



Lammy Five Years On

Prison Reform Trust update on the Lammy Review's prison recommendations

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The Lammy Review (2017) examined the treatment by the criminal justice system of people from Black, Asian and Minority Ethnic groups.¹ The Government accepted all 11 recommendations concerning prisons.² It published an update on progress in 2020 but has declined to do so since. So in late 2022, the Prison Reform Trust gathered evidence to determine whether policies had changed to meet the recommendations, and – crucially – whether outcomes had improved (impact). In line with Lammy's emphasis on the need for increased transparency, we have relied only on evidence in the public domain.

PRT's analysis was influenced by factors that are constant in the field of race equality and discrimination:

- Race is one of many factors that influence a person's experience of criminal justice. Other protected characteristics, such as age, gender, and disability intersect with ethnicity. Inequalities in living standards, education, and health also affect criminal justice outcomes.
- The impact of a person's race on their treatment can range from perceptions based on widely shared cultural assumptions to deliberate, malicious abuse of power based on a sense of superiority over another race.
- The scale of disproportionate outcomes among BAME prisoners cannot possibly be caused solely by the minority of officers who deliberately abuse their authority to exercise racist attitudes; rather, disproportionate outcomes largely reflect decisions made by the majority of managers and staff.

Perpetual vigilance is required to uphold the duties to eliminate unlawful discrimination; advance equality of opportunity; and foster good relations between people who share a protected characteristic and people who do not share it. Changing policies and issuing guidance or instruction have a part to play. But the law requires a policy to have the desired impact, not merely to exist.

This briefing is only about the Lammy report recommendations concerning prisons. Each follows the same structure:

- Recommendation (in full)
- Government commitments (policy)
- Evidence (outcomes)
- PRT's assessment.

¹ 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.*

² Recommendations: 17, 20, 21, 22, 24, 25, 26, 27, 28, 29, and 30, as listed in *Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.*

Two major developments, since the efforts to implement the Lammy recommendations, are relevant: the prison service's Race Action Programme, and HM Inspectorate of Prisons thematic report on the experiences of Black prisoners and Black prison officers.³

The Race Action Programme launched in late 2020 to tackle race inequality and discrimination, with five areas of work:

1. Creating safe spaces and support for staff and service users
2. Reviewing and enhancing the HMPPS learning and development offer
3. Reviewing Diversity and Inclusion structures and policies
4. Improving recruitment and career progression
5. Greater engagement and consultation with our BAME-led third sector partners.⁴

The Race Action Programme holds responsibility for implementing many of the prison-based Lammy recommendations, but its aim is to embed them as business as usual.

The recent thematic report by the prisons inspectorate introduced a sophisticated and profound analysis of the treatment of Black people in prison, relationships between prisoners and staff, and factors that lead to differential treatment.⁵ This insightful report informs this briefing and provides a vision for making significant improvements.

The history of the prison service's response to the all too persistent evidence of disproportionate treatment of people in its care is characterised by periods of apparent commitment and investment in change, followed by periods of inertia or even regression as priorities change and operational crises divert attention.⁶ This briefing is published in the hope that, by holding the prison service to account for evidence of actual change in the experience of the people in its care, that pattern might now be avoided.

³ HM Inspectorate of Prisons. (2022). Thematic review: The experiences of adult black male prisoners and black prison staff.

⁴ HM Prison and Probation Service. (2020). Race Action Programme.

⁵ HM Inspectorate of Prisons. (2022). Thematic review: The experiences of adult black male prisoners and black prison staff.

⁶ Thompson, B. (2021). The long view—Race equality: part of the fabric or just embroidery?. Bromley Briefings Prison Factfile: Winter 2021. Prison Reform Trust.

Policy and Outcomes

This section examines what progress has been made in achieving the accepted recommendations made in the Lammy review which relate to prisons. There are also three cross-cutting recommendations (3, 4, and 23) which do not fall solely to prisons, however, we have decided to include these given their importance to recording, monitoring and acting to address disproportionate outcomes.

Recommendation 3

“The default should be for the Ministry of Justice (MoJ) and 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.”

Government commitments

- “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. This will be implemented in statistics bulletins during 2018/19, or next annual publication after this date.”
- “We will review the potential further breakdown of data for [the Gypsy, Roma, and Traveller ethnic group] as new data becomes available with the new criminal justice system data standard capture system 18+1 (18 ethnicity categories plus “other”). However, the numbers may be too small to conduct meaningful analysis.”⁷

Evidence

Following the Lammy Review, there has been almost no change in the amount of routinely published, publicly available data by ethnicity.

1. Prisoner surveys conducted by HM Inspectorate of Prisons have consistently shown that racial minority prisoners experience disadvantage in multiple areas of prison life—providing important evidence when the government’s statistical data have been lacking. Despite the government’s commitments, and progress, inspectorate surveys continue to fill gaps in understanding the prison experience for racial minority prisoners. Government data sources continue to have a number of key omissions, which include ethnicity data on jobs held by prisoners, drug tests, use of segregation, and categorisation. As we highlight below, there are also no published data on use of force or PAVA incapacitant spray.
2. A serious problem with data on outcomes in prison is that prisons are inconsistent in recording information. In 2022, HM Chief Inspector of Prisons summarised evidence from his inspections in this way:

⁷ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

“Equality monitoring data were a concern in virtually all our inspections. National data were often out of date and local data were not always gathered. Even when available, data were not analysed fully every time or used effectively to address disproportionate treatment.”⁸

When local prison data are unreliable, national data are not accurate and are either unable to be published, or are published with caveats. Whilst it is positive that the government recognises the importance of collecting more data, a critical question remains—‘What is being done to improve existing data collection requirements in prisons?’.

3. In its 2021 publication Statistics on ethnicity and the criminal justice system, the MoJ stated:

“Differences observed may indicate areas worth further investigation but should not be taken as evidence of bias or as direct effects of ethnicity.”⁹

It is obvious that numbers alone cannot prove discrimination. But the government’s duty to eradicate discrimination is undermined by an approach that begins with a denial that disparities by race are evidence of discrimination, particularly when some of the differences in outcomes are significant. Lammy’s “explain or reform” principle, accepted by the government, places the burden on the prison service to explain why data showing disparities in treatment is not evidence of discrimination, not the other way around.

