

MoJ Independent Sentencing Review 2024-2025: Call for Evidence

Evidence submission

Action for Race Equality

January 2025

About Action for Race Equality

Action for Race Equality (ARE)¹ was founded in 1991, and over the last 30+ years we have worked to champion fairness, challenge race inequality and pioneer innovative solutions to empower young people across education, employment, and criminal justice.

ARE has worked in the criminal justice system (CJS) for over 15 years, acting as a critical friend to services including the Metropolitan Police, His Majesty's Prison and Probation Service, the Ministry of Justice, the Youth Justice Board, and the Greater London Authority's Violence Reduction Unit. We co-ordinate the National Independent Advisory Group², a panel of experts comprised of civil society, academic, and third sector representatives, who work to challenge policy and practice that disproportionately impacts Black, Asian, and Mixed Heritage people in the Criminal Justice System. We produce research and briefings on racial disproportionality in the CJS, and work with organisations led by and for Black, Asian, and Mixed Heritage people to strengthen their capacity and platform their voices in policy spheres.

Action for Race Equality recognises that the Criminal Justice System is institutionally racist. At every level, and in every department, institutional and systemic racism are creating harsher outcomes for Black, Asian, and Mixed Heritage people who come into contact with the justice system³. At each stage of a racially minoritised person's journey through the system, they will likely face racial bias, including in sentencing. The cumulative disadvantage that Black, Asian, and Mixed Heritage people experience through the legal system is directly contributing to the

¹ [Action for Race Equality](#)

² [The National Independent Advisory Group](#)

³ [Understanding ethnic disparity in reoffending rates in the YJS](#)

capacity crisis that initiated this important review. Action for Race Equality welcomes the decision to undertake the Sentencing Review, because we believe that each aspect of the Criminal Justice System requires an opportunity to fully review why racial disparities are occurring and how policy can be changed to finally end institutional racism. We would urge the review panel to consider the stark disproportionality that Black, Asian, and Mixed Heritage people face throughout the review process and encourage the panel to keep this consideration at the centre of its recommendations.

In 2014 The Young Review⁴ highlighted the specific experiences and needs of black and Muslim men aged 18-24 in the Criminal Justice System and set out a series of recommendations that aimed to ensure that action takes place to address unequal outcomes; from prison to resettlement. This paved the way for David Lammy's 2017 review⁵, which critically examined the treatment of Black, Asian, and Mixed Heritage people by the CJS and set out 35 clear recommendations intended to address and rectify areas where racial disproportionality was occurring. Over seven years after the landmark review, these recommendations have not been properly implemented despite the government accepting many of them⁶. This is pertinent to the Sentencing Review, because we have seen how recommendations fade into oblivion and no change is achieved. If the review hopes to be successful in improving sentencing, we would encourage an accountability mechanism to be implemented to follow up on the outcomes of the review for a time period following its completion.

⁴ [The Young Review | Clinks](#)

⁵ [Lammy review: final report - GOV.UK](#)

⁶ [Lammy five years on](#)

Theme 1: History and Trends in Sentencing

TRENDS IN SENTENCING

We do not believe that current sentencing practice meets the statutory purposes of sentencing for Black, Asian, and Mixed Heritage people. The system is not doing enough to address the root causes of crime, nor is it sufficiently accounting for people's whole journeys through public services including the CJS. This sentencing review needs to consider racial disproportionality in school exclusions, poverty, youth violence, and substance abuse as important factors that affect sentencing and outcomes. We find the terms of reference of this review lacking in this regard. They place the onus of crime solely on offenders and fail to recognise the structural barriers and systems that predicate harm in communities. The review encourages submissions to consider new thinking and proactive solutions. We fully agree with the need for radical change and new approaches to sentencing. There needs to be a radical and ambitious move away from punishment, towards relational approaches to harm reduction, and community support rooted in antiracist practice.

Punitive approaches to sentencing have proven to be ineffective, and highly inefficient. Overcapacity prisons, and recruitment crises in probation services are symptoms of a system that is in desperate need of reform. However, with high levels of staff and change fatigue, there is zero capacity for more piecemeal change. Pushes for radical reform must be accommodated by capacity audits and sufficient evaluation. Fatigued probation services are in need of high levels of recruitment, providing an opportunity to train a new cohort to align better with this work. This presents a chance at creating longer term cultural change which dismantles current systems of racial bias. We hope the review will consider robust implementable reforms now, alongside a vision for longer term change.

We would like to direct the Review's attention to the research 'Ethnic Inequalities in the Criminal Justice System' authored by Kitty Lymperopoulou in partnership with Action for Race Equality, as well as the accompanying policy briefing⁷. The findings from this research offer compelling evidence that race and ethnicity play an important role in sentencing decisions and that defendants from ethnic minority groups are treated more harshly than white British defendants in the court system.

