the criteria for permanent exclusion which requires not only that there was a serious breach or persistent breaches of the school's behaviour policy but also that to allow the pupil to remain in the school would seriously

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<sup>41</sup> JUSTICE, *Challenging School Exclusions* (2019), available at <https://justice.org.uk/our-work/administrative-justice-system/challenging-school-exclusions/>

<sup>42</sup> For example, when black children speak loudly in the classroom they are sanctioned, whereas white children are not (4in10, Just for Kids Law and Children's Rights Alliance, *Race, poverty and school exclusions in London* (October 2020), p. 13 available at [https://londonchallengepovertyweek.org.uk/wp-content/uploads/2020/10/RacePovertyandSchoolExclusions\\_FV-1.pdf](https://londonchallengepovertyweek.org.uk/wp-content/uploads/2020/10/RacePovertyandSchoolExclusions_FV-1.pdf)

<sup>43</sup> H. Richardson, 'Black pupils face trebled exclusion rate in some areas of England', *BBC News* (30 July 2020), available at <https://www.bbc.co.uk/news/education-53516009>

harm their education or welfare, or those of others in the school.<sup>44</sup> Consultees raised this in the context of pupils with SEN, however the concern is also applicable where pupils are excluded for ways of communicating or wearing hairstyles from specific communities as these do not impact on the education or welfare of pupils. These issues are further exacerbated by zero-tolerance behaviour policies, from which head teachers feel unable to depart to avoid exclusion in appropriate circumstances.

35. Proper consideration and application of the existing equality and exclusion law would help prevent discriminatory exclusions. We therefore recommend:

- a. that specific training on the exclusions Statutory Guidance and the application of the Equality Act 2010 in the context of exclusions should be mandatory for all teachers in leadership positions within schools. This knowledge should be refreshed through continuing professional development at least biennially; and
- b. access to advice should be made available to head teachers before they reach a decision to exclude. Head teachers should seek this advice, unless there is a good reason not to. The advice should be provided by someone external to the school who has knowledge of the relevant legal obligations.

36. Second, there needs to be processes in place to ensure that there is proper communication between schools on the one hand and pupils and parents on the other, so that any behavioural issues can be properly understood and their root causes addressed without unnecessarily excluding. There are a multitude of factors linked to poverty and racism that might impact a pupil's behaviour, but without proper communication children may be excluded without these being picked up. For example, families' inability to pay for essentials such as food and clothing can impact children's ability to concentrate and engage at school, not being able to afford the right uniform may result in breaches of the uniform policy, bullying and embarrassment from not being able to afford additional school costs and/or being singled out as receiving free school meals may impact children's

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<sup>44</sup> JUSTICE, *Challenging Exclusions* (n 41), paragraph 3.6.



behaviour<sup>45</sup> and experiences of racism may impact on children's behaviour as a result of feeling under-valued and disrespected.<sup>46</sup>

37. The Report therefore recommended that:

- a. Prior to any decision to permanently exclude, a head teacher (or another appropriately senior member of staff) should make every reasonable effort to meet the pupil and their parents, in order to notify them that the school is considering permanent exclusion and should take fully into account any representations they may make.
- b. It should be a requirement to hold a reintegration meeting with the parents and pupil following a fixed term exclusion, and this should be used as an opportunity for intervention to discuss how best to avoid further exclusions.<sup>47</sup> The DfE should also provide tighter guidelines and training for head teachers on how to conduct reintegration interviews in order to ensure that they are used effectively.

38. In addition, schools should have robust systems and processes in place in respect of exclusions to help ensure that head teachers have complied with their legal duties, followed a fair process that has included engaging with the pupil and parent and properly documented and evidenced their decision. Step-by-step guides, template documents and checklists can all assist in this regard. For example, some academies and councils provide pre-exclusions checklists for head teachers.<sup>48</sup> This will also help head teachers to reassure

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<sup>45</sup> E. Holloway et al, 'At What Cost? Exposing the impact of poverty on school life' *The Children's Society* (2014), available at [https://www.basw.co.uk/system/files/resources/basw\\_21941-5\\_2.pdf](https://www.basw.co.uk/system/files/resources/basw_21941-5_2.pdf)

<sup>46</sup> 4in10, Just for Kids Law and Children's Rights Alliance, *Race, poverty and school exclusions in London* (n 42), page 14.

<sup>47</sup> It was previously a requirement under the Education (Reintegration Interview) (England) Regulations 2007 for a head teacher to request a "reintegration interview" with parents following the expiry of any fixed-term exclusion for a primary-aged pupil, or of a fixed-term exclusion of six or more school days for a secondary-aged pupil. The 2008 Exclusions Statutory Guidance stated that the interview was an opportunity, amongst other things, to "discuss how behaviour problems can be addressed"; "explore wider issues and circumstances that may be affecting the child's behaviour"; and "reach agreement reach agreement on how the child's education should continue, how best they can be reintegrated and what measures could be put in place to prevent further misbehaviour" (Department for children, schools and families, 'Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units' (2008) para 41, available at <https://dera.ioe.ac.uk/8486/1/Exclusion%20guidance%202008.pdf>). In Wales this duty still exists under the Education (Reintegration Interview) (Wales) Regulations 2010.

<sup>48</sup> For example, Ark Academies have a "Principals pre-exclusion checklist" and Islington Council provides head teachers with an "exclusions checklist".

themselves that they have used exclusion properly and lawfully as well as assist those who have to conduct or to participate in the review process.

39. Third, there is a lack of an effective redress mechanism to challenge exclusions that may be discriminatory or otherwise unlawful. The current review processes for exclusions comprises three stages:

- a. Review by the governing board (governors or trustees) of the school who can decide to reinstate the pupil.
- b. In the case of permanent exclusion, review by an Independent Review Panel (“IRP”). The IRP cannot consider the merits of the governing board’s decision i.e. would it have come to the same decisions, but must evaluate that decision according to the principles of judicial review i.e. did the governing board act in accordance with its legal obligations. It cannot order reinstatement of a pupil, it can only recommend or direct that the governing board reconsiders reinstatement.
- c. If the IRP directs or recommends that the governing board reconsiders reinstatement the governing board must convene to do so. If the governing board declines to reinstate the pupil following a direction to reconsider, an adjustment downwards of £4,000 is to be made to the school’s budget.

40. This process is ineffective for the following reasons:

- a. The governing board lacks independence and often ‘rubber-stamps’ the head teacher’s decision to exclude, governors do not have sufficient knowledge and understanding of exclusions duties, including equality law and they also lack the knowledge, training and guidance to be able to conduct a procedurally fair review meeting, in which all parties are able to effectively participate.<sup>49</sup>
- b. The IRP’s lack of power to reinstate pupils, leaves pupils who have been unlawfully excluded without an effective remedy.<sup>50</sup> This deters pupils and parents from

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<sup>49</sup> JUSTICE, *Challenging School Exclusions* (n 41), paras 4.1 – 4.17.

<sup>50</sup> In 2018/19 the school offered reinstatement in only 13% of cases where the IRP recommended reconsideration and 39% of cases where the IRP directed reconsideration (DfE, Permanent and fixed-period exclusion in England, November 2020, Exclusion Reviews table, available at <https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england>)

applying for a review and may make some head teachers more likely to exclude.<sup>51</sup> There is also wide variation between IRPs in relation to their application of judicial review principles (which are complex legal principles being applied by non-lawyers), the standard of knowledge and training of panel members, the way in which hearings are conducted and the role of SEN experts.<sup>52</sup>

41. For these reasons, the report recommended comprehensive structural reform to the exclusions review process:

- a. The introduction of a new role of a specialist 'Independent Reviewer' ("IR") to conduct an investigative review into individual exclusion decisions, replacing the review currently conducted by the governing board. The IR would be independent of the school concerned and have relevant knowledge, training and experience. The IR would adopt an investigatory approach, consulting with the pupils and parents, teachers and school staff as well as the local authority. They would produce a report setting out their recommendation as to the best way forward. This could, for example, include withdrawal of the decision to exclude, provision of additional support or a managed move (if genuinely in the best interests of the child and the parents and pupil agree). The head teacher would choose whether to accept the report's recommendations. If they do not, an appeal would be available to the pupil and parents at which they would be able to rely on the IR's report, providing them with a strong, well evidenced case.
- b. The replacement of IRPs with an appeals body with specialist expertise, able to remake the decision afresh, to direct reinstatement of excluded pupils and order other remedies such as wiping a child's record of the exclusions or requiring a pupil be allowed to sit an exam. The report identified that the First-tier Tribunal (Special Educational Needs and Disability) could act as this body, as it already hears exclusion appeals involving disability discrimination. It would become the First-tier Tribunal (Education).

This is particularly important in relation to exclusions involving race discrimination. Currently these can only be heard in the County Court, rather than the First-tier Tribunal. At the County Court there is a court fee to start a case and the Court,

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<sup>51</sup> JUSTICE, *Challenging Exclusions* (n 41), paras 5.4-5.8.