PRT assessment

The evidence raises three main concerns about efforts by the MoJ and prison service to improve the collection and publication of data:

- Incomplete data
- Unreliable data
- How the data are interpreted.

We can only conclude that the recommendation has not produced the desired the outcome.

⁸ HM Chief Inspector of Prisons for England and Wales. (2022). Annual report 2021–22. HM Inspectorate of Prisons.

⁹ Ministry of Justice. (2021). Statistics on ethnicity and the criminal justice system 2020.

Recommendation 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.”

Government commitments

- “The MoJ considers ‘explain or reform’ 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. Unless there is an evidence-based explanation for an apparent disparity, then we expect the process behind the disparity to be changed.”¹⁰
- Every quarter at the Race & Ethnicity Board (internal governance overseeing progress on race disparity in the CJS), we conduct ‘data deep dives’ as part of exploring this principle to further investigate and address disparities in race related data within the CJS.”¹¹

Evidence from prisons

As expected, this recommendation has been interpreted in very different ways by criminal justice policy makers. The following examples show:

- A report that demonstrates precisely how explain or reform should be implemented (remand decisions affecting young people).
- An area where explain or reform is directly relevant but has had no impact (the introduction of PAVA spray).

1. Risk assessment data—remand and sentencing outcomes

A report by the Youth Justice Board, “Ethnic disproportionality in remand and sentencing”, found that probation officers’ assessments of the likelihood of re-offending are influenced by ethnicity.¹² Risk assessments affect remand and sentencing decisions. This report is a thorough analysis of remand and sentencing outcomes. The YJB is committed to re-visiting the data annually, showing a commitment to change practice where it is leading to disparate outcomes.

2. Use of force data—the introduction of PAVA spray

This will be discussed in detail below under Recommendation 25. However, it is an example of how not to apply ‘explain or reform’. Prior to equipping prison staff with PAVA spray, the prison service was made aware that PAVA was likely to be deployed disproportionately on Black young men. In response to a judicial review backed by the Equality and Human Rights Commission, the MoJ acknowledged that: “younger people, Black and Muslim people were also subject to disproportionate use of force, which it could not explain.”¹³

¹⁰ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

¹¹ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

6 ¹² ZK Analytics & Youth Justice Board. (2021). Ethnic disproportionality in remand and sentencing in the youth justice system. Youth Justice Board.

The government's decision to provide staff with a weapon designed to inflict pain, knowing that it would be applied disproportionately in ways they could not explain, demonstrated a lack of responsibility for the public sector equality duties.

PRT assessment

Explain or reform establishes a profoundly important principle in support of the MoJ's public sector equality duties. When there is evidence of different treatment by ethnicity and there is no reasonable explanation, the relevant policies should be analysed and changed to reduce the disparities in outcome.

HM Government's record shows a tendency to evade public sector duties. In March 2021, the government was asked for a breakdown of the number of equality impact assessments which led to (a) amending the policy; (b) deciding against proceeding with it; or (c) continuing despite evidence of a discriminatory impact. The government could not provide concrete evidence of any criminal justice policy that they have changed in response to an equality impact assessment.¹⁴

The occasional example of a genuine attempt to apply this central Lammy principle cannot compensate for the corporate failure to do so. There is little point publishing equality assessments of new policies and legislation if they have no impact on either the adoption or practical implementation of policies affecting prisoners. The total absence of any machinery to collate and track equality assessments amounts to corporate negligence in adhering to the public sector statutory duty and in delivering the government's response to the central Lammy recommendation to "explain or reform".

So we conclude that the recommendation has not been met at a corporate level, It does not appear to be the fundamental driver for cultural change that Lammy envisaged.

¹³ Equality and Human Rights Commission. (2019). Preventing the unlawful use of PAVA spray in prisons.

¹⁴ House of Lords written question UIN HL13893, 4 March 2021.

Recommendation 17

“The MoJ and Department of Health (DH) 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.”

Government commitments

- “HMPPS have developed a maturity screening tool, which can help commissioners and providers quantify demand for services and interventions that help young adult males to mature, and which can help practitioners in managing the needs of those who require help in this area.”¹⁵
- “The tool is supported by a flexible Maturity Resource Pack (entitled Choices and Changes) which aims to support young adult males with lower levels of maturity.”¹⁶
- “HMPPS continue to monitor uptake and use of the maturity screening tool and the Choices and Changes resource pack across prison and probation.”¹⁷
- “The Offender Management in Custody (OMiC) model provides opportunities for staff such as Keyworkers and Prison Offender Managers (POMs) to deliver Choices and Changes on a one-to-one individual basis. However, this will be rolled out gradually as Keyworkers develop the skills and confidence to do this type of work.”¹⁸

Evidence

The screening tool was introduced in July 2019, drawing on ten questions in the standard Offender Assessment System (OASys) screening tool. Lord Wolfson’s response to a parliamentary question in 2021 stated that in November 2021, 89% of prisons holding young male adults were making use of the screening tool.¹⁹

The minister also provided data on its reach. In 2020, 68% of young adult male prisoners with a full OASys were assessed for maturity. Of those, 61% were judged to have a low maturity level. In 2021, 66% of those eligible were assessed; 65% of those were judged to have a low maturity level.²⁰

The prison service also disseminated a resource pack (‘Choices and Changes’) to promote a better-informed approach to matching services to the individual needs of young people in custody. The prison inspectorate described the pack:

¹⁵ Ministry of Justice. (2018). *Tackling Racial Disparity in the Criminal Justice System: 2018 Update*.

¹⁶ Ministry of Justice. (2020). *Tackling Racial Disparity in the Criminal Justice System: 2020 Update*.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ House of Lords written question UIN HL3860, 23 November 2021.

²⁰ Ibid.

“An HMPPS resource pack for key workers or prison offender managers to use in one-to-one sessions with young adults who have been identified as having low psychosocial maturity. The exercises in the pack aim to encourage engagement and help young adults to develop their maturity.”²¹

The prison inspectorate published a thematic review on young prisoners in January 2021. At that time, the inspectorate found that: “the Choices and Changes programme, has been accessed by just 2% of those assessed as needing it.”

