

Building Trust

How our courts can improve the criminal court experience for Black, Asian, and Minority Ethnic defendants

Executive Summary

A trust deficit

Trust in the fairness of our courts is key to the legitimacy of the criminal justice system. Our courts are charged with guaranteeing our fair and equal treatment before the law. But, while the British judicial system has a reputation as one of the fairest in the world, our criminal justice system does not command the trust of our Black, Asian, and Minority Ethnic (BAME) citizens. A majority (51%) of British-born BAME people believe that the criminal justice system discriminates against particular groups and individuals, compared to only 35% of the British-born white population. David Lammy MP, who is currently leading a government review of race and the criminal justice system, has described this as the 'trust deficit'.

Why trust matters

The fact that the justice system does not command the trust of BAME citizens is concerning in itself. But this report suggests that this lack of trust has two specific negative consequences:

- It may be leading to **BAME defendants receiving more severe sentences by making them less likely to plead guilty**. Defendants who plead guilty at the first opportunity receive a one-third reduction in their sentence. But male BAME defendants are 52% more likely to plead not guilty in Crown Courts than similar white defendants. The reason for this is, at least in part, due to a mistrust in the courts and criminal justice system. Recent research shows that this higher level of not-guilty pleas explains why defendants from BAME backgrounds are more likely to be sent to prison by courts than white defendants.
- Perceptions of unfair treatment within the court process and lower levels of trust in the courts are likely to **increase the chances that BAME offenders will go on to offend again**.

The origins of the trust deficit

This report indicates that the origins of this trust deficit are, in part, based on significant racial disparities at court:

- **Adult BAME defendants are more likely to have their cases heard in a Crown Court and, when there, are more likely to go to custody**, than similar White defendants. BAME defendants are 45% more likely to have their cases heard in a Crown Court, 16% more likely to be remanded in custody, and 8% more likely to get a prison sentence than similar white defendants.
- **These disparities are most severe for black men**. They are 40% more likely to go to a Crown Court, 26% more likely to be remanded in custody, and 12% more likely to receive a prison sentence than similar white defendants.
- **There are certain offence categories that have particularly acute disparities**. For example, for drugs offences, there are 141 black men in prison - remand and sentenced - for every 100 white men. For every 100 white women handed prison sentences at Crown Courts for drug offences, 227 black women were given prison sentences.
- **BAME defendants are more likely to feel the criminal court process has not been fair to them**, with a significant minority believing this is because of their ethnicity.
- **The causes of these disparities are complex**. It is unclear to what extent they result from the acute racial imbalance in the flow of cases into court, from comparative differences in the seriousness of the offences committed, from the cumulative effects of disparity (e.g. the extent to which disparity in remand may impact decisions further down the process) or from whether 'unconscious bias' effects decision making within the court process.

Recommendations for building trust

Having reviewed approaches to building trust and tackling racial disparity in four similar countries, Australia, Canada, New Zealand and the USA, this report recommends that our courts can improve the experience of court for BAME defendants in the following ways:

- The Ministry of Justice should work with Her Majesty's Courts and Tribunals Service (HMCTS) to expand **existing data on racial disparity in the adult criminal court system**, by:
 - Ensuring that ethnicity data on magistrates' courts is brought into line with that of Crown Courts, especially around remand and plea decisions.
 - Creating data on access to justice, especially on legal representation, that can be analysed by ethnicity as well as by other diversity considerations.
 - Commissioning research on BAME perceptions of fairness in the court process.
- The Ministry of Justice should require that each local justice area (as defined by police force boundaries), **bring together agencies from across the criminal justice system to look at their local rates of racial disparity and produce action plans**, led by either the Police and Crime Commissioner or the Local Criminal Justice Board, to reform any identified policies and practices that create such disparity.
- **HMCTS should ensure that making the court process feel fairer for all defendants is at the heart of its court reform programme**, by:
 - Providing clearer explanations of the court process, before, during, and after court for all court users.
 - Training judges, magistrates, and court staff in better courtroom engagement between defendants, judges, and court staff.
 - Reviewing how online and virtual court processes can be exploited to increase the perceptions of fairness for all defendants.
 - Considering how judicial and magistrates' procedural fairness performance is considered within their performance appraisals.
 - Introducing more local, pop-up courts in civic buildings in more accessible locations and building support, mentoring, and aftercare services around the court process involving local civic organisations and services.
- **The HMCTS court reform programme should ensure that the criminal court system engages and understands the communities within which it works**, by:
 - Introducing ways of measuring, consistently and over time, the perceptions of fairness of victims, witnesses, and defendants in the court process.
 - Requiring each area sets out how they participate in wider community engagement initiatives, especially to excluded minority groups and families of defendants, as they develop and deliver their plans of action locally.

In making these recommendations, we are not so naïve to argue that courts can, on their own, overcome the current trust deficit. And while greater efforts need to be made across the justice system to build trust, we also recognise that many of the answers will lie outside the justice system. But the recommendations we have made are of special importance because the evidence suggests that they could play a role in building the trust of all our citizens in our justice system. We all want our courts to treat people equally, regardless of their background or the colour of their skin. Building trust in the justice system is everyone's responsibility, and we believe the strategies we outline in this report can, if implemented by our courts, make a positive contribution to achieving that shared goal.

About this Paper

Context and purpose of the research

Research over the past three decades has consistently shown that Black, Asian, and Minority Ethnic (BAME) defendants regularly experience less favourable treatment and outcomes in our criminal justice system. To bring new focus to the issue in 2015, Prime Minister David Cameron commissioned David Lammy MP to chair an independent review of the treatment of BAME defendants¹ in the criminal justice system of England and Wales.

While the Lammy Review is looking at the criminal justice system from arrest onwards, this report focuses on racial disparity in the adult criminal court process. Our courts are a vital part of our criminal justice system and our constitution. While many of us have little or no contact with courts in our lifetime, they help protect our rights as citizens to equal and fair protection and due process under the law. They are both symbols and guarantors of fairness in society. Our criminal courts play a crucial role in providing us all a neutral and impartial arbiter in our relationship with the power of the state.

In this context, this paper sets out to summarise the existing evidence on racial disparity² in adult criminal courts in England and Wales and document and analyse strategies that other countries have used and are using to address this issue.

The scope of our research

In looking at strategies to tackle disparity we focus on four English-speaking countries with common law legal systems: Australia, Canada, New Zealand, and the USA. We conducted research via a literature review as well as discussions with colleagues in the different jurisdictions to capture newer innovations not represented in the research literature.

To focus our work, we chose to exclude the experience of BAME defendants in youth, family, or civil courts, or in tribunals, the experience of BAME victims and witnesses in adult criminal courts, and issues of disparity for other minority groups in the criminal justice system.

