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Tackling Discrimination in Prison: still not a fair response

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Foreword

How complaints are handled is a very accurate indicator of how a prison is being run. As Chief Inspector, I always included complaints systems in the list of subjects inspected. We looked at how easy it was for prisoners to make complaints to prison authorities and independent monitoring boards, as well as the speed and content of responses, and the quality of explanations. We also took account of prisoners' views on how well the system worked.

I have been in close and regular contact with the Mubarek family since Zahid's murder in 2000, and with the Zahid Mubarek Trust since its inception. I am constantly humbled by their magnanimity, and the determination with which they have tried to make improvements to the way that black and minority ethnic (BAME) prisoners are treated. This has been maintained in the face of much disappointment over the failure of successive governments to implement the recommendations of the Inquiry into Zahid's murder, conducted by Mr Justice Keith, which itself had to be ordered by the Law Lords against the opposition of an unwilling government.

I am disturbed that the Zahid Mubarek Trust and the Prison Reform Trust should have found it necessary to produce this very full report on failings in the observance of the Discrimination Incident Report Form (DIRF) procedures. From the evidence in this report it is clear that, despite the policies to tackle racism and discrimination introduced following Zahid's death, the focus, energy and accountability to deliver equality have slid backwards.

Their report should lead to some searching questions about how complaints about discrimination are handled: Does the training for equality officers prepare them fully for their role and duties? Is training in equality for all officers sufficient and culturally sensitive to prevent discrimination? To what extent do prison managers make use of data from discrimination reports to monitor their prison's performance on equality?

Despite many appeals over the years, successive governments resolutely refused to budge on the question of statutory status of the Prisons and Probation Ombudsman. The present Prisons and Courts Bill fills this gap, and I sincerely hope that a statutory Ombudsman will be able to examine failures to investigate and resolve grievances about how DIRFs have been processed.

If it learns from the inquiries by Baroness Young and David Lammy MP into various aspects of the treatment of BAME offenders, the present government has the opportunity to demonstrate a renewed commitment to the just and equitable

treatment of all prisoners, irrespective of race or any other protected characteristic. The facts presented in this important report show how the issue has been allowed to slide in recent years. Reversing that decline must be an integral part of any genuine prison reform programme.

A handwritten signature in black ink on a light grey rectangular background. The signature reads "David Ramsbotham" in a cursive, slightly slanted script.

March 2017

Lord Ramsbotham

HM Chief Inspector of Prisons 1995-2001

Acknowledgements

This report benefited from the efforts of a wide range of people and organisations. We thank the Esmée Fairbairn Foundation and the Joseph Rowntree Charitable Trust for the support which enabled our two organisations to carry out the project. We are very grateful to the prison service for enabling the study to take place, for making its data on discrimination incident reports accessible, and for its consistent support for the project. We thank the prisons who provided their data, facilitated focus groups – both of prisoners and staff – and who continue to draw on the Zahid Mubarek Trust's expertise.

We thank the National Research Committee for their input into the methodology and analysis. The then Chief Inspector of Prisons, Nick Hardwick, provided help and support, as did Lord David Ramsbotham, former Chief Inspector; we thank them both. We are grateful to the volunteers who worked with the Zahid Mubarek Trust on their independent scrutiny panels. Finally, we thank colleagues at the Prison Reform Trust who administered the project, designed the charts, provided comments on the draft report, prepared it for publication, and are managing the dissemination of the report.

Tackling Discrimination: Executive Summary

In 2010, the Equality Act established three duties, which bind all prisons, to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity
- Foster good relations between people who share a protected characteristic and those who do not.

Six years hence, prisons are demonstrably failing to meet these duties. Black prisoners are over-represented in segregation units, more likely to have force used against them, and more likely to be on the basic regime. Muslim prisoners are more likely to say they have been victimised by staff. And both groups are less likely than their white counterparts to believe that officers treat them with respect.

The system in prisons for handling allegations of discrimination begins with a discrimination incident reporting form (DIRF). Anyone – prison officers, prisoners, visitors to prisons, or others – can report discrimination. Designated equality officers investigate the evidence and decide on claims. The process must be accessible, fair and constructive to meet a prison's equality duties. Prisoners need to feel confident that the process will be impartial and safe.

In pursuit of that objective, eight prisons in London have, since 2011, invited the Zahid Mubarek Trust to provide external scrutiny of the complaints process in relation to allegations of discrimination. That has allowed the Prison Reform Trust, working with the Zahid Mubarek Trust, to analyse 610 investigations, from eight prisons, covering the year 2014. This study is a testament to the prisons' desire to learn from independent scrutiny, and it has identified widespread failings in the process.

Prisoners submitted 70% of the discrimination reports and staff, 30%. The majority were about race (62%). Religion (15%) and disability (10%) were other protected characteristics reflected in the complaints. Discrimination on grounds of age, gender, and sexual orientation arose far less frequently.

39 complaints submitted by officers were defensive in that the staff member used the form to dispute an allegation of discrimination by a prisoner. A fifth of these led to negative sanctions for the prisoner in connection with the allegation. Both the use of report forms for defensive purposes and the victimisation of a prisoner for alleging discrimination are against policy.

- 27% of discrimination complaints were fully upheld:
A prisoner complained about discrimination from another prisoner. The equality officer heard officers' views that the accused was disruptive, and concluded that discrimination had taken place.

- 7% were partly upheld:
A prisoner complained that officers refused to escort him to prayers. The equality officer apologised to the prisoner that he had missed prayers, but concluded that there had been no discrimination.
- 39% were dismissed:
A prisoner accused two officers of harassing him. The investigation found CCTV evidence that the two officers had spoken to the complainant but there was no audio and therefore the claim was not upheld.

In 27%, the outcome was inconclusive.

Verbal abuse was the most common reason for alleging discrimination. Other situations included alleged job discrimination; lack of respect for one's culture; being denied access to the regime; and routine favouritism, where white prisoners were allegedly treated more leniently or given more benefits:

Behaviour warning for taking a shower when a white prisoner did the same.

Prisoner states he was not allowed to remain out while white prisoners were.

The current process of investigating discrimination reports is not equipped to tackle subtle discrimination (for example, a lack of respect due to a protected characteristic). Prisoners reported routine favouritism, but the vast majority of these were dismissed. Similarly, some reports showed patterns of discrimination by individual officers. But not one complaint by prisoners alleging a pattern of discriminatory behaviour by a staff member was upheld.

A third of the complaints about discrimination on religious grounds were about Islam, such as diet, religious observance, going to prayers, or seeing a chaplain of one's own faith.

A prisoner complained that the times to collect canteen conflicted with his worship times. The complaint was not investigated.

69 reports were submitted about a disability, most often about medical concerns or physical disabilities.

A prisoner said he became anxious about having a seizure and tried to alert an officer. The officer issued him with a behaviour warning, which the complainant wanted removed from his record. In response the equality officer organised a meeting between the prisoner and the officer and ensured that the negative entry was rescinded.

Very few discrimination reports reflected problems faced by people who had learning disabilities.

Complaints that were handled well demonstrated:

- Empathy for the complainant
- Even-handed investigation of the known facts
- Clear communication of the reasons for the decision
- A problem-solving approach.

A prisoner who had disabilities complained that by forcing him to share cells, the prison was failing to meet his needs. The investigator initiated a care plan and promised to move the complainant to a single cell.

A prisoner complained that when canteen went missing, white prisoners were reimbursed but not him. The investigator's note recorded: "The prisoner was reimbursed as there was no solid evidence that the prisoner was lying."

A black man alleged that he was denied Kosher meals on the assumption that he was not Jewish. The investigator arranged for the rabbi to visit the man, and his diet was reinstated.

- 72% of staff-submitted reports were upheld.
- 8% of prisoners' discrimination reports were upheld.
- 76% of staff reports of alleged discrimination by a prisoner were upheld.
- When a prisoner alleged discrimination by an officer, 1% were upheld.

The threshold of proof equality officers used to assess prisoners' claims of discrimination was generally too high. Some equality officers appeared to see their role as defending their colleagues from allegations of bias. This limited their capacity to identify the problem that gave rise to a complaint and think about practical solutions. In about a quarter of the reports, the explanation for dismissing the claim was weak, for example, merely: "no evidence of discrimination".

A fair system of responding to complaints of discrimination is a vital tool in meeting the equality duties. Prisons need their complaints processes to be seen to be fair and impartial in order to earn the confidence of prisoners. Prisons also need to learn from reports of discrimination so that they deliver more equitable treatment. On the basis of this review, none of these benefits are being derived on a consistent basis.

Introduction

*The ability to complain effectively is integral to a legitimate and civilised prison system.*¹

(Nigel Newcomen, Prisons and Probation Ombudsman)

Under the Equality Act 2010, all prisons have three duties:

- Eliminate unlawful discrimination, harassment and victimisation...
- Advance equality of opportunity...
- Foster good relations between people who share a protected characteristic and those who do not.²

An effective system of complaints is a vital tool in meeting all three duties. Through complaints about discrimination, an institution will be alerted to failings to meet the first two duties. And the sensitive handling of complaints contributes to harmonious relations between the institution and people from protected groups. Conversely, a failing complaints process denies evidence of discrimination, condones disproportionate opportunity, and fosters resentment and distrust.

When it is well-run, a complaints process improves relations (the third equality duty) because it:

- Increases trust
- Shows empathy
- Encourages a sense of shared responsibility for equalities
- Informs practice by learning from difficult situations
- Reduces frustration and tension
- Fosters open dialogue and communication.

In 2012, the National Offender Management Service (NOMS, now HM Prison and Probation Service, HMPPS) set out how complaints about discrimination should be managed.³ The process is initiated when someone completes a discrimination incident report form (DIRF). The policy requires that: complaint forms are easily available; problems are resolved at an informal level where possible; allegations of serious misconduct are fully investigated; systems for submitting discrimination reports and responding to them are private and secure; and that prisons use data from all complaints about discrimination to identify and target specific problems.

The study

From 2011 to the present, the Zahid Mubarek Trust has provided independent scrutiny of the management of equalities in London prisons. In this role, in 2014, the ZMT gathered data on 610 discrimination reports from eight prisons. With the approval of the prison service, and funded by the Zahid Mubarek Trust (ZMT), the Prison Reform Trust (PRT)

analysed the independent scrutiny panels' summaries of the 610 reports. Additionally, the ZMT and PRT obtained qualitative data from focus groups organised in three different establishments. The focus groups comprised two with a total of 21 prisoners and one with eight staff members.

This report represents the first formal study of the discrimination incident reporting process since its introduction more than five years ago. The report explores the ways prisons respond to discrimination incidents, based on an analysis of the 610 discrimination reports, and identifies learning opportunities both for the prisons and the prison service.

Statistics about discrimination

NOMS Equality Strategy reported examples of disproportionate outcomes (in 2015). These included higher than average rates for protected groups in the following areas:

- Black prisoners: segregation units, in the high secure estate, on the basic regime, and having force used against them
- Muslim prisoners: negative entries in prisoner's records and force used against them
- Younger prisoners (18-20): disciplinary charges, proven adjudications, the basic regime, and force used against them
- Prisoners with a disability: disciplinary charges, proven adjudications, the basic regime, segregation, having force used against them, and being denied release on temporary licence.

These outcomes show some of the situations that would lead a prisoner from a protected group to submit a discrimination report. However, the statistics do not explain why or how inappropriately disproportionate outcomes happen; or why they persist. The prison service needs the detail about prison life as experienced by prisoners which can be found in DIRFs.