The inspectorate’s report identified two key factors underlying the inadequate implementation of the maturity resource pack:

“We found that instead of providing this group with the tailored support, structure and consistency they need, there is a lack of a coherent response at the national level. There is no explanation for the current configuration of the estate, with only three dedicated young adult establishments for a population of over 15,000, no rationale for placing the majority of young adults in establishments that predominantly hold older prisoners, and no evidence that placement decisions are made on the basis of need.”²²

The report also explained:

“The poor provision for young adults disproportionately affected prisoners from black and minority ethnic backgrounds, who were particularly overrepresented in the young adult population.”²³

PRT assessment

Progress in achieving the recommendation is mixed. In 2021, it appeared that the prison service was assessing the maturity of many — though not all — young people coming into custody. Further, they had published a resource pack to enable officers to work individually with young people judged to need support. These efforts have been undermined, however, by the general pressure placed on the prison estate by a combination of population pressures and staffing shortages, and by the uneven performance of the Offender Management in Custody system.²⁴

²¹ HM Inspectorate of Prisons. (2021). Outcomes for young adults in custody.

²² Ibid.

²³ Ibid.

²⁴ HM Inspectorate of Probation & HM Inspectorate of Prisons. (2022). Offender Management in Custody — pre-release. HM Inspectorate of Probation.

Recommendation 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 to 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.”

Recommendation 21

“The prison system, working with the Department for Health, should learn from the Youth Justice System and adopt a similar model to the Comprehensive Health Assessment Tool (CHAT) for both men and women prisoners with built in evaluation.”

Government commitments

- “Central data collection on key aspects of health delivery in secure settings which have a clinical information system, has taken place since 2016. 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.”²⁵
- “NHS England’s Children and Young People Informatics Group have considered the functionality of local clinical Information Technology (IT) system as they do not currently allow for the CHAT data to be extracted and reviewed to construct a profile of the needs of young people broken down by ethnicity, as the recommendation suggests. There is a commitment to explore how the data would be provided through the next generation of clinical health IT systems, which will be rolled out in 2020.”²⁶
- “The Youth Custody Service (YCS) ... have worked alongside the NHS to agree data flow principles, and to ensure that the children and young people’s secure estate’s AssetPlus assessments have the best chance of being populated with up to date and accurate health information, by developing a tool allowing key CHAT summary data to be electronically flowed between on-site health providers and secure estate staff. ... This response to the recommendation goes as far as possible within the context of the NHS (SystemOne) IT upgrade, and the current inability to report CHAT data directly from their systems.”²⁷
- “We understand the benefits of the Comprehensive Health Assessment Tool (CHAT) and its relationship to the broader assessment of an offender’s needs, which informs sentence planning. Work already underway will establish how an equivalent level of evaluation can apply in our work with adult offenders.”²⁸

²⁵ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

²⁶ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

²⁷ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

²⁸ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for,

- “There are currently significant challenges associated with using the CHAT tool across the adult prison estate...”²⁹
- “The Comprehensive Health Assessment Tool (CHAT), which is used by the NHS for assessing young people’s health needs, is not suitable for use in the adult prison estate. In April 2019, the National Prisons Health Board (NPHB) ... agreed that CHAT was not the right tool and that the existing screening tools in the adult estate provide the same level of screening for adults as the CHAT does for Children and young people.”
- “The functionality of the new NHS IT infrastructure is currently being tested prior to roll out in 2020 and the NPHB is monitoring the results which will allow it to determine what additional action would be required to further improve both the existing screening tools and the new IT infrastructure and reporting systems. This will ensure equitable access to services for those with protected characteristics.”³⁰

Recommendations 20 and 21 can be taken together as their aims overlap. They call for data to make access to healthcare more equitable through a national health needs assessment, broken down by ethnicity. They also require evaluation of their impact in improving equality of access.

Evidence from prisons

The initial challenge in fulfilling recommendation 20 was data sharing between the Department of Health and HMPPS, which could not break down health needs or outcomes by ethnicity. Prisons were added as a distinct group to SystemOne, a national health IT system.

The NHS made an explicit commitment to equality with guidelines for recording data about patients’ protected characteristics.

“To improve the mapping, quality and extent of equality information in order to better facilitate compliance with the public sector Equality Duty in relation to patients, service-users and service delivery.”³¹

These show policy changes designed to apply the Lammy recommendations on equitable access to healthcare in prison. Two practical challenges remain:

- Consistent practice of health needs assessments on entry to prison
- Consistent link between assessed health needs and the provision of treatment.

Many local prisons are under severe pressure in receiving people into prison. In 2020, the Chief Inspector of prisons reported:

“Prisoners had inadequate access to mental health assessments and treatment at approximately half the prisons inspected.”³²

Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

²⁹ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

³⁰ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

³¹ NHS England. (n.d.). Equality objectives 2016 – 2020.

The recent thematic review by the prison inspectorate explained that a lack of trust prevented some prisoners from disclosing their health needs:

“[Black prisoners] did not trust staff to respect confidentiality and were concerned that knowledge of mental health problems might lead to victimisation from staff or other prisoners. Some felt it would increase their perceived risk if they admitted to these problems, making it more likely that they would be given a ‘dangerous black man’ stereotype, which would in turn further increase their vulnerability.”³³

Other evidence from the inspectorate (2022) suggests unequal access to healthcare.³⁴ Asked if it was easy to see a doctor or nurse, racial minority prisoners were significantly less likely to agree:

	Racial minority	White
Very/quite easy to see a doctor	30%	38%
Very/quite easy to see a nurse	49%	58%

A 2020 thematic review of children in custody found that identifying a health need did not necessarily lead to treatment.

“Just over one-third (34%) of children said they had health problems, including mental health, but only 63% of these respondents reported that they had received help for these problems.”³⁵

PRT assessment

Recommendations 20 and 21 required improvement in health screenings and assessments on entry to custody. That has been achieved. But those improvements are supposed to be a means to an end, not an end in themselves. Despite improvements in the recording of health data and data sharing, there is not enough information in the public domain to determine whether aggregated national offender health data, broken down by ethnicity, are being used to reduce health inequalities in prison.

³² HM Chief Inspector of Prisons for England and Wales. (2020). Annual report 2019–20. HM Inspectorate of Prisons.

³³ HM Inspectorate of Prisons. (2022). Thematic review: The experiences of adult black male prisoners and black prison staff.