Using administrative data accessed through the ONS Secure Research Service, the research found that legally relevant factors do not fully explain disparities in remand and sentencing outcomes between ethnic minority groups and the White British group. The data revealed that a custodial sentence is 41% more likely for Chinese defendants, and between 16% and 21% more likely for defendants from Asian groups, compared with White British defendants. Similarly, a

⁷ [Ethnic Inequalities in the Criminal Justice System, 2023](#)

custodial sentence is between 9% and 19% more likely for defendants in the Black groups, and 22% more likely for White and Black African defendants than White British defendants after adjusting for other characteristics.⁸

At the time of publication, this report was groundbreaking in that previous understanding of racial bias in the criminal justice system – and particularly in the courts – was based in qualitative and anecdotal evidence. ‘Ethnic Inequalities in the Criminal Justice System’ was clear in its conclusions that disparities are not caused by legally relevant factors. It is worth noting that evidencing institutional racism using quantitative data is particularly difficult due to a failure to accurately collect ethnicity data in a meaningful way (using the 18+1 census categories) as well as a lack of transparency around public access to these data sets. We would therefore encourage the review panel to maintain that while some disparities may not be evidenced, that does not mean that they are not occurring.

Strong evidence of racial and ethnic disparities has been documented in recent government-led reports, suggesting the presence of discrimination in sentencing, with Black and ethnic minority defendants being systematically sentenced more harshly than their white counterparts.⁹ Ethnic differences in imprisonment net of other factors indicate that even if people from ethnic minority groups share the same demographic, social and case characteristics in courts as the White British, they will not have equal CJS outcomes. Disparate impacts of criminal justice policies and practices on ethnic minorities and the existence of systemic and individual bias by criminal justice officials are likely causes of these disparities.¹⁰ The unequal treatment of ethnic minority people in the CJS cannot be attributed solely to individual CJ actors who make (conscious and unconscious) decisions based on stereotypes which cause certain groups to be viewed as more dangerous and blameworthy for their offences. Individual decisions are embedded within systemic, institutional, political, and cultural processes which interact to produce racism and ethnic inequalities in the CJS.

Ethnic disproportionality exists to varying levels at different stages of the CJS and over particular defendant and case characteristics. Defendants from ethnic minority groups experience disproportionately severe sentencing outcomes. Defendants from ethnic minority groups are more likely to be sent to Crown Court for trial, to plead not guilty, and to be remanded in custody when they appear in the Crown Court than the White British group. While ethnic minority defendants have lower or similar conviction rates than the White British group, if convicted, they are more likely to receive a custodial sentence and a longer sentence length than defendants in

⁸ [Ethnic Inequalities in the Criminal Justice System, 2023](#)

⁹ [Racial and ethnic disparities in sentencing: What do we know, and where should we go? - Veiga - 2023 - The Howard Journal of Crime and Justice - Wiley Online Library](#)

¹⁰ Clair M & Winter AS. 2016. How Judges Think About Racial Disparities: Situational Decision-Making in the Criminal Justice System, 54 *Criminology* 332:353-54

the White British group. The extent of disproportionality varies considerably between ethnic subgroups within the Asian, Black, Mixed and White ethnic groups. Custodial sentences for drugs offences are more disproportionate than custodial sentences for other offences.

Disproportionality in custodial sentencing for drugs offences is highest among defendants in the Chinese and the Other White group. Ethnic disproportionality is much more pronounced among young male defendants. Black Caribbean young males are far more likely to receive a custodial sentence compared to young males from all other ethnic groups. In addition to receiving harsher sentencing, Black, Asian, and Mixed Heritage people are also more likely to spend a longer time in prison¹¹.

INTERNATIONAL OBLIGATIONS

Action for Race Equality would like to draw the review's attention to the United Nations Committee on the Elimination of Racial Discrimination's concluding observations on the combined twenty-fourth to twenty-sixth periodic reports of the United Kingdom of Great Britain and Northern Ireland.¹² This report was published in August 2024 and makes a number of relevant observations and recommendations in line with the International Convention on the Elimination of All Forms of Racial Discrimination in relation to the criminal justice system. This includes that the State should revise laws and policies and refrain from practices resulting in disparate impacts among ethnic groups, including those related to joint enterprise and drug offences (36a) and that the state address the overrepresentation of persons belonging to ethnic minorities, including by avoiding overpolicing and unnecessary criminal justice interactions and by advancing alternatives to arrest and incarceration for minor offences (36b). We would encourage the sentencing review to work with cross agency partners to develop smart recommendations in line with these observations.

