

## Police, Crime, Sentencing and Courts Bill

### Prison Reform Trust briefing for the second reading in the House of Commons on 15 March 2021

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. This briefing focuses mainly on the provisions of Part 7 of the Bill on sentencing and release. It also includes an analysis of the overarching equality statement of the sentencing and release provisions.

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### Introduction

This Bill continues the long legacy of inflationary sentencing proposals in England and Wales begun in the 1990s. Far from being the simplification of sentencing claimed, the Bill adds to the piecemeal and confusing history of sentencing legislation of which the government claims to be so critical. It does so without a coherent philosophy to underpin its approach, and guarantees the continuation of general sentence inflation which has played a large role in destroying the capacity of both prison and probation services to deliver the rehabilitative goals which the government claims to promote.

The Impact Assessment (IA) of the sentencing proposals acknowledges that:

*“The longer time spent in custody resulting from abolishing automatic halfway release, SOPC reforms, and reforms to discretionary life sentencing could lead to prison instability as offenders serving the same sentence arriving at different times will face different release points. There is also a risk of having offenders spend longer in prison and a larger population may compound overcrowding (if there is not enough prison capacity), while reducing access to rehabilitative resources and increasing instability, self-harm and violence (paragraph 43).”<sup>1</sup>*

The IA estimates that the combined impact of the provisions for adults will result in “a total increase in the adult prison population of around 700 offenders in steady state by 2028/29 although this impact will begin to be felt from 2021/22 with just over 200 additional prisoners.”<sup>2</sup> However, previous government estimates of the impact of sentencing legislation have proved unreliable. For instance, the sentence of imprisonment for public protection (IPP), which was introduced by the Criminal

<sup>1</sup> [Ministry of Justice \(2021\) Police, Crime, Sentencing and Courts Bill: Sentencing, Release, Probation and Youth Justice Measures—Impact assessment, London: Ministry of Justice](#)

<sup>2</sup> Ibid.

Justice Act 2003, was estimated to result in an increase of just 900 additional prisoners; but was given to a total of 8,711 individuals prior to its abolition.

The latest prison population projections, which factor in proposals contained in the Smarter Approach to Sentencing white paper, estimate that prison numbers will increase by 20,000 to 98,700 by 2026.<sup>3</sup> The prison service is emerging out of an under reported operational crisis as a result of the Covid-19 pandemic. At a time when it should be focused on recovery, the Bill will increase prison numbers and add to pressures of overcrowding, making it harder to achieve a safe and purposeful regime focussed on rehabilitation.

The majority of the proposals in the Bill relating to serious and violent offences either rely on no evidence to support the claims made for them; or use such evidence as there is selectively and in a way that misleads. Several of its sentencing proposals, for both adults and children, are plainly inspired by exceptional individual cases and fall into the worst category of reactive policy making which has bedevilled the law in this area for several decades.

The Bill's own impact assessment acknowledges that there is "limited evidence that the combined set of measures will deter offenders long term or reduce overall crime. Therefore, the combined effect of all the measures proposed cannot be described as a cost or benefit due to limited evidence to indicate the direction or magnitude of change (paragraph 77)."<sup>4</sup>

We note the distinction the government makes between the treatment of more serious offences, particularly those of a sexual or violent nature, and other offending. For less serious offending, the white paper preceding the Bill recognised that prison generally reduces the likelihood of people desisting from crime, undermining all the factors—employment, accommodation, family relationships—which contribute to that process. Those elements of the white paper seemed to recognise the importance of an approach which deals with the complexity of the issues which give rise to offending in individual cases, and recognises that the public is best protected when a person is helped to live a crime free life altogether. The evidence to support that approach, much of it compiled by the Ministry of Justice itself, is solid and persuasive.<sup>5</sup>

In relation to the treatment of young adults, by contrast, both the white paper and the Bill ignore evidence which the government has previously acknowledged as persuasive. And specific proposals on the treatment of children fail in key respects to observe the policy test which the white paper itself sets, that the welfare of the child should be the primary consideration.