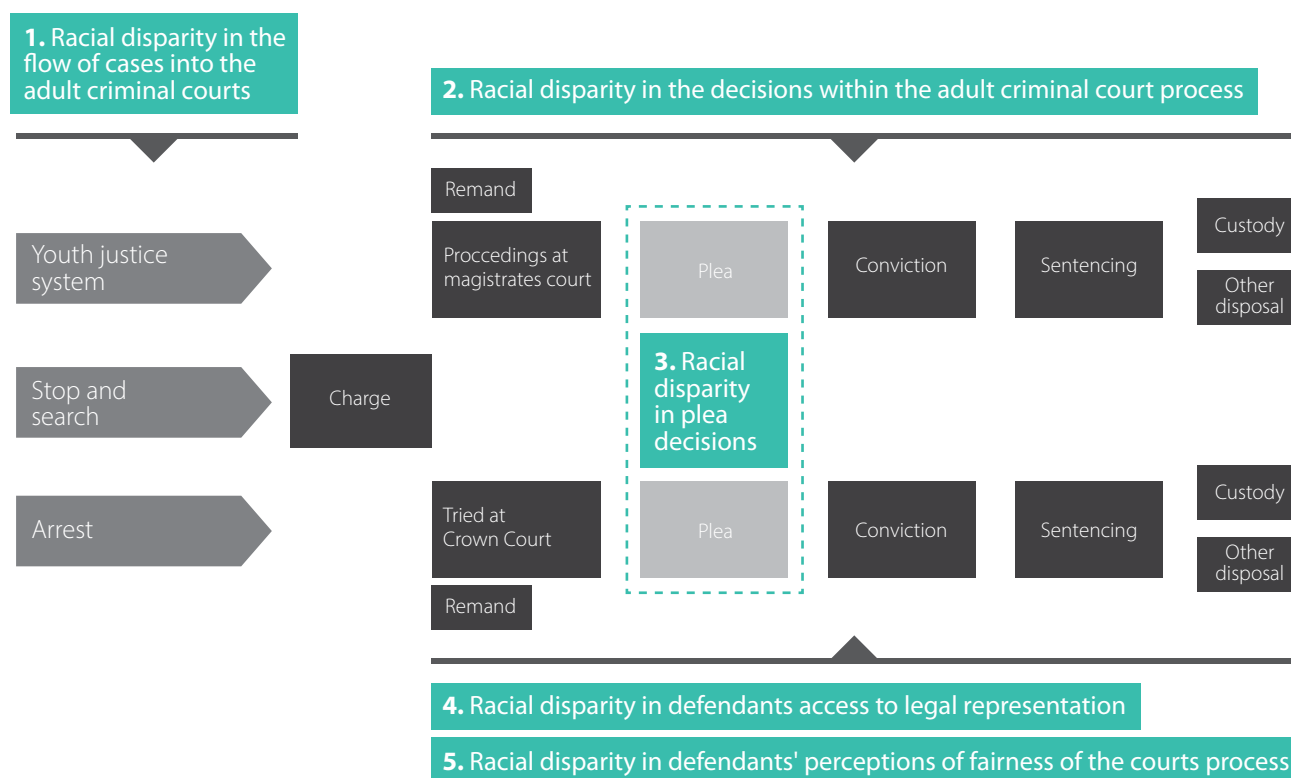
1. Racial disparity in our criminal courts

Research has found that there are a range of racial disparities in the adult criminal court process, extending from the charging decisions that precede the first appearance of the defendant all the way to the point of sentence.

In our analysis, we have looked at evidence across four areas (Figure 1): (i) Racial disparity in the flow of cases into court; (ii) Racial disparity in the decisions within the adult criminal court process; (iii) Racial disparity in plea decisions; (iv) Racial disparity in access to legal representation and (v) Racial disparity in perceptions of fairness of the court process.

Further data are included in Appendix 1.

Figure 1: Understanding racial disparity



1.1 Racial disparity in the flow of cases into court

There is significant evidence that there is racial disparity in the flow of cases into court, owing to patterns of police contact:

- Latest national stop-and-search figures³ show that BAME individuals are twice as likely to be stopped and searched compared to white individuals.
- BAME adult men and women are 75% and 23% more likely to be arrested, respectively, with adult black men over 3 times more likely to be arrested, compared to similar white men.⁴ Moving to individuals under the age of 18, BAME individuals are 35% more likely to be arrested, with young black men nearly three times more likely to be arrested, compared to white individuals.⁵

There is also evidence that BAME adults are more likely to have had contact with the youth justice system when they were younger, which is likely to increase their contact with the adult criminal justice system:

- Young black and mixed race individuals and those with unknown ethnicity were less likely than young white individuals to receive a pre-court disposal, increasing their chances of more formal prosecution.⁶
- BAME young men who have been arrested are 5% more likely to be charged compared to similar white young men.⁷
- BAME young men who have been charged are 72% more likely to be tried at a Crown Court, compared to similar white young men.⁸
- BAME young men who have been convicted are 21% more likely to receive a custodial sentence, with black and mixed race young men significantly more likely to receive a custodial sentence compared to similar white young men.

Of young people in custody, 44% are BAME. This proportion has risen over time, as the youth custodial population has decreased.⁹

1.2 Racial disparity in the decisions within the adult criminal court process

It is important to note that the following data presents disparities at stages of the adult criminal court process, comparing the likelihood of decisions for BAME individuals compared to white individuals at the same point in the process. Further work is needed to investigate whether the disparities we record below can be explained by the differing crime types, their severity and other circumstances.

At magistrates' courts, the latest data shows that (Table A1, Appendix 1):

- Adult BAME men and women who have been charged are respectively 8% and 16% *less* likely to be proceeded against at a magistrates' court, compared to similar white men and women.
- Adult BAME men and women whose cases proceed to the magistrates' court are respectively 8% and 24% *more* likely to be convicted compared to similar white men and women.
- Adult BAME men and women who have been convicted are respectively 11% and 12% *less* likely to be given a custodial sentence at a magistrates' court compared to similar white men and women.¹⁰

At Crown Court, the latest data shows that (Table A2, Appendix 1):

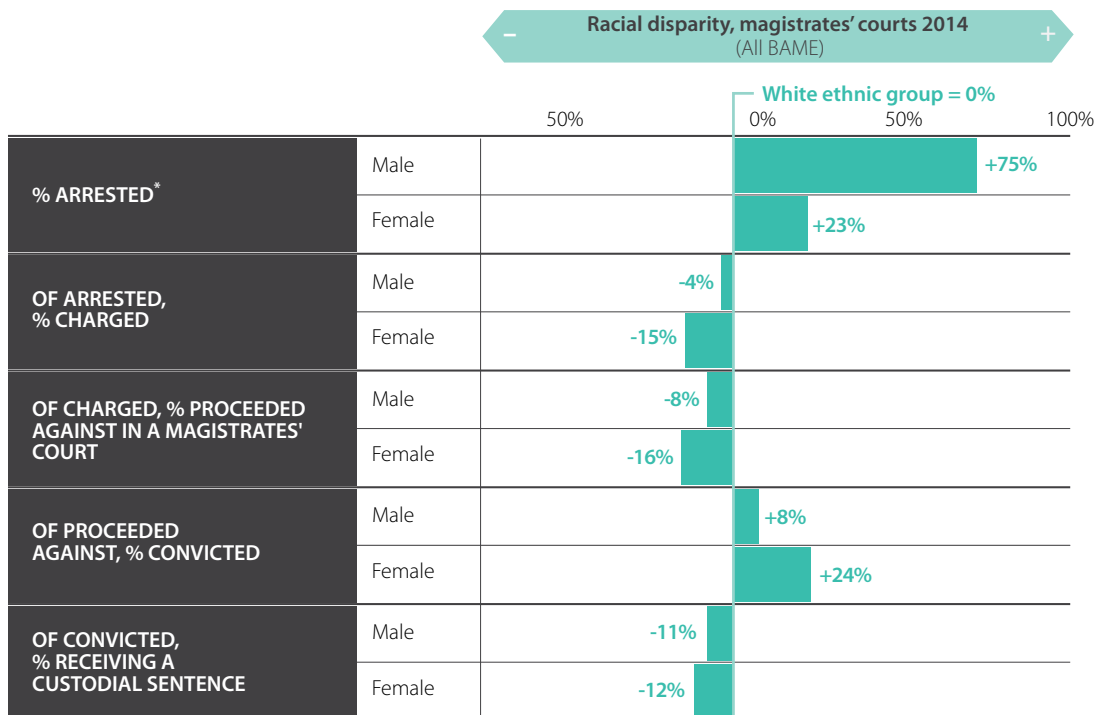
- Adult BAME men and women who have been charged are respectively 45% and 64% *more* likely to be tried in a Crown Court compared to similar white men and women.
- Adult BAME men and women who are tried in a Crown Court are respectively 16% and 13% *more* likely to be remanded in custody compared to similar white men and women.
- Adult BAME men and women who have been convicted in a Crown Court are respectively 8% and 13% *more* likely to be given a custodial sentence in a Crown Court compared to similar white men and women.¹¹

When looking at specific ethnic populations within the BAME groupings, we focused on the two largest groups of BAME defendants, black and Asian males (Tables A3 and A4, Appendix 1).¹² The latest data show that:

- Adult black men are 40% more likely to go to a Crown Court, 26% more likely to be remanded in custody, and 12% more likely to receive a custodial sentence compared to similar white men.
- Asian adult men are 62% more likely to be committed to a Crown Court for trial compared to similar white men.¹³
- For drugs offences, Black and Asian men are significantly more likely to have their cases go to a Crown Court, more likely to be remanded, and more likely to be given a custodial sentence compared to similar white men.
- For violent offences, Black and Asian men are both significantly more likely to have their cases go to a Crown Court and are both more likely to be remanded. Black men are more likely to be given a custodial sentence compared to similar (with Asian men sentenced to custody at comparable rates to similar white men).