STOP AND SEARCH

The introduction of Stop and Search and Joint Enterprise legislation should be recognised as key drivers in exacerbating racial disproportionality in sentencing. These measures are used disproportionately amongst Black, Asian, and Mixed Heritage communities, leading to higher arrest rates that do not necessarily indicate a higher likelihood of offending. People from these communities are more likely to go further along the court system and are not awarded the same opportunities for rehabilitation early on. In this way, disadvantage is compounded through to

¹¹ [Black remand prisoners held 70% longer than white counterparts in England and Wales | UK criminal justice | The Guardian](#)

¹² [Committee on the Elimination of Racial Discrimination | Concluding Observations on the combined twenty-fourth to twenty-sixth periodic reports of the United Kingdom of Great Britain and Northern Ireland](#)

sentencing and beyond, and the recommendations to review these pieces of legislation are within the scope of this review.

The aforementioned higher stop and search and subsequent arrest rates are part of a broader pattern wherein Black, Asian, and Mixed Heritage people, including children and young people, are disproportionately over policed using invasive techniques, including strip searches. This can have a negative impact on their mental health and wellbeing.

The data shows that, in the year ending March 2023, there were 24.5 stop and searches for every 1,000 black people, and 5.9 for every 1,000 white people. There were 92 stop and searches for every 1,000 people in the 'black other' ethnic group, the highest rate out of all ethnic groups – this group includes people who did not identify as black African or black Caribbean, or were not recorded as such.¹³

As outlined in the recent report 'No Reasonable Grounds' by Stopwatch, the evidence on section 60 of the *Criminal Justice and Public Order Act 1994* proves that it is no longer fit for purpose.¹⁴ This report argues that s60 should be scrapped, on the basis that it violates human rights law, exacerbates social harms and is overwhelmingly ineffective in preventing crime. The Criminal Justice Alliance advocated for the repeal of section 60 Stop and Search powers in their super complaint, *More Harm Than Good*, which placed S.60's 'propensity to exacerbate racial disproportionality, diminish arrest outcomes, and erode community trust and confidence' as a central tenant to its argument for repeal. His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) failed to acknowledge this key argument in its investigation, and as such policing and respective inspection and scrutiny bodies failed to reform once again.

If the panel hopes to ease the capacity crisis with the sentencing review, it will be important for the final recommendations to consider how other policies are disproportionately targeting Black, Asian, and Mixed Heritage people and contributing to the strain on the courts.

JOINT ENTERPRISE

Those from minority ethnicity communities, particularly the Black community, are consistently over-represented in multi-defendant prosecutions and convictions for homicide.¹⁵ Joint Enterprise convictions have led to people being convicted of murder or manslaughter even if they did not play a decisive role, has been used to prosecute Black, Asian, and Mixed Heritage people,

¹³ [Stop and search - GOV.UK Ethnicity facts and figures](#)

¹⁴ [No reasonable grounds: the case for repealing section 60 - StopWatch](#)

¹⁵ [The usual suspects second edition | Centre for Crime and Justice Studies](#)

in particular Black boys and young men, in so-called 'gang' related cases – with whole groups often convicted for a crime committed by one person on the back of allegations that they are in a gang. However, it is particularly difficult to identify when an individual has been convicted under Joint Enterprise and so we have no true understanding of the extent to which this is happening. The review must consider providing a fairer framework for secondary liability sentencing and increasing scope for sentencer discretion.¹⁶

The Centre for Crime and Justice Studies report 'The Usual Suspects' calls on the Crown Prosecution Service to commit to proper data collection, and to undertake a retrospective review of joint enterprise prosecutions. In 2023, the organisations Liberty¹⁷ and JENGBA¹⁸ won a case to pilot monitoring ethnicity data in joint enterprise cases.¹⁹ Liberty has responded to statistics gathered from this showing that Black people are being disproportionately targeted by joint enterprise prosecutions, with CPS figures revealing Black people are 16 times more likely to be prosecuted under joint enterprise than white people.²⁰

¹⁶ [The Legal Dragnet: Joint enterprise law and its implications - Barrow Cadbury Trust](#)

¹⁷ [Liberty - Human Rights](#)

¹⁸ [JENGBA - Joint Enterprise Not Guilty by Association](#)

¹⁹ [Legal win for campaigners in 'racist' Joint Enterprise dispute - Liberty](#)

²⁰ [Crown Prosecution Service Joint Enterprise Pilot 2023: Data Analysis | The Crown Prosecution Service](#)

Theme 2: Structures

The current carceral system is unsustainable. The capacity crisis is just one symptom of a broken justice system. Current structures and processes inherently disadvantage Black, Asian, and Mixed Heritage people, and reform that ends the systematic disadvantage will not occur as long as the focus remains on punishment, state violence, and incarceration. ARE is a strong advocate for diversion, positive interventions, and non-policing solutions to redressing harm in communities. We recommend the review consider how racial disproportionality effects access to diversion through the condition of guilty pleas, when decades of over-policing have resulted in a distinct lack of trust in the criminal justice system amongst Black, Asian, and Mixed Heritage defendants.