The treatment in the overarching equality statement accompanying the Bill of the discriminatory impacts of its proposals for people with protected characteristics falls far short of the duties placed upon it by law (see our analysis of the equality impact below). In particular, there are a significant number of measures contained within the Bill which are likely to perpetuate the inequalities highlighted in the government's

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<sup>3</sup> [Ministry of Justice \(2020\) Prison Population Projections 2020 to 2026, England and Wales, London: Ministry of Justice](#)

<sup>4</sup> [Ministry of Justice \(2021\) Police, Crime, Sentencing and Courts Bill: Sentencing, Release, Probation and Youth Justice Measures—Impact assessment, London: Ministry of Justice](#)

<sup>5</sup> [Ministry of Justice \(2013\) Transforming Rehabilitation: a summary of evidence on reducing reoffending, London: Ministry of Justice](#)

independently commissioned review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.<sup>6</sup> It also chooses to gloss over the impact these provisions will have in relation to the protected characteristics of both age and race. Those consequences are very likely to be that the disproportionate and growing representation of black children and young black men in custody will increase, reflecting the systematic bias disclosed by the Lammy report and which the government is supposedly committed to tackling. Consistent with other proposals under the White Paper, a lack of data is presented in the Equality Statement as the absence of discrimination.

We largely welcome proposals to reform criminal records disclosure and provisions to enable the piloting of problem-solving courts. The provisions on out of court disposals will need careful scrutiny, particularly for their equality impacts. Likewise, provisions on community sentencing will need close consideration to ensure they do not increase the likelihood of individuals, particularly those with learning disabilities, being unnecessarily breached and recalled to custody.

## **Part 7—Sentencing and Release**

### **Chapter 1: Custodial sentences**

#### **Clause 100: Minimum sentences for particular offences**

These proposals, which seek to limit the discretion of sentencers with the knowledge and the full facts of a case before them, are at odds with the government’s own evidence. Their recent research on the most effective responses to prolific offending shows that reconviction rates for prolific offenders are lower when agencies persist with the use of community sentences rather than resorting to custody— and the positive impact is even more marked for people with mental health issues.<sup>7</sup>

The government’s own research on the management of behaviour in prisons also recognises that providing support and positive encouragement is a more effective tool than threatening people with ever more serious consequences.<sup>8</sup> Nevertheless, successive governments continue to legislate in the mistaken belief that deterrence works, and these proposals follow that pattern.

#### **Clause 101: Whole life order as starting point for premeditated child murder**

There can be few more depressing examples of how governments play politics with sentencing than the growth in the number of whole life sentences over the last three and a half decades. The clause to add premeditated murder of a child to the list of offences for which a whole life order must now be the “starting point” for the sentencing decision, merely adds to that litany. Despite the effective absence of any meaningful possibility of review, as required by European human rights law,

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<sup>6</sup> [Lammy, D. \(2017\) The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System, London: Ministry of Justice](#)

<sup>7</sup> [Hillier, J. and Mews, A. \(2018\) Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending?, London: Ministry of Justice](#)

<sup>8</sup> [HM Prison & Probation Service \(2020\) Incentives Policy Framework, London: Ministry of Justice](#)

successive government interventions have created a situation in which there were no prisoners serving whole life in 1982, and there are now over 60. Leaving to one side the moral and philosophical arguments that should surely at least be aired before a proposal of this kind is made, its practical impact extends beyond the small number of cases to which it may be relevant, fuelling the sentencing inflation across a wide spectrum of offending which in turn has helped to produce a prison population that no government has been willing to find the resources to treat decently.<sup>9</sup>

### **Clause 102: Whole life orders for young adult offenders in exceptional cases**

This clause to allow for the possibility that an 18 year old might receive a whole life tariff is the first of several that fly in the face of evidence on maturity which the government has previously accepted and promised to take into account in its policy concerning young adults in the criminal justice system.<sup>10</sup> That evidence, supported by neurological studies, establishes that the development of maturity extends well beyond adolescence, and typically into a person's mid-twenties. In its response in 2015 to Lord Harris' report into the deaths of 18-24 year olds in custody, the government agreed that "what is widely known and accepted is that young adults, particularly males, are still maturing until the age of 25". There has been no change in that evidence, nor, so far as we know, in the government's wish to have regard to it.