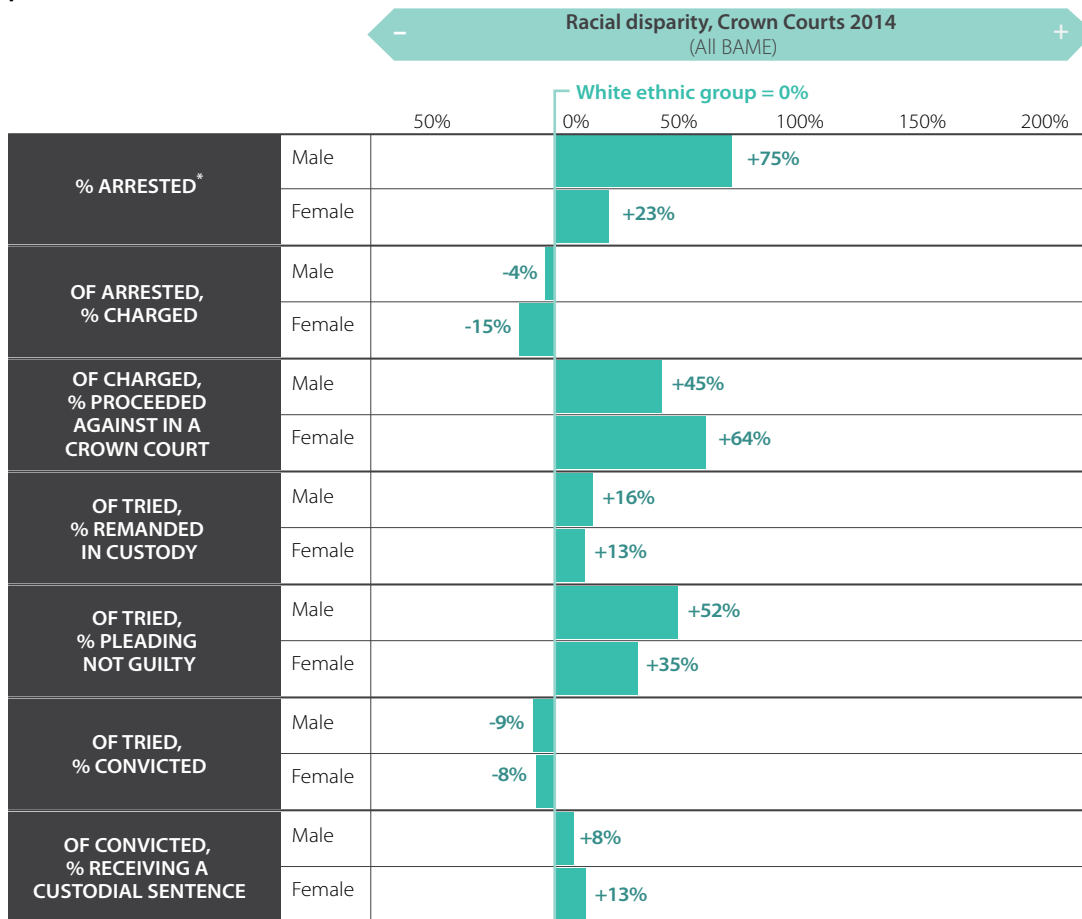
Surprisingly, given the disparities just recorded, there is also evidence that there is significant disparity in acquittal rates at Crown Court, with adult BAME men and women respectively 9% and 8% more likely to be acquitted compared to similar white men and women. Adult black and Asian men are both 9% more likely to be acquitted at a Crown Court compared to similar white men.

Figure 2: Racial disparity in the decisions within the adult criminal court process, 2014, magistrates' courts.



* Rates were obtained for specific offence group categories by counting the number of arrests in 2013/14 within age, gender, ethnicity and offence group out of an 'at risk' age, gender and ethnicity specific population from the 2011 census of England and Wales.

Figure 3: Racial disparity in the decisions within the adult criminal courts process, 2014, Crown Courts.



* Rates were obtained for specific offence group categories by counting the number of arrests in 2013/14 within age, gender, ethnicity and offence group out of an 'at risk' age, gender and ethnicity specific population from the 2011 census of England and Wales.

1.3 Racial disparity in plea decisions

The latest data show that:

- Adult BAME men and women who are tried in Crown Courts are respectively 52% and 35% more likely to plead not guilty compared to similar white men and women.
- Black and Asian men who are tried in Crown Courts are respectively 58% and 51% more likely to plead not guilty compared to similar white men.
- Black and Asian women who are tried in Crown Courts are respectively 35% and 51% more likely to plead not guilty compared to similar white women.

1.4 Racial disparity in access to legal representation

Despite our efforts, we were unable to find data on rates of legal representation by ethnicity and whether this has an impact on racial disparity. We did find that, regardless of ethnicity, fewer defendants have access to legal representation in adult criminal court proceedings now than in the past. For example, the proportion of all defendants dealt with in Crown Courts who are known to have had legal representation decreased by 2 percentage points between 2010 and 2015.¹⁴

A study on unrepresented defendants at magistrates' courts in 2016 said: '25% of all defendants' who came before them in 2014 were 'unrepresented'. This same study also suggested that lack of representation worsened over time in the magistrates' courts.¹⁵

It is not possible, however, to know whether declining rates of representation in adult criminal courts impacts racial disparity.

1.5 Racial disparity in perceptions of the fairness of the court process

A large-scale study¹⁶ conducted in the early 2000s found that 31% of defendants in a Crown Court and 26% in a magistrates' court perceived their treatment had been unfair. The proportion of black defendants who complained of unfair treatment was marginally but significantly higher than for white defendants in Crown Courts. In magistrates' courts, a higher proportion of Asian and black defendants felt they had been unfairly treated compared to white defendants.

Of those who perceived they had not been treated fairly, around half of black and half of Asian defendants in Crown Courts felt that the unfair treatment was as a result of them being from an ethnic minority. However, the study also found that very few defendants perceived racial bias in the conduct or attitude of judges or magistrates – only 3% in Crown Courts and 1% in magistrates' courts.

1.6 Discussion

This short summary of the available evidence on racial disparity highlights significant gaps in the available public data and in our understanding of the causes of this disparity. There is no publicly available data on magistrates' court decisions around remand or plea rates that takes account of ethnicity and no publicly available data on legal representation and ethnicity at all. The work conducted on perceptions of fairness, though seminal in its day, is now relatively dated. It is not possible to know whether perceptions of BAME defendants have changed measurably in the intervening decade, as there has been no recent attempt to update it.