PLEA AND DIVERSION

Sentencing outcomes are determined by legal factors such as offence severity, plea proposal and pre-trial detention. As outlined above, Black, Asian, and Mixed Heritage groups are more likely to be stopped and searched, and more likely to be arrested. Ethnic Minority groups are subsequently likely to have lower levels of trust in the police and the justice system and are less likely to enter a guilty plea. This has a cumulative effect on access to diversion, which leads to unsustainable levels of incarceration, reoffending, and harm being reproduced in communities. Plea has a strong effect on sentencing outcomes with those entering a Not Guilty plea being three times more likely to be imprisoned and receive 95% longer sentences. Pre-trial detention holds a strong association with the likelihood of imprisonment, with defendants remanded in custody being 7.5 times more likely to receive a custodial sentence.²¹ Defendants with custodial sentences for more serious offences (with a starting point sentence of 3 years) receive 260% longer sentences than those convicted of less serious offences. The association between poorer plea bargaining and pre-trial detention outcomes and harsher sentencing outcomes, combined with the higher Not Guilty pleas and pre-trial detention rates amongst ethnic minority groups suggests that ethnic minorities are subject to 'cumulative disadvantage'.²²

There is reason to believe that pre-court diversion schemes which do not require people to admit guilt to be eligible for diversion may help address disproportionate outcomes for those from Black Asian and Minority Ethnic backgrounds.²³ The Lammy Review found that the lack of trust some BAME groups have in the criminal justice system renders BAME people less likely to admit an offence or plead guilty at court, in effect barring people from being diverted.²⁴ They also found

²¹ [Ethnic Inequalities in the Criminal Justice System, 2023](#)

²² [Equal diversion? Racial disproportionality in youth diversion - Centre for Justice Innovation, 2021](#)

²³ [Pre-court diversion for adults: an evidence briefing - Centre for Justice Innovation, 2019](#)

²⁴ [Lammy review: final report - GOV.UK](#)

that 40% of schemes limit access to diversion to only those young people with two or fewer previous offences, potentially excluding individuals from communities that are historically over-policed. Research has consistently suggested that some Black, Asian, and Mixed Heritage communities in England and Wales are more tightly surveilled, increasing the chance of detection and arrest, and are more likely to be arrested in situations and for behaviour white people would not. As the Magistrates Association note, ‘an increased use of stop and search on one particular group may result in that group having a much higher rate of out of court disposals or arrests against them.’²⁵ In this way, racial disparities attach to the apparently race-neutral measure of ‘prior record’, which itself can be an important determinant of a person’s trajectory through the criminal justice system. Records of previous criminal justice system contact are taken as indicators of character and capacity for reform, and their ‘validity as proxies for actual behaviour is seldom questioned’. The review should consider reforming custodial thresholds by reducing the weight given to previous convictions.

In a similar vein, we draw the review’s attention to issues around ‘no comment’ interviews, highlighted in the article, ‘Silence, joint enterprise and the legal trap’ in the British Society of Criminology.²⁶

It provides further evidence of high levels of distrust in police amongst Black, Asian, and Mixed heritage communities affecting sentencing outcomes, and the role of the law and its agents in generating silence among suspects. The article concludes that to avoid over-charging and to encourage young people with knowledge of serious violence to talk, structural change is needed. The system must reverse the legal rules regarding silence and reform the law on secondary liability to reduce the legal risks of talking.

PRE-SENTENCE REPORTS

Differences in the extent of disparities in imprisonment and sentence length suggest differences in the ways imprisonment and sentence length decisions are made. The principal sentencing factors in determining sentences are the seriousness of the offence, the culpability of the ‘offender’ and the harm caused to victims. Judges and magistrates follow sentencing guidelines in choosing an appropriate sentence but exercise discretion in varying degrees depending on the level of information available to them. Inadequate and poor-quality information about ethnic minority defendants’ circumstances in pre-sentence reports can result in ambiguity about the seriousness of the offence which determines the decision to imprison, and potentially biased ‘perceptual shorthands’ which increase the risk of ethnic minority individuals receiving more

²⁵ (Gammon, M. and Easton, J. (2019). Roundtable Report: Disproportionality in the youth justice system. Magistrates Association)

²⁶ [Silence, joint enterprise and the legal trap - Susie Hulley, Tara Young, 2022](#)

punitive sentences. In contrast, decisions regarding sentence length taken after the decision to imprison has been made, are determined by the maximum penalty for the crime allowed by law including mandatory minimum sentences passed by Parliament which act to limit discretion of judges and magistrates' in determining sentence length.