Reports of discrimination can highlight disproportionate outcomes. They can also reveal tensions in staff-prisoner relations, processes which cause prisoners frustration, and subtle forms of discrimination. But they can only do this if prisoners have confidence in the process. Prisons need to be systematic in using the qualitative data the DIRFs provide to help pinpoint the mechanisms that drive disproportionality. When prisons respond to complaints by improving practice and resolving problems, prisoners are more likely to have confidence in the process.

Prisoner complaints: policy development since 2010

Policy and procedural changes introduced since 2010 have changed the way prisons should respond to discrimination. The previous policy on race equality (2007 - 2011) was prison service order (PSO) 2800 which defined a racist incident and provided detailed requirements for investigating reported racism. The policy on ensuring equality (prison

service instruction (PSI) 32/2011) replaced PSO 2800 in April 2011 and introduced significant changes in how racist incidents are reported and investigated.

PSO 2800 focused solely on race; PSI 32/2011 covers all nine protected characteristics.

PSI 32/2011 is advisory with fewer mandatory actions. It is designed, *“to allow Governors greater discretion and flexibility in how they go about delivering the required outcomes.”*

PSO 2800 applied the Macpherson definition of a racist incident:

A racist incident is any incident which is perceived to be racist by the victim or any other person.

This definition recognised an alleged victim’s interpretation as a valid ground for a racist incident report. In contrast, PSI 32/2011 covers incidents of discrimination, harassment and victimisation, and focuses on explicit and direct discrimination.

The standard of proof under PSO 2800 was ‘the balance of probabilities’. The current DIRF system puts the burden of proof on a victim which requires hard evidence that unlawful discrimination took place.

Prior to PSI 32/2011, external scrutiny of complaints was mandatory for prisons, whereas now it is recommended. PSI 32/2011 states that external scrutiny can be one of the measures to improve prisoners’ confidence in the process. It also recognises the importance of engaging with external stakeholders - *“particularly those who are representatives of minority groups”* - in the management of equalities. However, it does not mandate such provisions.

PSO 2800 mandated that the race incident investigations should be carried out by dedicated race equality staff trained in dealing with the issue. PSI 32/2011 states that governors may choose:

...to retain posts with specialist responsibilities for equalities issues and to assign to them particular responsibilities to deal with reports of discrimination incidents.

While recognising the necessity of some work carried out by the dedicated race equality staff (i.e. collecting and analysing monitoring data, co-ordinating and updating the action plan, organising consultation with prisoners, etc) PSI 32/2011 suggests that these tasks, *“can be distributed amongst other managers and staff if this is deemed more effective locally.”*

PSI 32/2011 requires staff to report incidents not only via DIRFs but other means, such as disciplinary reports, entries in the case notes section of Nomis, security information reports, etc. Whereas prisoner-submitted report forms are investigated, those submitted

by staff, “*should be reviewed by a manager to ensure that the action taken was appropriate*”. The review process includes providing feedback to the member of staff where action taken was not satisfactory.

The standards of handling discrimination, harassment or victimisation in PSI 32/2011 include a recommendation of “*challenging inappropriate behaviour using interpersonal skills in accordance with ‘Challenge It, Change It’ training and guidance*”. Since April 2013, equality and diversity training is accessed through the Civil Service Learning (CSL: online training) which has replaced ‘Challenge It, Change It’. Although all governors have access to the new training course, it is not mandatory for staff to undertake it.

PSI 32/2011 does not cover the reporting procedures for staff in case of misconduct by another member of staff as this is covered by a separate policy and process.

Overview of data from discrimination reports in 2014

Across the eight prisons, some received far more discrimination reports than others:

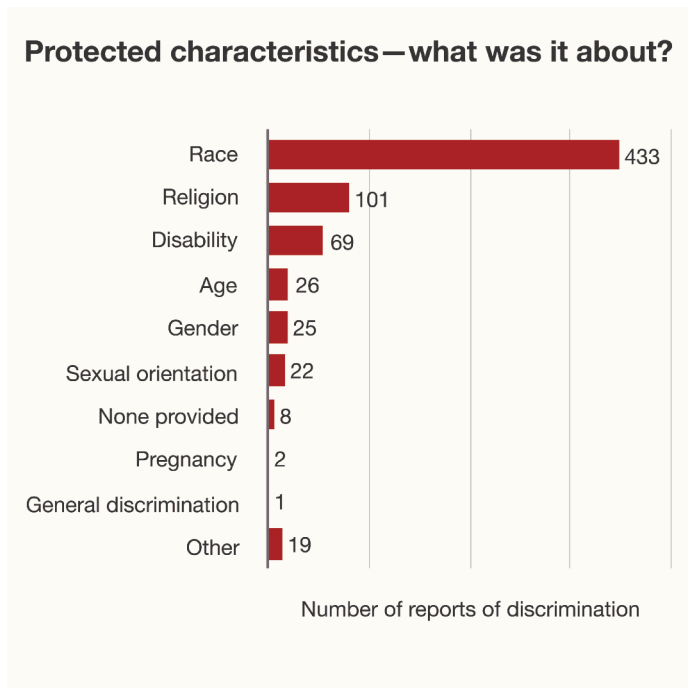
Prison One	80
Prison Two	60
Prison Three	44
Prison Four	64
Prison Five	44
Prison Six	55
Prison Seven	48
Prison Eight	215

39 of the 610 were submitted by an officer in reaction to a claim by a prisoner that that officer had been racist. These 'defensive' DIRFs were analysed separately because the outcomes could be misinterpreted. If these were upheld, did this mean that the prisoner's allegation of discrimination had been accepted? Or did it mean that the investigator agreed with the officer's rebuttal of discrimination? The useable sample, therefore, was a total of 571, some of which were missing details, such as where the incident occurred.⁴

Of the 571 cases, eight did not specify who had submitted them. The remainder comprised 392 (70%) submitted by prisoners, and 169 (30%) by officers. A visitor submitted one; one was listed as 'anonymous' [See Table 1 in the Appendix].

292 discrimination reports were about the conduct of staff (52% of the total); 200 (36%) were about prisoners; 32 accused multiple parties; in 31, it was the establishment (or a local policy) that was accused of discrimination; for seven, others were accused; and in nine, there was no clear subject of the allegations [See Table 2 in the Appendix].

Race was cited more often than other protected characteristics. About a quarter of the reports cited more than one (for example, 'race and religion'), resulting in some double-counting. Taking this into account, the analysis covered:



[See Table 3 in the Appendix].

Complaints were lodged both about positives, such as access to education, prison jobs, or family; and negative consequences, such as the basic regime, discipline, or use of force.

115 reports were about difficulties in gaining access to positive aspects of the regime. 35 of them were about access to medical care. Other benefits comprised jobs, 25, and religious practices, 23. Regime benefits such as resettlement support, education and vocational training (6) were mentioned far less often.

A prisoner complained that racism had prevented them from being given a job. The investigator acknowledged that there was evidence in the prison of an ethnic imbalance in jobs. However, the investigator added that ethnicity was ‘not taken into account’ in giving out jobs.

Access to jobs can be influenced by the degree to which officers consider an applicant to be trustworthy; therefore, if those who exercise discretion over job allocation tend to trust white prisoners, discrimination is likely to occur. Access to jobs highlights a reciprocal quality of trust and distrust – if a prison tolerates a situation in which white prisoners are more likely than prisoners from BAME groups to get trusted jobs, then BAME prisoners are less likely to have confidence in the fairness of the prison.

59 complaints were about negative consequences for the complainant. These included Incentives and Earned Privileges (IEP), punishments, and, less often, use of force. Black prisoners and those of mixed heritage are more likely to be on the basic regime than white or Asian prisoners. Therefore, it is important that complaints about regime status are carefully considered.

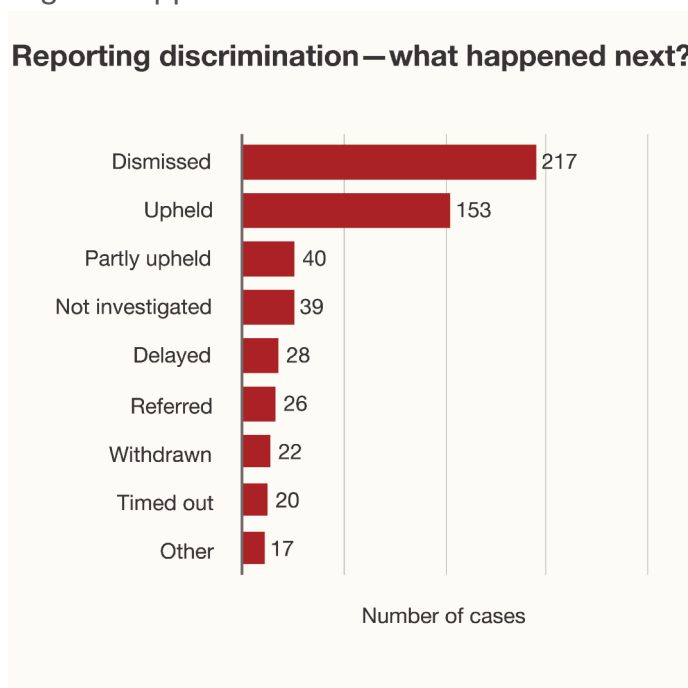
A prisoner claimed that he took a shower with other prisoners, but only he was punished. The investigation found that he had showered when only cleaners were authorised to do so.

A prisoner claimed that he was in a fight and the white opponent received a lesser punishment.

A prisoner claimed he had been unfairly punished for wearing flip-flops which other prisoners were allowed to wear.

Outcomes of the complaints

Excluding defensive DIRFs, outcomes were clear for 562 reports. The outcomes were described in different ways. For example: ‘prisoner found guilty on adjudication’; or ‘unauthorised items were found on him. No discrimination’; or ‘all correct procedures were observed’. Therefore, to record the outcome of each investigation required some interpretation. The categories applied were:



[See Table 4 in the Appendix]

If the allegations were rejected, it was classified as ‘dismissed’. More reports were dismissed (217 / 39%) than any other outcome.

An allegation that two officers were racially harassing a prisoner:

CCTV shows these two officers but no voice recording means no proof of racist abuse.

Another example was this response:

No impartial third party witness, no CCTV footage, no evidence of discrimination.

39 (7%) were not investigated. Although reasons not to investigate were rarely provided, a few did explain.

Officer cannot be identified. Cannot investigate.

If the allegation appeared to be fully accepted and the complainant's requests were met, it was classified as 'upheld'. Of the 562 analysed, 153 (27%) were upheld. Examples included:

Prisoner was punished for using inappropriate language, adjudication found guilty.

A prisoner submitted a complaint about another prisoner. The outcome was: Alleged perpetrator is known to officers for disruptive behaviour, can conclude that an act of discrimination took place.

According to PSI 32/2011, discrimination reports submitted by staff can be 'reviewed', that is, considered by the investigator but not fully investigated. The 54 reviewed reports of discrimination were listed as upheld, as the actions of the staff member were accepted by the investigator.

If the allegations and requests were partially accepted or fulfilled, the outcome was 'partly upheld'. There were 40 such cases, 7% of the total. For example:

An allegation that an officer was making jokes about people from Africa:

Witnesses confirmed story. Officer conceded he makes jokes but not to offend; Officer reminded of professional conduct.

A prisoner complained that he was denied access to prayers.

Apologies to the complainant that new officers dealt with mosque list and they seem to act over-cautiously. No racism.

It was typical of partly upheld reports that an investigator would address some concerns, but not the element of discrimination.

28 (5%) were still awaiting investigation ('delayed') at the time the scrutiny panel examined the investigation. The ZMT received reports only after the completion period had passed, so there should have been an outcome for these, but the reasons for the delay were rarely provided.