Moreover, the absence of data in these key areas means it is not possible to comprehensively understand racial disparity in the decisions within the adult criminal court process, nor establish cause and effect. For example, the data does not look at how transit through the system operates cumulatively to the disadvantage of specific groups. Nor do they accurately tell us what is causing the disparity. As we have seen, the evidence on the flow of cases into court strongly suggests that BAME individuals are significantly more likely to come into contact with the adult criminal courts and this is likely to create some of the disparities in outcomes.¹⁷ Further work is needed to investigate whether the disparities we have recorded can be explained by the differing crime types, their severity, the circumstances of BAME offending at an individual level, and particular practices, such as the common law doctrine of joint enterprise.¹⁸ Moreover, it is unclear the extent to which these disparities can be ascribed to the role that unconscious/implicit bias plays in decisions made throughout the justice system.¹⁹ And we still need further research in specific areas. For example, while it is currently unclear why BAME defendants are more likely to be acquitted in the Crown Courts, recent research in the USA shows a similar (and surprising) pattern of overall worse outcomes for ethnic minorities in court and yet also higher rates of acquittals and case dismissals. This could be because, in cases where there is weaker evidence to support prosecution, those that involve BAME defendants are more likely to be taken forward than those involving white defendants.²⁰ But the point is simply put — on the current evidence, it is not possible to say exactly why the racial disparity in our criminal courts arises.

Nonetheless, the current data paints a concerning picture— there is strong evidence that there is racial disparity in the decisions of the adult criminal courts. BAME defendants are more likely to be tried in Crown Courts rather than in magistrates' courts; are more likely to be remanded in custody, and are more likely to receive a custodial sentence when compared to similar white defendants. And even though the findings from work on BAME perceptions of fairness suggest a welcome lack of perceived overt bias, it also shows that BAME defendants are still more likely to feel the process has not been fair to them, with a significant minority of those perceiving that their ethnicity was in part the cause of their unfair treatment.

And both, the lower perceptions of fairness BAME defendants have of our courts and the disparities they experience in its decisions may explain, in part, why British-born BAME communities have such low levels of trust in the justice system. Among those born in the UK, 51% of those from BAME backgrounds believe that the criminal justice system discriminates against particular groups or individuals, compared to 35% of the white population.²¹ It is clear that the disparities in contact with the police plays a critical role in overall trust in and the perceived legitimacy of the rest of the criminal justice system.²² Taken together, faced with proportionally more stops and searches and more arrests, many of which result in no further action; faced with more severe outcomes at court; and faced with a higher likelihood that they are asked to endure a court process only to be found innocent after all, it is perhaps little wonder that British-born BAME individuals' trust in the justice system is comparatively low.

While this comparative lack of trust is concerning on its own terms, it is likely to have two specific impacts within the court process, both of which store up trouble for the future. The first is that it is the most probable explanation for why BAME defendants are much more likely to plead not guilty in a Crown Court. In discussions conducted with defence lawyers and BAME individuals with experience of the system as background to this research, there is consensus that adult BAME defendants are more likely to elect in either-way cases to have their case heard at the Crown Court due to a lack of trust in the magistrates' court (where there is a disparity in conviction rates) and a lack of trust in the prosecuting authorities to have developed a strong case.

This higher rate of not-guilty pleas in Crown Court in turn means that these BAME defendants, if found guilty, are not eligible for sentence reductions for early guilty pleas and therefore are likely to be sentenced more severely. Recent Ministry of Justice research suggests that the racial disparity in custodial sentencing can 'be explained ... by the tendency of offenders to plead guilty or not guilty' (although it does not account for all of the disparity).²³ It is worth noting that there is also evidence from Canada and the USA that defendants from ethnic minorities plead not guilty more often, with similar impacts on outcomes.^{24,25} Again, establishing cause and effect here is problematic, and BAME defendants' lack of trust, though likely to significantly influence their decision making, may not be the only explanation for the difference — it could also be that BAME defendants are more likely to be innocent.

Second, the lack of trust is likely to be feeding directly back into the criminal justice system through further offending. There is substantial international evidence that the lack of trust in criminal justice decision-makers and the lower perceptions that they are or have been fair,²⁶ has a knock-on consequence for defendants' future compliance with the law.²⁷⁻³⁰ Put squarely, where people perceive a lack of fairness in the criminal justice system process, they are more likely to offend again.

Therefore, building trust back up in the court system is a vital task, to which we turn next.

2. Strategies for building trust

2.1 A typology of strategies

To see how we can build trust in our justice system among BAME individuals, we looked at approaches to tackling racial disparity in four jurisdictions — Australia, Canada, New Zealand, and the USA. We looked at these countries as we were aware that there is evidence of racial disparity in their criminal justice systems^{31,32,33,34} and because these countries are comparable jurisdictions, English-speaking with common law systems. However, we are aware that, due to the differences in their legal systems, their histories, and their cultures, as well as the differing dimensions of racial disparity in those jurisdictions, replication of any effective strategies we identified into England and Wales would not be straightforward.

It is also relevant, at this stage, to recognise that some of these strategies do not expressly seek to tackle racial disparity in adult criminal courts alone or, indeed, as their primary aim. Nonetheless, we have included them where they have a strong, even if indirect, link to efforts to improve how adult criminal courts tackle racial disparity.

We have grouped the differing types of strategies identified in the following ways:

- **Transparency strategies:** making issues of racial disparity more open and understandable can lead to increased accountability for and action to address racial disparity problems and help build trust.
- **Access to justice strategies:** improving access to legal advice and representation for ethnic minority individuals in the criminal court system is likely to reduce racial disparity and build trust.
- **Bias strategies:** removing the bias, be it conscious or unconscious, in court decision making should reduce racial disparity and build trust.
- **Workforce diversity strategies:** increasing the diversity and awareness of diversity issues amongst the workforces of the adult criminal courts should reduce racial disparity and build trust.
- **Procedural fairness strategies:** providing a court process marked by respect, understanding, neutrality, and a voice for all, this should build trust in the fairness of the law.
- **Alternative dispute resolution strategies:** Putting defendants into alternative forums and decision-making processes, away from traditional court processes, can reduce racial disparity and build trust.
- **Community justice strategies:** Giving communities a role in decision making and the co-production of services, and setting the enhancement of the local communities 'quality of life' as a symbolic goal for the justice system can reduce racial disparity and build trust.

2.2 Transparency strategies

In this section, we consider strategies that share the hypothesis that, making issues of racial disparity more open and understandable can lead to increased accountability for and action to address racial disparity problems and help build trust.

Government reviews and inquiries

We found widespread use of government reviews and inquiries into racial disparity in the respective criminal justice systems we considered. For example, in Canada, there have been inquiries into the experiences of Aboriginal^{35,36,37} and black individuals³⁸ in the Canadian system, and similar reviews also found in Australia.³⁹ In the USA, the National Center for State Courts has compiled a database of the main findings and recommendations of various commissions and taskforces that have looked at racial disparity.⁴⁰ Many of the recommendations from these reviews fall into three categories: education, training, and other programmes to directly address perceptions of racial disparity; programmes and policies to reduce barriers to full participation in the legal system; and greater data gathering on diversity.⁴¹ In the USA, we found that the federal government has the power to investigate and litigate jurisdictions exhibiting unconstitutional practices or policies, including racial disparity in law enforcement. These investigations can lead to monitored agreements, known as consent decrees, between the federal government and local jurisdictions outlining changes to policies and practices as well as mandating the public availability of relevant data.

Evidence on the impact of inquiries, reviews, and similar exercises is mixed. There is certainly evidence that these inquiries have succeeded in consciousness raising — making the issue of racial disparity one of public debate and inspiring initiatives either within agencies or within communities.⁴²⁻⁴⁴ That said, they can also raise expectations, sometimes unrealistically. Predictably, the government responses, and action plans that stem from these reviews, often attract criticism for failing to implement recommendations at all or as intended.