The origin of this provision derives entirely from a single recent case. There can be no clearer example of short-term presentational advantage trumping the evidence. The remarks of a single trial judge have been used to present a cruel and inhumane measure as "untying the hands of the judiciary", where in reality the bulk of the Bill's sentencing proposals are designed to do the reverse, or to remove a key aspect of sentencing (the assessment of dangerousness) from judges altogether.

### **Clause 103: Starting points for murder committed when under 18**

This clause increases the tariffs for DHMP sentences on the grounds that children nearer the age of 18 should receive custodial terms closer to the grossly inflated tariffs the law now stipulates for adults. The proposal completely ignores the evidence on maturity, and the commitment of the previous government to take that evidence into account in determining policy. It invents a new, unevidenced presumption not only that maturation ceases at 18 but that the obligations of the state towards the distinctive approach required in relation to children gradually diminish as they approach that age.

### **Clause 104: Sentences of detention during Her Majesty's pleasure: review of minimum term**

This clause reduces the number of tariff review elements for murder on the basis that this spares victims' families distress and that such reviews are rarely successful. The white paper acknowledged that the review process is necessary because of the fact

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<sup>9</sup> [Hadjipavlou, S. \(2018\) Analysis of the determinants of the size and composition of the prison population in England & Wales, London: Crest Advisory](#)

<sup>10</sup> [Ministry of Justice \(2015\) Government response to the Harris Review into self-inflicted deaths in National Offender Management Service custody of 18-24 year olds, London: Ministry of Justice](#)

of maturation, but then ignored the science that shows that maturation continues into the mid-twenties. Again, a desire to make a political response to a single high profile case appears to be driving the government's approach.

#### **Clause 105: Life sentence not fixed by law: minimum term**

This clause—effectively requiring courts to set longer tariffs in discretionary life sentence cases—is described as a necessary consequence of the change to the release point in longer determinate sentences for sexual and violent offences. Although not stated, it is highly likely also to be a reaction to another single high-profile case in which defendants were convicted of manslaughter, the punishment was disapproved of in the press, but a government sponsored appeal on the grounds that the sentence was unduly lenient was rejected.

#### **Clause 106: Increase in requisite custodial period for certain violent or sexual offenders**

This clause significantly changes the punitive weight of a sentence where it relates to sexual or violent conduct. The rationale for doing so is confused. The way in which substantive offences are framed and maximum penalties set, together with sentencing guidelines, already allow the length of sentence to reflect factors which affect “seriousness”—sexual and violent conduct included. Sentences for such crimes have already lengthened considerably over the last two decades.<sup>11</sup>

But if the rationale is, as the government's White Paper implied, public protection, then Parliament is being asked to assume that all more serious violent and sexual offences are committed by people who are also “dangerous”, in the sense that they are more likely to commit a similar offence in the future. That is bound to be objectively untrue in some cases, but also calls into question the raft of overlapping sentencing provision (already added to by this government) which does concern itself specifically with offenders who are considered dangerous on a case-by-case basis.

How courts will resolve the conundrum that a person convicted of a violent offence who receives a sentence of just over 4 years will be much more harshly punished than someone who receives a sentence of just under 4 years remains to be seen. Or, indeed, how the government will explain that the person convicted of stealing from a pension fund will be more leniently dealt with than the person who lashes out in a pub fight. Whatever other goals this proposal may achieve, simplification of sentencing is not amongst them.