<sup>52</sup> *Ibid*, paras 5.12-5.13, 5.17-5.24.

unlike tribunals, is not set up to accommodate litigants in person. Further, litigants in the County Court are at risk of having to pay for the other side's costs. Bringing all exclusion appeals, including those involving race discrimination, into the First-tier Tribunal would provide an effective remedy for pupils unlawfully excluded, including on the basis of race discrimination.

42. In addition, in order for a review process to be robust and effective it is crucial that pupils and parents are enabled to participate fully in it in whatever form it takes. This requires:

- a. Improvements to the design, content and availability of guidance on exclusion decision making and the review process to make it coherent and accessible to parents/carers and pupils; signposting to, and improving the availability of, independent service advisors and support services.
- b. Greater awareness by professionals within the review process of how to effectively communicate with parents/carers and pupils and include them within the process, including making reasonable adjustments for those with additional needs or vulnerabilities.
- c. Including the pupil by seeking their views at all stages of the review process.

**Question 7 – How could inequalities in the health outcomes of people in different ethnic groups be addressed by government, public bodies, the private sector, and communities?**

43. Being excluded from school negatively impacts on children's mental health,<sup>53</sup> reinforcing their sense of rejection and negative self-image.<sup>54</sup> As seen above, pupils of particular ethnicities are much more likely to be excluded than their peers. Implementing the recommendations outlined in answer to Question 3 above, will ensure that the processes to make, confirm and review a decision to exclude pupils are fair and robust, helping to

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<sup>53</sup> Ford et al., 'The Relationship between Exclusion from School and Mental Health: A Secondary Analysis of the British Child and Adolescent Mental Health Surveys 2004 and 2007' *Psychological Medicine* (25 August 2017) available at <https://ore.exeter.ac.uk/repository/handle/10871/28337>.

<sup>54</sup> Gill, Quilter-Pinner and Swift, 'Making the Difference: Breaking the Link between School Exclusion and Social Exclusion' Institute for Public Policy Research (2017) page 21, available at <https://www.ippr.org/files/2017-10/making-the-difference-report-october-2017.pdf>.

eradicate unnecessary, unfair and unlawful exclusions and therefore mitigate against the negative health consequences resulting from exclusion.

### **Question 8 – What could be done to enhance community relations and perception of the Police?**

44. Whilst JUSTICE appreciates a further opportunity to discuss our findings around racial and ethnic disparity in the YJS, it is important to reflect on the significant number of reports and inquiries that have already sought to understand the problem and make recommendations for its improvement. Key of these are:

- a. **The Scarman Report:** following the 1981 Brixton riots, an inquiry chaired by Lord Scarman was held, resulting in the Scarman Report. The Report warned that urgent action was required to prevent racial disadvantage becoming an “*endemic, ineradicable disease threatening the very survival of our society*.”<sup>55</sup>
- b. **The MacPherson Report:** A key moment was the racially motivated murder of Stephen Lawrence in 1993, which ultimately led an inquiry into his murder and its investigation, in an attempt to learn lessons as to what went wrong. This culminated in the MacPherson Report<sup>56</sup> in 1999. It concluded that the investigation into the murder had been “*marred by a combination of professional incompetence, institutional racism and a failure of leadership*”,<sup>57</sup>
- c. **The Young Review:** Chaired by Baroness Lola Young in 2013, its primary goal was to identify how to improve the negative outcomes experienced by black and Muslim male offenders between the age of 18-24. The report was published in 2014 and raise concerns about the drivers that result in the young people entering the CJS, the disproportionate use of stop and search and the risk driven nature of policing;<sup>58</sup> and

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<sup>55</sup> BBC, 'Q&A: The Scarman report, (27 April 2004), available at [http://news.bbc.co.uk/2/hi/programmes/bbc\\_parliament/3631579.stm](http://news.bbc.co.uk/2/hi/programmes/bbc_parliament/3631579.stm)

<sup>56</sup> Sir William MacPherson of Cluny, *The Stephen Lawrence Inquiry*, (1999), available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277111/4262.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf)

<sup>57</sup> Ibid, para 46.1.

<sup>58</sup> Baroness Lola Young, *The Young Review*, (2013), page 11, [https://www.equalcjs.org.uk/sites/default/files/articles/clinks\\_young-review\\_report\\_dec2014.pdf](https://www.equalcjs.org.uk/sites/default/files/articles/clinks_young-review_report_dec2014.pdf)

d. **The Lammy Review:** This Review, published in 2017, had access to data that had not previously been made available to scrutiny and analysis and concluded that “*BAME individuals still face bias, including overt discrimination, in parts of the justice system*”.<sup>59</sup>

45. The Commission follows in the footsteps of these other initiatives, and adds to the urgency for the need to find solutions to these pressing problems. It is vital that recommendations are accompanied by concrete action, and we echo the concerns of the Joint Committee on Human Rights when they state that “*commissioning reports and failing to implement them intensifies disaffection and lack of confidence in the Government on race issues*.”<sup>60</sup>

46. Despite these reports’ sensible recommendations, and the public attention they received, racial disparity in the CJS continues to persist today, and the challenges faced by BAME individuals become ever more pressing. For instance, during the first COVID-19 lockdown (March – May 2020), figures show that BAME people were more likely to be fined,<sup>61</sup> and the number of stops and searches rose considerably.<sup>62</sup> This shows the scale and nature of the problem, highlighting that what is needed is a complete cultural shift in how BAME people are treated by our justice system. Acknowledging that racial disparity is an issue, is only the first step in a long journey to justice.

47. The Racial Disparity Working Party has identified an attitude among criminal justice agencies that quickly criminalises BAME children. However, JUSTICE believes that the welfare of the child should be paramount. The Children Act 2004 provides that:

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<sup>59</sup> D. Lammy, *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), p. 69, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643001/lammy-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf)

<sup>60</sup> Joint Committee on Human Rights, *Black People, Racism and Human Rights*, Eleventh Report of the Session 2019-2021, (11 November 2020), paragraph 35, <https://committees.parliament.uk/publications/3376/documents/32359/default/>

<sup>61</sup>R. Currenti and J. Flatley, *Policing the Pandemic: detailed analysis on police enforcement of the Public Health Regulations and an assessment on disproportionality across ethnic groups*, (National Police Chiefs’ Council), (27 July 2020), page 3, available at <https://news.npcc.police.uk/resources/policing-the-pandemic-4>

<sup>62</sup> ‘*Stop-and-search use in London rose 40% in lockdown, figures show*’ (The Guardian, 25 August 2020), <https://www.theguardian.com/uk-news/2020/aug/25/stop-and-search-use-in-london-rose-40-in-lockdown-figures-show>

*“Each person and body... must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children.”*<sup>63</sup>

48. Despite this being enshrined in legislation, the sentiment is often lost in translation, particularly when it comes to BAME young people. BAME children experience the YJS very differently to, and often more negatively than, White children. This submission focuses primarily on the experiences of Black boys, Muslim children, Gypsy, Roma and Traveller (“GRT”) children and BAME girls. While not exhaustive, we consider this range of examples as sufficient to demonstrate the reality of how such groups experience the YJS and believe our findings can have wider resonance.

49. It is well known that the relationship between BAME communities and the police is challenging. While the underlying reasons are complex, JUSTICE considers that the disproportionate outcomes of the CJS, combined with apparent over policing, have engendered tangible feelings of resentment.

50. This most clearly manifests itself in the use of ‘stop and search’ powers,<sup>64</sup> which are disproportionately used against BAME individuals, have limited efficacy in preventing crime, and consequently contribute to significant negative perceptions of the police. In this section, JUSTICE analyses such powers. Thereafter, we consider how this impacts on the police’s relationship with BAME communities, informed by the interim findings of the Racial Disparity Working Party.

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<sup>63</sup> Children Act 2004, s 11 (2)(b).

<sup>64</sup> Stop and search is the term given for the power of police officers to stop an individual and search them in a public place. The power is provided for in the Police and Criminal Evidence Act 1984 (“PACE”); the Criminal Justice and Public Order Act 1994 (“CJPO”); and in the Terrorism Act 2000. Section 1 of PACE gives a police officer the power to stop a person or vehicle if they have reasonable grounds to suspect the person has stolen or prohibited articles in their possession. There is no need for the authorisation of a senior officer. Section 2 of PACE requires officers to inform those they are searching of their name, police station, the object they are trying to find and the grounds for the search. Failure to comply with such requirements will render a stop and search unlawful (see *R v Bristol* [2007] EWCA Crim 3214). Section 60 of CJPO allows any senior officer to authorise the use of stop and search powers within a designated area for up to 48 hours where they reasonably believe that incidents involving serious violence may take place, or that weapons are being carried. Once authorisation is given, the implementing officer does not require any grounds to stop a person or vehicle within the area. Section 47A of the TA allows police officers to stop and search someone when there is a reasonable suspicion of an act of terrorism taking place, and only where those powers are considered necessary to prevent a terrorist act taking place.