Equal opportunities/diversity policies

We found significant instances in which, at an operational and policy level, criminal justice agencies have issued statements and strategies that set out, reiterated, and made a clear commitment to equal opportunities/diversity.⁴⁵ Others have sought to organise, in one place, the various responses state agencies are taking to respond to ethnic disparity in the justice system. For example, in New Zealand and Australia, there have been several policy initiatives and plans, seeking to arrange and direct better justice system responses to the issues around the disparity experienced by Maori and Aborigine populations.

There are also nationally sponsored state and judicial governance bodies which have a presiding role in improving responses to disparity in courts. For example, in Australia, there has recently been a judiciary-led effort to ensure that courts are responsive to the needs of the diverse population of Australia, through the Judicial Council on Cultural Diversity. The Council was formed under the auspices of the Council of Chief Justices at the suggestion of the Migration Council of Australia (MCA).⁴⁶

Again, we found that these formal policy approaches can be seen as symbolically important but it is unclear the extent to which these types of response are effective in reducing racial disparity. Moreover, there is some evidence that these types of response are met with scepticism by those who are supposed to be their primary beneficiaries, especially where consultation on them has not been felt to be substantive.⁴⁷

Data collection and transparency

We identified several initiatives to improve the collection, analysis, and publication of data collected by justice agencies around disparity. For example, in New Zealand, all data from 1980 on sentencing are available and able to be interrogated and customised by members of the public by ethnicity, gender and age online.⁴⁸ These approaches often encompass data collection and transparency on the workforces in the criminal justice system (which we return to in Section 2.4), as well as data on individuals involved in the system, be they defendants, victims, or offenders.

There can be issues with data collection, however. First, justice agencies can find the routine collection of data on ethnicity difficult, partly as it is burdensome and also due to the complex nature of ethnic identity.^{49,50} Second, ethnicity data collected by justice agencies on defendants and offenders can suffer from selection bias^{51,52} – often the data give only a measure of system contact, rather than actual criminality, and we already know that there is racial disparity in the contact between BAME individuals and the criminal justice system.⁵³ Third, data can often be inconsistently and inaccurately recorded.

Beyond simple data collection, we identified a small group of strategies where data were used to change practice as part of a deliberative process. These programmes are designed to use data to establish the problems around racial disparity and then work with criminal justice agencies to look at policies and practices which can be changed to tackle to the root causes of disparity. Significant in these approaches is the work conducted by the W. Haywood Burns Institute's work in the USA (Case study 1), which often works to assist local jurisdictions in rectifying racial disparity in youth justice systems.

Case study 1:

Using data within an 'intentional approach to reducing disparities', W. Haywood Burns Institute, USA⁵⁴

The W. Haywood Burns Institute uses what it calls an 'intentional approach to reducing disparities'. This approach is based on the theory that decision makers in the criminal justice system should examine how their decisions impact racial disparities.

The Institute has developed an assessment process that measures a jurisdiction's ability and willingness to engage in racial disparity reduction work. The assessment provides an objective view of the jurisdiction's policies and practices, and how they may be impacting disparities, including contextual issues such as institutional culture and racial and ethnic politics.

This is followed by several steps, including a process of data collection and decision point analysis, which has three goals:

- Collecting the appropriate data. The Institute works with a jurisdiction to map its decision-making process to determine how its local system flows and where data collection is necessary.
- Analysing and interpreting data. The Institute has developed tools that allow a jurisdiction to view a snapshot of disparity in its juvenile justice system, including a data collection and analysis template for key front-end decision-making points.
- Developing an institutional response. The Institute works with jurisdictions to develop an institutional response for using their data, ensuring that when key indicators of disparity are reported, the jurisdiction has the tools to dig deeper to learn more about why the disparities exist and where policy and practice change might be appropriate.

Conclusions

When considering replication of these strategies, we recognise that many of them have been and are being used in England and Wales. For example, there have been full-scale inquiries into racial disparity in policing, like the MacPherson Inquiry⁵⁵ through to the existence of the Lammy Review at the time of writing. There are numerous examples of diversity and equal opportunities polices, too. It should also be noted that our review of data suggests that England and Wales, at least at a national level, have a solid data collection tradition, although we have highlighted gaps in the available court data.

However, England and Wales do not have a history of using data-driven deliberative approaches like those applied by the W. Hayward Burns Institute. This type of approach has the potential to offer new insights into both how racial disparity arises in the first place and what measures can reduce it, and how these steps can help build trust in the system.

2.2 Access to justice strategies

These strategies share the hypothesis that improving access to legal advice and representation for ethnic minority individuals in the criminal court system is likely to reduce racial disparity and build trust.

Public legal education

Within broader efforts to educate all citizens about the law in Canada, we found examples where specific support is targeted at disadvantaged indigenous communities (Case study 2) who have disproportional contact with the criminal justice system.

Case study 2:

Northern Native Public Legal Education Program, Canada⁵⁶

The Northern Native Public Legal Education Program provides culturally sensitive outreach services for First Nations communities throughout Northern British Columbia. Funded by the Law Foundation of British Columbia, its activities include:

- Outreach sessions for public schools provide an opportunity for students to discuss justice-related issues in their own community. The sessions are designed for schools that have an Aboriginal population of at least 50%.
- The Native Youth Courtlink Program provides opportunities to discuss issues of adaptation, racism, and discrimination and attitudes towards the police and the justice system. It also arranges for participating youth to interact with the justice system.
- The Native Youth-at-Risk Courtlink Program is designed to address the justice-related issues of Aboriginal youth who are at risk of trouble with the law, school dropout, and substance abuse. These students may exhibit low self-esteem and behavioural problems (verbal or physical violence).

For adults, the organisation provides several community programmes focusing on the following topics:

- Introduction to criminal and civil law
- Careers in the justice system
- Restorative justice
- Public forums on current community legal issues
- Cultural sensitisation for justice system personnel.

Improving legal representation

Attempts have also been made to reduce racial disparity through the provision of direct legal aid services, especially to indigenous populations. An example of this is the Aboriginal and Torres Strait Islander Legal Services in Australia, established to ensure that Aboriginal and Torres Strait Islander clients and their families receive high-quality legal assistance, advice, and representation; to build community capacity through legal education programmes; and to provide a prisoner throughcare service.⁵⁷ New Zealand has seen the introduction of a mixed model of legal representation with the creation of a public defender service (PDS), which in part was announced to increase access to justice to Māori and Pacific clients.

In the USA, each state has its own system of ensuring that legal representation is available for those unable to pay.⁵⁸ Many have created state-run public defender services. In areas with a high density of ethnic minority groups, some public defenders have sought to expand their role beyond basic legal representation. For example, New York's Bronx Defenders provides 'holistic' public defence for citizens of the racially diverse neighbourhood it serves, spearheading efforts to create specific new diversion programmes for adolescents, veterans, and others as part of its community work.⁵⁹

Advocacy and strategic litigation

Some American public defender services have set up specific projects to tackle disparity through pro-active advocacy (Case study 3). For example, the Department for Public Advocacy in Kentucky has conducted an education project in collaboration with the Kentucky Bar Foundation and local bar associations. This project developed a 'litigating race manual' and training sessions to provide defence lawyers with tools to identify issues of racial bias or racial disparity at each stage of the criminal process.

In addition, we found examples where public defender services used strategic litigation (seeking to use representative cases to create case law which challenges specific policies and practices) to tackle racial disparity. For example, the Metropolitan Public Defender Service Agency in Portland, Oregon, brought legal challenges to overturn a 15-year-old city ordinance on drug-free exclusion zones that disproportionately impacted African Americans.

Conclusions

In the examples we identified, it seems that the use of advocacy and strategic litigation could be effective in changing state-level policy and practices that are leading to racial disparity, though it is hard to quantify its impact. We also found creative legal representation efforts to reduce racial disparity and build trust in the system, with new services and initiatives being taken forward to assist specific community groups that are facing ongoing disparities.