The government has already acknowledged that there is no evidence of deterrent impact from measures of this sort, and sought instead to justify them on the basis of crime prevented during a longer period in custody. But as already pointed out, the impact assessment for the Bill is unable to conclude that its measures will have any measurable impact on crime, and no analysis has been prepared to show the number or type of offences which these provisions might prevent. The principal benefit claimed is public confidence in the criminal justice system, but again no evidence is presented to support the premise that harsher sentencing increases public confidence. The conclusion of relevant research in this area has for over two decades been that the public is poorly informed about the actual severity of existing

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<sup>11</sup> Ministry of Justice (2020) Criminal Justice Statistics quarterly, England and Wales, July 2019 to June 2020, London: Ministry of Justice

sentencing. Moreover, given the rapid and extreme increase in the severity of punishment for more serious offending since the turn of the century, the obvious conclusion to draw is that a policy of seeking to increase public confidence through harsher punishments has already been pursued relentlessly without meeting its objective.

The measures included in new section 244ZA(6) will also increase the time spent in custody for children convicted of certain offences and serving a sentence of seven years or more. The suggestion in the Government's white paper that there may even be some benefit for the child in this because there will be more time to complete courses in custody beggars belief, and exposes the proposal for the political gesture that it really is.

### **Clause 107: Increasing in requisite custodial period for certain other offenders of particular concern**

This clause—also increasing the punitive element of a sentence—is described as a necessary consequence of the emergency legislation the government introduced following terrorist attacks in late 2019 and early 2020. It is, but that only serves to demonstrate the complexity of sentencing law in this area, and the extent to which the government adds to that complexity every time it responds to an individual crime by promising a change in sentencing law. It also shows how the adjustments that inevitably follow rushed and event-specific legislation always ratchet up the length of sentences overall, producing the inflationary effect that drives so many of the intractable problems of our prison system.

### **Clause 108: Power to refer high-risk offenders to Parole Board in place of automatic release**

This proposal is triggered by concern over terrorism, and the risks of radicalisation within prisons. But it reflects the muddle the government has created by reaching for hurried sentencing reform as a response to a phenomenon which sentencing is highly unlikely to change. In the process, this clause creates a constitutional and legal mess.

So far, and without any public examination of the failings in the criminal justice and security systems that may have allowed two terrorist attacks in late 2019 and early 2020, the government has prayed in aid public protection in the face of a terrorist threat to allow retrospective sentencing, to introduce parole consideration for some terrorist offenders, and then to rule it out for others. Now it cites it as the justification for executive sentencing, radically changing the nature of a sentence mid-stream on the basis of alleged behaviour that post-dates not just the original offence, but the trial that the offence brought about.

Even the criteria to identify cases where the power might be invoked are vague. Two scenarios are envisaged in the white paper. In the first, a person serving a sentence for a non-terrorist offence is judged to pose a terrorist threat (the radicalisation phenomenon). It is not clear what the evidential test for this would be, the standard of proof required, or why there should not simply be an expectation that the person is prosecuted for an appropriate offence related to their behaviour. The scope of legislation designed to catch people sympathetic to terrorist causes is wide—the proposal simply appears to be a mechanism to avoid the inconvenience of having to provide evidence and have it tested in open court.

The second scenario is that someone is a terrorist but has not been convicted of a terrorist offence. Exactly why the authorities would not bring evidence of terrorism to the sentencing court's attention is not explained, but the fundamental problem is the same. Making release from custody discretionary, and contemplating the possibility that the period in custody could be doubled as a result, is not some minor alteration in the administration of a sentence. It is retrospective sentencing by the executive, a form of internment, circumventing the judicial process and all the protections it confers.

Parliament is invited to take on trust that the application of these powers will be rare, but the criteria on the face of the Bill are broad and there is no mechanism to guard against the abuse of executive power in a matter which properly belongs wholly within the remit of a court.

## **Chapter 2: Community sentences**

### **Clause 124: Supervision by responsible officer**

### **Clause 126: Power for responsible officer to vary curfew requirements etc**

Within this part of the Bill there are two particular clauses which will require close parliamentary scrutiny. These would give individual probation officers the power to restrict a person's liberty in ways that go beyond what the court has sanctioned, by compelling attendance at additional appointments and increasing curfew periods. Given that the consequences of failing to abide by such additional restrictions could involve breach proceedings and even imprisonment, understanding the exact procedure by which such decisions can be made and appealed will be critical. People with learning disabilities can find it particular difficult to comply with measures such as additional appointments or reporting requirements, and so special attention will need to be given to ensuring they are not unfairly disadvantaged by these provisions.