³⁴ HM Chief Inspector of Prisons for England and Wales. (2022). Annual report 2021–22. HM Inspectorate of Prisons.

³⁵ HM Inspectorate of Prisons. (2020). Children in Custody 2018–19.

Recommendation 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.”

Government commitments

- “The MoJ will collect and publish the new data outlined in the Prison Safety and Reform White Paper (published November 2016), and break down 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.”³⁶
- “Data on disproportionality in offender outcomes can be explored using the Equalities Monitoring Tool (EMT) available internally in HMPPS. The EMT provides reporting by ethnicity against IEP, complaints & adjudications. Work is on-going to improve the timeliness, functionality and breadth of this data and to allow for comparisons.”³⁷
- “Prison and Probation Analytical Services (PPAS) have been continuing their work to improve the internal prison Equality Monitoring Tool (EMT). This includes developing an offender Equality Data Dashboard which provides easily accessible information to enable equality related trend analysis and comparisons by prisons and regions.”³⁸

Evidence

The 2016 Prison Safety and Reform White Paper committed to publishing a wide range of data on prison performance, including “the most important of the performance standards in a new prisons league table.” The paper committed to publish measures including rates of self-harm; staff and prisoner perceptions of safety; quality of work opportunities; time out of cell; and time spent in purposeful activity. Whilst many of these statistics were already published and accessible at a national level, they were often aggregated, allowing for limited or no interrogation of differences across individual prisons, or by protected characteristics.

The Ministry of Justice’s 2020 update on progress made clear that the rationale for collecting and analysing this data was “to enable equality related trend analysis and comparisons by prisons and regions.” This is a significant step forward in ambition. Long standing reports such as Race and the Criminal Justice System, published as part of the legal requirement of section 95 of the Criminal Justice Act 1991, have provided some limited information, but tell us little about the actual experience of custody beyond reiterating the findings of HM Inspectorate of Prisons.³⁹

³⁶ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

³⁷ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

³⁸ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

³⁹ Ministry of Justice. (2021). Statistics on ethnicity and the criminal justice system 2020.

The Ministry of Justice’s annual offender equalities report, published since 2013, provides some limited information about the prison experience for people across a range of protected characteristics. However, as it cautions:

“The report presents some analysis by individual characteristic and is meant to serve as a guide for further research. In many cases, more than one factor (e.g. age and another protected characteristic, criminal history, socio-economic) may have an effect on an outcome.”

The report provides data on the ethnic breakdown of the prison population and other areas including self-inflicted deaths; assaults; proven adjudications; incentives and earned privileges (IEP) status. This has not changed significantly following the publication of the Lammy Review.

PRT assessment

Since the publication of the Lammy Review, the government has launched the Ethnicity Facts and Figures service, a website which collates data across a range of areas of life—including the criminal justice system. Five years on, there are just three measures for prisons—assaults, self-inflicted deaths and self-harm by ethnicity—and five further measures for children in prison, again focused on assaults, disciplinary measures and use of force (a notable omission for adults).⁴⁰ Just as we have seen with the annual offender equalities report, all of these measures were already publicly available prior to the publication of the Lammy review.

Justice Data, another website which collates headline statistics on performance across the criminal justice system, includes just one entry on ethnicity. This displays the number of prisons where there was a statistically significant difference in the responses of “white and ethnic minorities (excluding white minorities) prisoners” to the measuring the quality of prison life (MQPL) survey. This currently shows that there was a significant difference in 46% of the 93 prisons for which data exists.⁴¹

Meanwhile, many of the commitments on prison performance data made in the 2016 white paper, and which formed the basis of the response to this recommendation, appear to have been repeated in 2021. They include “clear, public and transparent prison performance statistics...[to measure] against our priorities: security and stability; substance misuse and mental health; and resettlement and family ties”, prison league tables also make another appearance.⁴² It is notable that there is no explicit commitment to “break down these measures by ethnicity where possible” as stated in the original government response to the Lammy review.

Six years on from when the government published its prison safety and reform white paper, there is still no new published performance framework, let alone a breakdown of this performance by ethnicity.

The lack of progress has not just been limited to publicly available data. Recent evidence from HM Inspectorate of Prisons suggests that use of the prison service’s internal monitoring system to record and analyse data — the Equalities Monitoring Tool (EMT) — is inconsistent.

⁴⁰ GOV.UK Ethnicity Facts and Figures. (n.d.). Crime, justice and the law.

⁴¹ GOV.UK Justice Data. (n.d.). Measuring the quality of prison life - ethnic minorities (excluding white minorities).

14 ⁴² Ministry of Justice. (2021). Prisons Strategy White Paper.

When individual prisons neglect their duty to collect data, the prison service is unable to meet its obligations of transparency. As the inspectorate's thematic report revealed:

“At each of the fieldwork prisons we requested a basic range of data on areas that could help to inform the treatment of prisoners, including on use of force, behaviour management, [discrimination incident report forms] and participation in activities. One prison was unable to provide us with any such data. At the others, we usually received fairly comprehensive raw data on behaviour management, but less so on activities...the data generally did not show trends and, in some cases, there was no analysis at all...Another problem was that the ethnic monitoring data was often out of date.”⁴³

Inconsistent application of the EMT undermines the government's commitments to provide data on outcomes; to improve the EMT; to analyse disproportionate outcomes; or to develop a robust equality data dashboard. Consistent recording of data via the EMT should be mandatory for all establishments.

The absence of publicly available data, including basic metrics such as time spent in cell, prevents any assessment by government, or scrutiny bodies, of whether unlawful discrimination is occurring. But even if that shortcoming is resolved, for publicly available data to be accurate and meaningful internal data collection methods must also be sound and consistently applied. Without data it is impossible to even begin the process of explain or reform.

We are forced to conclude that the government is falling short of the ambition it has set itself.

Recommendation 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.”

Government commitments

- “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. ... Parole Board outcomes were included for the first time in the Race and Criminal Justice Statistics 2016, published in November 2017.”⁴⁴
- “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 offence by reoffence table — to give an indication of reoffence seriousness; c) and reoffending rates by ethnicity.”⁴⁵

⁴³ HM Inspectorate of Prisons. (2022). The experiences of adult black male prisoners and black prison staff.

