

In his response to David Lammy's landmark report in 2017, the then Secretary of State for Justice, David Lidington, said "The Government accepts it will be judged on its actions, as well as its words".

In 2020, two years after an initial update in 2018, one of his several successors published a further update on Lammy's 35 recommendations, saying "I am proud to set out in this report a comprehensive programme of work designed to address inequalities right across the board."

But since then, the government has decided against publishing any analysis of progress against this "comprehensive programme".

This document does not attempt to fill all of that gap. At the Prison Reform Trust, we do not pretend to an expertise across the whole criminal justice system. But we do know about prisons, and we do know that in prisons your ethnicity can continue to make a profound difference to your experience of them, whether you are a prisoner or a member of staff.

We also know that people within the Ministry of Justice and within the prison service are personally committed to the change David Lammy called for. But the messages they receive from their political masters are mixed at best. There is no central record, still less any monitoring, of the extent to which Lammy's "explain or reform" requirement is being met, and the absence of any official update on the "comprehensive programme of work" speaks to a waning of enthusiasm at best. At worst, it implies a desire to look the other way.

In his 2018 Perrie Lecture, David Lammy said "You cannot be in the criminal justice business and not be in the race business".

The Prison Reform Trust believes that equality is fundamental to justice. So we have combed through all of the evidence in the public domain about progress – or the lack of it – in respect of the Lammy recommendations that directly concern prisons and the prison service. We have made a judgement in each case about how we think the government is doing. In line with David Lidington's steer from 2017, our assessment looks at actions not words, outcomes not good intentions. The test is not whether a policy has been written, or an instruction delivered, but whether it has made a difference.

NOTES	KEY
1. This matrix follows the chapter headings of the Lammy Review, and recommendations made within them, along with the commitments subsequently made by the government.	RED = no progress
2. The deadline column refers to the deadline committed to in the government's response or in subsequent government progress updates (where available).	AMBER = partial progress
3. The progress column tracks progress of each deliverable since publication of the government's response.	GREEN = commitment met
4. Please note, many of the commitments in the government's response are vaguely worded and there is no implementation plan with timelines.	