What is most striking to us is that the most prominent examples of both types of strategy all came from state-funded public defender organisations. Of course, this leaves the immediate replicability of these findings open to question. However, the substantial and impressive examples we found of public defender organisations tackling racial disparity and building trust made us wonder whether there is something about both the ethos of public defence organisations and their connection with communities that produces an environment in which access to justice efforts are more likely. We say this recognising that this is not, on its own, a sufficient argument in favour of a similar public defender system in England and Wales.

Case study 3:

Racial Disparity Project, Defenders Association, Seattle, USA⁶⁰

In 1999, the Defender Association in Seattle received federal funding to establish the Racial Disparity Project, an effort designed to identify practices that could be changed administratively through education and training programmes, and to use motion practices and appellate efforts to address systemic problems

Three areas of disparity were targeted and tackled: (1) Impoundment of vehicles driven by people with suspended licences, a practice that fell most harshly on low-income people of colour. Public defenders addressed the issue in several ways, including appealing the impounds, recommending alternative approaches to judges, and working with community groups to encourage amending the law. In 2002, the Seattle City Council established a car-recovery legal clinic, using area university law students to assist people to regain possession of their cars. (2) Defenders targeted the issue of racial profiling by advocating that data collection efforts record all traffic stops, noting the age, gender, and race of each suspect; the reason for the stop; and the subsequent action taken. (3) In April 2001, the head of the Seattle-King County Public Defender Association and the Seattle Chief of Police issued a joint call for more resources for treatment and for the expanded use of drug courts, while defenders moved to consolidate a score of buy/ bust cases in a legal challenge to the patterns of enforcement. This led, in 2011, to the creation of a new harm-reduction-oriented process for responding to drug activity and street-based sex work called Law Enforcement Assisted Diversion (LEAD). Under LEAD, police officers exercise discretionary authority at the point of contact to divert individuals to a community-based intervention programme for low-level criminal offences (such as drug possession, sales, and prostitution).

An evaluation of the Racial Disparity Project conducted by the University of Minnesota Institute on Race and Poverty concluded that the project enables defenders to broaden their advocacy 'to encompass not only representation of individual clients, but also efforts to change the system for the benefit of disadvantaged communities, and particularly communities of color'.

2.3 Bias strategies

The strategies in this section share the hypothesis that removing the bias, be it conscious or unconscious, in court decision making should reduce racial disparity and build trust.

Use of assessment tools

Over the past 20 years, all the justice systems considered in this review have adopted tools to help inform decision making in court, through the provision of assessments based on objective and relevant data, rather than relying solely on professional judgment. These tools generally try to apply statistical methods of estimating the risk of an event's occurrence, such as the risk of a defendant turning up to court when on bail. Their introduction has been justified, in part, as a way of tackling the racial disparity that arises from subjective judgements by professionals.⁶¹ Assessment tools have grown in their use and sophistication across all the jurisdictions we have considered. New Zealand, for example, has introduced tools to assess the culturally specific rehabilitative needs of Māori offenders, involving a detailed cultural assessment of Māori offenders by a Māori community representative.

However, there has been considerable discussion, primarily in the USA, about whether assessment tools accentuate, rather than remove, bias.⁶² Because the data used to estimate risk within the tools are often based on criminal justice data (arrests, convictions, etc.), there is a concern that ethnic minorities might score higher on risk and needs assessments because of their increased likelihood

of being in contact with the justice system — not necessarily because of their criminal propensity. A meta-analysis of the research on risk assessment tools looked at the relationship between race/ethnicity and assessment tools. It found mixed results, with some studies finding tools were better able to predict risk for white offenders, while other studies found showed no clear evidence that the race/ethnicity of the participants impacted the ability of the assessment tools to predict risk.^{63,64} Moreover, there are some studies that suggest these tools may either reduce or exacerbate racial disparities depending on how they are used.^{65,66}

Mandatory minimum sentencing

Mandatory minimum sentencing constrains judicial discretion by setting minimum sentences which apply in specific circumstances. In the USA, mandatory minimum sentencing was introduced at federal and state levels during the 1980s and 1990s in part as a response to concerns that unrestrained judicial discretion gave rise to well-documented sentencing disparities in factually similar cases.⁶⁷ This led to the passage of so-called three strikes and out legislation, whereby statutes require courts to impose a longer punitive sentence following the third conviction for an offence. In Australia and Canada, there were similar moves to introduce mandatory minimum sentencing.⁶⁸

Research in the USA has suggested that the use of mandatory minimum sentences for serious forms of offending has contributed to significant inflation of custodial sentences. In addition, by being applied disproportionately to offences in which ethnic-minority offenders are more heavily represented (e.g. in the differences between sentencing around the possession of crack and powder cocaine), they have accentuated racial disparities in the USA.⁶⁹ There have been similar findings in Australia, indicating that the introduction of mandatory sentences for property offending has disproportionately impacted Aboriginal youth, and significantly reduced Aboriginal access to pre-trial diversion.⁷⁰

Sentencing guidelines

Sentencing guidelines provide judges with structured decision-making tools to arrive at broadly consistent sentences across a specific jurisdiction. There is considerable variation in how sentencing guidelines have been used in different countries, with a spectrum between general guidance to judges, giving them a degree of flexibility, all the way to complex, structured decision-making grids, which constrain discretion still further.⁷¹

Part of the drive for these types of guidelines is to raise consistency in decision making. For example, Minnesota was the first US state to introduce sentencing guidelines in 1978,⁷² to 'ensure that sentencing decisions are not influenced by factors such as race, gender, or the exercise of constitutional rights by the defendant'.⁷³ Several US states now have sentencing guidelines. In Australia, in 2003, New South Wales became the first state to introduce sentencing guidelines. While Canada does not have a formal system of sentencing guidelines, it has established a clear set of purposes and principles of sentencing, amending the sentencing provisions of the Criminal Code in 1996.

In a meta-analysis of over 80 different evaluations in the USA, researchers found that 'after taking into account defendant criminal history and current offense seriousness, African-Americans and Latinos were generally sentenced more harshly than whites' and there 'was some evidence to suggest that structured sentencing mechanisms, such as sentencing guidelines, were associated with... unwarranted sentencing disparities'.⁷⁴ However, there are also some studies that suggest that racial disparities have been successfully reduced following the adoption of sentencing guidelines.^{75,76}

Conclusions

All three of these strategies are used in England and Wales already. Therefore, it is worth reflecting on the broad conclusions from our research. First, the use of mandatory minimums is not widespread in England and Wales but its use in drug cases here should be of special interest, given what we have already seen about the racial disparities in drugs offences in Section 1. This suggests that further research is needed to look at the extent to which the racial disparities for black and Asian males for drugs offences is explainable by the mandatory minimum sentences we have in place for dealing in Class A drugs.⁷⁷

Second, there is conflicting evidence of the impact of sentencing guidelines. Sentencing guidelines are implicated alongside other strategies for increasing the use of prison but the case is far from proven as to the role they have played in escalating this use. Neither is it clear what impact they have had on racial disparity or in building or reducing trust in the fairness of the courts' decisions. This is also a subject that requires further research.

Third, turning to assessment tools, the evidence suggests that validated actuarial assessment systems focused on factors statistically correlated with recidivism can be preferable to subjective professional judgements.⁷⁸⁻⁸⁰ On balance, there is no clear evidence that validated tools administered appropriately treat individuals from ethnic minority populations unfairly; in fact, they may potentially help to limit racial bias in the criminal justice system.⁸¹ However, some of the inputs that assessment tools rely on (e.g. arrest histories) are subject to disparate practices and assessment tools may reproduce these disparities. Further research would be welcome.