⁴⁴ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

⁴⁵ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

Evidence

The latest edition of ethnicity and the criminal justice system statistics, published in 2021, provides a breakdown of Parole Board decisions in oral hearings (but not paper case assessments) by prisoner ethnicity. The board also publishes this information in its annual report. In previous years data on decisions following recall back to custody had also been included, however even this limited further information is not available in the latest edition.⁴⁶

We have been unable to locate any publicly available parole data on sentence type and ethnicity, or the Parole Board data which was due for publication in October 2018.

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.⁴⁷ The government's 'Ethnicity facts and figures' presents the following rates of proven reoffending by ethnicity:

Ethnicity	Proven rate of reoffending
Asian	24.3%
Black	32.7%
White	30.6%
Other (inc. mixed ethnicity)	20.9%
All	29.2%

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.⁴⁸
- People who identified as Black (or Black British) were arrested at a rate over 3 times higher than those who identified themselves as White.⁴⁹
- 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).⁵⁰
- 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.⁵¹

⁴⁶ Ministry of Justice. (2021). Statistics on ethnicity and the criminal justice system 2020.

⁴⁷ GOV.UK Ethnicity Facts and Figures. (2021, April 19). Reoffending.

⁴⁸ GOV.UK. (2022, May 3). Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021 second edition.

⁴⁹ Ibid.

⁵⁰ Pyper, D. (Ed.). (2021). Race and ethnic disparities. House of Commons Library.

⁵¹ Ministry of Justice. (2021). Statistics on ethnicity and the criminal justice system 2020.

PRT assessment

Whilst the government has published data on the overall rates of reoffending by ethnicity (see above), we have been unable to locate any publicly available data specifically for people released from prison as Lammy called for. Therefore, this commitment remains outstanding.

Overall reoffending rates include the outcomes of sanctions such as fines that fall short of imprisonment. On their own, the official data may contribute to an impression that Black men pose a higher risk of reoffending, as was highlighted in the Youth Justice Board's report cited above. But what this doesn't capture is whether this is a reflection of genuine difference, or the inevitable result of different treatment of Black men by police, prosecutors and courts.

The Lammy review's approach encouraged a much broader look at the impact of disproportionality, rather than simply its existence (as discussed in Recommendation 3).

Detailed analysis and research conducted for the review sought to understand what was happening at an individual level—by moving through each stage of the criminal justice system—to result in overrepresentation, as well as its wider economic cost.⁵²

Until we ask 'why is there a difference?', we are unable to 'explain or reform'.

Recommendation 24

“To increase the fairness and effectiveness of the Incentives and Earned Privileges 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.”

Government commitments

- “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 30.”⁵³
- “The data on IEP levels and proportionality will be monitored through the Equalities Monitoring Tool and in 2018/19 we will publish revised guidance for prisons to help them maximise the benefit of the forums.”⁵⁴

⁵² Uhrig, N. (2016). Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales. Ministry of Justice; and Kneen, H. (2017). An exploratory estimate of the economic cost of Black, Asian and Minority Ethnic net overrepresentation in the Criminal Justice System in 2015. Ministry of Justice.

⁵³ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

⁵⁴ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

Evidence

The changes recommended by the Lammy Review were intended to:

1. Make forums on the fairness and effectiveness of regimes mandatory

Achieved.

2. Ensure that these forums meet regularly with equitable representation

There is no published evidence to confirm that the forums are functioning as intended.

3. Lead to fairer outcomes under the incentive scheme.

The prisoner surveys cited in HMCIP's Annual Report (2021-22) show that racial minority prisoners were significantly less likely than white prisoners to agree that they had been treated fairly in the behaviour management scheme (23% to 38%). In 2018, the rates were 32% BAME and 45% white.⁵⁵

HMPPS Offender Equalities Report (2020/21) presents an ethnic breakdown of people on Enhanced status.⁵⁶ The rates were:

Ethnicity	Proportion on enhanced status
Asian/Asian-British	53%
White	52%
Black/Black British	48%
Mixed	46%
Other	37%

PRT assessment

The recommendation said that governors should have the final say in how it was implemented. The MoJ's response matched this suggestion, stating that the new framework would provide governors with flexibility to respond to local needs, but it would also promote greater consistency.

In correspondence with the prison service, the Prison Reform Trust advocated more detailed guidance about the data the forums and the governor would consider in assessing the fairness of the regime:

*“The degree of local discretion allowed on which data should be examined and the inferences that can be drawn is unhelpful. The framework would be more helpful to governors and provide better assurance of a positive impact if it included a mandatory national framework for the presentation and interpretation of data”.*⁵⁷

⁵⁵ HM Chief Inspector of Prisons for England and Wales. (2022). Annual report 2021–22. HM Inspectorate of Prisons.

⁵⁶ Ministry of Justice. (2022). Her Majesty's Prison and Probation Service Offender Equalities Annual Report 2021/22.

18 ⁵⁷ Harman, R. (2018). Consultation on draft incentives and earned privileges policy framework. Prison Reform Trust.

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.

Recommendation 25

“Prison governors should ensure Use of Force Committees are not ethnically homogeneous and involve at least one individual, such as a lay prison observer, 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.”

Government commitments

- “HMPPS have asked prison governors to ensure with immediate effect that they have appropriate, diverse forums to review the use of force, with an authoritative member on each panel to represent prisoners’ interests. The data collection, and hence record of which staff members have used force, is being strengthened to identify apparently anomalous behaviour. ... 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.”⁵⁸
- “A systematic review of Use of Force committees and minimising restraint meetings has taken place within prisons and the youth estate across England and Wales, to highlight areas of good practice and areas for improvement. This will inform revised guidance and the new Use of Force Policy Framework which is expected to be rolled out in implemented in early 2019.”⁵⁹
- “A digital reporting tool has been developed and is currently being trialled to enable better identification of disproportionality at both a local and national level that can feed into further equalities analysis, interventions to tackle disproportionality, and future policy development.”⁶⁰
- “A national Use of Force committee has also been established to provide scrutiny by the National Tactical Response Group, as well as other internal teams, including senior Diversity and Inclusion staff.”⁶¹
- “A revised Use of Force policy framework has been drafted and contains information on governance and accountability, including around equalities issues. ... Disproportionality considerations have been incorporated into the ‘readiness assessment’ for the rollout of PAVA incapacitant spray.”⁶²

⁵⁸ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

⁵⁹ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

⁶⁰ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

⁶¹ Ibid.