The Lammy Review An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System							
Recommendation number	Recommendation	Government commitment	AGENCIES		Deadline	Progress	Commitment achieved
			Lead agency	Other agencies involved			
Chapter 1: Understanding BAME disproportionality							
3	The default should be for the Ministry of Justice (MoJ) and criminal justice system (CJS) agencies to publish all datasets held on ethnicity, while protecting the privacy of individuals. Each time the Race Disparity Audit exercise is repeated, the CJS should aim to improve the quality and quantity of datasets made available to the public.	The MoJ will publish more and better data on ethnicity where possible and we will welcome external analysis where it throws light on problems that need closer examination, especially where it relates to smaller minority groups. We will review the potential further breakdown of data for (Gypsy, Roma, and Traveller defendants) as new data becomes available with the new criminal justice system data standard capture system 18+1 (18 ethnicity categories plus "other").	Ministry of Justice	Home Office	This will be implemented in statistics bulletins during 2018/19, or next annual publication after this date.	Inspectors continue to report serious problems with the inconsistent collection and analysis of equality monitoring data by prisons. This not only undermines efforts to effectively address disproportionate treatment within individual prisons, but also hinders the ability of analysts to produce accurate data at a national level. Existing analysis is sometimes questionable and does not appear compatible with the government's commitment to 'explain or reform'.	
4	If CJS agencies cannot provide an evidence-based explanation for apparent disparities between ethnic groups then reforms should be introduced to address those disparities. This principle of 'explain or reform' should apply to every CJS institution.	The MoJ considers "Explain or Change" as an overarching principle for cultural change. Where an apparently disproportionate outcome is identified, MoJ leadership, management, and operational staff must review and understand the drivers of these outcomes, so the process behind them can be changed. The MoJ will actively and systematically work to identify issues that fall into this category and we are keen to listen to external groups on this matter. Progress in each case will be monitored by the Race and Ethnicity Board. This principle has already been accepted across government after the publication of the Race Disparity Audit and we identify a number of areas within the criminal justice system in this response where the "Explain or Change" principle should be applied.	Ministry of Justice	Race and Ethnicity Board		There is currently no evidence that a single policy change has been made following an analysis of disproportionate outcomes, or that there is any mechanism for gathering and monitoring this centrally.	
Chapter 4: Courts							
17	The MoJ and Department of Health should work together to develop a method to assess the maturity of offenders entering the justice system up to the age of 21. The results of this assessment should inform the interventions applied to any offender in this cohort, including extending the support structures of the youth justice system for offenders over the age of 18 who are judged to have low levels of maturity.	Her Majesty's Prison and Probation Service (HMPPS) is currently piloting an assessment tool to identify the levels of maturity in offenders aged 18-25 to assist with more effective targeting of interventions.	HM Prison and Probation Service	Department of Health and Social Care		HMPPS have developed a maturity screening tool and resource pack to support staff working with 18-25 year old men with low levels of maturity. This is a positive development, but delivery of better outcomes as a consequence appears poor—with inspectors revealing that just 2% of those assessed as needing this support had received it.	
Chapter 5: Prisons							
20	Leaders of institutions in the youth estate should review the data generated by the Comprehensive Health Assessment Tool (CHAT) and evaluate its efficacy in all areas and ensure that it generates equitable access to services across ethnic groups. Disparities in the data should be investigated thoroughly at the end of each year.	The HMPPS Youth Custody Service will work with NHS England, and the Welsh Government Health and Social Services department to explore how this data can be used to best effect in the future, in order to ensure the equitable treatment of BAME children and young people in secure settings, whilst ensuring that personal information is managed in a safe and appropriate way that maintains patient confidentiality.	HMPPS Youth Custody Service	NHS England and the Welsh Government		The Ministry of Justice chose to adopt a different means to achieve the outcome sought by Lammy and has implemented its preferred solution. But the evidence of impact has yet to emerge.	
21	The prison system, working with the Department of Health, should learn from the youth justice system and adopt a similar model to the CHAT for both men and women prisoners with built in evaluation.	Work already underway will establish how an equivalent level of evaluation can apply in our work with adult offenders. We will work with the Welsh Government Health and Social Services department to explore how this recommendation can be implemented within Wales.	HMPPS and Department of Health	Welsh Government Health and Social Services department		Inspectorate evidence shows no improvement in access to medical care, and there are no outcomes to show that analyses of the data have contributed to more equitable service.	
22	The recent prisons white paper sets out a range of new data that will be collected and published in the future. The data should be collected and published with a full breakdown by ethnicity.	The MoJ will collect and publish the new data outlined in the Prison Safety and Reform White Paper (published November 2016), and breakdown these measures by ethnicity where possible. This links to the commitment we have made to develop performance indicators for prisons, which was also raised in the Lammy Review. As part of the cross-criminal justice system approach to data collection and analysis (Recommendation 1), we will also seek to improve dataset quality to allow breakdown by ethnicity, where it is not currently possible to do so.	Ministry of Justice			The routinely available published data do not meet the expectation raised by the government's commitment, despite the limited publication of new data in the public domain, for example on staff recruitment.	