Overall, given this mixed picture of whether bias strategies work in tackling racial disparity and building trust, this seems an area where more research is needed, especially because assessment tools and sentencing guidelines are so commonly used in England and Wales already. Specifically, given their ubiquity, we suggest further research is conducted on the impact of sentencing guidelines and assessment tools on racial disparity.

2.4 Workforce diversity strategies

The strategies in this section share the hypothesis that increasing the diversity and awareness of diversity issues amongst the workforces of the adult criminal courts should reduce racial disparity and build trust.⁸²

Strategies to increase judicial diversity

Some of the countries we looked at have made significant efforts to improve the representation of ethnic minority groups in the judiciary. One approach has been to develop a more open and formal judicial selection process. For example, in the USA, research⁸³ looking at state courts (where the vast majority of court decisions are made) in 2010 noted a wide variety of state-level strategies⁸⁴ to improve judicial diversity through better, more open, and more diverse processes. In Australia, there have been similar attempts.⁸⁵⁻⁸⁷

Many judicial appointment commissions have instituted outreach programmes for BAME candidates. In Canada and the USA, these programmes are designed to inform eligible lawyers about the judicial appointment process, with a special focus on actively encouraging applications from those with non-traditional legal backgrounds (sectors of the legal profession where many women and ethnic minority lawyers are found).⁸⁸ An example of this is the American Bar Association's Judicial Diversity Initiative Intern programme,⁸⁹ which offers full-time internship programmes open to all first- or second-year minority and/or economically disadvantaged law students to clerk for judges.

There are also examples of jurisdictions using data transparency as a mechanism to shed light on judicial diversity. For example, since 2004, the American Bar Association has been compiling demographic data on judges across the USA in its National Database on Judicial Diversity in State Courts. In Canada, the Ontario Judicial Appointments Advisory Committee publishes data on the diversity of people (included ethnicity) who have been appointed to the judicial bench.

Assessing the impact of these strategies is hard, as there is a lack of data on judicial diversity over time in some of the jurisdictions we have considered. And while there has been some progress in increasing the diversity of the judiciaries in others,⁹⁰ it remains difficult to disentangle which strategy has been the most effective.

Strategies to increase diversity in the legal profession

We found many examples where legal professional associations have sought to promote diversity in their profession. These examples include the promotion of better recruitment and retention practices amongst law firms, for example, by encouraging law firms to recruit based on competencies and behaviours rather than subjective impressions.⁹¹ Another area in which professional bodies have played a role is in data monitoring.⁹² For example, in Australia, the Asian Australian Lawyers Association has conducted research into Asian Australian representation in the legal profession to address 'the gap in statistics on the level Asian Australian representation in the senior ranks of the legal profession – from solicitors, to barristers and the judiciary.'⁹³ We also found evidence that legal professional bodies played a role in mentoring and outreach programmes, to encourage members of minority communities to consider legal careers or to mentor law students into the professions. For example, the Law Society of Upper Canada runs an Equity and Diversity Mentorship Program which is 'designed for students in law schools and accredited paralegal education programs... who are looking for advice and guidance on practice, professional and career matters', matching them with mentors.⁹⁴

Diversity awareness/cultural competency training

We also found examples where training has been used to address racial disparity. This tended to be described as diversity training, cultural awareness training, or race relations training and could often go beyond looking solely at ethnic diversity but also gender and sexual orientation as well. We found a range of examples in all four countries where judges have received this type of training,⁹⁵ usually including subjects related to the potential for gender, race, age, and disability discrimination in the legal process. We also found examples on several legal professional bodies' websites of toolkits and model programmes aimed at providing training,⁹⁶ such as identifying and responding to harassment and discrimination, equity, and diversity in hiring and recruiting, and creating an inclusive and positive workplace environment.

More recently, across the criminal justice system agencies more generally, there is a growing recognition that training should be reshaped from information provision into focusing on cultural competency: seeking to improve an individual's ability to interact effectively with people of different cultures. For example, the National Judicial College of Australia, the Judicial Commission of NSW, and the Australasian Institute of Judicial Administration are developing a programme which will focus on the practice of cultural competency in a judicial setting, using specific examples, scenarios, and practices such as working with interpreters and translators and with new arrivals to Australia.

There is little research on how effective these training approaches have been. There is a paucity of information on how the training has been received by participants, let alone its impact on racial disparity. There is, however, a more established evidence base around similar training in policing. This suggests that

diversity and cultural awareness training can be seen as tokenistic by participants, when poorly implemented. Examples of poor implementation of this type of training in policing include diversity training only for new entrants, no continual professional development around diversity, and a lack of complementary efforts to demonstrate the importance of diversity as an institutional value.⁹⁷⁻¹⁰⁰

Conclusions

When considering judicial and legal diversity together, we found that there is considerable debate in all jurisdictions on whether enough progress has been made.¹⁰¹ There remains clear evidence that individuals from ethnic minorities still face barriers when entering both the judicial and legal professions.¹⁰²⁻¹⁰⁵ In addition, there remains a significant discussion to be had across the jurisdictions about how and whether to balance judicial diversity with appointment by merit.^{106,107}

While we argue that diversity in judicial and legal professions is good in its own right, the evidence suggests it also has instrumental value. It is clear^{108,109} that 'judicial diversity can have a powerful symbolic value in promoting public confidence in the courts' and a diverse judiciary 'enhances the credibility of the courts among historically excluded communities.'¹¹⁰⁻¹¹² Moreover, studies of the effect of judicial diversity indicate 'that a more diverse judiciary can enhance the quality, and therefore the fairness, of judicial decision-making.'¹¹³ While we recognise that there is, at the time of writing, no strong evidence that increasing judicial diversity necessarily improves the outcomes experienced by BAME defendants, the role it plays in raising trust is crucial. Indeed, its ongoing importance in England and Wales has been emphasised in recent statements by both the Lord Chief Justice and the Lord Chancellor on judicial diversity, both of whom strongly suggest that there is still a great deal more progress needed.

Unsurprisingly, our research does not suggest that there is a single strategy for increasing judicial diversity. In practice, the jurisdictions we have considered have employed a range of strategies to increase diversity, including looking at judicial selection criteria and appointment commissions, outreach programmes, and data transparency. Moreover, it is clear from literature in Canada, Australia, and New Zealand that efforts to increase the diversity of the judiciary in England and Wales (through mechanisms such as the Judicial Diversity Initiative) are seen as points of light for other jurisdictions to aim for, regardless of whether progress on these issues is seen as sufficient within England and Wales itself.

Similarly, while there are certainly some encouraging signs that strategies to increase diversity in the legal profession have been effective,¹¹⁴⁻¹¹⁶ it is hard to disentangle which strategies have been the most effective. The role played by legal professional bodies in these jurisdictions has been particularly noticeable in providing a catalyst for change. Recent attempts by organisations such as the Bar Council¹¹⁷ and the Law Society in England and Wales to increase BAME access to and retention within the legal profession are similar to approaches we have identified in other jurisdictions.

Lastly, we found that both diversity awareness training and, more recently, cultural competency training, has been employed widely as a strategy within both the judiciary and the legal profession. However, we found little evidence of how this training has been received by staff or of its impact on racial disparity. The evidence from the use of this type of training in policing suggests that this type of training can be easily seen as tokenistic, if there are not broader and complementary reforms in place.¹¹⁸ This suggests that there is a good case for more monitoring and evaluation, and publicly available research, on both how diversity training within the legal and judicial professions is received and on whether it can be shown to impact racial disparity. While we would not want our conclusions here to be over-interpreted, we think there should be caution and reflection in investing too much hope in training alone to rectify racial disparity.