### **Clause 128 and Schedule 13: Special procedures relating to review and breach**

The measures contained within this section of the Bill outline the measures to enable the piloting of problem-solving courts and are welcome.

Their focus on underlying needs could contribute to restoring confidence among BAME communities in criminal justice processes. As the Government's response to the Lammy Review states "Trusted figures in the CJS were described as those who had taken the time to get to know an individual, their background and specific needs and vulnerabilities."<sup>12</sup>

However, there is a contradiction in that participation requires a guilty plea, something which analysis conducted for the Lammy Review found was less likely amongst defendants from Black, Asian or mixed ethnicity backgrounds—meaning that they are also more likely to be disadvantaged.

The Lammy Review draws a clear link between the tendency to plead not guilty and a lack of trust in the criminal justice system. To prevent discrimination a pilot of

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<sup>12</sup> [Ministry of Justice \(2020\) Tackling Racial Disparity in the Criminal Justice System: 2020 Update, London: Ministry of Justice](#)

problem-solving courts would necessarily need to work with people who enter not guilty pleas, and/or add in measures that are likely to increase confidence in the process.

Unfortunately, as it stands, the Bill offers neither of these remedies. In its white paper, the Government says that, “while choosing the locations for the pilot, we will consider the most diverse areas to ensure that the broadest group of offenders are able to benefit from PSCs”. The Government does not explain the link—if any—between the choice of locality and the trust deficit.

## **Part 8—Youth justice**

The contradictory approach seen in the government’s white paper unfortunately remains in the Bill, starting with Clause 131’s welfare of the child in remand decisions, before moving to introduce a raft of punitive and unevidenced measures. As we highlight earlier in Clause 106, the bill will increase the time spent in custody for children convicted of certain offences from the current halfway point, to two-thirds of their custodial sentence length. We are not aware of any evidence that being “tough” with children helps to achieve any of the objectives this paper sets for the youth justice system, but a good deal of evidence that it may do the reverse, both reducing the prospects of a reduction in reoffending and doing harm to children who have often been traumatised by such an approach before entering the criminal justice system.<sup>13</sup>

We welcome the addition of a new statutory duty (clause 131) for courts that requires them to consider the welfare and best interests of the child when applying the sets of conditions that must be met in order to remand to custody, including that the court must be of the opinion that the prospect of a custodial sentence is “very likely”, rather than the lower threshold of it being a possibility.

We refer parliamentarians to the Alliance for Youth Justice for a detailed assessment of the provisions of the Bill relating to youth justice.

## **Part 10—Management of offenders**

### **Chapter 1: Serious Violence Reduction Orders (SVROs)**

This section of the Bill introduces a new civil order in the Sentencing Code, the Serious Violence Reduction Order. This is the latest in a line of recent civil orders, which can be imposed on a lower standard of proof, but allow for a period of imprisonment of up to two years following a breach of an order’s terms. As with the recent introduction of similar civil orders, such as the Knife Crime Prevention Order (KCPO) and the Domestic Abuse Protection Order (DAPO), we object to a policy under which civil orders imposed on a balance of probabilities can, if breached, result in a criminal conviction and even imprisonment without a criminal process in relation to the original, alleged offending behaviour.

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<sup>13</sup> [Ross, A. et al. \(2010\) Prevention and Reduction: A review of strategies for intervening early to prevent or reduce youth crime and anti-social behaviour, London: Department for Education and Centre for Analysis of Youth Transitions](#)

This report is just one of many examples of research that demonstrates the futility of deterrence as an approach to preventing offending by children.

In the case of the SVRO, this is particularly important given the extremely widely drawn circumstances in which it can be applied. An SVRO could lawfully be imposed where a person does not use or have possession of an offensive weapon during the commission of an offence; and in cases where more than one person is involved, it would only require that a person “ought to have known” that another person was in possession.