In October 2021, HM Inspectorate of Probation conducted a thematic inspection of 'The experiences of black and mixed heritage boys in the youth justice system'.²⁷ Overall, they found that pre-sentence reports (PSRs) did not consider the impact of structural barriers on the lives of black and mixed heritage boys or explore their experiences of discrimination. While there was evidence of liaison with other agencies in the preparation of PSRs, the boys and their parents or carers rarely had the opportunity to read and comment on the report before sentencing. This was a missed opportunity to support the child, attend to any anxieties and fully engage the parents or carers from the start.

The Crown Prosecution service have undertaken case review work due to a 2022 Leeds University study on racial disproportionality on sentencing.²⁸ When compared cases by ethnicity for similar crimes, what was different in the case files was the description of the violence, not the description of the individuals. Mixed ethnicity suspects and their actions were described in more negative and prosecution-worthy terms, which framed them in a more blameworthy manner. Structural racism is pervasive and must be identified and rooted out throughout sentencing processes, down to the language used in case files.

Action for Race Equality has worked with the HMPPS Race Action Programme in our former capacity as chair of the External Scrutiny Panel to support the development of an aide memoire on the writing of pre-sentence reports for ethnic minority people. We would encourage the panel to review this aide memoire and consider how this can be further implemented to ensure better production of PSRs.

²⁷ [The experiences of black and mixed heritage boys in the youth justice system, HM Inspectorate of Probation 2021](#)

²⁸ [Crown Prosecution Service Disproportionality Research Summary Report, 2024](#)

Theme 3: Technology

We direct the reviews attention to the robust and growing body of evidence that technology, and especially artificial intelligence, reproduce and exacerbate existing racial inequalities.²⁹ Liberty have raised concerns about AI and attendant algorithmic technologies will contravene fundamental human rights, result in unlawful discrimination, and exacerbate and entrench systemic racism.

New algorithmic based technologies are at risk of being improperly regulated and are reliant on state data sets in which Black, Asian, and Mixed Heritage communities are over-represented. This runs a high risk of having a disproportionate impact on Black, Asian, and Mixed Heritage communities.³⁰

THE GANGS MATRIX AND THE VIOLENCE HARMS ASSESSMENT SYSTEM

The police's deployment of new technologies that seek to analyse and predict crime outcomes and identify and profile people are also having a seismic impact on the way laws are being and will continue to be enforced, including in sentencing, magnifying existing inequalities and oppression. The Gangs Matrix, a Metropolitan Police Service database containing personal information of people perceived to be in a gang or likely to commit violence, highlights this well. In 2018 the Information Commissioner published an enforcement notice which ruled that it had been consistently breaching data protection laws since its creation. Research found that 15% of people on the Matrix were children (some as young as 12) and 78% were Black males. Reasons for being placed on the Matrix were opaque and could result in criminalisation and difficulties accessing public services - young people on the Matrix faced the risk of over-policing, eviction, and in some cases being stripped of welfare benefits, being taken into care, or even deportation. Following a legal challenge focusing on the racial disproportionality of the database, the MPS was forced to concede that their operation of the Matrix was unlawful. It has now finally agreed to radically overhaul the database and to remove more than a thousand names from it.³¹ We now have serious concerns that the racial discrimination embedded in the Gangs Matrix is set to be repeated in the Violence Harms Assessment system. Instead of rolling out new tools which continue to subject Black, Asian and Mixed Heritage people to racist over-policing, those in power must look instead towards community-led solutions which have social justice, equality, participation and human rights at their heart.³²

²⁹ [Racism and AI: "Bias from the past leads to bias in the future" | OHCHR](#)

³⁰ [Libertys-response-to-the-Science-and-Tech-Committees-Call-for-Evidence-into-Governance-of-Artificial-Intelligence.-November-2022.pdf](#)

³¹ [Libertys-response-to-the-Science-and-Tech-Committees-Call-for-Evidence-into-Governance-of-Artificial-Intelligence.-November-2022.pdf](#)

³² [Harms of Gang Matrix set to be repeated, groups warn - Liberty](#)

Theme 4: Community Sentences

Alternatives to custody are crucial to meeting the statutory purposes of sentencing, reducing harm, and preventing violence in communities. As opposed to focusing on carceral police systems, this reform should take the opportunity to bolster probation services, community sentences, and other alternatives to custody.