26 (5%) were advised to use a different approach ('referred'), for example, to submit a claim under the NHS or to use a general application form. Sometimes, the situation seemed to be unrelated to discrimination. For example:

A prisoner who had not received his canteen was advised to use the complaints system.

However, in a few of these, the referral to other avenues was open to question. For example, queries about one's rights to religious practice would seem to be a legitimate topic, but these were sometimes referred to the prison chaplaincy for a response:

An investigator responded to a complaint about the lack of kosher food stating: referred to chaplaincy: not a discrimination problem.

Other reports (about education, health care or officers) were referred to various departments as matter of their responsibility even though the complainant felt that such a delay was related to one or more protected characteristic.

A prisoner complained that, while feeling suicidal, he pressed his cell bell to talk to an officer. The complainant alleged that the officer ignored his bell because of his race. The investigator concluded that not responding to a cell bell could not be discriminatory, and advised the prisoner to use the general complaints procedure.

22 (4%) were withdrawn by the complainant. Very few explained why the person had withdrawn the complaint. Six concerned ongoing situations, such as bullying or harassment. Cases where a complainant stated that they wished to withdraw the report for fear of repercussions were rare. However, these investigations failed to explore any perceived risk of victimisation.

20 (4%) were 'timed out', most often due to the complainant being released or transferred from prison. The policy instruction states that these complaints should still be investigated.

17 had 'other' outcomes; for example, "prisoner could not be interviewed due to mental health." Finally, nine of the 571 did not indicate any outcome.

Further detail about the outcomes

Where staff were accused of discrimination, outcomes were clear in 290 cases, of which four (1%) were upheld; and 24 (8%) were partly upheld.

A prisoner alleged that during cell searches, a few prisoners lost possessions. The prison reimbursed two white prisoners, but not the complainant. The investigator decided the complainant should be reimbursed but did not investigate why his request had been denied in the first place.

A transgender prisoner stated that she had been searched inappropriately by two male officers and she felt discriminated against. The investigator concluded that the staff should have been more sensitive and follow the rules for searching transgender prisoners. The investigator apologised and issued a reminder to all staff.

Prisoners were accused in 200 cases, of which 140 (70%) were upheld and 11 (6%) were partly upheld.

DIRFs making allegations about a failing of the establishment or its policies were upheld in five of 31 cases (16%) [See Table 5 in the Appendix].

A prisoner reported that his name had been removed from a list by the education department, preventing him from preparing for release. The investigation agreed, and reinstated him on the list.

When staff reported discrimination, the outcome was clear in 169 cases. 121 of these were upheld or reviewed (72%). Of the 390 submitted by prisoners, 32 (8%) were upheld and 31 (8%) were partly upheld [See Table 6 in the Appendix].

Of the 169 submitted by staff, at least 30 explicitly stated that the victim of the discrimination was a prisoner. These arose most often when an officer heard verbal racist abuse of one prisoner by another. In addition, officers sometimes submitted a report at the request of prisoners. For example, a prisoner stated that he felt vulnerable in his shared cell, which led the officer to submit a discrimination report.

Over three-quarters (25/30) of the staff-submitted reports of prisoner-on-prisoner discrimination were upheld. This suggests that the system worked well when officers monitored interactions between prisoners and reported any abuse. This role is a legitimate duty of officers, to protect groups from discrimination as part of maintaining good order.

Staff-submitted discrimination reports which accused prisoners described punitive measures; e.g., a negative entry in case notes, placing the prisoner on report, submission of a security intelligence report, etc. Where staff-submitted discrimination reports were reviewed by an investigator, the process often did not include taking witness statements and/or interviews with the prisoner. The investigator often provided case notes from the prisoner's file as additional evidence to support the complainant's allegations.

20 discrimination reports were about general discrimination. Examples include:

Prisoner reported ongoing tension between black and white prisoners.

Prisoner made racist comments toward Asian people.

Homophobic comments.

Racist views on Muslims.

In 36 staff-submitted reports, the victim was a member of staff. These were either reported by the staff member who was a target of the alleged discrimination, or by a staff member who witnessed discrimination against a colleague.

15 discrimination reports from staff were dismissed (9%). The majority (13/15) were submitted on behalf of a prisoner; and 11 concerned allegations of verbal racist abuse.

Staff submitted the form after the prisoner reported some racial tension on the wing between white and black prisoners. Investigator could not find any evidence of this claim.

Two of the 15 made an allegation against a fellow staff member. The investigator viewed CCTV and as there was no audio recording to support the allegation concluded that discrimination could not be proven.

One was submitted by a BAME member of staff alleging direct verbal racial abuse from a prisoner. The complaint was dismissed, as the prisoner was found not guilty during the adjudication. Two reports submitted by staff alleged general verbal racial abuse from prisoners and on both occasions the investigator decided that there was insufficient evidence:

A teacher supervising a workshop overheard two prisoners singing a song with strong and clear racist language. The teacher immediately challenged both prisoners and submitted a discrimination report. In the investigation, both prisoners admitted using offensive language, but explained that they were song lyrics and not meant to cause any offense. The investigator concluded that the prisoners would not receive any punishment as there was no direct victim and they were apologetic.

Staff submitted a report that a prisoner displayed racist views when requesting a move to another wing. The staff made an entry in the case notes and placed the prisoner on the basic regime. During the investigation the prisoner admitted saying that there were 'too many black prisoners' and he did not feel safe. The investigator concluded that although the prisoner displayed racist views, it was not sufficient evidence to support the staff allegation.

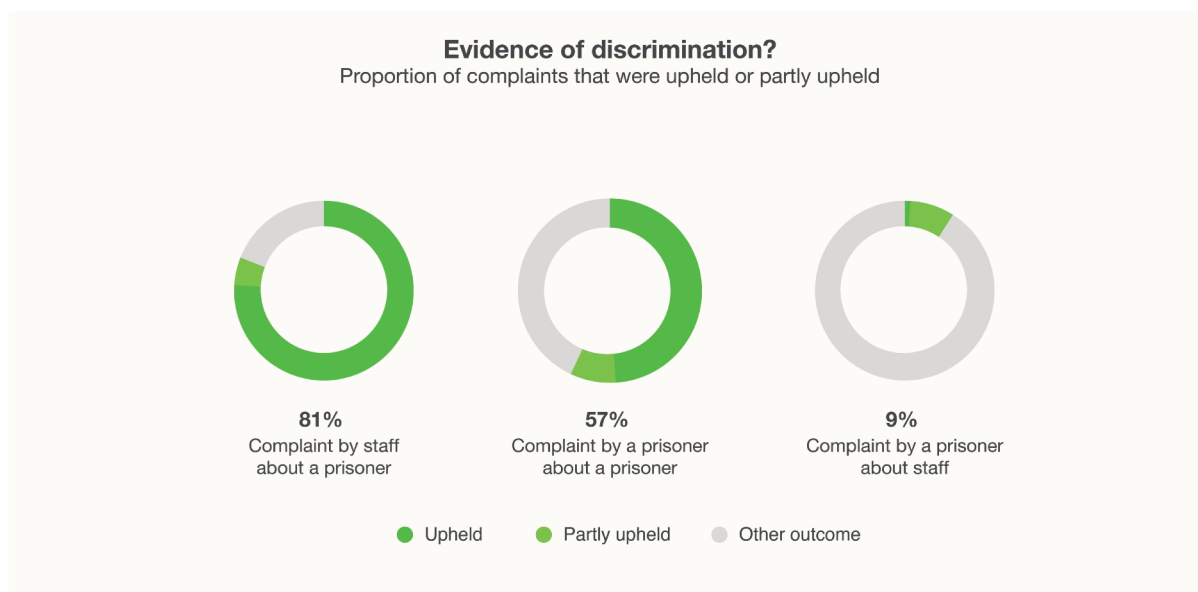
283 reports, submitted by prisoners, made allegations about staff. 160 reports, submitted by staff, accused prisoners of discrimination. Prisoners were far less likely to submit a report making allegations about a fellow prisoner. Of the 389 submitted by prisoners, 73% were about staff, and 39 (10%) were about fellow prisoners.

Staff members submitted only seven reports making an allegation about a fellow member of staff – accounting for just 1% of the discrimination reports analysed. None of these complaints were upheld.

A senior member of staff used inappropriate language in reference to ethnic minority staff which the complainant found highly offensive and racist, especially from a senior colleague. Afterwards, the complainant felt victimised for submitting the discrimination report and wanted an investigation.

Of those submitted by staff alleging discrimination by a prisoner 121/160 (76%) were upheld (or reviewed). Of the reports submitted by a prisoner alleging discrimination by a prisoner 19/39 (49%) were upheld. Thus, complaints about discrimination by prisoners were fairly consistently upheld, regardless of who submitted it [See Tables 7 and 8 in the Appendix].

Of the reports submitted by a prisoner, alleging discrimination by staff, four of 283 (1%) were upheld; 23 (8%) were partly upheld. Thus, there was very little chance that a report submitted by a prisoner accusing an officer of discrimination would be upheld.



[See Table 8 in the Appendix]

As stated above, the three protected characteristics cited most often were race, religion and disability. The number and proportion of upheld reports, for each of these protected characteristics (where the outcome was known) were:

Race	128/431	30%
Religion	11/101	11%
Disability	8/69	12%

[See Tables 9, 10, 11 in the Appendix].

Complaints about Race

Race was cited in 433 discrimination reports. While verbal abuse was cited most often, other concerns sometimes arose, albeit less frequently. These included: routine favouritism, a lack of professionalism, and lack of respect for one's culture. These were not mutually exclusive, as some incidents featured more than one aspect.

Over half of the reports submitted about race (56%) concerned alleged verbal racist abuse, almost half (118 of 241) of which were upheld. Among reports about race concerning verbal abuse, 84 made an allegation against staff; 153, against prisoners. One allegation of verbal racist abuse against staff was upheld (one of 84, 1%) while 117 against prisoners (76%) were upheld [See Table 12 in the Appendix].

The next most common type of race discrimination report concerned unequal access to the regime. For example, one complainant claimed the cleaning officer disliked white prisoners. Reports were also raised when prisoners were prevented from taking part in the regime due to a failure to unlock them. Many of these were based on the complainant comparing his or her treatment to the way other ethnic groups were treated.

About one in ten of the race discrimination reports suggested that an officer had been unprofessional. Examples included allegations that:

An officer spread information about complainant's conviction.
A visitor overheard an officer make homophobic remarks.
An officer engaged in verbal abuse during control and restraint.
An officer wrote 'snitch' on the complainant's property.
Officers failed to protect a prisoner from racist assaults.

None of the discrimination reports alleging unprofessional conduct were upheld; and three-quarters were dismissed.

Claims of more serious misconduct were also reported, including 3 claiming an assault by members of staff. One of these situations occurred during a control and restraint manoeuvre and CCTV was taken as evidence. A second claim was under investigation.

Subtle forms of racial discrimination

In 2005, the Chief Inspector of Prisons described treatment where, in routine functions, people from BAME groups sensed that they were treated less well than white majority prisoners. In the inspectorate's thematic report, "Parallel Worlds", black prisoners were quoted describing:

*being treated differently in the way they were spoken to, searched or 'put behind their doors'; the length of time they waited for valued jobs or enhanced status; where they were seated in the visits room; and the way their visitors were treated. They described being told to come back later or to put in an application when they asked for things that they saw white prisoners receiving straight away.*⁵

Such routine favouritism is difficult to identify, to investigate, to measure, and to counter. The situations are fleeting and leave little evidence on which to make a complaint. Often, the impact on the prisoner does not meet a threshold for a claim of discrimination. So they remain hidden. But, if these concerns are not addressed, they contribute to a sense among BAME prisoners that they will always receive second class treatment in prison.