23	The MoJ and the Parole Board should report on the proportion of prisoners released by offence and ethnicity. This data should also cover the proportion of each ethnicity who also go on to reoffend.	<p>The Parole Board and the MoJ are working on ways to report release by sentence type divided by ethnicity. We are also looking at how we can link those released to their reoffending data, with a view to publishing reoffending rates by ethnicity.</p> <p>Parole Board outcomes were included for the first time in the Race and Criminal Justice Statistics 2016, published in November 2017.</p> <p>Key processes in the system, and the outcomes achieved for BAME service users will be analysed in the future system. HMPPS are currently developing these performance measures. This information will be made public wherever possible, with the commitment to 'explain or reform' any disparity.</p>	Ministry of Justice and Parole Board	HMPPS	In October 2018, the Parole Board will publish data on all those released from indeterminate sentences, showing: a) A one-year reoffending rate; b) An index of offence by reoffense table – to give an indication of reoffense seriousness; c) and reoffending rates by ethnicity.	Limited data are published and fall short of Lammy's recommendation. Whilst headline reoffending rates are now available, no such data are available specifically for those released from prison. What data are available show re-conviction, not reoffending, and may imply misleading links between ethnicity and the risk of reoffending. Commitments made in the 2018 and 2020 updates to publish more data appear to have been unfulfilled.	
24	To increase the fairness and effectiveness of the Incentives and Earned Privileges (IEP) system, each prison governor should ensure that there is a forum in their institution for both officers and prisoners to review the fairness and effectiveness of their regime. Both BAME and White prisoners should be represented in this forum. Governors should make the ultimate decisions in this area.	<p>As a first step, prison governors have been required, with immediate effect, to set up diverse forums in every prison to review the fairness and effectiveness of the IEP system, consistent with Recommendation 24.</p> <p>HMPPS are currently looking at the operation of the IEP policy and as part of this examination will strengthen reference to race disproportionately and to position the IEP system firmly in a procedural justice structure. The framework policy will set an expectation that local systems are reviewed annually, with action taken to explain or change imbalances. The operational instructions and guidance in respect of IEP, use of force and complaints are currently subject to review and this affords an opportunity to fully respond to the relevant recommendations.</p>	HM Prison and Probation Service			<p>A revised policy has been published, but there is no published evidence to confirm that the forums are functioning as intended.</p> <p>The absence of any published information about whether these forums exist, still less how closely they meet the standards set out by Lammy, is a serious shortcoming. Published national data on incentives do not show an improvement in the equality of outcomes under the incentives framework.</p>	
25	Prison governors should ensure Use of Force Committees are not ethnically homogeneous and involve at least one individual, such as a member of the prison's Independent Monitoring Board (IMB), with an explicit remit to consider the interests of prisoners. There should be escalating consequences for officers found to be misusing force on more than one occasion. This approach should also apply in youth custodial settings.	<p>The data collection, and hence record of which staff members have used force, is being strengthened to identify apparently anomalous behaviour.</p> <p>Use of force and adjudication will be monitored routinely by the HMPPS equalities sub-committee in the first instance, which reports to the HMPPS executive committee, and will feed into the Race and Ethnicity Board.</p> <p>HMPPS is reviewing the wider framework for use of force which will ensure that the current conduct and discipline procedures are adequate. It will also look at whether current procedures for examining the use of force appropriately feed into outcomes for procedures such as adjudication.</p>	HM Prison and Probation Service	Race and Ethnicity Board		<p>The prison service has issued a use of force good practice guide, and a digital reporting tool "to enable better identification of disproportionality at both a local and national level". The prison service also established a national use of force committee, including senior diversity and inclusion staff, to provide scrutiny.</p> <p>However, despite repeated assurances, publicly accessible use of force statistics are still not published, and there is no available evidence of performance in the application of use of force policy.</p> <p>The use of PAVA incapacitant spray deployed on Black men has been disproportionate. The prison service cannot explain this disparity, but there is no evidence that they have applied the 'explain or reform' principle to the policy on PAVA. The use of force good practice guide and the national governance of PAVA use have not reduced the disproportionality.</p>	