## *Negative Impact of Stop and Search Powers*

51. Stop and search is one of the principal contributors to the fractious relationship between police and BAME communities. The evidence in this regard is clear, with three quarters of BAME young people thinking their communities are unfairly targeted.<sup>65</sup> Although all BAME groups experience stop and search at a higher rate than White people, Black boys experience the highest proportion of stop and search. Despite rates of stop and search decreasing overall over the last 15 years, no corresponding drop exists for BAME children, who make up over 54% of all stop and searches. This rises to 37% with respect to Black children. Moreover, rates of stop and search are now on the rise, with a 32% increase in use between March 2018 and March 2019<sup>66</sup>

52. Powers under PACE<sup>67</sup> and CJPO<sup>68</sup> are the most frequently used,<sup>69</sup> and there is a lack of evidence to suggest that either have any tangible effectiveness, especially with respect to violent crime.<sup>70</sup> This is shown in a recent publication of the Home Office, which highlighted that of all the stops and searches undertaken in the year ending March 2020, 76% resulted in no further action.<sup>71</sup>

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<sup>65</sup> P. Keeling, 'No Respect: Young BAME me, the police and stop and search' (*Criminal Justice Alliance*, June 2017), page 20, <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf>

<sup>66</sup> Home Office, *Police powers and procedures, England and Wales, year ending 31 March 2019*, page 1, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/841408/police-powers-procedures-mar19-hosb2519.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841408/police-powers-procedures-mar19-hosb2519.pdf)

<sup>67</sup> Police and Criminal Evidence Act 1984.

<sup>68</sup> Criminal Justice and Public Order Act 1994.

<sup>69</sup> P. Keeling, 'No Respect: Young BAME me, the police and stop and search' (*Criminal Justice Alliance*, June 2017), page 20, <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf>

<sup>70</sup> Evidence on the effectiveness of stop and search at reducing violent crime is extremely limited. An academic review published in early 2018, using ten years of data from London, examined the potential effect of the tactic on different forms of crime. The researchers found that a 10% increase in stop and search (S&S) was associated with a drop in "susceptible crime" of 0.32% (monthly) or 0.14% (weekly)—a statistically significant but very small effect. When drug offences and drug-related stop and searches were excluded, the size of the effects halved. The study "struggled to find evidence of an effect of S&S on violent crime": a 10% increase in the tactic led to a 0.01% decrease in non-domestic violent crime. The academics concluded that it "seems likely that S&S has never been particularly effective in controlling crime", and yet "police officers believe that S&S is a useful tool of crime control": Tiratelli, M., Quinton, P., & Bradford, B. *The British Journal of Criminology*, Volume 58(5), (September 2018), pages 1212–1231, available at [Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data](#)

<sup>71</sup> See 'Police powers and procedures, England and Wales, year ending 31 March 2020', Home Office, (27 October 2020), page 1.



53. Section 60 powers are primarily used in deprived areas, which often have a higher population of Black people. These stops are even less effective, with only 5% resulting in arrest.<sup>72</sup> Moreover, while some weapons may be taken off the street, there is limited evidence that stop and search reduces serious violence; at best, it shifts violence from one area to another.<sup>73</sup> Indeed, the cost of the policy is steep when accounting for the detrimental impact on BAME confidence in the police, considering the persisting belief among those populations that they are being unfairly targeted and overpoliced. This belief is strengthened by figures showing that the number of section 60 stops doubled between March and May 2020,<sup>74</sup> despite crime levels having fallen in the period immediately before.<sup>75</sup> This steep rise in the use of the power has been aided by a pilot scheme that lifted restrictions on who could authorise such stops, reducing the level of authorisation needed from senior officers to inspectors and superintendents.<sup>76</sup>

54. The use of section 60 is therefore of great concern. We see little value in how it is currently implemented, other than for the police to be seen to be doing something. It is likely the continued use of this tactic in this way will continue to damage the relationship between the police and the communities that section 60 targets. Given its ineffectiveness, its increase in use and its undue targeting of BAME people, we consider that changes made to the authorisation process of section 60 stops should be reversed.

55. In addition, in London, stop and search is often carried out by the Metropolitan Police Service's ("MPS") 'Territorial Support Group'. These groups do not have ongoing relationships with communities which means they are less likely to be invested in the outcome for individuals. The Racial Disparity Working Party found that these groups are

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<sup>72</sup> P. Keeling, 'No Respect: Young BAME me, the police and stop and search' (Criminal Justice Alliance, June 2017), page 11, <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf>

<sup>73</sup> Tiratelli, M., Quinton, P., & Bradford, B. 'Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data', The British Journal of Criminology, Volume 58(5), September 2018, Pages 1212–1231, available at <https://academic.oup.com/bjc/article/58/5/1212/4827589>

<sup>74</sup> During the first COVID-19 lockdown (March to May 2020), over 20,000 young black men (a quarter of all black 15 to 25 year old in London) were stopped by the Metropolitan Police, with 80% of stops resulting in no further action – See S. Marsh, 'Met police increased use of s60 stop and search during lockdown', The Guardian, 27 July 2020, available at <https://www.theguardian.com/uk-news/2020/jul/27/met-police-increased-use-of-section-60-stop-and-search-during-lockdown>

<sup>75</sup> 'Police continue to see falls in crime during lockdown', National Police Chiefs' Council, 19 June 2020, available at <https://news.npcc.police.uk/releases/police-continue-to-see-falls-in-crime-during-lockdown>

<sup>76</sup> GOV.UK, *Government lifts emergency stop and search restrictions*, 11 August 2019, available at <https://www.gov.uk/government/news/government-lifts-emergency-stop-and-search-restrictions>

often perceived as being aggressive in their approach and the lack of care shown by them means they are, unsurprisingly, distrusted and disliked by BAME communities. Such stops are inevitably detrimental to building positive relationships.

56. The Independent Office for Police Conduct (“IOPC”) has also added to the criticisms, noting that the legitimacy of stop and search is undermined by issues such as police forces’ lack of understanding of disproportionality, poor communication, consistent use of force over seeking cooperation, the failure to use body-worn video cameras during incidents and continuing to seek further evidence after the initial grounds for the incident were unfounded. In light of these issues, the IOPC recently made 11 recommendations to the MPS so that it can improve its practice, which it has accepted.<sup>77</sup> We consider many of these issues contribute significantly to the lack of trust, which undermines any attempts to build confidence between the police and the BAME communities they serve. As such, we support these recommendations and consider that all police forces should take steps to implement them.

57. JUSTICE notes that there are current proposals to expand the remit of stop and search powers. The Government has consulted on the introduction of Serious Violence Reduction Orders (“SVRO”), which would allow courts to confer on police the power to stop and search individuals who have a previous conviction for any relevant offence, such as carrying a knife, without the need for reasonable suspicion.<sup>78</sup> As highlighted in JUSTICE’s response to the Home Office, this new measure could risk significant damage to community relationships, particularly where BAME individuals would be treated as “*perpetual criminals*”.<sup>79</sup> JUSTICE believes it is imperative that the Government better consider the disproportionate impact on BAME communities before expanding police powers in this way.

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<sup>77</sup> Independent Office for Police Conduct, *Review identifies eleven opportunities for the Met to improve on stop and search*, 28 October, available at <https://www.policeconduct.gov.uk/news/review-identifies-eleven-opportunities-met-improve-stop-and-search>

<sup>78</sup> Home Office, ‘Serious Violence Reduction Orders: a new court order to target known knife carriers’ (Gov.uk, 14 September 2020), page 2, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/917277/SVRO\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf)

<sup>79</sup> JUSTICE, ‘Serious Violence Reduction Orders Consultation, Home Office Response’, page 7, available at <https://justice.org.uk/wp-content/uploads/2020/11/JUSTICE-Response-Home-Office-Serious-Violence-Reduction-Orders.pdf>

## *Improving Community Relations*

58. Stop and search is clearly detrimental to BAME communities' confidence in the role of the police. Concretely, this is all the more dangerous where it leads to those communities feeling unable to rely upon the police when their intervention is needed. Crime, for example, may go undetected and those responsible unpunished. This lack of trust was articulated in a roundtable held by the Home Affairs Committee.<sup>80</sup> During that discussion, a Black child said that "*we know the police treat Black people differently...it means that we do not feel safe ever.*" Another child said that "*the only interaction that you have with police nowadays is when you are being pulled over, when you are being stopped and searched.*" The child said that his first interaction with the police was at primary school when the police would come with their cars and that "*people loved the police.*" He went on to say that "*my next interaction after that was being pulled over because there were suspicions that I had a knife on me; and I was about six years old coming home from the park.*"<sup>81</sup>
59. Many of these incidents are not isolated events, as BAME children face being stopped and searched on multiple occasions throughout their lives. Unsurprisingly, this has led to BAME individuals feeling over-policed and having less trust in the police.<sup>82</sup>
60. Unfortunately, when a stop is unsubstantiated, JUSTICE understands that police officers do not feel that an apology is necessary, despite children wanting an acknowledgement of the embarrassment it has caused.<sup>83</sup> If police officers were more receptive to the impact of the disproportionate use of stop and search, it could lead to more cooperative searches and improved relationships in the future. However, communities continue to feel unsafe and therefore unable to rely on the police.<sup>84</sup>

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<sup>80</sup> Home Affairs Select Committee, *Serious youth violence*, Sixteenth report of session 2017-2019, (18 July 2019), available at