⁶² Ibid.

In correspondence with Prison Reform Trust, the then prisons minister, Lucy Frazer, made a further commitment:

“We will introduce a number of additional measures to safeguard against misuse of force, consistent with our commitment to deliver the recommendations of the Lammy Review. This includes the implementation of a digital use of force reporting tool and once this recording process is established we plan to publish annual statistics on the use of force.”⁶³

In October 2020, the MoJ promised the Equality and Human Rights Commission (EHRC) that it would publish its use of force data.⁶⁴

Evidence

The prison service issued a use of force good practice guide. The digital reporting tool was introduced into prisons. The prison service also established a national use of force committee, including senior Diversity and Inclusion staff, to provide scrutiny.

In 2021, the Chief Inspector of Prisons concluded that the governance of use of force in prisons (which includes sanctions for misuse) was inadequate:

“In 13 of the 19 adult male closed prisons that we inspected, we recorded a key concern and recommendation about the use of force. ... At several prisons, incidents of use of force were either not recorded at all or cameras were turned on late, limiting the ability of leaders to judge if the use of force was appropriate. ... Governance of use of force was inconsistent and in some inspected prisons it was inadequate.”⁶⁵

In June 2022, Ellie Reeves, MP, Shadow Minister for Prisons and Probation, asked the government to state which prison use of force committees have a member whose remit is to represent prisoners' interests. Victoria Atkins, replying on behalf of the Secretary of State for Justice, stated that, “this information is not collected centrally.”⁶⁶

The absence of central monitoring undermines the priority given to fulfilling the recommendation, and, more important, it weakens the internal scrutiny of the disproportionate use of force.

The MoJ's commitment to the EHRC to publish its use of force data remains unfulfilled (March 2023).

The prison inspectorate's thematic report revealed disparities in use of force, even when age was taken into account. Black prisoners were nearly twice as likely as other ethnic groups to say they had been restrained by staff (20% compared to 11%). Black prisoners were more than twice as likely as other ethnic groups to have batons used on them.⁶⁷

⁶³ Lucy Frazer QC MP. (30 June 2020). [PAVA: Letter to Peter Dawson, Prison Reform Trust].

⁶⁴ Equality and Human Rights Commission. Preventing the unlawful use of PAVA spray in prisons.

⁶⁵ HM Chief Inspector of Prisons for England and Wales. (2022). Annual report 2021–22. HM Inspectorate of Prisons.

⁶⁶ House of Commons written question UIN 11808, 13 June 2022.

⁶⁷ HM Inspectorate of Prisons. (2022). Thematic review: The experiences of adult black male prisoners and black prison staff.

PAVA was introduced in 2019. From then to November 2021, PAVA was deployed in 187 incidents. The low frequency makes it difficult to draw firm conclusions. However, during that time, Black people accounted for 39% of incidents where PAVA was used while representing under 13% of the prison population.⁶⁸

Prisons must pass a 'readiness assessment' before being issued with PAVA. Criteria include that the prison must understand any disparities in use of force and have in place an action plan to address them. The extent to which PAVA is used disproportionately on young Black men has steadily increased since PAVA was introduced. The prison service cannot explain the ethnic disparities in its use. Nationally, the prison service has failed to meet its own criteria for readiness. Despite this, the prison service continues to provide staff with PAVA, thereby failing its public sector equality duties.

PRT assessment

There is overwhelming evidence that the use of force and deployment of PAVA spray disproportionately affect men from Black backgrounds.

Responses to the Lammy recommendation include a digital use of force tool, a national use of force scrutiny committee, and a good practice guide. However, since it was introduced, the rate at which PAVA was deployed on Black individuals has disproportionate. The prison service cannot explain this disparity and the improvements in policy cited above have had no clear impact. HMPPS has not honoured its commitment to the EHRC to publish its use of force data.

There is no published data about the make-up of use of force committees, and we are not aware that the prison service collects this information.

We conclude that, despite a good deal of policy attention, there is insufficient evidence in the public domain to conclude that Lammy's recommendation has been implemented, and still less to judge that its desired impact has been achieved.

⁶⁸ House of Lords written question UIN HL 3792, 22 November 2021.

Recommendation 26

“Her Majesty’s Prison and Probation Service should clarify publicly that the proper standard of proof for assessing complaints is ‘the balance of probabilities’.”

Recommendation 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.”

Government commitments

- “HMPPS are updating the current complaints and discrimination incident reporting (DIRF) processes to meet the requirements of Recommendation 26 and 27, whilst making sure the needs and requirements of prisoners who have literacy difficulties or for whom English is not their first language are met.”⁶⁹
- “Following a separate consultation with staff, prisoners and external stakeholders on the Discrimination Incident Report Form (DIRF), a series of recommendations have been agreed and work is underway to refresh the policy and operational guidance to ensure the process is more accessible and transparent, to build trust amongst prisoners.”⁷⁰
- “To ensure that the complaints framework is sustainable and continues to deliver all the required outcomes, there is a prerequisite that monitoring data must be collected locally and used to drive performance. Weaknesses in the operation of the process must be identified and rectified.”⁷¹

A revised DIRF guidance was produced in early 2021, with changes designed to fulfil both recommendations. That policy was then withdrawn (for further consultation with prison staff and the voluntary sector). As of January 2023, it appears that staff are being trained by a third sector organisation in a new policy, but it has not been published.

Evidence

The revised guidance (2021) instructed staff who investigate DIRFs to apply the rule:

“Where there is a difference in treatment, due to a protected characteristic which led to a detriment to the complainant and there is no reasonable or feasible explanation for these differences, then discrimination could be the cause for the outcome.”⁷²

⁶⁹ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

⁷⁰ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

⁷¹ Ibid.

⁷² HM Prison and Probation Service. (2021). Guidance for reporting and managing incidents of discrimination.

The 2021 guidance describes a problem-solving approach, including a clear example to illustrate the principles. It quotes the NOMS Race Review 2008:

“Methods that seek to learn from the complaint, and to move forward by solving the problem rather than apportioning blame, can often achieve a quicker resolution, as well as being more likely to satisfy the complainant.”⁷³

These are welcome changes that could contribute to improving the response to prisoners who submit a DIRF. However, there is no evidence that the changes have led to better outcomes.