NOMS Race Review 2008 recognised the importance of such situations and acknowledged that a better response was needed:

... the most significant differences between BME and white prisoners are in perceptions of their relationships with staff, with BME prisoners having more negative perceptions than white prisoners. . . .

These areas of prison life are often difficult to resolve via the complaints process, which was developed to deal with clear-cut incidents of harassment or discrimination. There is more to be done to make the process suitable to handle more covert forms of discrimination. ⁶

A minimum of 61 discrimination reports raised concerns about routine favouritism:

A prisoner feels officer favours white prisoners more.

Officers refused to get his radio from reception for five weeks, though they do things for other prisoners.

Visit was declined; thinks it is because of BME background.”

IEP warning for taking a shower when white prisoners did the same.

Prisoner states he was not allowed to remain out while white prisoners were.

Officers on segregation do not allow showers, calls, exercise. Other prisoners with the same negative behaviour are allowed but they are not black.

No longer on basic and entitled to exercise, but not unlocked for gym.

As these examples show, routine favouritism arises in interactions in which BAME or other protected characteristic groups are less likely to receive the benefits given to their majority group counterparts.

The Interim Report of the Lammy Review considered some treatment that suggested routine favouritism. Commenting on the evidence that men and women from mixed heritage groups, and black men were more often subject to adjudications, the Interim Report states, “that even while in prison, BAME prisoner behaviour is more heavily scrutinised.” ⁷

The discrimination reports about routine favouritism were almost always dismissed or not investigated. 33 were dismissed; six were not investigated; and two were upheld. The current process, with its focus on explicit discrimination, is not equipped to resolve the problems raised by routine favouritism.

The process for reporting racist incidents under PSO 2800 was based on anyone’s perception that a racist incident had occurred. The scope included subtle influences of racial differences on a person’s conduct or language.

DIRFs were designed to handle overt discrimination, capable of being tested by evidence. The treatment must be explicit, and the complainant needs to demonstrate that their protected characteristic was treated unfairly and inequitably. The change means that the prison service’s systems of responding to unfair treatment have become more focused on overt bias and less suited to covert forms.

Patterns of discrimination

Taking one allegation in isolation, it is clearly difficult to build up sufficient, unbiased evidence to prove by the balance of probabilities that discrimination occurred. The investigation notes show a number of complaints where a pattern of behaviour by the same staff member is reported. 55 of the discrimination reports explicitly described a pattern of conduct. Examples included:

Ongoing discrimination and unfair treatment from an officer.

Officer is known to use racist names towards prisoners.

Officer displays Islamophobic views and makes insulting comments towards Islam. Five prisoners witnessed this...

A number of these investigations cited other reports which had made similar allegations against the same member of staff. Not one complaint raised by a prisoner alleging a pattern of discriminatory behaviour by a staff member was upheld. 37 were dismissed; eight were not investigated; and seven were withdrawn.

In one prison at least eight discrimination reports were submitted about the same member of staff by seven different prisoners. Each of these reports was investigated as an isolated case and dismissed for lack of evidence.

Complaints about Religion

Among the 101 reports that cited religion, only about half made explicit a link to religion. In the rest of the discrimination reports the complainant may have perceived that religion had been a contributing factor.

The predominant outcomes for discrimination reports about religion were:

Dismissed	50
Upheld	11
Referred	11
Partly upheld	9
Not investigated	9

[See Table 10 in the Appendix]

Among those explicitly referring to religion, most were about diet or facilitating religious observance, such as going to prayers, or seeing a chaplain of one's own faith.

A prisoner complained that the times to collect canteen were in conflict with his worship times. The complaint was not investigated.

A prisoner complained that his family had brought him things he needed for Ramadan, which had been returned to his family without explanation. This prisoner now had no way of getting the things he needed for observing Ramadan. The investigator found against the complaint, and concluded that the prison had acted in accordance with policy.

Among reports about religion, a high percentage included race. When a prisoner was subjected to verbal abuse, it was not always obvious whether the offensive language applied to race or religion. However, sometimes the links were clear.

A prisoner was taken off the list for Kosher meals and asked to be reinstated. He listed his report under both race and religion, as he considered it possible that there was a presumption that he was not Jewish as he was black. The investigator showed good problem-solving skills by asking the Rabbi to visit the complainant, and then reinstating his Kosher diet.

The investigation notes do not necessarily record data on the complainant's religion or ethnicity. Of those that mentioned religion, about a third were about Islam. It is likely that others, also about Islam, were not listed as such. The complaints from Muslim prisoners mostly concerned verbal abuse and/or unfair treatment from staff and prisoners due to their religion. Such allegations are difficult to prove:

A prisoner complained that during a search of his cell the officer had removed magazines and religious books that he had purchased on canteen. The complainant felt victimised and requested an investigation. The investigator concluded that it was not a matter of discrimination but misuse of power by the officer.

A prisoner complained that another prisoner made offensive comments about the complainant's mother, who attended visits in a Muslim outfit. The alleged perpetrator did not deny the allegation and stated that he had been racially abused by the complainant previously. The investigator challenged both prisoners although there was no evidence of the allegation made by the perpetrator.

Sometimes an investigator provided the prisoners with some explanation:

Two prisoners had a conversation about a documentary on the Iraq war. They were overheard by an officer who made Islamophobic comments and gave a negative entry to both prisoners. The officer also submitted a security alert, alleging that one of them desired to join the war. The investigator concluded that although there were no witnesses, if the prisoner had made such comments, the alert should remain on his record, due to its serious nature. As the prisoners could not produce a third party witness, their complaint was not upheld.

Complaints about religion were more likely than most other types to have been referred to other procedures. In many cases, this was appropriate, especially when faith did not appear to be relevant. For two reports, however, it appeared that the complaint ought to have been considered under discrimination. A prisoner who reported that there was no Kosher diet available was told to speak to the chaplaincy, as this was 'not a discrimination problem'.

Involving prison Imams in investigations of reports submitted by Muslim prisoners could help to resolve the issue:

A prisoner complained that he was told by the officer to pull out his trousers from socks. The prisoner tried to explain that it is against his religious belief to wear trousers over his ankle. The investigator asked the Imam to intervene and the issue was clarified and resolved for all sides involved.

Complaints about disabilities

People with disabilities continue to experience poorer outcomes than other prisoners. According to the Equality Act, 2010, prisons must make reasonable adjustments to ensure that people who have disabilities have full and equitable access. Public services, which include all prisons, must anticipate potentially discriminatory practice, and prevent it from occurring.

Further, under the Equality Act, a lack of provision that results in a disabled person being less able to understand and respond to their particular situation may amount to discrimination.

69 discrimination reports were submitted about disabilities. 65 of these were submitted by prisoners. Few specified the nature of the disability, but 14 stated that they were about medical concerns; seven about physical disabilities; two about mental health and one about a learning disability.

In all, 29 (42%) were dismissed; eight (12%) were upheld; and four (4%) were partly upheld. None submitted by staff was upheld (three of which were not investigated).

Of the eight upheld reports, three were allegations against another prisoner ('discrimination and harassment'); four were complaints that the establishment was failing to meet their needs; and one alleged that an officer discriminated against the complainant:

A complainant stated that he became anxious about having a seizure while in his cell. When he rang the cell bell, the officer who responded issued him with a behaviour warning for using the cell bell. The investigator brought the officer and the complainant together to discuss the incident and ensured that the negative entry was removed from the prisoner's record.

The one report about a learning disability was from a man who had been assessed as having ADHD. His status had been restored to standard after a time on basic and he wanted his television back. The complaint was upheld.

Evidence shows that learning disabilities are prevalent among prisoners. NOMS statistical evidence showed that people with disabilities were disproportionately likely to experience punishment, the use of force, and segregation. Therefore, it would be reasonable to expect a higher number of discrimination reports reflecting the experience of people with learning disabilities. The low percentage suggests a need for an alternative, oral means of lodging a complaint and a more user-friendly process.

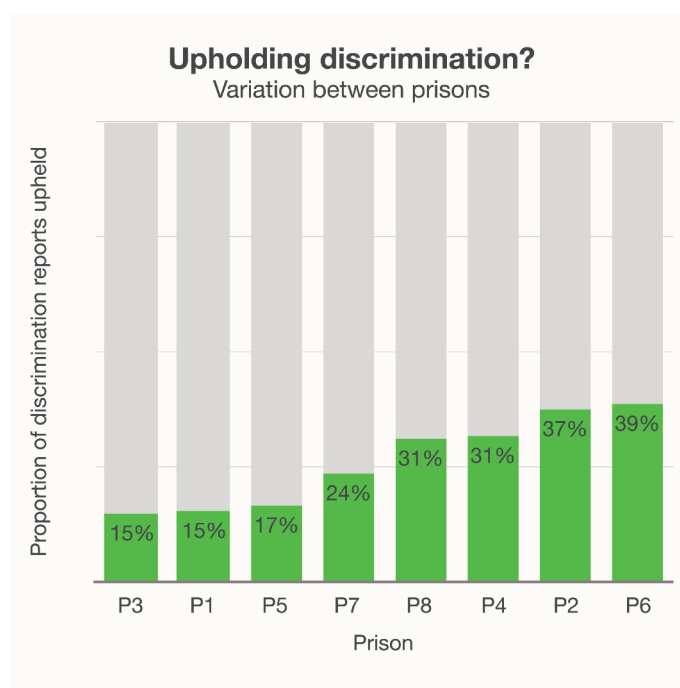
How discrimination investigations were conducted

Different methods used by different equality officers

The data reflected investigations in eight prisons and show significant differences among them.

In 2014, the prisons covered in this report had various arrangements in place for handling discrimination reports: in four prisons, they were investigated by landing officers with equalities duties, in three prisons, investigations were conducted by custodial managers and in only one prison, a dedicated equalities manager (non-uniformed member of staff) was responsible for the investigations.

In the whole sample, the percentage of reports upheld or reviewed ranged from 15% in two establishments to 37% and 39% in two others:



[See Table 13 in the Appendix]

As stated, 8% of reports submitted by prisoners were upheld, ranging from none of 33 in one prison to almost a third (12/38) in another [See Table 14 in the Appendix].

In contrast, 75% of staff-submitted reports were upheld, ranging from 48% to 100% [See Table 15 in the Appendix].

70% of the reports where a prisoner was accused were upheld. The rate varied, from 53% (21/40) in one prison, to four out of four in another [See Table 16 in the Appendix].

Discrimination reports in which staff were accused of discrimination were very rarely upheld (1%), and in four prisons none had been upheld.