With the weight of prison overcrowding, and the clear risks of reproducing violence and harm; providing community led solutions and support has both a strong moral and pragmatic base. Black, Asian and Mixed Heritage voluntary sector organisations should be seen as a key partner in supporting the probation service to meet the needs of Black, Asian and minority ethnic people in the CJS. They should be enabled to work alongside justice services through appropriate commissioning and funding opportunities. Funding opportunities need to be tailored to ensure their reach and inclusivity, recognising and tackling funding “cold spots” as well as the importance of investing in specialist, by and for infrastructure and support to sustain and enable front-line organisations to focus on what is important – delivering.

Justice services and all contracted providers working alongside them must be required and held to account in appropriately meeting the needs of Black, Asian and Mixed Heritage service users, working in a culturally competent way that acknowledges the impact of structural racism and discrimination on service users; with communities engaged in the implementation of this. The Newham Y2A Hub provides a powerful model of good practice, showing the effectiveness of community led alternatives to custody.³³ Several Black, Asian, and Mixed Heritage voluntary sector organisations were involved in the delivery of rehabilitative programmes as part of the hub, including Wipers UK,³⁴ Spark 2 Life,³⁵ Exit Foundation³⁶ and Safety Box.³⁷ Revolving doors have further collated examples of good practice and positive interventions in their recent report.³⁸

We recognise that there has been a move towards increased use of tags to help ease the capacity crisis. We would welcome increased guidance on the use of tagging as we are concerned that more people will be tagged where they may not have been previously, and this will disproportionately impact Black, Asian, and Mixed Heritage people.

³³ [Process evaluation of the Newham Y2A Hub - GOV.UK](#)

³⁴ [Youth Justice | Wipers Youth CIC | London](#)

³⁵ [Spark2Life - Sharing the keys 2 prevent harm and promote life](#)

³⁶ [Exit Foundation – Love never fails](#)

³⁷ [Knife Crime | Violence Reduction Organisation — The Safety Box®](#)

³⁸ [Addressing racial disparity in the youth justice system, Revolving Doors 2024](#)

Theme 5: Custodial Sentences

SENTENCE INFLATION

‘Sentence inflation: a judicial critique’, a paper written by five former Lord Chief Justices and published by the Howard League, called for “an honest conversation about what custodial sentences can and cannot achieve” and a return to “more modest proportionate sentences across the board”.³⁹ The paper explores the current crisis in prisons and articulates that while much of the discussion of the crisis has focused on urgent remedial measures, the source of prison overcrowding in 2024 is decades of sentence inflation. If prisons are to become places of rehabilitation and restoration to citizenship, places where prisoners can receive the support and interventions needed to return safely to the community and desist from offending, there needs to be a fundamental shift in the drivers of sentencing policy.

The paper recognises prison’s disproportionate impact on people from ethnic minority backgrounds, who represent 27% of the prison population compared with 18% in the general population. In 2017, the now Foreign Secretary David Lammy, in his review of race and the criminal justice system, called for increased understanding of the causes and impact of disproportionality on people in prison. A recent thematic report of HMIP on race in prison highlighted discrimination and inequitable treatment, yet another report in a long and growing list that demonstrates the institutional racism at the heart of the justice system. Despite the mounting evidence, change has been slow, with many of the recommendations in the Lammy review and still not yet implemented despite the review being broadly accepted and recognised for its valuable insight. This demonstrates the fundamental resistance to change within the criminal justice system and highlights why the review panel need to ensure recommendations make proper considerations of racial disparities and how to dismantle systematic harms.

THE JUDICIARY

We direct the review’s attention to the Racial Bias and the Bench report.⁴⁰ Drawing on the findings of a survey of 373 legal professionals as well as existing research, it evaluates the racial fairness of judges and racial guidance and diversity initiatives.

It encourages robust and interconnected reforms of the judiciary, including revamping the process for making complaints and ensuring all hearings are recorded and easily accessible. It speaks to the need to organise compulsory and ongoing high-quality racial bias and anti-racist

³⁹ [The Howard League | Sentence inflation: a judicial critique, 2024](#)

⁴⁰ [Racial Bias and the Bench, A response to the Judicial Diversity and Inclusion Strategy \(2020-2025\), University of Manchester 2022](#)

training for all judges and key workers in the justice system. This sentencing review must consider the role all key workers in the justice system play in upholding systemic racism that causes disproportionate sentencing outcomes, and work to eliminate bias across the board.