In 2022, the prison inspectorate’s thematic report concluded that the prison service’s data about DIRFs were unreliable:

“HMPPS could not provide national statistics on DIRF submission or upheld rates ... The problem with data quality was illustrated at one prison which provided a basic breakdown of submitted DIRFs by ethnicity but could not show if the people who wrote them were prisoners or staff, nor if any were considered proven ... It was therefore difficult to use this data to provide reassurance to prisoners who might not have confidence in the process”.⁷⁴

The inspectorate asks prisoners if they believe the complaints process is fair. In 2017, only 22% of men from BAME backgrounds agreed they were fair (compared to 32% of white men). In 2021, neither rate had changed significantly (21% of BAME men compared to 35% of white men expressing satisfaction with the response to complaints).⁷⁵

The prison inspectorate’s recent thematic review offered helpful explanations for BAME prisoners’ continued lack of confidence in the complaints process:

“Black prisoners were reluctant to use the DIRF system ... and had little faith in its value. Many were either unaware of DIRFs or felt that the subtle nature of discrimination meant that it was too difficult to prove what they had experienced: we found little evidence of DIRFs submitted by black prisoners in our fieldwork prisons being upheld. ... Our findings suggested that while DIRFs can be useful in holding people accountable for blatant and deliberate discrimination, they were poorly suited to the task of responding to the type of experience usually reported by black prisoners.”⁷⁶

First, this observation draws a link between prisoners’ confidence in the process and the likelihood that the DIRF will be upheld. Until the rate at which DIRFs submitted by prisoners are upheld improves, prisoners are unlikely to trust the process. Second, it hints that the focus of the DIRF process on discrimination which is tangible and easy to prove makes it unsuitable for more subtle forms of discrimination (‘micro-aggressions’).

⁷³ National Offender Management Service. (2008). Race Review 2008: Implementing race equality in prisons — five years on.

⁷⁴ HM Inspectorate of Prisons. (2022). Thematic review: The experiences of adult black male prisoners and black prison staff.

⁷⁵ HM Chief Inspector of Prisons for England and Wales. (2018). Annual report 2017–18. HM Inspectorate of Prisons; and HM Chief Inspector of Prisons for England and Wales. (2022). Annual report 2021–22. HM Inspectorate of Prisons.

⁷⁶ HM Inspectorate of Prisons. (2022). Thematic review: The experiences of adult black male prisoners and black prison staff.

PRT assessment

The prison inspectorate's report draws attention to inadequate recording of responses to DIRFs and prisoners' experiences of subtle, micro-aggressions.

The evidence points to deep problems in the way prisons respond to DIRFs: prisoners cannot trust a process that fails to respect their concerns. Efforts to shift the standard of proof being applied, so that prisoners' complaints are more likely to be upheld, may lead staff to more defensive postures. A problem-solving approach within a process designed for blatant racism will not help to address negative stereotypes that influence staff perceptions.

It appears that the prison service's response to the Lammy recommendations on DIRFs reveals tensions between policy and practice. While efforts have been made to implement the recommendations — the balance of probabilities and the problem-solving approach — they have been uneven and hampered by delays and shifts in the revision of the policy.

It is vital that the revised policy be published and open to wider scrutiny. As reports of discrimination are a tool in meeting public sector equality duties, DIRFs should be incorporated in the Equality Monitoring Tool and equality performance measure (Recommendation 30).

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.

Recommendation 28

“The prison system should be expected to be recruiting 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”.

Government commitments

- “HMPPS has set an objective of 14% of our recruits being BAME, by December 2020. ... This target applies across HMPPS as a whole as well as the main delivery arms, including prisons. ... The target will deliver a pipeline of recruits more representative than the current workforce and we are exploring further ways to drive the pace at which the overall HMPPS workforce becomes more diverse.”⁷⁷
- “HMPPS is committed to recruiting a more representative workforce and the initial target was set at 14% of all new recruits to be from a BAME background by December 2020 (in line with the national workforce statistics). We are clear, however, that whilst we expect this to be achieved that this is only the beginning of the upward trajectory that we are continuing to work towards. Therefore, we are also improving our data analysis of staff retention.”⁷⁸

⁷⁷ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

⁷⁸ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

- “We now routinely monitor BAME representation at each stage of the recruitment process to address any identified disparities, whereas prior to the Lammy Review we did not.”⁷⁹
- “Furthermore, HMPPS have committed to recruiting more diverse applicants through the Unlocked Graduate programme, a two-year scheme whereby graduates are employed directly by HMPPS as Prison Officers on a two-year fixed term basis, completing a Masters in Leadership in a Custodial Environment.”⁸⁰

Evidence

Government statistics on the workforce show changes from 2017 to September 2022. (These refer to all staff in post, not specifically recruitment.) During this period:

- The number of public sector prison staff who declared that they were from a BAME group rose by 1,261 between March 2017 and December 2022.
- BAME representation amongst public sector prison staff increased from 6.5% in 2017 to 9.6% in 2022.⁸¹

The workforce statistics from December 2022 show an increase in BAME staff members joining the prison service from 218 in the first quarter of 2017 to 708 in the last quarter of 2022.⁸²

This evidence shows significant progress in meeting the recommendation. However, other evidence suggests that the challenge is more complex.

According to the HMPPS workforce statistics, “there is evidence of a disparity in outcomes when comparing ethnic minority applicants to white applicants” among Prison Officer and Operational Support Grade (OSG) applicants, mainly driven by a large proportion of ethnic minority candidates not reaching the assessment stage following an application.⁸³

They also show staff from BAME groups leaving the service increased from 261 in March 2017 to 788 in December 2022, the rate rising by over 200% in just over five years.⁸⁴ One reason staff from Black ethnic groups might not stay is poor prospects for promotion.

As long as staff from BAME groups are proportionately more likely to leave, the prison service will struggle to achieve and maintain a more representative workforce. As of 31 December 2022, 12.3% of HMPPS staff who declared their ethnicity were from an ethnic minority background. Amongst Public Sector Prisons staff the figure was 9.6%.⁸⁵

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ministry of Justice. (2023). Table 5a: Public Sector Prison staff in post, by protected characteristic [Dataset]. In *HM Prison and Probation Service workforce quarterly: December 2022*.