<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1016/101602.htm>

<sup>81</sup> Independent Office for Police Conduct, Review identifies eleven opportunities for the Met to improve on stop and search, (28 October 2020), paragraph 143, available at <https://www.policeconduct.gov.uk/news/review-identifies-eleven-opportunities-met-improve-stop-and-search>

<sup>82</sup> P. Keeling, 'No Respect: Young BAME me, the police and stop and search' (*Criminal Justice Alliance*, June 2017), page 3, <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf>

<sup>83</sup> JUSTICE, 'Justice Committee Inquiry: Children and young people in custody', paragraph 23, available at <https://justice.org.uk/wp-content/uploads/2020/07/JUSTICE-written-evidence-to-Youth-Justice-Inquiry.pdf>

<sup>84</sup> Home Affairs Select Committee, *Serious youth violence*, Sixteenth report of session 2017-2019, 18 July 2019, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1016/101602.html>

61. JUSTICE has seen that where CJS agencies are open to criticism, rather than taking a defensive approach, real opportunity for change emerges. The best responses have been where agencies have taken ownership of the issues. JUSTICE can see no reason why police officers should not take pride in wanting to prove perceptions of them wrong. Police officers will be able to improve the strained relationship with BAME people if they take accountability for their role in the breakdown.
62. Lack of accountability within the police and the wider justice system, has damaged the faith that society needs to place in the police. JUSTICE understands that CJS agencies do a difficult job. In particular, police officers play an important role in protecting the community and should feel free to carry out their duties when advancing that aim. However, when BAME individuals are resistant to repeated stop and search, they are often met with force, including for example, higher use of taser deployment.<sup>85</sup> Compounded with an absence of successful prosecutions for excessive use of force in police custody, there is unsurprisingly an impression that the police can act with impunity.
63. Further, a lack of accountability can result in poor general practice. It is not enough to target individual police officers or specific issues. We must aim for a culture that works to improve standards for the whole justice system. The police should hold themselves accountable for wrongdoing, particularly when individuals are stopped for suspicion founded on no reason other than the colour of their skin. They should strive to do their job in a fair and effective manner. If the entire system does not aim to improve, criminal justice responses will continue to negatively impact BAME communities and alienate them from police intervention when they need it.
64. Given the fact that stop and search is both disproportionately applied to BAME communities, and that arrests are unlikely to follow, it is unsurprising that many BAME people mistrust the CJS. Particularly for BAME children, mistrust occurs through poor communication, perceived aggressive policing tactics and apparent over-policing<sup>86</sup> in the community. To allow for a truly child-centred approach, in line with the principles of the

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<sup>85</sup> K. Pimblott, *A growing threat to life: taser usage by Greater Manchester Police*, Resistance Lab, 2020, <https://resistancelab.network/our-work/taser-report/index.html>

<sup>86</sup> JUSTICE, 'Justice Committee Inquiry: Children and young people in custody', paragraph 21, available at <https://justice.org.uk/wp-content/uploads/2020/07/JUSTICE-written-evidence-to-Youth-Justice-Inquiry.pdf>

Children Act, in which racial disparities can be addressed, JUSTICE believes the systems young people go through need to be scrutinised and reformed.

65. To increase accountability and consistency in the use of stop and search powers, we recommend improved record keeping to better understand the reasons for stops. At present, there is no consistent recording of age, with different age brackets used by different forces. JUSTICE understands that the majority of forces record self-defined ethnicity, and if a suspect refuses to state their identity, 'unknown/not stated' is selected. JUSTICE believes that stop records should include what activity was suspected, what was found, what the outcome was, and most importantly, 'perceived' ethnicity. This would make it easier to monitor the legality of stops and research best practice, with a view to producing learning to improve stop and search interactions.

66. Instead, JUSTICE considers that there should be a review of stop and search powers to assess why it is that BAME children are targeted at a far higher rate than their White counterparts. The urgency of such assessment is clear, particularly where we know that the vast majority of such stops lead to no further action. Rather, we have seen that stop and search compounds negative feelings towards policing, leading to an undesirable and unsustainable situation for many BAME communities who may need their help.

**Question 9 - What do you consider to be the main causes of the disparities in crime between people in different racial and ethnic groups, and why?**

67. JUSTICE stresses that this is a vast topic and wishes to emphasise that there are many causes of the disparities in crime, many of which exist outside the CJS. However, the Racial Disparity Working Party's focus has been on policing and community, biased perceptions, and the Youth Court process.

68. In the first instance, there is no evidence that BAME children proportionately, are committing more crime than their White counterparts. Rather, the Racial Disparity Working Party has identified several societal factors that may have an impact on a BAME individual's experience of crime. For example, for a variety of complex socio-economic and historic reasons, BAME people are more likely to live in poverty and/or vulnerable areas. In addition, children who have been excluded from school are at greater risk of criminal

exploitation.<sup>87</sup> Given the disproportionate exclusion of pupils from Caribbean and GRT heritage backgrounds detailed at paragraph 30 above, the link between exclusions and crime may contribute to the disproportionality in the YJS for BAME children and young people. In this context, we consider that where such factors are present, any CJS or state response should have as its primary consideration the welfare of the child.

69. For all the external factors that impact on a BAME child's life, it is important to recognise that the way they are treated by the CJS has an inevitable impact. It is clear that BAME children experience the CJS differently, and often more negatively, than their White counterparts. However, within this group, the reasons for children's involvement with, and exposure to, criminality can vary immensely. In this section, we first consider the CJS' response to BAME children, followed by reflections on the experiences of BAME girls, Muslim children and those of GRT heritage.

#### *CJS Response to BAME Children*

70. In responding to Question 8, we have seen how the majority of those stopped and searched are not arrested, with no further action taken. However, of equal concern is the way BAME individuals and children are treated where any potential wrongdoing is identified. Because of the way these children are policed, there is more likely to be resistance to any stop, which in itself could generate criminal outcomes, for instance a charge of resisting arrest, assaulting the police, or a charge for any illicit article found.

71. In the first instance, JUSTICE recalls that stop and search can drive racial disparity in the CJS in the following ways:

- a. it targets deprived areas, which have a higher proportion of black people;

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<sup>87</sup> There have been numerous reports highlighting the increased vulnerability of excluded children to criminal exploitation. See for example, Just for Kids Law, 'Excluded, exploited, forgotten: childhood criminal exploitation and school exclusions' (August 2020), available at [https://justforkidslaw.org/sites/default/files/fields/download/JfKL%20school%20exclusion%20and%20CCE\\_2.pdf](https://justforkidslaw.org/sites/default/files/fields/download/JfKL%20school%20exclusion%20and%20CCE_2.pdf); All-Party Parliamentary Group on Knife Crime 'Back to School? Breaking the link between school exclusions and knife crime' (2019) available at <http://www.preventknifecrime.co.uk/wp-content/uploads/2019/10/APPG-on-Knife-Crime-Back-to-School-exclusions-report-FINAL.pdf>; 'School Exclusions "Fuelling Gang Violence"' *BBC News* (30 October 2018) available at <https://www.bbc.com/news/uk-46027265>; House of Commons Home Affairs Committee, 'Serious Youth Violence: Sixteenth Report of Session 2017-19' (2019) paras 163–171, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1016/1016.pdf>

- b. it stops more black people on suspicion of drug possession, despite Black people using drugs less; and
- c. it leads to the arrest and subsequent conviction of more Black than White people for drug possession, despite white people using drugs more.

72. The stop rate for drugs per 1,000 people is 18.6 for Black people and 2.1 for White people, despite White people being more likely to be found with drugs.<sup>88</sup> This could suggest that stop and searches carried out on Black people are based on weaker grounds, thereby implying certain biases on the part of the police when applying the principle of ‘reasonable suspicion’ on BAME communities.

73. In cases where something is found, particularly drugs, there are worse outcomes for BAME people – specifically Black people – than White people. Following a stop for drugs, Black people are more likely than white people to be arrested and convicted of cannabis possession. Moreover, Black people are more likely to be convicted of cannabis possession than the supply of class A and class B drugs combined,<sup>89</sup> showing stop and search does not primarily target gangs or the drivers of serious violence.

74. It appears, therefore, that in applying ‘reasonable suspicion’, varying standards are applied to Black individuals versus their White counterparts. We support calls for the PACE Codes to be amended to clarify what a genuine suspicion entails, including that the smell of cannabis cannot be grounds for suspicion. However, we consider that a change in policy is also required. At present, we understand that there is an expectation that police officers must charge if they find drugs on an individual who has three previous cautions. While analysis of the UK’s drug policy is outside the scope of this submission, we consider that divergent ways in which White and Black people are treated when drugs are found signals the need for a different approach. For example, reducing the number of children charged for simple cannabis possession, and instead identifying and ensuring their welfare needs, would make a large difference to racial disparity in the child justice system. Moreover, should higher class drugs be found, it seems to us that police should understand that this is not normal for a child.

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<sup>88</sup> M. Shiner, Z Carre, R. Delsol and Niamh Eastwood, *The Colour of Injustice: ‘Race’, drugs and law enforcement in England and Wales*, page 15, available at [https://www.stop-watch.org/uploads/documents/The\\_Colour\\_of\\_Injustice.pdf](https://www.stop-watch.org/uploads/documents/The_Colour_of_Injustice.pdf)

<sup>89</sup> *Ibid*, page viii.