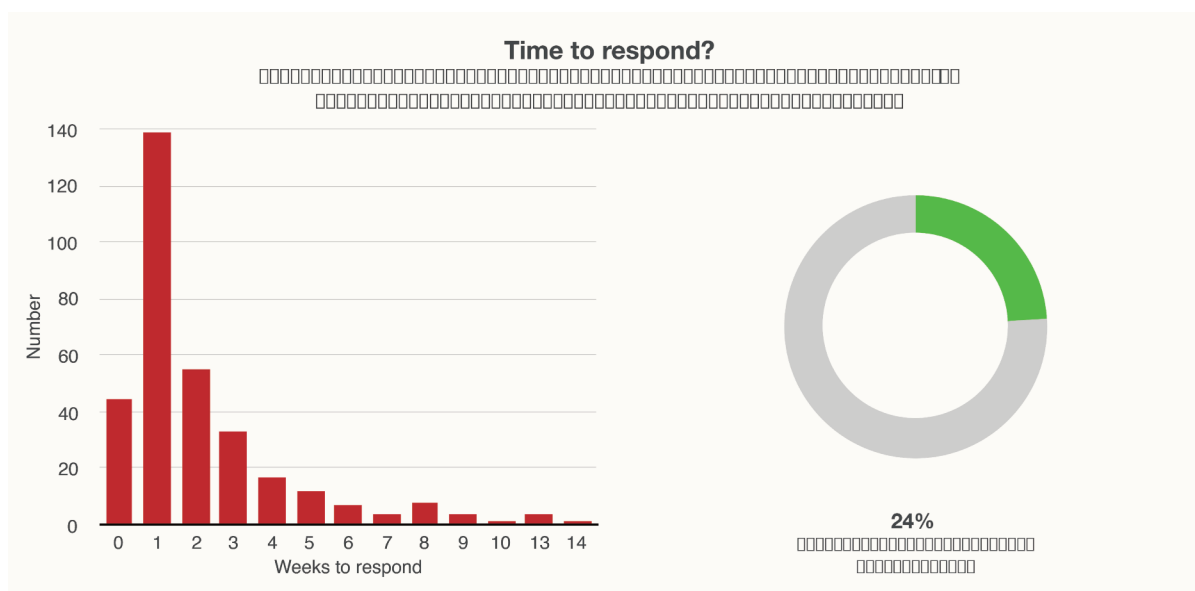
An analysis of discrimination reports about race showed that the proportion upheld ranged 8/62 (13%) to 42% and 47% [See Table 17 in the Appendix].

The rate at which DIRFs about religion were upheld ranged from none in four prisons to 18% in one prison.

How timely were the responses?

Prison investigators must respond to a DIRF within 10 working days (PSI 02-2012 Prisoner Complaints).

Data on the time gap between submission dates and the date of the reply were uneven: 329 listed both dates. 242 were missing dates, but of these 52 were not investigated, 44 were resolved informally, and eight were still pending an investigation. Thus 138 (24%) were missing information which should have been recorded about the response time. In one prison, 38 of 59 were missing one or both of the key dates.



Of the 329 cases for which dates were recorded, 44 (13%) received a reply within a couple of days; 183 (56%) within one week; and 238 (72%) within two weeks. Five in one prison had delayed a reply for ten weeks or more.

Performance was varied across the eight prisons. The prison with the highest number of complaints was also where most responses were given within two weeks (92%). In a second prison, only a quarter received a reply within two weeks. In one prison, over 30% were not investigated, over 10% had delay in the response and over 10% had no sufficient investigation notes provided.

How was the evidence tested (standards of proof)?

Tests of investigations into discrimination are:

- the concern is investigated promptly
- the evidence is weighed against the balance of probabilities
- the investigation is impartial
- the complainant is protected from victimisation (retaliation for making a complaint)
- the reasons for the decision are clearly explained.

PSI 32/2011 does not provide guidance on how investigators should gauge the evidence. However, according to PSI 06/2010,⁸ the standard of proof that should be applied for staff conduct is the balance of probabilities: on the basis of the evidence, it is more likely than not that the alleged event occurred. The more serious the allegation, the more convincing the evidence needs to be. However, the standard is not ‘beyond reasonable doubt’, which is required for criminal law.

Previous research, going back over 15 years, shows that investigators were often unsure of how to test the evidence by the balance of probabilities. As a result, they may set the standard too high, or apply different standards, depending on who submitted the discrimination report.

2001 Judy Clements, Prison Service Race Relations Adviser:

“Without doubt I found a Service, much of which was in denial that racism existed. I found a Service that was without a shadow of doubt institutionally racist. I found a Service where the predominant culture was ... to investigate and find insufficient evidence of racism, or to identify other issues, failing to see or acknowledge and deal appropriately with the racist element.”⁹

2006 The Zahid Mubarek Inquiry

“The failure to recognise racist abuse for what it is was the most obvious manifestation of an even more serious malaise – the lack of intuitive skills on the part of staff to see things against the background of their racial dimension.”¹⁰

2008 NOMS Race Review 2008

“Investigations into race complaints were generally of poor quality: investigators had rarely received training and were poorly supervised by senior managers. Unreasonable standards of proof were imposed, and complaints were hardly ever upheld.”¹¹

In our study, there were a few examples of a fair application of the balance of probabilities test. One complaint stated that officers reimbursed white prisoners whose tobacco went missing, but not the complainant, who was black. The investigator found that no solid evidence suggested that the complainant was lying, so the complaint was upheld.

In other prisons, the dismissal of complaints implied that the threshold was high.

A prisoner complained that an officer was verbally abusive about his religion. The investigator checked with the officer who explained that the prisoner had misunderstood what was said.

Although the balance of probabilities suggests that something was said which the prisoner found it offensive, the investigator concluded that it was ‘not discrimination’.

A complaint about job discrimination prompted the investigator to examine the ethnicity of prisoners holding jobs. He explained that although there was an imbalance, “ethnicity is not taken into account in giving jobs”.

This investigation ignored the hard evidence from the ethnic monitoring. A re-statement of policy was considered by the investigator to constitute evidence against the complaint.

One investigator replied to a number of complaints that they were not convinced of discrimination:

A prisoner complained that other prisoners engaged in verbal racist abuse. The investigator spoke to a senior staff member who witnessed the accused prisoners engaging in verbal abuse, but did not recall any racist comment. The investigator stated: “cannot conclude beyond reasonable doubt that discrimination took place.”

This investigator was applying the wrong standard of proof.

Of 283 complaints made by prisoners about alleged discrimination by an officer, a total of four (1%) were upheld.

There were a few cases in which the investigation uncovered evidence suggesting that a prisoner fabricated a complaint, for example out of anger at being disciplined by an officer.

A prisoner complained of verbal abuse from an officer. The investigator interviewed a prisoner in the next cell who stated that the complainant made the allegations up and had asked him to back up his statement.

There were others in which the full evidence appeared to justify the use of discretion.

But even if these complaints are excluded, it is inconceivable that investigations weighed prisoners’ concerns fairly, when 1% were upheld. Applying too high a threshold of proof means that legitimate concerns are dismissed. It sends a message that discrimination and equal opportunity are not a priority for the prison. When the chances of a prisoner being believed are one in a hundred, they have good reason for having no confidence in the process.

When did the evidence lead to a dismissal of complaints?

The majority of investigations cited the evidence on which a decision had been made, which shed light on how investigators reached a decision. Among complaints submitted by prisoners which were dismissed, the evidence which arose most often – appearing in

about 40% of these cases – was that it came down to the officer’s word against the prisoner’s. In the majority of these cases, the officer’s denial of the claim was considered sufficient.

A number of complaints which alleged ongoing discrimination by the same officer were considered to be the officer’s word against a prisoner’s.

A prisoner complained that an officer had abused him with language he knew to be offensive. The equalities officer interviewed the accused officer who confirmed the comment had been made but denied any intention to offend.

Where differential treatment was alleged, the difference was often justified by investigators by reference to the behaviour of the complainant. In a few cases, it appeared that the investigator dismissed a complaint on the evidence of previous poor behaviour – ‘the complainant is known for bad behaviour’.

In about a third of investigations, the officer’s decision was vindicated by prison policies or rules. For example:

A prisoner complained that an officer removed his second mattress, though others were allowed two. The complaint was dismissed because the policy was one mattress per prisoner.

A prisoner complained about job discrimination. The complaint was dismissed because he had been rejected for the job due to disruptive behaviour.

In some cases the investigator confirmed an inconsistency in applying rules and policies equally to all prisoners, but then denied that racial and/or religious bias could play a part in this.

A prisoner appealed against an IEP sanction for taking a shower at an inappropriate time. He saw two white prisoners taking the shower at exactly the same time and the officer did not challenge them. The relevant officer was interviewed and confirmed that some officers may allow showers at that time, but the rule is that no one should have a shower then and the officer simply followed the rule.

Complaints about the regime on segregation, limited access to showers, being placed on basic for refusing an order, or being placed on report were among those complaints against staff which were dismissed because the investigator concluded that the rules had been applied correctly.

The fact that there was a policy or rule which explained the officer’s actions was not always a sufficient reason to reject the claim. In one case, a prisoner alleged that an officer did not take account of her disability which meant she needed more time to get ready than others. The investigation concluded that staff need to follow the rules of the regime, a response which ignored the duty to make reasonable adjustments for disabilities.

As routine favouritism, patterns of behaviour and more subtle forms of discrimination demonstrate, investigations require equality officers to interpret the information available to them, make judgements about the strength of the evidence, and apply their personal values to the task.

A prisoner stated that he had been sacked unfairly as other people behave worse and they still have their job. The investigator checked with the supervisor who explained that the complainant was sacked for refusing to help when asked.

The investigator had to decide whether, in the specific circumstances, refusing to help out was sufficiently uncooperative to justify the loss of the job.

Two prisoners reported that when they asked for some food an officer offered a pork sandwich.

While it is clear why this caused offence, how could an investigator tell if the officers did this by mistake, or as a deliberate taunt? In one of these cases, the report was partly upheld, as the investigator decided it was a genuine mistake not discrimination, then issued advice to all staff to be careful about diet.

Protection from victimisation

Victimisation, in the context of discrimination reports, means punishing a complainant in retaliation for submitting a complaint. The UN Standard Minimum Rules for the Treatment of Prisoners, Rule 57.2, states:

*Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner . . . must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.*¹²

There were few complaints in which prisoners said they feared being victimised. Investigations usually ignored this aspect of the complaint, as set out below:

*Prisoners want to complain in confidence.
The officer cannot be identified; cannot be investigated.
Prisoner is scared to use non-confidential form as his previous [report] of racist allegations was ignored.
(No response; not investigated.)
Always unlocked last because he complained.
"Complainant wishes to withdraw complaint."*

There was no evidence that the investigations explored the prisoner's reasons for fearing retaliation, nor were steps taken to protect the complainant.

Among the 571 discrimination complaints (392 from prisoners) there was one complaint in which the investigation notes stated that the complainant had been victimised as a result.

The one example of victimisation is egregious, however. A prisoner complained to the equalities officer that another officer was discriminatory. In reaction, the investigator placed the complainant on the list of racist prisoners. Not only was the prisoner punished for making a complaint, it was the investigator who retaliated.

Although other victimisation may have occurred, the available evidence suggests that, in these prisons, most prisoner-complainants were safe from retaliation. Given that as recently as 2008, NOMS acknowledged that prisoners were too often victimised for making a complaint, this is a remarkable achievement.

The 39 defensive discrimination reports showed a very different pattern. A fifth of these investigations stated that the prisoner who alleged racism was given a behaviour warning and/or the allegation was entered on the prisoner's personal file. Some prisoners were listed as racist, a label which would follow the prisoner in other establishments and have serious implications throughout their sentence. In six cases, the prisoner was placed on report (whether or not the prisoner actually submitted a complaint). One prisoner was placed in segregation on the basis that an allegation of staff racism was a threat to the officer.

Explanations of decisions

It is prison service policy that responses to reports of discrimination should include a full explanation. The discussion to follow is based solely on the notes by the investigator recording the response to the discrimination report. It is possible that verbal explanations were sometimes given to complaints that were not recorded.

About one in four responses failed to explain the decision to reject the person's claim.

A prisoner complained about job discrimination. The investigator's explanation was 'no evidence'.

A prisoner wrote that he or she would like to speak to the equalities officer to make a confidential complaint. The response to the prisoner was, 'officer cannot be identified, cannot be investigated.'