## **Part 11—Rehabilitation of offenders**

We have seen a comprehensive analysis of these proposals by Unlock, published on 2 December 2020, and support both their analysis and their call for a much more substantial programme of reform in relation to criminal records disclosure. The government’s proposals fall well short of previous promises to take a radical approach, and do little to support one of the White Paper’s related goals of increasing the employment of people who have offended as a means to reducing re-offending.

## **Overarching Equality Statement for the PCSC Bill: Sentencing, release etc. provisions**

### **PRT analysis**

#### **Summary**

This overarching equality statement repeats the complacent and disingenuous approach of the statement prepared for the White Paper – “A Smarter Approach to Sentencing”. The clear probability of disproportionate impacts, particularly on the basis of race and age, is repeatedly described as a necessary consequence of the meeting bill’s claimed objectives on public protection. The fact that the evidence for disproportionate impacts is clear, but that no evidence is adduced for the supposed public protection benefits of many of the provisions, is ignored.

Moreover, the combination of contributions from two different government departments also exposes a confusion within government about its understanding of the law it is required to obey. In parts, the statement acknowledges the probability of indirect discrimination, but states that this is justified as a proportionate means of meeting a legitimate aim (which by implication is more important than avoiding discrimination). But in other parts of the statement, the argument that a measure is justified is used to claim that no discrimination will occur. In other sections a third argument is adduced, which is that the discriminatory impacts identified do not amount to “any particular disadvantage”, which seems extraordinary given that those impacts can include spending many additional years in custody.

There is also a stark difference in the approach taken to mitigation of potential discriminatory impacts, even where the comparison between two measures from different departments is exceptionally close. Notably, changes in MAPPA arrangements affecting people suspected of terrorist sympathies, proposed by the Home Office, are accompanied by specific safeguards against unconscious bias; whereas precisely the same decision on risk in a provision created in the Ministry of Justice attracts no safeguard of any kind.

The attempt in the final section to portray the Bill's provisions in this section as meeting the legal duty to foster good relations is shameful in its partial description of the actual impacts which the government itself has identified but chosen to override in the interests of objectives which it considers have a higher priority. The claim that this section of the Bill is likely to foster good race relations brings the whole public sector equality duty into disrepute.

### **Detailed observations**

The statement says that "BAME groups "appear to be over-represented at every stage of system—but there is clear evidence that they are. This unfortunate drafting implies a continuing failure to face up to the fact of chronic discriminatory impacts , despite the evidence of the Lammy report and the government's apparent acceptance of its findings.

On changes to "3 and 2 strike" provisions, the statement says:

*"However, our overall assessment is that this is justified as a proportionate means of achieving the legitimate aims of the policy which is to ensure that offenders receive custodial sentences that reflect the severity of their crime and offending history."*

But one paragraph later on increased maximum penalties for assaults on emergency workers, it says

*"We do not, however, consider that these overrepresentations will likely result in any particular disadvantage for offenders with protected characteristics. Our assessment is that the changes described by these policy proposals are a proportionate means of achieving our aim to better protect the public by ensuring the maximum penalty reflects the severity of the offence. We therefore do not consider that these policy changes are likely to result in any unlawful indirect discrimination."*

The same formula is used for provisions on dangerous driving

On whole life orders for 18-20 year olds, the statement only considers disproportionality on basis of race, and dismisses it. It doesn't even consider discrimination on grounds of age. Nor does it consider the broader impact on sentencing of raising expectation for the most serious offences, and the probable discriminatory impact of sentence inflation

On post release sentencing—the designation of people as risky by the Secretary of State, leading to the conversion of a standard determinate sentence into a sentence where release is discretionary—the statement says:

*"It is not possible to determine what types or groups of offenders will pose a terrorist risk or other significant danger to the public."*

Except of course it is, because it is straightforward to discover the ethnicity and religious affiliation of people currently serving sentences for terrorist offences, and for EDS and other indeterminate sentences imposed on the basis of dangerousness. The statement goes on to say:

*"We think this measure is unlikely to result in any particular disadvantage for the small number of offenders it will affect, and that, overall, the policy is a proportionate*

*means of achieving the legitimate aim of protecting the public from dangerous offenders.”*

This is surely ludicrous—how can substantial extra time in custody be anything other than a “particular disadvantage”?