⁸² Table 9a. Ibid.

⁸³ Ibid.

⁸⁴ Table 9b. Ibid.

⁸⁵ Ibid.

Here again, the prison inspectorate's thematic review is insightful:

“Black prisoners wanted greater staff diversity in order to foster more trust and better relationships, but the character, capability and professionalism of the individual member of staff was also seen as being of fundamental importance.”⁸⁶

PRT assessment

Workforce recruitment data show progress in attracting BAME candidates for prison officer roles. But retention remains a problem which undermines work to achieve a more representative workforce. The prison inspectorate's thematic review of the experiences of Black prison officers provides powerful evidence that should guide recruitment and retention.

Recommendation 29

“The prison service should set public targets for moving a cadre of BAME staff through into leadership positions over the next five years.”

Government commitments

- “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.”⁸⁷
- “HMPPS agrees there is more to be done to work towards a representative senior leadership. HMPPS intend that by 2030 the senior leadership cadre will reflect the BAME working population in the country as a whole.”⁸⁸
- “Statistically this is a significant challenge because the attrition rate of senior posts is low and currently, we do not have sufficient BAME middle managers ready to apply for vacancies when they do arise. Therefore, much of our focus in the short term is on improving the middle management position and in appropriate senior positions advertising externally for BAME applicants. We have recognised through extensive engagement with existing BAME staff that to achieve and sustain this scale of progress we need to fundamentally change and challenge existing culture as well as build the trust of talented BAME staff working in the organisation who regrettably do not always have the confidence to apply for progression opportunities.”
- “We have also recognised the need to fundamentally improve our recruitment, attraction and selection processes to ensure that they are more attractive to BAME applicants and are non-discriminatory in their application.”⁸⁹

⁸⁶ HM Inspectorate of Prisons. (2022). Thematic review: The experiences of adult black male prisoners and black prison staff.

⁸⁷ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

26 ⁸⁸ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

Evidence from prisons

The government's 2020 update cited a view that staff from Black ethnic groups do not trust the process enough to apply for promotion.

*“The equality analysis of our operational promotion process found that BAME staff actually did slightly better than white staff at the assessments; the main issue was the lack of BAME staff applying for the opportunities in the first place. So, our efforts are now concentrated in encouraging more staff to consider applying for promotion”.*⁹⁰

The prison inspectorate's thematic review concluded that Black staff are discouraged from applying for promotion because of the lack of diversity in senior positions:

*“Many interviewed staff thought that black officers were more likely to be overlooked for promotion. Some said they had become reluctant to apply for more senior roles because they did not see others being successful, noting that decisions about promotion were mostly made by white staff who, they felt, were less inclined to promote a black officer.”*⁹¹

PRT assessment

As the MoJ explained, part of this challenge is that senior positions rarely become available. The Unlocked Graduates programme is playing a leading role in supporting BAME graduates in prison service careers. The Prison Strategy White paper also made commitments to reform the way leadership talent is identified and nurtured, but there is no public reporting mechanism for the commitments given in that white paper.⁹²

Given the absence of public data, it is impossible to conclude that the ambition set out by the ministry is being delivered. When the evidence points to scepticism amongst Black staff about the promotion process, it is crucial that performance data against these targets should be transparent.

Recommendation 30

“HMPPS should develop performance indicators for prisons that aim for equality of outcome for BAME and white prisoners.”

Government commitments

- “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. As such, HMPPS are working to introduce performance indicators to assess outcomes against protected characteristics.”⁹³

⁸⁹ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

⁹⁰ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

⁹¹ HM Inspectorate of Prisons. (2022). Thematic review: The experiences of adult black male prisoners and black prison staff.

⁹² Ministry of Justice. (2021). Prisons Strategy White Paper.

⁹³ Ministry of Justice. (2017). Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

- “HMPPS and MoJ are developing indicators within the performance framework for prisons that enable the assessment of equality of outcomes for prisoners of all ethnicities.”⁹⁴
- “Data and Analytical Services Directorate (DASD) are developing a single performance measure to assess the equity of treatment and outcomes for BAME and white prisoners, and the measure will be added to the Prison Performance Tool (the prison-level annual performance framework) once a robust baseline and data set have been established. ... We anticipate that a draft measure will be ready to run in shadow (i.e. without targets) from Q3 2020/21 and as a weighted and targeted measure from 2021/22.”⁹⁵

Evidence

In a House of Lords debate in November 2022 on progress in applying the Lammy reforms, Lord Bellamy conceded:

*“Performance indicators in the Prison Service are one of the recommendations that it has not been possible to take forward yet. It is quite difficult to do as it is difficult to devise these indicators.”*⁹⁶

Processes of gathering data at the level of individual prisons are too uneven to generate robust data. Data collection, monitoring, and analysis in prisons are inadequate to serve as the basis for evidence on which to apply effective governance of equalities. For example, the Chief Inspector of Prisons Annual Report (2021–22) states:

*“Equality monitoring data were a concern in virtually all our inspections. National data were often out of date and local data were not always gathered. Even when available, data were not analysed fully every time or used effectively to address disproportionate treatment.”*⁹⁷

PRT assessment

The Chief Inspector’s most recent annual report shows that a fundamental problem in delivering on this recommendation is the uneven and unreliable collection of data in prisons. The failure to implement this recommendation carries a symbolic as well as a practical importance, given the government’s reliance on performance measures as a way of indicating its priorities as well as incentivising central and local management to achieve them.

⁹⁴ Ministry of Justice. (2018). Tackling Racial Disparity in the Criminal Justice System: 2018 Update.

⁹⁵ Ministry of Justice. (2020). Tackling Racial Disparity in the Criminal Justice System: 2020 Update.

⁹⁶ House of Lords oral question, 28 November 2022, Column 1564.

⁹⁷ HM Chief Inspector of Prisons for England and Wales. (2022). Annual report 2021–22. HM Inspectorate of Prisons.

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<https://questions-statements.parliament.uk/written-questions/detail/2021-11-09/HL3860>

House of Lords written question UIN HL 3792, 22 November 2021.

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About the Prison Reform Trust

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. For further information about the Prison Reform Trust, see www.prisonreformtrust.org.uk/

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