Such explanations clearly did not address the person's concerns or point to evidence for dismissing the claim.

For some prisoner-initiated complaints, the investigator dismissed the allegations, but also provided a valid explanation:

A complainant felt that he was not offered a job due to discrimination. The investigation showed that the prisoner had not followed the set procedure for job applications and the investigator showed the prisoner how to do this.

A disabled prisoner argued that requiring him to share a cell was discrimination against his disability. The investigator checked with the health care centre for advice on the possible impact of sharing a cell before concluding that there was no discrimination.

In rare cases, the investigator concluded that the failure to treat someone fairly was human error. For example, a Muslim prisoner complained that he was entitled to attend prayers, but an officer failed to unlock him. In another case:

Responding to a claim of discrimination in applying for a job, the investigator ruled that there had been no discrimination, but recommended that the prison should develop a system that provided fairer access to jobs.

About three out of four complaints by prisoners about officers received a reasonable account of why the complaint could not be upheld. This, too, suggests a considerable improvement in practice since 2008.

Examples of bad practice

A prisoner complained that he was given an IEP warning for being late, though the cause was that he had not been unlocked. The investigation notes state that the CCTV was checked and revealed no sign of intimidation on the part of staff. This finding was based on evidence which was not relevant to the complaint.

A prisoner complained that a named officer failed to respond to his cell bell when he, the prisoner, felt suicidal. The investigator replied that not answering a bell cannot be considered discriminatory and advised the complainant to use another avenue to complain.

A complainant stated that although an officer's name was unknown, he would be able to identify the officer on sight. The investigator closed the case without further investigation due to lack of detail:

“Not investigated as alleged perpetrator cannot be identified.”

One poor practice was referring a discrimination complaint to the individuals who were accused by the complainant.

A prisoner complaint described discrimination from a staff member that he had not received special medical packs he was entitled to. According to the action notes, the complaint was forwarded to the accused member of staff for investigation, but he felt this was unethical and refused to deal with the complaint.

The cases which were categorised as ‘timed out’ highlight another failing, as it is policy that these should be investigated, even if the complainant has left the establishment:

A prisoner complained about ongoing verbal racial harassment from his cell-mate and states that his situation is not taken seriously by officers. The investigator notes that the complaint 'appears to have little racial condition' but concluded that the reports cannot be investigated as the complainant left the establishment.

The 39 defensive DIRFs submitted by staff accounted for 8% of the total complaints which concerned race, and almost one in five of all those submitted by staff (39/208).

An officer complained that the prisoner asked why officer was a racist. The complainant demanded an explanation from the prisoner and as the prisoner could not give any convincing reason, the officer gave the prisoner a negative entry.

Seven defensive reports described negative behaviour by a prisoner which preceded the allegation of racism against the officer. One officer was accused of racial bias when he told a prisoner to turn down loud music; a prisoner was sacked from his job; and another had his television taken away.

A prisoner angrily accused an officer of being racist. The investigator took note of the complainant's language and concluded:

The prisoner admits using swear words, alleged officer would not make racist comments; prisoner was recorded as racist on CNOMIS.

In one case, the officer submitting the report claimed that being accused of racism was 'highly offensive'.

An officer placed the prisoner on a governor's report for being accused of racism. The adjudication was dismissed as the adjudicating governor thought being called racist is not an insult but opinion. The officer was not happy with this outcome. The investigator concludes that it was a reasonable expectation from the officer that the prisoner would be awarded suitable punishment.

Under half of these 39 suggest that an investigator even spoke to the prisoner. Not one of these resulted in an investigator deciding this was a misuse of the process. The majority – over 60% - found against the prisoner.

Examples of good practice

Many of the reports suggested that the circumstances that gave rise to the complaint were complex. In some cases, it was clear that the investigator put considerable effort into checking the facts, consulting colleagues from other disciplines, and considering how to balance conflicting evidence.

A prisoner was warned about the misuse of his cell alarm bell. The complainant explained that he was using the bell to summon help because he was in pain.

The investigator checked with the health care centre and established that the dosage had been decided on medical grounds, and this was explained to the complainant.

A prisoner complained that a member of the chaplaincy sent a representative of the faith to his cell to warn him not to return to their community. The investigator confirmed that the chaplaincy had authorised the visit and promised to investigate the incident further.

A prisoner who had disabilities complained that by forcing him to share cells, the prison was failing to meet his needs. The investigator initiated a care plan and promised to move the complainant to a single cell.

A prisoner was moved to a single cell on security grounds and asked to know the reason. The investigator supported the claim:

“The reason behind this decision is known to security and the prisoner has right to have it explained appropriately.”

DIRFs that were handled well by the investigator demonstrated:

- Empathy for the complainant
- Even-handed explanation of the known facts
- Clear communication of the reasons for the decision
- A problem-solving approach
- Timely response
- Extra investigation notes enclosed to the report detailing what actions were taken.

A problem-solving approach

Resolving the problem is an important test of how well a complaint was handled. The NOMS Race Review 2008 recommended wider use of problem-solving approaches in responding to allegations of racial discrimination:

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.

(NOMS Race Review 2008, page 73)

Consulting the complainant about what he or she would like to see happen would offer a simple first step towards greater satisfaction in the system.

(NOMS Race Review, 2008, page 78)

PRT’s analysis found responses in which the investigator had explored the problem, thought creatively about options and ensured that the practical needs were met.

A prisoner said that he had been dismissed from a job due to a disability. The investigator checked the facts and ensured that the complainant was given a different job.

A prisoner alleged that another prisoner engaged in homophobic taunts. The investigator spoke to the alleged perpetrator and warned him about his language.

A man had come off basic regime but was still denied his television. The investigator checked the facts and reinstated the television.

As this selection shows, investigators responded with problem-solving skills to a wide range of situations. Some of these – providing a prisoner with a job or restoring their television – required investigators to have discretion over resources. Some situations required good relationships with other departments in the prison (e.g., the chaplaincy). The common thread is that the investigator identified the needs beneath the complaint and focused on how to address those needs.

In a small number of responses, investigators acknowledged failings. Vindicating the complainant's grievance in this way was likely to improve relations and build trust.

A prisoner claimed he was discriminated against in being sacked so his job could be given to a white prisoner. The investigator replied that a fairer system of employment needed to be devised to avoid confusion in future.

A prisoner complained about an inappropriate search by an officer. The investigator sent a letter of apology.

A prisoner complained that his canteen was delivered to his cell while he was out and it was stolen. The investigator decided that, while this was not discrimination, the complainant should be compensated.

Although the investigator decided that the last incident was not discrimination, the response resolved the problem for the prisoner. Further, in these investigations, there is an acknowledgement that the prison has a responsibility to provide services equitably.

In two of the eight prisons, about one in four discrimination reports were managed informally, whereas in two others, the rate was much lower at one in seven. Informal methods, such as mediation, may be more effective at solving the person's problem. The prisons inspectorate's Expectations includes the following indicator:

Prisoners are encouraged, where appropriate, to solve areas of dispute informally, before making official complaints. ¹³

Prisoners' confidence in the process of responding to discrimination reports

One test of a complaints process is: How much confidence do prisoners have in the system? Previous research on systems for responding to allegations of racism reveals a longstanding trust deficit in prisons: people from BAME groups have not had confidence that the complaints process would respond fairly to their concerns.

“A Fair Response”, a 2010 report by the Prison Reform Trust, was based on interviews with 71 prisoners from BAME groups. While two-thirds said that they had experienced racial discrimination, most said they had not submitted a complaint. The common explanations for not complaining were:

fearing repercussions; doubting it would be confidential; feeling it would be futile; the incident was not serious enough or too difficult to prove; [and] doubting that the investigator would be impartial. ¹⁴

In 2014, the prisons inspectorate reported:

Black and minority ethnic prisoners still have more negative perceptions of the fairness and effectiveness of complaints systems. Across the adult and young adult estate, 28% of black and minority ethnic prisoners who said that they had made a complaint felt that complaints were dealt with fairly compared with 41% of white prisoners ... ¹⁵

To encourage prisoners to trust that complaints will be handled fairly, complainants must:

- be safe from victimisation (any form of retaliation for raising the complaint)
- see a reasonable prospect of a positive outcome or
- receive an explanation for decisions that go against them.

The response must also be reasonably prompt.

As part of this study, focus groups were conducted in two prisons, and were attended by a total of 21 BAME prisoners. The groups revealed negative perceptions and a lack of confidence in the DIRF process among BAME prisoners. The members were unanimous in their lack of confidence in discrimination complaints process.

Discrimination reports also provide evidence on the nature and extent of negative perceptions. Some refer to an antagonistic culture. Other individual complaints, about a specific aspect of treatment, show patterns when scrutinised in aggregate.

A staff complaint states that the prisoner thinks most white staff in the prison are racist. The prisoner believes that his request to see a nurse would have been accepted if he was white.

A prisoner complaint states that officers allow white prisoners to get away with stuff which are not permitted to black and Asian prisoners.

A prisoner believes that his cell is searched more often than others because he is Muslim. The investigator clarifies that cell search is done based on the intelligence which cannot be shared with prisoners therefore cannot provide any explanation to the complainant.

Previous studies have shown that independent, external scrutiny can help to boost prisoners' confidence in the process. PSI 32/2011 strongly recommends that prisons work with independent, external bodies to maintain the quality of the process through scrutiny of the handling of discrimination reports.

Since 2013, the Zahid Mubarek Trust has provided external scrutiny of the discrimination report forms for prisons in London. The ZMT's Independent Scrutiny Panel project includes monthly or bi-monthly visits to each prison. A panel of trained volunteers examine the investigations into, and responses to, discrimination reports. The panel uses the following criteria to assess the quality of the process: timeframe, investigation details and the response to a complainant. Following each visit, the panel prepares a report, which is discussed at the equalities meetings.

Independent, external scrutiny guards against an unfair or insensitive process:

A system without an independent element is not a system which accords with proper standards of justice...It [an independent adjudicator] would give the whole system a validity which it does not otherwise have. It would act as a spur to the Prison Service to maintain proper standards. It would encourage the resolution of difficulties in advance of an appeal. ¹⁶

The fact that the prisons in this study were open to the contribution of external scrutiny is a significant strength (particularly as it means taking on board criticisms of practice). These prisons have shown similar commitment to transparency and a desire to improve work on equalities by facilitating the analysis on which this report is based. We do not have similar data on other prisons, though it appears that few have external scrutiny.

Implications of this report for the Lammy Review

The focus of the Lammy Review is the disproportionate representation of BAME people at stages throughout the criminal justice system. Regarding prisons, the Review's interim report looked at placement in high secure prisons, adjudications, and decisions about release on temporary licence. Each of these can have an effect on the numbers of people in prison.

People from BAME groups suffer disproportionate rates of segregation, use of force, and the basic regime. These factors can increase the length of stay in custody and are equally relevant to the Lammy Review.

This study of discrimination incidents has brought to light many others areas of prison experience, including job discrimination, verbal abuse, disrespect for religious beliefs, and routine favouritism. Some of these have a direct bearing on the length of time someone spends in custody. Others are important dimensions of a person's experience of prison and can exert a powerful influence on their sense of the system's fairness and legitimacy.

The Interim Report of the Lammy Review suggests an approach which could reduce disproportionality:

One overarching hypothesis worth investigating may be that established principles of oversight, guidance and collective decision-making reduce the effects of any unconscious racial bias that play out in areas of the system where decision-makers exercise a higher degree of individual discretion. ¹⁷

The evidence from this study strongly supports the Interim Report's analysis. Oversight and guidance are needed both in the delivery of services (to ensure that all prisoners are treated fairly) and in the conduct of investigations of complaints about discrimination. There is an urgent need for greater quality control of discrimination investigations and responses. Further, independent, external scrutiny is needed to improve the quality of responses and to build trust among BAME prisoners.