On the provision to deliver longer custodial periods for serious sexual and violent offending, the statement says:

*“Men, people with a Black ethnicity as well as younger adult offenders (aged 18-24) and offenders over the age of 50 are slightly more represented amongst those who would be affected by this change than those who would not. The change may have a greater impact on older prisoners over time since the policy relates to offenders spending a greater proportion of their sentence in custody and the pool of older offenders in prison is likely to grow as a result. However, we consider that it is unlikely to result in a particular disadvantage for offenders in these cohorts and that, overall, the policy is a proportionate means of achieving the legitimate aims of protecting the public and achieving consistency within the sentencing framework.”*

So the assessment simply ignores the disproportionate impact on grounds of race and youth, repeating the scarcely believable line that there is no “particular disadvantage”, and asserting that the measure is a proportionate means to a legitimate end.

On MAPPA changes, the statement exposes a substantial difference in the approach of one government department compared to another. It says:

*“Although there is potential for unconscious bias in the determination of terrorism risk in cases where offenders have not committed a qualifying offence, we will take steps to mitigate this, including ensuring that:*

- decisions regarding discretionary MAPPA management are based on information from a range of sources and are supported by all relevant partners;*
- the MAPPA documentation asks specific questions about diversity considerations and serves as a reminder to panels to address these issues; and*
- the NPS National Security Division will review the data relating to discretionary cases annually to ensure that offenders are not being referred in to MAPPA on disproportionate grounds.”*

So this acknowledges the risk of unconscious bias in decision making in relation to terrorism and suggest measures to deal with it. But there is no equivalent in the MoJ drafted section on the identification of terrorist risk post sentencing (i.e. which triggers the conversion from automatic to discretionary release post sentencing), despite the fact that both the nature of the decision and the cohort of people about whom that decision may be taken are identical.

On out of court disposals, the statement cites Lammy evidence on lack of trust leading to lower likelihood of benefitting from these provisions, but falls back on proportionate means and “no particular disadvantage”, as grounds for ignoring it.

On Rehabilitation of Offenders Act reform, the statement makes a virtue of the fact that there is a higher representation of BAME men in the 4 year plus category who will benefit:

*“There is a higher proportion of BAME groups in scope of the policy that are sentenced to over 4 years’ SDS for applicable offences than those sentenced to under 4 years. Males from a BAME background who received a custodial sentence of over 4 years which are not a Schedule 18 offence are therefore likely to be positively impacted by this policy.”*

So this disproportionality can count as a particular advantage, but never as a particular disadvantage in all the other provisions which affect this cohort.

On youth sentencing measures, there is no mention of the fact that over 50% of children in custody are now from BAME background. The statement says:

*“We have considered any disproportionate impacts from the youth sentencing measures. While we recognise that there may be indirect impacts on children with certain protected characteristics who are overrepresented in the affected groups, we believe that the principle of public protection and the overarching aim of the youth justice system to prevent offending by young people justify the changes outlined.”*

Yet the overarching aim of the youth justice system is surely the well-being of the child. It is hard to see how disproportionate impacts due to race can meet that test.

On the general section on discrimination due to disability, the statement opens with this assertion:

*“We do not consider that the proposals are likely to result in any discrimination against people with disabilities.”*

But there is no data relating to any of the provisions on which such an assertion could be based. It is well established that people with learning disabilities and mental health issues are both over represented in the criminal justice system and likely to suffer disadvantage in the absence of reasonable adjustments specific to the challenges they face. The statement’s assertion is exactly that, with no evidence or argument to support it.

On the general duty to foster good relations, the statement is extraordinarily complacent, and flies in the face of the all evidence from Lammy and from Inspectorates and others regarding the trust amongst BAME communities in the CJ system. It says:

*“the MoJ has taken steps to restore the trust of BAME communities in the criminal justice system by implementing some of the recommendations of the Lammy Review.”*

But it offers no assessment of the impact of those changes, and ignores the evidence that implementation of Lammy recommendations has been not only partial, but very slow.