75. JUSTICE believes that to generate change CJS agencies must work to challenge misconceptions that we have long adopted about children. For example, JUSTICE has found that where BAME children act ‘streetwise,’ they are often incorrectly labelled as mature.<sup>90</sup> Reaching these conclusions may lead to unjust outcomes where children are treated as deserving of harsher punishment. Misperceived maturity should not correlate with culpability.

76. To adequately address the challenges faced by BAME children, CJS agencies need to fully understand their communities. Those making decisions about children need to seek to better understand them by appreciating all relevant factors. Working to address the issues that BAME children face is more likely to produce better outcomes for them, enabling police officers to prioritise the child’s welfare. JUSTICE believes that by engaging with communities, and genuinely investing in positive outcomes, there is a chance to repair the relationship between police and BAME communities.

77. In sum, we consider a welfare-led response to stop and search for children as far more appropriate, with the aim to ensure the child no longer uses whatever drug they are found with. For instance, when dealing with a child, disposal decisions should be made on a case-by-case basis. Should previous disposal decisions prove inadequate, charge should not be the automatic answer. As far as children are concerned, police officers should always prioritise the welfare of the child over punitive responses represented by the CJS, such as diversion and deferred-prosecution schemes (see from paragraph 114 below).<sup>91</sup>

### *BAME Girls*

78. JUSTICE has found a lack of understanding when it comes to the drivers for BAME girls and women engaging in criminality. Criminality in young women is often driven by exploitation, coercion and domestic abuse. For example, 60% of women in prison have been domestically abused.<sup>92</sup> It is also common for young women to be sexually exploited

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<sup>90</sup> <https://justice.org.uk/wp-content/uploads/2020/07/JUSTICE-written-evidence-to-Youth-Justice-Inquiry.pdf>

<sup>91</sup> JUSTICE considers diversion to be a key moment in a child’s journey through the YJS, so to improve disproportionate outcomes, all children need to be treated fairly at this stage. Diversion means taking children out of the CJS and offering those who commit less serious offences, and are at a low risk of reoffending, alternatives to being charged or prosecuted for their crime. This can also be referred to as an ‘out of court disposal’.

<sup>92</sup> Race on The Agenda, *This is it. This is my life...Female voice in violence, final report*, 2011, page 9, available at



within gangs. Despite this, the police appear to lack the ability to see BAME girls and women as victims, with their own vulnerabilities. As a consequence, they often feel their stories are not taken into account.<sup>93</sup>

79. JUSTICE has found a lack of support available for these girls. We consider that there should be more focus on investigating the circumstances surrounding any criminality to ensure better safeguards are available. The CJS should work to protect vulnerable young women from being harshly penalised and instead assist with diversion to both address any underlying drivers of offending behaviour while ensuring children are adequately safeguarded.

### *Muslim Children*

80. There are significant external disparity factors relating to Muslim individuals. Among 16 to 24 year olds, the unemployment rate is 23% compared to 10% of their white counterparts.<sup>94</sup> They are more likely to have higher rates of poverty and homelessness, too. Additionally, Muslim communities are increasingly associated with terrorism, despite only 1% of Muslim prisoners being convicted of terror related offences.<sup>95</sup> This perception is aggravated by Government programmes such as PREVENT.<sup>96</sup>

81. PREVENT is one of four elements of CONTEST, the counter-terrorism strategy that places a duty on certain bodies (such as schools) to have “*due regard to the need to prevent people from being drawn into terrorism*”.<sup>97</sup> The Muslim community has felt unfairly targeted

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[https://www.rota.org.uk/sites/default/files/webfm/researchpublications/ROTA\\_FVV\\_FINALREPORT\\_2011\\_LR.pdf](https://www.rota.org.uk/sites/default/files/webfm/researchpublications/ROTA_FVV_FINALREPORT_2011_LR.pdf)

<sup>93</sup> J. Cox and K. Sacks-Jones, “*Double disadvantage*”: the experiences of Black, Asian and Minority Ethnic women in the criminal justice system, Agenda, 2017, page 6, available at <https://weareagenda.org/wp-content/uploads/2017/03/Double-disadvantage-FINAL.pdf>

<sup>94</sup> Powell A. (22 May 2019) Unemployment by ethnic background, Briefing Paper Number 6385, page 3, <http://researchbriefings.files.parliament.uk/documents/SN06385/SN06385.pdf>

<sup>95</sup> Prison Reform Trust, *Prison: the facts – Bromley Briefings Summer 2019*, page 7, available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Prison%20the%20facts%20Summer%202019.pdf>

<sup>96</sup> The PREVENT strategy is part of the Government’s counter-terrorism strategy, CONTEST. PREVENT has three strategic objectives: respond to the ideological challenge of terrorism and its threat; prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support; work with sectors and institutions where there are risks of radicalisation that need to be addressed. For more information, please see: Home Office, ‘Prevent Duty Guidance’ (Gov.uk, 10 April 2019) <https://www.gov.uk/government/publications/prevent-duty-guidance>

<sup>97</sup> Counter-Terrorism and Security Act 2015, s.26.

by the programme and feel it is used to give people permission to hate Muslims.<sup>98</sup> There is a significant over-representation of young Muslims referred to PREVENT, with 60% of children referred being Muslim.<sup>99</sup> This has led to Muslim children believing their religion is considered to be dangerous, and in turn, has perpetuated distrust in a justice system that fails to understand their culture, practices and beliefs.

82. JUSTICE has found that there are mixed views on the anti-terrorism strategy. Some members of the Muslim community believe it is extremely useful,<sup>100</sup> while others believe it is used to give people permission to hate Muslims.<sup>101</sup> There is significant over-representation of Muslim referrals, with 60% of children referred to PREVENT within school being Muslim.<sup>102</sup> As well as inappropriate referrals,<sup>103</sup> this has led to a fear of criminalisation among young Muslims, with some children feeling that schools are not safe places to discuss extremism and terrorism through fear of being referred.<sup>104</sup> Unsurprisingly, there is an overwhelming sense of suspicion around PREVENT within Muslim communities.<sup>105</sup>

83. JUSTICE is deeply concerned by the idea of children stifling their religious identity through fear of being considered dangerous. If steps are not taken to mitigate this perception, distrust will grow. JUSTICE considers that the government must re-start the inquiry into

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<sup>98</sup> D. Parker, D. Chapot and J. Davis, 'The Prevent Strategy's Impact on Social Relations: a report on work in two local authorities,' *Feminist Dissent* 2019, 4, pages 160-193, available at <https://journals.warwick.ac.uk/index.php/feministdissent/article/view/411#:~:text=The%20Prevent%20Strategy%20is%20often,speech%20in%20schools%20and%20universities>

<sup>99</sup> The Muslim Council of Britain, *The impact of Prevent on Muslim communities: a briefing to the Labour Party on how British Muslim communities are affected by counter-extremism policies*, 2016, available at <http://archive.mcb.org.uk/wp-content/uploads/2016/12/MCB-CT-Briefing2.pdf>

<sup>100</sup> D. Parker, D. Chapot and J. Davis, 'The Prevent Strategy's Impact on Social Relations: a report on work in two local authorities,' *Feminist Dissent* 2019, pages 160-193, <https://journals.warwick.ac.uk/index.php/feministdissent/article/view/411#:~:text=The%20Prevent%20Strategy%20is%20often,speech%20in%20schools%20and%20universities>

<sup>101</sup> Ibid.

<sup>102</sup> The Muslim Council of Britain, *The impact of Prevent on Muslim communities: a briefing to the Labour Party on how British Muslim communities are affected by counter-extremism policies*, 2016, <http://archive.mcb.org.uk/wp-content/uploads/2016/12/MCB-CT-Briefing2.pdf>

<sup>103</sup> Reports of a nursery considering reporting a four-year-old boy for mispronouncing 'cucumber' as 'cooker bomb' when describing a picture he drew. See: B. Quinn, 'Nursery 'raised fears of radicalisation over young boy's cucumber drawing' (*The Guardian*, 2016), <https://www.theguardian.com/uk-news/2016/mar/11/nursery-radicalisation-fears-boys-cucumber-drawing-cooker-bomb>

<sup>104</sup> Ibid.

<sup>105</sup> Qurashi, F. *The Prevent strategy and the UK 'war on terror': embedding infrastructures of surveillance in Muslim communities*, *Palgrave Commun* 4, 17 (2018).

PREVENT as soon as possible.<sup>106</sup> Further, Muslim children should be engaged with to better understand their religion and to provide a safe space to talk about their concerns.