In his open letter to the Prime Minister, David Lammy, MP states that in leading the Review towards a conclusion, he will, "focus on how best to build trust in our justice system among minority communities. It is important that our justice system is seen as legitimate." ¹⁸

Fairness, trust and responsibility are essential characteristics of treating others as persons, with full respect for their dignity. Discrimination is the opposite, defining the other as an object. Thus, fairness, trust and responsibility are crucial remedies. This study may help the Lammy Review to identify aspects of prison management that need to change to build trust.

Fairness, trust and responsibility have specific implications for the process of managing complaints about discrimination. When an institution accepts responsibility for any failure

to deliver fairness, that acknowledgement is very likely to increase trust. When a system of complaints is seen to be stacked against the prisoner-complainant, it is both unfair and – from the prisoners’ perspective – untrustworthy.

Responses to claims of discrimination which can promote responsibility will include:

- Inclusive processes to share ideas about how to resolve the problem
- A range of possible responses, flexibility about remedies
- Providing each stakeholder with information about the problem and the options.

To build trust, complaints must be handled more fairly, prisons must be more efficient in using DIRF data to identify patterns of concern and act to resolve them, and all prisons need to involve independent external scrutiny.

Conclusions

An effective system for dealing with prisoner complaints underpins much of prison life. It helps to ensure that the Prison Service meets its obligation of dealing fairly, openly and humanely with prisoners. It also helps staff by instilling in prisoners greater confidence that their needs and welfare are being looked after, reducing tension and promoting better relations. A prison's equilibrium is more likely to be maintained if prisoners feel they have an accessible and effective means of making a complaint, an outlet for their grievances and confidence that their complaints will be considered properly, with reasons given for decisions. ¹⁹

(Digby Griffith, Director of National Operational Services, NOMS)

A well-managed complaints process:

- Demonstrates a commitment to fairness
- Is impartial, testing complaints by the balance of probabilities
- Meets needs and solves problems
- Checks against staff being conditioned into insensitivity
- Provides evidence for areas of improvement.

When the system of responding to DIRFs is working well, prisoners feel confident about disclosing experiences of discrimination; and managers make good use of data from these complaints to improve their understanding of how disparities and disproportionate outcomes occur. Governors/directors also have a better grasp of why prisoners from groups within the protected characteristics report negative attitudes from staff.

This study has shown that the official response to prisoner reports of discrimination worked quite well when prisoners were alleged to have caused discrimination. It was sometimes effective when the problem arose through a breakdown in systems within the prison. There were also some investigations that showed strengths on which prisons can build: including empathetic responses and problem-solving. Further, this evidence suggests that - with the exception of 'defensive' DIRFs, prisoners who submitted a complaint were very rarely victimised - a significant improvement in the handling of discrimination reports since 2008.

But the official response to prisoners' experience of discrimination from staff was not functioning. The Equality Strategy 2015-2017 advised prisons to invite 'equality related feedback from offenders in custody'. Yet while discrimination investigations could provide a vital window into prisoners' experience, the investigations routinely dismissed concerns raised by a prisoner.

Similarly, the Chief Inspector of Prisons observed:

In general, where there was equality monitoring, there was too little use of the data to help improve outcomes for protected groups. ²⁰

Disproportionate outcomes tell only part of the story: the reports submitted by prisoners also shed light on their sense of staff-prisoner relationships. Prisoners' allegations of discrimination by staff were upheld in four of 283 cases (1%). When a series of reports indicated a pattern of discrimination from an officer, not one was upheld.

The current system, with its focus on explicit discrimination, is not equipped to resolve the problems raised by routine favouritism. NOMS Race Review 2008 identified subtle forms of racial discrimination as an area requiring further work. In 2016, the challenge of recognising and addressing implicit racism and religious intolerance remains. Very few investigations showed an understanding that an allegation against an officer brought to light polarised perceptions which needed to be discussed by the parties involved in order to 'clear the air' and improve relations (the third public sector equality duty).

The Equality Act 2010 required the criminal justice system to eradicate discrimination, provide equal opportunities, and promote harmonious relations between groups. Six years on, this research shows that prisons are failing to meet their public sector equality duties. As the prisons struggle to cope with fewer staff and a sharp rise in violence and self harm, fairness and equality have slipped down the agenda. The process for handling complaints about discrimination, which has a vital role in meeting the equality duties, is poorly supported, weighted against prisoner complaints, and fails to earn the confidence of prisoners.

Where officers deliberately abuse their authority to discriminate against any protected group, managers need to be alert to patterns arising through discrimination reports and take firm action.

Responses to many claims of discrimination, involving routine favouritism, differential treatment, and the questionable use of discretion should be managed through a different process, which is open and neutral, making it more likely to earn the trust of prisoners. It must offer non-punitive options, so that officers see opportunities to learn more about the prisoners they work with and the skills demanded by their duties of care. The process should focus on transparent explanations to aid mutual understanding, rather than blame and sanctions. Finally, the process should be designed so that it promotes, among prison officers as well as prisoners, a positive commitment to equality and a sense of responsibility to make that work.

Recommendations

For the government:

Establish within HM Prison and Probation Service an external prison equality advisory group, comprised of representatives from voluntary sector agencies whose direct contact with prisoners will enable them to comment on equality policies and emerging problems in meeting the three public sector equality duties.

For the HM Prison and Probation Service:

The DIRF process is essential to enable prisons to fulfil their public sector equality duties. A distinct process for responding to claims of unfair discrimination must be maintained and strengthened.

The DIRFs process should increase mutual understanding. To do this, the response needs to give legitimacy to diverse perspectives on the same event. The adversarial nature of investigations increases defensive reactions and hinders learning about different perspectives. Prisons need to have a wider range of possible responses, available to prisoners and staff, providing options to fit different types of discrimination. The toolkit should include:

- problem-solving
- mediation
- compensation
- apologies
- outside expertise
- mandatory training for staff who attract a number of complaints
- discipline for those who are deliberately discriminatory.

Few responses to discrimination complaints demonstrated problem-solving skills. Every DIRF should be examined in this way. The investigation of discrimination reports submitted by prisoners should begin by asking complainants what they want to happen as a result of the investigation, and seek to address the needs the person has raised.

Part of improving the DIRF process must be to make it accessible to people who have learning disabilities. This means simplifying the process and ensuring that it is available through oral means as well as in written form.

This study found 'defensive DIRFs' across all eight prisons. Defensive DIRFs are an abuse of the system. HMPPS must ensure that managers are vigilant in rejecting the defensive use by staff of discrimination reports. Appropriate training and staff supervision should inform prison staff about the legitimate purposes of the DIRF process.

For Prison Governors/Directors:

Governors need to improve the functioning of the DIRF system – for example, by ensuring that DIRF forms are freely available on every wing and that equality officers are properly resourced and trained so that they have the skills and authority required.

Senior Management Teams (SMTs) should receive and discuss a report on the recent topics raised by DIRFs, at least on a monthly basis, so that SMTs can gain insights into areas causing concern. SMT meetings should include action points to rectify areas causing widespread concern.

Governors should ensure that investigators' (equality officers) responses include an explanation of the reasons for their decision, as well as a way of recognising the complainant's point of view. Wherever possible, equality officers should meet the person who made the complaint to convey their findings directly.

Where a DIRF is not upheld, prisons should consider:

- How the response might address the complainant's concerns (problem-solving)
- How the follow-up of the finding can support the prisoner and reassure them that their concerns have been taken seriously. For example, the prison could stipulate that a prisoner equality rep will visit every prisoner whose complaint is dismissed or not investigated, to give them support in dealing with the rejection.

Prisons should consult prisoners regularly (at least annually) on how well the DIRF process is working; this will help to measure confidence, and provide feedback about how to improve performance.

Prison governors/directors should work with independent, external organisations who can scrutinise investigations of complaints. The external organisations should advise the equality officer (making the process more impartial); and guide the prison in interpreting equality data.

Appendix: Statistical tables

Table 1. Who submitted discrimination reports?

		Submitted by		
		Frequency	Percent	Valid Percent
Valid	prisoner	392	68.7	69.6
	staff	169	29.6	30.0
	anonymous	1	.2	.2
	visitor	1	.2	.2
	not specified	8	1.4	
	Total	571	100.0	100.0

Table 2. Who was accused of discrimination?

		Who was accused		
		Frequency	Percent	Valid Percent
Valid	Officer or officers	292	51.1	52.0
	Prisoner	200	35.0	35.6
	Multiple	32	5.6	5.7
	Establishment	31	5.4	5.5
	Others	7	1.2	1.2
	Total	562	98.4	100.0
Missing	Missing	9	1.6	
	Total	571	100.0	

Table 3. Which protected characteristics were reports of discrimination about?

		Protected characteristic		
		Single	multiple	percent of aggregate
Valid	race	359	433	62.0
	religion	48	101	14.5
	disability	27	69	9.9
	age	1	26	3.7
	gender	3	25	3.6
	sexual orientation	11	22	3.2
	pregnancy	2	2	.3
	general discrimination	1	1	.1
	other	19	19	2.7
	Total	471	698	100.0
	race & religion	20	45	
	missing	8	8	
	Total	571		

Table 4. Outcomes of reports of discrimination (in all)

		Outcome		
		Frequency	Percent	Valid Percent
Valid	Dismissed	217	38.0	38.6
	Upheld	153	26.8	27.2
	Partly upheld	40	7.0	7.1
	Not investigated	39	6.8	6.9
	Delayed	28	4.9	5.0
	Referred	26	4.6	4.6
	Complainant withdrawn	22	3.9	3.9
	Timed out	20	3.5	3.6
	Other	17	3.0	3.0
	Total	562	98.4	100.0
Missing	Missing	9	1.6	
Total		571	100.0	

Table 5. Outcomes depending on who was accused

			Outcome * Who is accused Crosstabulation					Total
			Who is accused					
Outcome			Officer or officers	Prisoner	Establishment	Others	Multiple	
Dismissed	Count		175	20	12	2	7	216
	% within Who is accused		60%	10%	39%	29%	22%	39%
	Upheld	Count	4	140	5	0	4	153
	% within Who is accused		1%	70%	16%	0%	13%	27%
	Partly upheld	Count	24	11	2	0	3	7%
	% within Who is accused		8%	6%	6%	0%	9%	7%
	Not investigated	Count	24	4	3	2	6	7%
	% within Who is accused		8%	2%	10%	29%	19%	7%
	Delayed	Count	19	4	2	1	2	5%
% within Who is accused		7%	2%	6%	14%	6%	5%	
Referred	Count	11	2	6	1	5	4%	
% within Who is accused		4%	1%	19%	14%	16%	4%	
Complainant withdrawn	Count	18	3	0	1	0	4%	
% within Who is accused		6%	2%	0%	14%	0%	4%	
Timed out	Count	10	6	0	0	4	4%	
% within Who is accused		3%	3%	0%	0%	13%	4%	