HOME DETENTION CURFEW

The Government has indicated that short custodial sentences and home detention curfews may be increased to combat the prison capacity crisis. We raise concerns about schemes that increase punishment in the offerings of community sentences. We would like to highlight the evidence that points to the ineffectivity of electronic monitoring, and the disparate outcomes by race and gender.

International examples can help shed light on potential pitfalls of increasing home detention curfew and Electronic Monitoring (EM). American evidence shows disproportionate impacts on people of colour. “In a 2022 report, defence attorneys indicated that BIPOC people were often placed on more restrictive EM conditions than white people. This is consistent with research demonstrating the presence of racial disparities at every stage of the criminal legal system, including in programs intended to divert people from incarceration.”⁴¹

With a focus on young adults, we would like to draw the review’s attention to the potential disruption short custodial sentences may have on access to education and employment, for which Black, Asian, and Mixed Heritage young adults already suffer from unequal access. HDC can in many ways set young people up to fail, as they are not sufficiently able to manage the conditions set. HDC requires you to be in ‘stable accommodation and support,’ which can be highly discriminatory to young adults, who may have complex housing needs, depending on fractious relations with parents/guardians providing housing for them, and cultural stigma attached to electronic tagging. The Chartered Institute of Housing’s 2024 Review of the UK housing system⁴² finds that there is plenty of data that demonstrates ethnic inequalities within access to housing for Black, Asian, and Mixed Heritage people in the UK.⁴³ Curfews set often prevent young adults from going into the areas where their friends and families live, restricting their access to support, and making access to education and employment harder.

⁴¹ [Vera-People-on-Electronic-Monitoring.pdf](#)

⁴² [UK Housing Review 2024 | Chartered Institute of Housing \(CIH\)](#)

⁴³ [BME statistics on poverty and deprivation - Institute of Race Relations](#)

Theme 6: Progression of Custodial Sentences

According to government statistics on Ethnicity and the Criminal Justice System, 2022, Black prisoners served the greatest proportion of their original sentence in custody. In line with previous years, black defendants continued to serve a greater proportion of their original determinate sentence in custody (68% in 2022) when compared with mixed (64%) white (59%), Asian (58%) and prisoners from other ethnic groups (61%). Over the past 5 years, ACSL (Average Custodial Sentence Length) was consistently lower for white defendants compared to all other ethnic groups combined. In 2022, the ACSL was 21.2 months for white defendants, compared to 30.5 months for Asian defendants (44% longer), 27.9 months for black defendants (32% longer), 25.2 months for mixed defendants (19% longer) and 22.9 months for the other ethnic group (8% longer). Despite mitigating language in the government's own analysis, it is clear that there are pronounced disparities in outcomes throughout Black, Asian, and Mixed Heritage people's experience with the CJS, and that these disparities endure and compound.

REOFFENDING

In terms of the reduction of crime and the protection of the public; despite the high levels of disproportionate sentencing and incarceration outlined above, there are also high levels of reoffending and reconviction.⁴⁴ The government's proven reoffending figures suggest that Black people are slightly more likely than white people to be reconvicted, and much more likely than Asian people. As a measure of actual propensity to re-offend, the official proven reoffending statistics do not take the following factors into account:

- In the year ending 31 March 2021, individuals from a Black or Black British background were searched at a rate 7.0 times higher than that of those from a White ethnic group.
- People who identified as Black (or Black British) were arrested at a rate over 3 times higher than those who identified themselves as White.
- At Crown Courts in 2019, individuals from BAME groups were more likely to be remanded in custody (45% for BAME defendants compared to 39% for White defendants).
- In 2020, of all males prosecuted for an indictable offence 75% were White. Black males accounted for 12% of all male prosecutions, while comprising 4% of the general population.

⁴⁴ [Lammy five years on, Prison Reform Trust, 2023](#)

Theme 7: Individual needs of victims and offenders

WOMEN IN PRISON

Women navigating both the immigration and criminal justice systems are uniquely negatively impacted by custodial sentences. There is disproportionate use of custodial remand and custodial sentencing for Black women.⁴⁵ Research repeatedly demonstrates the benefit of community support in relation to rehabilitation and a reduction in reoffending, particularly for those convicted of offenses related to trauma and/or abuse. The majority of the women Hibiscus support live with complex trauma and experience social precarity as migrant women subsequently compounded by the trauma of imprisonment.⁴⁶ They must navigate this whilst working to rebuild their lives and community ties in a hostile environment. Unnecessary custodial sentences remove women from communities, severing relationships, disrupting support, and creating additional barriers to rehabilitation.