### *GRT Children*

84. Bias towards GRT children is also prevalent throughout society. A recent YouGov poll found that:

- a) 66% of people do not think GRT people are an ethnicity;
- b) Over a third of British parents would be unhappy if their child had a playdate at the home of a GRT person;
- c) 40% of people would be unhappy if a close relative married a GRT person; and
- d) 10% of people said pubs and restaurants should refuse entry to GRT people for no other reason than their identity.<sup>107</sup>

85. Unsurprisingly, this widespread discrimination has manifested within police forces. Police officers have been found to believe GRT people are “*criminals*”<sup>108</sup> and tend to over-react in their response to minor disturbances. By allowing such negative views to fester, decision-makers within the YJS have also adopted these attitudes and are less likely to consider rehabilitative options for GRT individuals. For example, one of the consultees to the Racial Disparity Working Party was told that a particular police force does not consider GRT children for diversion as they do not believe they will complete the course. Such attitudes may account for why GRT children experience vastly disparate outcomes in the YJS.

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<sup>106</sup> Matrix Chambers, *Lord Carlisle stood down as independent reviewer of Prevent programme*, 20 December 2019, available at <https://www.matrixlaw.co.uk/news/lord-carlisle-stood-down-as-independent-reviewer-of-prevent-programme/>

<sup>107</sup> Tweet from the Traveller Movement, available at <https://twitter.com/GypsyTravellerM/status/1316300126391066624>

<sup>108</sup> “I was talking to a police officer the other day and he said to me, ‘why are the majority of Gypsies and Travellers criminals?’ – Female, Irish Traveller, in, The Traveller Movement, *The preliminary report: policing by consent: Understanding and improving relations between Gypsies, Roma, Irish Travellers and the Police*’, 2018, page 4, available at [https://travellermovement.org.uk/phocadownload/userupload/criminal-justice/TTM-Policing-by-consent\\_web.pdf](https://travellermovement.org.uk/phocadownload/userupload/criminal-justice/TTM-Policing-by-consent_web.pdf)

86. The Traveller Movement, a charity promoting inclusion and community engagement with GRT people, also found discriminatory attitudes among police officers, with one interviewee saying officers make “*derogatory comments*” towards them.<sup>109</sup> Despite these tensions, only 2 out of 43 police forces have a targeted strategy and/or plan for improving relations with GRT communities.<sup>110</sup> Relationships between the police and GRT communities must be improved. To that end, JUSTICE recommends that police forces likely to engage with GRT communities should have a community engagement strategy.

87. Although not exhaustive, these issues have contributed to disproportionate criminal justice outcomes for BAME individuals. Whether it is being unfairly targeted by stop and search or being over-criminalised at a young age, the way in which the YJS responds to BAME children is scarcely different to how it treats their White counterparts. The key disparity among those from different races and ethnicities is how they are treated by the system. JUSTICE maintains that the welfare of children should always take primacy, and where they interact with the CJS, their inherent vulnerabilities must be recognised.

**Question 10 - Can you suggest other ways in which racial and ethnic disparities in the UK could be addressed? In particular, is there evidence of where specific initiatives or interventions have resulted in positive outcomes? Are there any measures which have been counterproductive and why?**

88. In this section, JUSTICE sets out its views, based on the findings of the Racial Disparity Working Party, on measures which could have a positive impact on reducing disproportionate outcomes for BAME communities throughout each stage of the YJS. We then turn to those measures which are counterproductive, thereafter concluding with recommendations which could help address issues of racial disparity within the CJS.

#### *Positive Initiatives*

89. The Racial Disparity Working Party has identified several initiatives that are having a positive impact on issues of racial disparity within the YJS. For example, we recognise that the number of FTEs into the CJS has fallen for each ethnicity, which is to be commended.

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<sup>109</sup> The Traveller Movement, ‘Policing by Consent: Understanding and Improving Relations between Gypsies, Roma, Irish Travellers and the Police’ (2018), page 12, see [https://travellermovement.org.uk/phocadownload/userupload/criminal-justice/TTM-Policing-by-consent\\_web.pdf](https://travellermovement.org.uk/phocadownload/userupload/criminal-justice/TTM-Policing-by-consent_web.pdf)

<sup>110</sup> Ibid, page 6.

Yet, at the same time, this reduction is led principally by White children, with no corresponding decrease for BAME individuals.<sup>111</sup> This clearly indicates that while good practice within the YJS is possible, it is not applied consistently.

90. The relationship between the police and BAME children may be further assisted through ensuring access to specialists upon arrest. For example, the Racial Disparity Working Party, learned that a police station diversion programme for children has been developed, to be piloted in Wood Green Police station. In the temporary custody suite, every child gets screened to identify any needs they may have. There will be four youth custody workers embedded in Wood Green custody suite. The workers will be responsible for initial engagement with children brought into custody and understand more about the child's context and support networks. The youth workers will also identify whether there are any welfare concerns in relationship to the child. In this way, custody will be used as a reachable moment and as a chance to review appropriate diversion interventions.<sup>112</sup> We are encouraged by this initiative. However, we believe that children would connect with and trust more an individual who is not connected to statutory services. As such, we recommend that independent navigators are embedded in custody suites where BAME children are most likely to be.

91. JUSTICE believes that ensuring a child focused approach to youth justice should be a priority.<sup>113</sup> The move towards a child-centred YJS, where a child's welfare and safeguarding takes precedence, is supported. This should mean seeing children, including BAME children, for what they are; inherently vulnerable and in need of protection. This core principle is articulated in the YJB's national aim to promote the "child first, offender second" policy.

92. Although JUSTICE supports this in principle, it appears the policy has not been translated into practice. For example, we understand that there has been a lack of focus on GRT communities, with little research being undertaken to better understand their experience

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<sup>111</sup> Figures provided by Ministry of Justice, *Youth Custody Data*: August 2020.

<sup>112</sup> Metropolitan Police, *New project to divert children away from crime launched in North London*, October 2020, available at <https://news.met.police.uk/news/project-to-divert-children-away-from-crime-launched-in-north-london-413462>

<sup>113</sup> T. Bateman, *The State of Youth Justice: an overview of trends and developments*, National Association for Youth Justice, October 2020, page 7, <https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>

of the CJS. Moreover, as is clear from this submission, BAME children in general continue to have more negative experiences of the YJS than White children.

93. Another positive initiative is the IOPC's creation of a youth panel in March 2018, which aims to improve understanding of children and young people and what they would like to see change in policing. JUSTICE welcomes the composition of the panel, which includes children who have experience of the CJS and 68% of the panel members are BAME.<sup>114</sup> JUSTICE considers that such community engagement is key to building trust, and must be accompanied with improvements in communication to such communities.

94. In addition, the Youth Justice Board's ("YJB") AssetPlus<sup>115</sup> intervention programme, designed to assist practitioners in making high quality assessments of children in the YJS, also serves as an example of good practice. It is used to create bespoke plans which both address children's offending behaviour patterns whilst also helping them to reorient their lives away from crime.

95. We have heard that this programme places weight on the voice of the child. For example, one method deployed is for the child to create a 'cultural genogram',<sup>116</sup> giving them the opportunity to consider and discuss their cultural heritage. Allowing a child to explore their family history so that they can better understand their own behaviour, also gives the youth justice practitioner the same opportunity. We understand that this aids in improving trust and communication, thereby allowing for a deeper understanding of a child's needs. Responding to a child in this way should encourage them to engage in the process, allowing them to better overcome the drivers of their potentially criminal behaviour.

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<sup>114</sup> IOPC, 'Independent Office for Police Conduct (IOPC) Youth Panel: Key Findings & Recommendations 2019' (2019)

[https://www.policeconduct.gov.uk/sites/default/files/Documents/research-learning/iopc\\_youth\\_panel\\_report\\_march2019.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/research-learning/iopc_youth_panel_report_march2019.pdf)

<sup>115</sup> AssetPlus is an assessment and planning interventions framework developed by the Youth Justice Board. Its aim is to provide a holistic end-to-end assessment and intervention plan, allowing one record to follow a child or young person throughout their time in the youth justice system. For more information, see: Youth Justice Board for England and Wales, 'AssetPlus assessment and planning in the youth justice system' (Gov.uk, 15 October 2014),

<https://www.gov.uk/government/publications/assetplus-assessment-and-planning-in-the-youth-justice-system/assetplus-assessment-and-planning-in-the-youth-justice-system>

<sup>116</sup> Genograms are visual tools used to map service users' social and personal relationships and understand how the child is being supported. They include information about both physical and emotional connections of family members with children.



96. Diversion schemes, such as ‘Checkpoint’ in Durham<sup>117</sup> and ‘The Drug Education Programme’ in Avon and Somerset,<sup>118</sup> aim to ensure that reoffending does not take place. This is achieved by diverting those found with drugs, instead of pursuing a punishment-focused response. JUSTICE is pleased that these schemes have produced positive results.

97. Effective programmes that divert children from the YJS and prevent re-offending are vital. However, BAME children are less likely to be diverted than White children.<sup>119</sup> This means that White children are more likely to benefit from interventions that help prevent repeat offending. Unsurprisingly, disproportionate application has led to a higher proportion of BAME children in custody.<sup>120</sup> Moreover, such schemes only exist in limited areas, with inconsistent standards. JUSTICE therefore recommends that similar schemes should be nationwide and meet the specific needs of the people in each area, and we propose additional recommendations with respect to diversion below from paragraph 114 below.