Table 6. Outcomes by who submitted the report

Outcome * Submitted by Crosstabulation

			Submitted by					Total
			prisoner	staff	anonymous	visitor	missing	
Outcome	Dismissed	Count	201	15	0	0	1	217
		% within Submitted by	52%	9%	0%	0%		39%
	Upheld	Count	32	121	0	0	0	153
		% within Submitted by	8%	72%	0%	0%		27%
	Partly upheld	Count	31	9	0	0	0	40
		% within Submitted by	8%	5%	0%	0%		7%
	Not investigated	Count	32	7	0	0	0	39
		% within Submitted by	8%	4%	0%	0%		7%
	Delayed	Count	24	3	0	1	0	28
		% within Submitted by	6%	2%	0%	100%		5%
	Referred	Count	26	0	0	0	0	26
		% within Submitted by	7%	0%	0%	0%		5%
	Complainant withdrawn	Count	20	2	0	0	0	22
		% within Submitted by	5%	1%	0%	0%		4%
	Timed out	Count	14	5	1	0	0	20
		% within Submitted by	4%	3%	100%	0%		4%
	Other	Count	10	7	0	0	0	17
		% within Submitted by	3%	4%	0%	0%		3%
Total		Count	390	169	1	1	1	562
		% within Submitted by	100%	100%	100%	100%	100%	100%

Table 7. Outcomes of DIRFs submitted by staff

DIRFs Submitted by staff: Outcomes * Who is accused Crosstabulation

			Who is accused				Total
			Prisoner	Officer or officers	Establishment	Others	
Outcome	Upheld	Count % within Who is accused	121 76%	0 0%	0 0%	0 0%	121 72%
	Dismissed	Count % within Who is accused	12 8%	2 29%	1 100%	0 0%	15 9%
	Partly upheld	Count % within Who is accused	8 5%	1 14%	0 0%	0 0%	9 5%
	Not investigated	Count % within Who is accused	3 2%	3 43%	0 0%	1 100%	7 4%
	Timed out	Count % within Who is accused	5 3%	0 0%	0 0%	0 0%	5 3%
	Delayed	Count % within Who is accused	2 1%	1 14%	0 0%	0 0%	3 2%
	Complainant withdrawn	Count % within Who is accused	2 1%	0 0%	0 0%	0 0%	2 1%
	Other	Count % within Who is accused	7 4%	0 0%	0 0%	0 0%	7 4%
	Total	Count % within Who is accused	160 100%	7 100%	1 100%	1 100%	169 100%

Table 8. Outcomes of DIRFs submitted by prisoners

			Who is accused					Total
			Officer or officers	Prisoner	Multiple	Establishment	Others	
Outcome	Dismissed	Count	173	8	7	11	2	201
		% within Who is accused	61%	21%	22%	37%	40%	52%
	Not investigated	Count	21	1	6	3	1	32
		% within Who is accused	7%	3%	19%	10%	20%	8%
	Upheld	Count	4	19	4	5	0	32
		% within Who is accused	1%	49%	13%	17%	0%	8%
	Partly upheld	Count	23	3	3	2	0	31
		% within Who is accused	8%	8%	9%	7%	0%	8%
	Referred	Count	11	2	5	6	1	25
		% within Who is accused	4%	5%	16%	20%	20%	6%
Delayed	Count	18	2	2	2	0	24	
	% within Who is accused	6%	5%	6%	7%	0%	6%	
Complainant withdrawn	Count	18	1	0	0	1	20	
	% within Who is accused	6%	3%	0%	0%	20%	5%	
Timed out	Count	10	0	4	0	0	14	
	% within Who is accused	4%	0%	13%	0%	0%	4%	
Other	Count	5	3	1	1	0	10	
	% within Who is accused	2%	8%	3%	3%	0%	3%	

Table 9. Outcomes for reports about race

		About Race Outcomes			
		Frequency	Percent	Valid Percent	
Valid	Dismissed	166	38.3	38.5	
	Upheld	128	29.6	29.7	
	Partly upheld	28	6.5	6.5	
	Not investigated	26	6.0	6.0	
	Complainant withdrawn	17	3.9	3.9	
	Delayed	17	3.9	3.9	
	Referred	17	3.9	3.9	
	Timed out	15	3.5	3.5	
	Other	17	3.9	3.9	
	Total	431	99.5	100.0	
	Missing	Missing	2	.5	
	Total		433	100.0	

Table 10. Outcomes for reports about religion

		About Religion Outcomes		
		Frequency	Percent	Valid Percent
Valid	Dismissed	50	49.5	49.5
	Referred	11	10.9	10.9
	Upheld	11	10.9	10.9
	Partly upheld	10	9.9	9.9
	Not investigated	9	8.9	8.9
	Delayed	6	5.9	5.9
	Complainant withdrawn	1	1.0	1.0
	Timed out	1	1.0	1.0
	Other	2	2.0	2.0
	Total	101	100.0	100.0

Table 11. Outcomes for reports about disabilities

About Disabilities Outcomes				
		Frequency	Percent	Valid Percent
Valid	Dismissed	29	42.0	42.0
	Not investigated	11	15.9	15.9
	Referred	10	14.5	14.5
	Upheld	8	11.6	11.6
	Delayed	4	5.8	5.8
	Partly upheld	3	4.3	4.3
	Complainant withdrawn	2	2.9	2.9
	Timed out	1	1.4	1.4
	Other	1	1.4	1.4
	Total	69	100.0	100.0

Table 12. About Race and Verbal Abuse – Outcomes by who accused

About Race & verbal abuse		Who is accused	
		Officer or officers	Prisoner
Outcome	Upheld	1	117
	Dismissed	55	11
	Partly upheld	6	8
	Complainant withdrawn	11	1
	Not investigated	5	4
	Delayed	1	1
	Referred	2	1
	Timed out	1	4
	Other	2	6
Total		84	153

Table 13. Outcomes by prison

Percent of DIRFs upheld by prison			
	# submitted	# upheld	% upheld
P1	79	12	15%
P2	59	22	37%
P3	41	6	15%
P4	54	17	31%
P5	42	7	17%
P6	44	17	39%
P7	42	10	24%
P8	199	62	31%
Totals	560	153	27.3%

Table 14. Percent submitted by prisoners upheld; by prison

Percent of DIRFs submitted by prisoners upheld; by prison			
	# submitted	# upheld	% upheld
P1	70	4	6%
P2	38	12	32%
P3	37	3	8%
P4	33	2	6%
P5	33	0	0%
P6	20	2	10%
P7	34	5	15%
P8	124	6	5%
Totals	389	34	8.7%

Table 15. Percent about race submitted by staff upheld; by prison

Percent of DIRFs submitted by staff upheld; by prison			
	# submitted	# upheld	% upheld
P1	9	8	89%
P2	21	10	48%
P3	3	3	100%
P4	21	15	71%
P5	9	7	78%
P6	24	17	71%
P7	7	5	71%
P8	75	56	75%
Totals	169	121	71.6%

Table 16. Percent upheld; prisoner accused; by prison

	Percent upheld		prisoner accused	
	# submitted	# upheld	% upheld	
P1	10	8	80%	
P2	40	21	53%	
P3	4	4	100%	
P4	23	16	70%	
P5	10	7	70%	
P6	24	17	71%	
P7	7	8	73%	
P8	78	58	74%	
Totals	196	144	73%	

Table 17. About race outcomes by prison

About Race: Prison * Outcomes Crosstabulation

		Outcome								Total	
		Dismissed	Upheld	Partly upheld	Not investigated	Complainant withdrawn	Delayed	Referred	Timed out		Other
Prison	1	27	8	5	10	2	5	4	0	1	62
	2	9	17	5	0	1	0	0	4	4	40
	3	1	6	0	9	1	2	2	4	1	26
	4	19	14	2	1	1	1	0	1	0	39
	5	19	5	2	0	2	0	1	0	0	29
	6	7	16	3	3	0	1	3	1	0	34
	7	9	7	3	1	0	2	2	3	1	28
	8	75	55	8	2	10	6	5	2	10	173
Total		166	128	28	26	17	17	17	15	17	431

Endnotes

- 1 Prisons and Probation Ombudsman for England and Wales, Annual Report, 2015-2016
http://www.ppo.gov.uk/wp-content/uploads/2016/09/PPO_Annual-Report-201516_WEB_Final.pdf#view=FitH.
- 2 Government Equalities Office (2011) Equality Act 2010: Public Sector Equality Duty, online:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85019/equality-duty.pdf;
accessed 5 October, 2016.
- 3 See NOMS (2012) Prison Service Instruction 32/2011: Ensuring Equality.
- 4 The statistics presented in the text are provided in full in the Appendix. Percentages refer to the valid responses, and exclude missing data.
- 5 HM Inspectorate of Prisons (2005) Parallel Worlds: A thematic review of race relations in prison, online:
<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/06/Parallel-Worlds.pdf>;
accessed 5 October 2016.
- 6 NOMS (2008) Race Review 2008, page 15, online:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294157/1000439crace_review_part_1.pdf; Accessed 5 October 2016,
- 7 Ministry of Justice (2016) Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales, by Noah Uhrig: The Interim Report of the David Lammy Review, page 25; online:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/568680/bame-disproportionality-in-the-cjs.pdf
- 8 NOMS (2012) Prison Service Instruction 06/2010: Conduct and Discipline (re-issued July 2013), National Offender Management Service.
- 9 Commission for Racial equality (2001) "Investigation of the Prison Service" 18 September, 2001: Lincoln's Inn Old Hall.
- 10 Keith, Justice Brian (2006) The Zahid Mubarek Inquiry Report, Volume 1, page 421.
- 11 NOMS (2008) Race Review 2008, page 62.
- 12 United Nations (2015) United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); online:
<https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>; accessed 5 October 2016.
- 13 HMIP (2012) Expectations, Version 4, Expectation 28: Complaints; online:
<http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/adult-expectations-2012.pdf>; accessed 22 December, 2016.
- 14 Prison Reform Trust (2010) "A Fair Response: developing responses to racist incidents that earn the confidence of black and minority ethnic prisoners", page 6. Online:
http://www.prisonreformtrust.org.uk/uploads/documents/fair_response.pdf; accessed 24 November 2016.
- 15 HM Inspectorate of Prisons (2014) Report of a review of the implementation of the Zahid Mubarek Inquiry Recommendations, page 30; online:
<http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/Mubarek-final-published.pdf>; accessed 24 November 2016.
- 16 Lord Woolf, Woolf Report, cited in Prison Reform Trust (2016) Strangeways: 25 years on, page 30; online:
<http://www.prisonreformtrust.org.uk/Portals/0/Documents/woolf25250315FINALilo.pdf>
- 17 Ministry of Justice (2016) Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales, pages 29-30; online:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/568680/bame-disproportionality-in-the-cjs.pdf
- 18 David Lammy, MP (2016) Open Letter to the Prime Minister, online:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/569218/open-letter-to-prime-minister.pdf
- 19 Digby Griffith, Director of National Operational Services, NOMS, (2012) Prison Service Instruction 02/2012, Executive Summary.
- 20 HM Chief Inspector of Prisons (2016) HMIP Annual Report 2015-2016

A fair system of responding to complaints about discrimination is vitally important in prisons. When someone believes they have been discriminated against, there needs to be a fair investigation to decide what happened and what might need to be done to resolve the problem.

Tackling Discrimination in Prison is published jointly by the Prison Reform Trust and the Zahid Mubarek Trust. The prison service allowed us to examine over 600 allegations about discrimination, to analyse what complaints were about, how they were investigated, and what the outcomes were for people who submitted a complaint. This is the first study of how prisons respond to reports of discrimination since the system started.

The evidence suggests that over the past few years, while prisons have been under pressure due to staffing cuts and increasing violence, the systems for maintaining equality have slipped down the priority list. Very few complaints about discrimination by staff were upheld. The report recommends that the prison service should strengthen the distinct process for investigating claims of discrimination. Investigations should make greater use of problem-solving, mediation, and outside expertise to address the problems that gave rise to the complaints.