Women's needs and rights to education, safety, justice, and wellbeing – and their experiences across the different public services which should provide these – are inextricably linked. Contact with public services is often overlapping, for example, female prisoners have poorer mental health than both women in the general population and male prisoners, those who are more likely to be excluded at school are more likely to encounter the criminal justice system as adults, and there is a growing literature linking police brutality to mental health. Moreover, it is clear that different public services let women, particularly Black women, down in similar ways.⁴⁷

PREGNANCY IN PRISON

Level Up call on the Sentencing Review committee to implement reforms to sentencing that will see an end to the use of prison for pregnant women and mothers.⁴⁸ Since the high-profile deaths of two babies in the women's prison estate in recent years the Prison Ombudsman, NHS and Ministry of Justice have categorised all pregnancies in prison as “high risk” and The Royal College of Midwives have maintained that “prison is no place for pregnant women”. The unique needs of pregnant women, mothers and their children, will never be met inside prison. Timely access to routine midwifery care and emergency healthcare, nutritious food and support from family, friends and community are vital to a mother's health and a child's development. The longer-term harm that maternal imprisonment and the risk of separation causes to the child will long outlast

⁴⁵ [Counted Out: Black, Asian and minority ethnic women in the criminal justice system, Prison Reform Trust, 2017](#)

⁴⁶ [The Sentencing Review: Our Response - Hibiscus Initiatives](#)

⁴⁷ [Public Harms - Racism and Misogyny in Policing, Education, and Mental Health Services, Black Equity Organisation and the Fawcett Society 2024](#)

⁴⁸ [Pregnancy in prison: Ending the imprisonment of pregnant women](#)

the length of a mother's custodial sentence. Eleven countries have already recognised that prison will never be a safe place to be pregnant. They prioritise community alternatives over imprisonment of pregnant women. The UK needs to catch up.

As outlined above, women from Black, Asian, and Mixed Heritage backgrounds already face disproportionate outcomes in the CJS. Across the UK, the maternal death rate for women from Black ethnic backgrounds is two times higher than that of White women, and the maternal death rate for women from Asian ethnic backgrounds remains two times higher than that of White women.⁴⁹ There is limited criminal justice data disaggregated by both gender and ethnicity which makes it harder to identify accurately and address effectively the disparities experienced by women from minority ethnic groups in the criminal justice system.⁵⁰ Though it is difficult to evidence trends in racial disproportionality in the imprisonment and poor treatment of pregnant women in prison, it is not difficult to conclude that Black, Asian, and Mixed Heritage women may experience even worse outcomes than the stark picture of pregnancy in prison painted by Level Up.⁵¹ We strongly encourage the sentencing review to consider the following recommendations made by Level Up, and to also consider racial disproportionality in the sentencing of pregnant women.

1. Sentencing must be tailored to address the specific needs and vulnerabilities of all pregnant women and mothers of young children, which will never be met in prison;
2. A new sentencing framework must seek to avoid any part of pregnancy or the 'first 1,001 days' (including pregnancy and the first two years of a child's life) from being spent in prison or separated from their mother;
3. A new sentencing framework must acknowledge the rehabilitative potential of pregnancy and motherhood, as reflected in evidence and case law;
4. A new, non-custodial sentencing framework must avoid tagging pregnant women and mothers of dependent children unless strictly necessary to meet the seriousness of offence;
5. New probation guidance to restrict the use of recall for pregnant women and mothers.

MUSLIMS IN PRISON

The review should consider the report published by Maslaha, 'Time to end the silence: the experience of Muslims in the prison system'.⁵² They recommend that sentencing should prioritise community solutions taking into account the evidence of discrimination against Muslims in prison and the disproportionately poorer outcomes they experience. Sentencers should be aware

⁴⁹ [Maternal death rates in the UK have increased to levels not seen for almost 20 years | University of Oxford](#)

⁵⁰ [Counted Out: Black, Asian and minority ethnic women in the criminal justice system, Prison Reform Trust, 2017](#)

⁵¹ [Inside the 'imperfect mosaic': Minority ethnic women's qualitative experiences of race and ethnicity during pregnancy, childbirth, and maternity care in the United Kingdom | BMC Public Health | Full Text](#)

⁵² [Time to End the Silence, the experience of Muslims in the prison system, Maslaha](#)

that a discriminatory environment in prison is counterproductive to approaches and theories focused on desistance and rehabilitation and is therefore not conducive to preventing re-offending.

This submission was produced by Qasim Alli, Policy and Research Officer, with support from Meka Beresford, Head of Policy. We would be happy to contribute further to this process if helpful. For further information, please contact qasim@actionforraceequality.org.uk