26	Her Majesty's Prison and Probation Service (HMPPS) should clarify publicly that the proper standard of proof for assessing complaints is 'the balance of probabilities'. Prisons should take into account factors such as how officers have dealt with similar incidents in the past.	HMPPS is reviewing the complaints processes in prisons and will strengthen the process for dealing with discriminatory incidents. HMPPS will remind governors of the importance of making clear the avenues through which complaints can be made.	HM Prison and Probation Service			<p>A revised policy for reporting discrimination incidents was published in 2021, but subsequently withdrawn. It is understood that a replacement policy has been produced, but this is currently not publicly available.</p> <p>Inspectors found that the prison service's data about discrimination incident report forms (DIRFs) were unreliable and that confidence in the complaints system by Black prisoners had remained unchanged.</p>	
27	Prisons should adopt a 'problem-solving' approach to dealing with complaints. As part of this, all complainants should state what they want to happen as a result of an investigation into their complaint	HMPPS is reviewing the complaints process in order to embed a problem-solving approach and reaffirm 'the balance of probabilities' as the relevant standard of proof. Allied to this, HMPPS also plan to change the manner in which complaints of discriminatory incidents are dealt with in order to restore trust and confidence in our systems of redress.	HM Prison and Probation Service			In practice, there is no evidence that prisoners' DIRFs are more likely to be upheld; the data collection is inconsistent; and a lack of transparency limits the information in the public domain.	
28	The prison system should be expected to recruit in similar proportions to the country as a whole. Leaders of prisons with diverse prisoner populations should be held particularly responsible for achieving this when their performance is evaluated.	<p>HMPPS has set an objective of 14% of our recruits being BAME, by December 2020.</p> <p>This reflects the proportion of working age BAME people in the wider population, and levels of interest and applications currently support this target. This target applies across HMPPS as a whole as well as the main delivery arms, including prisons.</p>	HM Prison and Probation Service		December 2020	Despite significant activity and progress in the recruitment of BAME applicants to roles in HMPPS, challenges remain. In particular, poor rates of retention may undermine the progress made on recruitment. HMPPS continues to identify evidence of a disparity in outcomes when comparing ethnic minority applicants to white applicants for both Prison Officer and Operational Support Grade (OSG) applicants.	
29	The prison service should set public targets for moving a cadre of BAME staff into leadership positions over the next five years.	HMPPS are determined to increase the senior leader cadre and has set a target of 12% by December 2020, subject to refinement as baseline data improves. A number of initiatives are being put in hand to achieve this, including developing an accelerated development scheme for eligible staff from under-represented groups. A direct recruitment scheme is showing early promise in attracting BAME participants.	HM Prison and Probation Service		December 2020	There has been significant activity in this area to build confidence and identify barriers amongst BAME staff for promotion opportunities, but limited evidence of tangible progress in realising Lammy's original recommendation to date, and no public reporting mechanism for assessing performance.	
30	HMPPS should develop performance indicators for prisons that aim for equality of treatment and of outcomes for BAME and White prisoners.	<p>HMPPS recognises the benefits of performance indicators and their relationship to accountability, and agree that there should be a clear way of measuring equality of outcome.</p> <p>HMPPS are working to introduce performance indicators to assess outcomes against protected characteristics. Progress can be made on some aspects quickly, such as the outcomes from the annual prisoner survey, with others requiring more complex work. HMPPS will continue to strengthen our data to lay the ground for these metrics, which, once developed, will make outcomes for BAME prisoners part of the overall gauge of performance.</p> <p>Once established, information from performance indicators will be looked at systematically alongside other data to strengthen our understanding of prisoner outcomes. Additional audit work is already underway to identify distinctions between the experiences of white and BAME prisoners, which will be a further strand in understanding and working to improve their experiences.</p>	HM Prison and Probation Service		<p>We anticipate that a draft measure to assess the equity of treatment and outcomes for BAME and white prisoners will be ready to run in shadow (i.e. without targets) from Q3 2020/Q1 and as a weighted and targeted measure from 2021/22.</p>	Despite the government's recognition of the importance of performance indicators and accountability, there has been no demonstrable progress in delivering equality performance indicators. This suggests a lack of corporate commitment to race equality.	