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<sup>117</sup> Checkpoint was established by Durham Constabulary in 2015. It aims to reduce the number of victims of crime through an innovative scheme to reduce reoffending. It does this through a four-month programme in which the individual who committed the crime is able to tackle underlying issues such as alcohol or drug misuse or mental health issues. Through this programme, the scheme aims to improve the life chances of participants.

Should an individual successfully complete the programme, they will not be charged with an offence. If they do not successfully complete it, a decision to prosecute will be made. Of those who agree to the programme, 90% successfully complete it. Moreover, those who participate in the programme have lower reoffending rates (13.3% lower) than those who do not participate in the scheme. Importantly, victim satisfaction also seems to be higher than traditional prosecution, due to the focus on preventing reoffending. This trend has been found in similar schemes.

Although only available to adults, we see no reason why similar schemes cannot be designed for children. See <https://www.durham.police.uk/Information-and-advice/Pages/Checkpoint.aspx>

<sup>118</sup> Avon and Somerset Police were one of the first police forces in the country to introduce a diversion scheme for people aged 18 and over back in 2016. This is called the Drugs Education Programme, or DEP for short. People referred to the DEP will be invited to attend a three and a half hour group session that aims to educate attendees about the harms of drugs and also some of the legalities surrounding them. Those aged 10-17 will be referred to the Youth Alcohol and Drug Diversion Scheme (YADD) which is similar to the adult service but delivered on a one to one basis rather than as a group. See <https://www.bdp.org.uk/blog/the-drug-education-programme-dep>

<sup>119</sup> “Research shows that BAME citizens have significantly lower trust in the justice system than their white counterparts, and that they are less likely to admit an offence or plead guilty at court. This can close off opportunities for diversion, formal out of court disposals and sentencing discounts.” - Centre for Justice Innovation, *Who should be eligible for youth diversion? Evidence and practice briefing*, (2019), page 4, <https://justiceinnovation.org/sites/default/files/media/document/2019/Eligibility%20Criteria%20Briefing.pdf>

<sup>120</sup> Her Majesty’s Prison and Probation Service, ‘Youth Custody Data’, (13 November 2020), <https://www.gov.uk/government/statistics/youth-custody-data#history>

## Counterproductive Measures

98. Stop and search powers have been found to target deprived areas, which have a higher proportion of Black people, and officers stop and arrest more Black people for drug possession, despite White people using drugs more.<sup>121</sup> JUSTICE submits that this tool fails to help vulnerable communities and unfairly targets BAME people.<sup>122</sup>
99. In an attempt to improve stop and search, some areas have set up scrutiny panels. The panels review incidents of stop and search in their local area and provide them with a rating, which range between good, needs improvement and bad. Depending on the rating, panel has the power to trigger a referral or deeper investigation of the stop. In Bedfordshire, one scrutiny panel led to a Section 60 notice being deemed unnecessary. Scrutiny panels are an invaluable tool for evaluating and improving stop and search.
100. Another key area of concern is the Government's policy with respect to 'gangs'. After the 2011 riots,<sup>123</sup> the Government announced new anti-gang strategies. The Mayor of London supported this initiative by launching the Trident Gang Crime Command,<sup>124</sup> and the MPS established a gang database, the 'Metropolitan Police Service Gangs Violence Matrix' ("the Matrix").
101. The Matrix is a tool used to identify gang members, risk assess them according to the level of violence, and identify those at risk of victimisation. However, BAME people make up the largest proportion of the Matrix, with 90.1% being non-White.<sup>125</sup> This suggests that there is potential bias within its application.

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<sup>121</sup> Please refer to Question 8 for further analysis on stop and search powers.

<sup>122</sup> In 2019, 80% of stops of black men resulted in no further action. See: S. Marsh, 'Met police increased use of s60 stop and search during lockdown' (*The Guardian*, 27 July 2020), <https://www.theguardian.com/uk-news/2020/jul/27/met-police-increased-use-of-section-60-stop-and-search-during-lockdown>

<sup>123</sup> BBC, England riots: Maps and timeline, (15 August 2011), <https://www.bbc.co.uk/news/uk-14436499>

<sup>124</sup> Home Office (2011) An overview of recorded crimes and arrests resulting from disorder events in August 2011, page 6, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/116257/overview-disorder-aug2011.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116257/overview-disorder-aug2011.pdf)

<sup>125</sup> The Matrix has been the subject of reports from the Information Commissioner's Office and MOPAC, both of which highlight biases within it. As a result of these reports, a large number of low-risk individuals have been removed from the Matrix. However, large disparities remain. In addition, Amnesty International have produced a report on the Matrix, highlighting many of the difficulties individuals face when they are placed on the Matrix. We recommend interested readers to turn to these reports as they provide far more depth than we are able to do, with many sensible recommendations. Below, we focus



102. Further, being placed on the Matrix can have a negative impact on an individual. The MPS can share this information with job centres, social services and schools. This can lead to named individuals being denied housing, excluded from school, and losing job opportunities. This is clearly counter-productive; rather than reducing gang involvement, it indirectly forces vulnerable people into more difficult circumstances, and potentially further entrenching any criminal behaviour.

103. Another issue with the Matrix is that it allows BAME children to be assumed to be associated with criminal behaviour as opposed to their inherent vulnerabilities. If BAME children are found to be involved in gangs, they should be identified as victims at the earliest opportunity so that they know they are entitled to help should they need it.<sup>126</sup> JUSTICE emphasises that children involved in criminality are still children, and the YJS should focused on their welfare first and foremost.

104. In light of these negative repercussions, JUSTICE is not convinced that the Matrix should continue to be used. Nevertheless, if it remains in use, we consider that it should be used primarily as a safeguarding tool. To this end, the police should inform an individual that they are on the Matrix immediately, and refer them to the relevant local authority for safeguarding.

### *Addressing Racial and Ethnic Disparities in the CJS*

#### Child Focus

105. Understanding children who come into contact with the YJS is paramount, and should guide the CJS whenever children are concerned. Engaging with a child by learning about their family, culture and/or drivers around their criminality will help to produce better outcomes for the child. By embedding procedures that require children be asked about their experiences, particularly with respect to their race and experiences, will allow for a better understanding of their needs.

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on what we consider to be issues that have not been fully explored or require reinforcing. See <https://www.met.police.uk/SysSiteAssets/media/downloads/force-content/met/about-us/gangs-violence-matrix/mps-gang-violence-matrix-q4-2019.pdf>

<sup>126</sup> CJA, *CJA/MOJ Policy forum on BAME victims of crime*, May 2019, available at <http://criminaljusticealliance.org/wp-content/uploads/2019/06/CJA-MoJ-Policy-Forum-on-BAME-victims-of-crime-190619.pdf>

106. For example, the CPS's Community Accountability Forums, established in 2007, aim to gain a better understanding of different communities, and scrutinises how subconscious bias may influence their practice and procedures. JUSTICE considers that these exercises are particularly important where trust is low. CJS agencies need to have uncomfortable conversations before trust can be rebuilt.<sup>127</sup> Building relationships and re-establishing trust will lead to more effective outcomes for BAME children and young people.
107. By engaging effectively with BAME children, subconscious biases within the YJS can be diminished. As previously mentioned, the best responses have been where CJS agencies have taken ownership of issues and addressed them. YJS actors should want to make appropriate changes to better respond to vulnerable children with complex needs.
108. However, when considering any potential improvements, agencies must listen to the child and primarily focus on their welfare. This would allow practitioners the opportunity to work towards cultural competency. Considering the disproportionate outcomes for BAME children, JUSTICE considers embedding cultural competency within training to aid familiarisation with communities, improve the diversity of the CJS workforce and improve outcomes for BAME children.

### Restorative Practice

109. Attempts at improving youth justice outcomes for children have been disproportionately applied. Whilst responses for White children seem to be improving, change for BAME children remains stagnant. The YJS needs to react to all children fairly and consistently in the first instance.
110. One way to better respond to a child is through restorative practice. Restorative practice is similar to restorative justice, other than that it is focused on prevention rather than reacting to incidents that have already taken place. Although focusing on a different stage of the justice system, the broad principle of seeking to repair harm remains the same.

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<sup>127</sup> Crown Prosecution Service, 'Inclusion and Community Engagement Strategy' (CPS 2020, May 2018), <https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Inclusion-and-Community-Engagement-Strategy-May-2018.pdf>

More specifically, within criminal justice, restorative practice seeks to reduce crime and violence, improve human behaviour, restore relationships, and repair harm.<sup>128</sup>

111. The belief is that through building a strong network of relationships it is easier to respond to wrongdoing. Applying this to a criminal justice context, this means that criminal justice organisations, such as the police, would hold shared values and mutual understanding with the communities they serve, as well as be trusted by those communities.

112. We consider that restorative practice can implement much of this process at a local level. For instance, the Restorative Engagement Forum has convened circles between police officers and children and young people from Northamptonshire and Gloucestershire. These were environments, where participants were guided on how to express themselves, while focusing on the impact of actions rather than on who's to blame. As well as giving children the opportunity to explain to police officers what it feels like to be on the wrong side of the law, it allows opportunities for trust to be built, and a mutual understanding to be arrived at. For example, at the end of one of sessions, trust exercises are used to further build a positive relationship. Although such sessions will not improve racial disparity on their own, they may engender a different approach from police officers when dealing with children in their area.

113. JUSTICE considers that restorative practice would be beneficial for all CJS actors as it improves relationships and focuses on prevention rather than reaction. As such, JUSTICE recommends piloting and evaluating restorative practice circles – a forum in which everyone can safely discuss their experiences of policing. The circles should be adapted to each area so that they are applicable to specific needs. JUSTICE considers that police may also benefit from moving towards this alternative method, rather than automatically criminalising young people.

### Diversion

114. JUSTICE considers diversion should be a priority. We have already highlighted that some communities, such as GRT children, are deprived of diversion opportunities and are given up on at an early stage. However, JUSTICE considers it vital that a child is

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<sup>128</sup> International Institute for Restorative Practices, *Defining restorative*, available at <https://www.iirp.edu/restorative-practices/defining-restorative/>

supported, and their offending behaviour addressed, before any prosecutorial measures are considered. This allows the child to have the chance to address any problematic behaviours and thereby reduce the risk of (re)offending.

115. However, diversion is not a statutory activity for Youth Offending Teams (“YOTs”) and they are not statutorily funded to provide diversion schemes, even though diversion is becoming a large part of their work. This has led to inconsistent practice, as YOTs develop schemes based on the resources and knowledge they have. In order to remedy this a national framework for diversion schemes should be developed and implemented, which must be followed by all those who are part of the diversion decision-making process. The underlying objective of this framework is to strengthen a presumption in favour of diversion for children and for this presumption to be properly embedded and consistently applied in all criminal allegations involving children.

116. In order to implement this proposed framework at a local level, and to drive consistent practice, we consider that every YOT in England and Wales must develop their own bespoke approach in line with this framework.

117. The CPS can also play a role in ensuring that children are diverted more often. They must consider all options when considering whether to charge and also have a duty to continuously assess the case as it progresses through the court. In this light, we recommend that in cases involving child defendants (or defendants who were children at the date of the offence), the CPS should implement the same national diversion framework discussed above.

118. We are satisfied that consistent diversion schemes based on this framework will mean more BAME children are diverted. In addition, we are happy that a national framework such as this will mean money saved in the long term. This is because fewer children will require being dealt with formally by police, prosecutors, the courts, the prison estate and probation. In addition, diversion schemes will result in reduced reoffending, meaning reduced crime, which also reduces costs to the CJS.<sup>129</sup> Lastly, it will ensure children with unmet needs have those needs identified and met as early as possible. This will ensure issues such as addiction or mental health issues do not escalate and require greater

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<sup>129</sup> A. Petrosino, C. Turpin-Petrosino and S. Guckenberger, ‘Formal System Processing of Juveniles: Effects on Delinquency,’ *Campbell Systematic Reviews*, 2010:1, available at <https://core.ac.uk/download/pdf/56773913.pdf>

resources to address.<sup>130</sup> As such, we consider that diversion should receive the funding it needs to work effectively, and support the Justice Committee's call for this.

### Decision-Making

119. Discretionary decision making has led to disparate outcomes for BAME children. The Racial Disparity Working Party has found that disparities may be caused by decision-makers not feeling empowered to make the right decision, particularly if they are not well-versed in youth justice or welfare issues.

120. It is vitally important to address sentencing disparities when it comes to BAME children. There is a higher proportion of BAME children in youth custody, which points to a high likelihood that they are being given harsher sentences than white children. One solution would be to adopt problem-solving hearings ("PSH"). Northamptonshire YOT uses these hearings to gain a better understanding of the complex needs of the child prior to delivering sentence. Each party, which may include youth workers, YOT workers, gang members, educators, and the child is given the chance to speak. JUSTICE appreciates that these hearings are labour intensive and that they may not be suitable for every child. However, we recommend that the opportunity for PSHs are rolled-out to every youth court, with clear guidance set out as to how to select a case for PSH, if evaluation shows positive results.

121. Northamptonshire YOT have also introduced Youth Order Review Panels ("YORP") to compliment PSHs. A YORP is comprised of two magistrates and a YOT member who meet with the child at a YOT centre. The aim is to hold a meeting with the child who is subject to a Youth Rehabilitation Order, and to encourage them to complete it. The YORP will have a conversation with the child about the Order, discuss how to ensure compliance, and if there are any barriers to complying with the Order, amendments will be made. Magistrates must undergo extra training in order to participate in a YORP. Feedback on these panels suggests that the magistrate gains a better understanding of the child which enables them to make better decisions. JUSTICE recommends that YORPs should take place at every youth court and that they should be applied fairly to each demographic.

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<sup>130</sup> B. Estep and C. Robin-D'Cruz, *Valuing youth diversion: a toolkit for practitioners*, (2019), page 9, available at <https://justiceinnovation.org/sites/default/files/media/document/2019/Valuing%20youth%20diversion%20A%20toolkit%20for%20practitioners.pdf>

122. Finally, JUSTICE believes that more work needs to be done to scrutinise judicial decision making. Although the research is patchy, there have been worrying reports of racial bias. One striking example of overt bias was heard by the Racial Disparity Working Party, when they spoke to a child who a judge referred to as a “*strapping black lad*.” Such language is clearly alienating, inappropriate, and could exacerbate any perceived biases on the part of BAME individuals.

123. At the same time, any implicit biases which exist within the judiciary are of equal concern. In 2019, the average sentence length for a BAME individual was 27.1 months, compared to 19.5 for their White counterpart. While the reasons for this disparity are complex,<sup>131</sup> it indicates that greater scrutiny must be afforded to how sentences are issued. Indeed, the Lammy Review found that juries, by contrast, “*deliver equitable results, regardless of the ethnic make-up of the jury, or of the defendant in question*”, pursuant to “*successive studies*”.<sup>132</sup>

124. While we welcome initiatives such as the Equal Treatment Bench Book,<sup>133</sup> JUSTICE remains concerned that such bias may continue to affect decision-making when it comes to BAME children. However, the Racial Disparity Working Party has found insufficient access to the Ministry of Justice’s research on the subject. Therefore, we strongly urge research to be carried out so that we can properly measure judicial bias.

125. Further, JUSTICE considers that lessons can be learnt from other parts of the CJS. The CPS, for example, conducts general reviews of case files and focuses on racial issues. We therefore recommend that the YJS adopt a similar level of internal scrutiny, for instance

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<sup>131</sup> “The higher conviction ratio might be partly explained by the higher rate of ‘guilty’ pleading among White defendants. If we look at defendants in Crown Court trials in 2019, 37% defendants from BAME groups pleaded ‘not guilty’ compared with 27% of White defendants. The Lammy Review explained that willingness to plead guilty is linked to trust in the fairness of the legal system.” – See also Baber Yasin and Georgina Sturge, *Ethnicity and the criminal justice system: What does recent data say on over-representation?*, House of Commons Library, (October 2020), <https://commonslibrary.parliament.uk/ethnicity-and-the-criminal-justice-system-what-does-recent-data-say/>

<sup>132</sup> See the Lammy Review, page 6, and Thomas, C. Ministry of Justice Research Series. Are Juries Fair? (2010) – <https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf> and Thomas, C. Criminal Law Review, number 9. Ethnicity and the Fairness of Jury Trials in England and Wales 2006-2014 (2017).

<sup>133</sup> “*The Equal Treatment Bench Book aims to increase awareness and understanding of the different circumstances of people appearing in courts and tribunals. It helps enable effective communication and suggests steps which should increase participation by all parties.*” – Available here - <https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>

by seizing opportunities to look back on past cases, learn from mistakes and take appropriate steps to improve them.

### *Conclusion*

126. In addition to these measures, JUSTICE believes that the whole CJS must ensure a focus on racial disparity. It is only through placing a spotlight on the issue, investigating it and creating solutions for it that racial disparity can be tackled. There is already the public sector equality duty, although we consider that it has not been effective in bringing racial disparity to the forefront of public sector bodies' minds. It is clear that it must be strengthened with further initiatives. One promising initiative is the proposal by the Magistrates Association and Youth Justice Board to create a *National Protocol for BAME Children*. This would be based on the *National Protocol on Reducing Criminalisation of Looked-After Children*<sup>134</sup> and expect bodies that sign up to the protocol to follow key principles when dealing with BAME children, such as the primacy of welfare. For the protocol to be successful, it would require a range of organisations to join, including police forces, educational institutions, children's services and the Youth Custody Service. While in its early stages, this is an initiative we welcome and support.

127. JUSTICE looks forward to the Commissions' report, conclusions and recommendations. JUSTICE welcomes further consultation in responding to this serious issue, and is available to assist the Commission with additional information should it be of assistance.

**JUSTICE**  
**30 November 2020**

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<sup>134</sup> Department of Education, Home Office and Ministry of Justice, *National Protocol on reducing unnecessary criminalisation of looked-after-children*, (2018), available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/765082/The\\_national\\_protocol\\_on\\_reducing\\_unnecessary\\_criminalisation\\_of\\_looked-after\\_children\\_and\\_care\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765082/The_national_protocol_on_reducing_unnecessary_criminalisation_of_looked-after_children_and_care_.pdf)