2.5 Procedural fairness strategies

The strategies in this section share the hypothesis that by providing a court process marked by respect, understanding, neutrality, and a voice for all, this should build trust in the fairness of the law. This is often referred to in the literature as ‘procedural fairness’ – the perceived fairness of the court’s procedures and practices in arriving at a decision.¹¹⁹

Improving understanding of the court process

There are several examples of efforts to improve the understanding defendants have of the court process, prior to, at, and after court. For example, we found evidence of a number of courts in the USA that have developed clear advice factsheets for individuals thinking about filing a domestic violence protective order, factsheets which use plain language to illustrate the protective order process and highlight the relevant court forms, related family law issues, and likely interactions with law enforcement and other agencies.

We found examples where courts had both paid and voluntary staff to provide in-court support to help defendants navigate the court process. For example, in Oregon, a County Circuit Court employs a Court Navigator to identify self-represented litigants, refer them to additional services and resources, and provide information about the court process to mitigate confusion about their case.¹²⁰ We also found similar examples specifically for ethnic minority groups. For example, in Canada, the Aboriginal court worker programme facilitates the arrangement of legal aid for Native defendants, explains court procedures, and provides information about legal rights and the law to Native defendants and their families. Court workers can also brief lawyers, represent the accused in cases of minor offending when legal aid provision is not available, and often attend hearings to provide support to the defendant and their family.

There are also strategies that emphasise ensuring better provision of interpretation services for defendants with limited English proficiency or other language needs. For example, in California, the courts are currently tendering for a provider to pilot the use of video remote alternative language and sign language interpreting. This is part of a strategy to ensure a ‘consistent state-wide approach to ensure language access for all limited English proficient court users in California in all 58 superior courts.’¹²¹

We also found courts that spent time explaining decisions after court. For example, in Minnesota, USA, a study of domestic violence sorted litigants into two groups, one who got a full explanation of the decisions made from the judicial officer (including a question-and-answer period) and one who received no explanation. The study found that ‘receiving an explanation from the bench made the biggest difference in terms of satisfaction for litigants’ and that ‘litigants who did not receive a favorable outcome from a trial were more likely to say they would comply with court orders when they reported both fair treatment and having received a full explanation of the decision by the judicial officer in their case.’¹²²

Improving communication in the courtroom

We identified several initiatives in the USA that have sought to improve interactions between defendants, judges, lawyers, and court professionals to improve the interactions in court. A recent US Department of Justice grant provides guidance to judges and court professionals about best practice in managing court appearances. This includes emphasising the need for court professionals to introduce themselves, make eye contact, and avoid multitasking (such as looking down at a cell phone) while speaking to defendants. We also found more specific guidance on courtroom communication for domestic violence cases, which also highlighted the need to consider that the individuals

involved may need special measures because domestic abuse can provoke feelings of shame or evoke memories of past trauma.¹²³ The quality of courtroom communication can be used to evaluate professionals, including judges (Case study 4).

Case study 4:

Judicial Performance Evaluation Commission, Utah, USA

To promote public accountability of the judiciary while ensuring that the judiciary continues to operate as an independent branch of government, when judges stand for retention elections Utah's Judicial Performance Evaluation Commission (JPEC) conducts and publishes evaluations of judges. The voters ultimately decide whether each judge will continue to serve in office.

Judges must pass three minimum performance standards:

- **Legal Ability:** understanding of the law and any relevant rules of procedure and evidence.
- **Judicial Temperament and Integrity:** behaviours and conduct that promote public trust and confidence in the judicial system.
- **Administrative Performance:** management of workload and issuance of opinions without unnecessary delay.

Part of the evaluation is conducted via survey. A quantitative, electronic survey is sent to attorneys, court staff, jurors, juvenile court professionals, and others who have conducted business with the judge in the courtroom. Survey respondents answer questions on a 1–5 scale, and results are computed for each judge in each of the minimum performance standard categories.

In addition, judges can be assessed through courtroom observations. This gives volunteers from the community a chance to participate in the evaluation of state court judges. JPEC first trains volunteers on the value of procedural fairness in the court context and then volunteers observe the court. Observers record both what they see and their personal responses to what they see as it relates to procedural fairness. The courtroom observation reports are sent to judges and included in the judge's evaluation report.

Commissioners consider survey comments and detailed accounts by the courtroom observers and then vote to determine if a judge uses procedural fairness, i.e., treats an individually fairly in the court setting.

Training approaches have also been used to change the behaviour of judges and other court professionals within the courtroom (tackling such issues as defence lawyers and prosecutors sharing jokes with each other in open court in front of defendants). For example, in a programme in the Superior Court of Santa Clara County, California, judges get a more objective view of their courtroom manner and style by watching video footage of themselves hearing cases. The recordings are reviewed with an outside expert and with colleagues, or privately (to maximise comfort for the bench officer), and are kept separate from their performance evaluation.¹²⁴ Judges were also given training to improve areas such as non-verbal communication and are provided with judicial mentors on procedural fairness.

Improving courtroom design

Efforts have also been made to improve the physical layout of courtrooms. For example, there has now been extensive work looking at how access to daylight, the seating arrangement, and other architectural improvements can enhance procedural fairness within the courtroom itself.¹²⁵ There have also been efforts to look at courthouse design and environment, including better signage, information desks, décor, and ways to involve court users in supplying feedback on their court experience.

Conclusions

There is substantial international evidence that procedural fairness measures can improve an individual's experience of the court process, even in situations in which they receive a negative outcome¹²⁶ and that this has a knock-on consequence for their future compliance with the law.¹²⁷⁻¹³⁰ Of course, the question for this study is whether these findings also hold for marginalised, ethnic minority defendants. Certainly, there is evidence that there is no difference in what influences these perceptions of fairness and trust for ethnic minorities compared to white defendants — in short, all defendants' perceptions of fair treatment are influenced by the same things: the extent to which they feel they were respected, that they understood the process, that they had a voice in the proceedings, and that the decisions were arrived at in a neutral and objective manner.¹³¹ There is some promising evidence that procedural fairness strategies that apply to all defendants can improve the court experience for defendants who otherwise have low levels of trust in criminal justice institutions, often individuals from marginalised ethnic minorities. This suggests that a focus on procedural fairness is a 'very good way to build trust and encourage compliance irrespective of who the people are using the courts.'¹³²

Research in our courts suggest that many defendants, regardless of ethnicity (and especially young adult defendants and vulnerable defendants), often find the court process confusing and one in which they have little agency or voice. Often, it feels like a system characterised by 'us', the people using the system, and 'them', the court professionals.¹³³⁻¹³⁶ As we have seen, there is substantial evidence that BAME defendants generally come into the courtroom with lower expectations of fair treatment from justice authorities and that this, understandably, not only makes them less likely to feel they are treated fairly but attunes them to perceptions of unfairness and signs of respect.¹³⁷

Positively, an emphasis on procedural fairness strategies could align well with the current Her Majesty's Courts and Tribunals Service (HMCTS) court reform programme, which aspires to make courts easier to navigate for everyone.¹³⁸ However, the explicit adoption of procedural fairness strategies has, to date, been negligible. Moreover, there remain practices, such as the use of the dock at both magistrates' and Crown Courts, which may undermine procedural fairness (as well as the right to a fair trial).¹³⁹ In addition, many of the strategies that we identified focus on improving the experience of attending the court in person. Current court reform strategy is increasingly looking at resolving cases online and understanding procedural fairness online is currently an under-examined area. Nonetheless, while it seems there is currently little explicit activity in this area, a greater emphasis on these approaches in our criminal court could be of benefit to all defendants.

2.6 Alternative dispute resolution strategies

The strategies in this section share the hypothesis that by putting defendants into alternative forums and decision-making processes, away from traditional court processes, can reduce racial disparity and build trust. Many of these alternative resolution processes are founded on tribal and restorative justice principles.¹⁴⁰

Restorative justice strategies

We found significant evidence of the use of restorative justice strategies to reduce racial disparity. For example, in New Zealand, there have been significant attempts to deploy restorative justice both as a diversion from court and as a court disposal, especially for the Maori population, which continues to experience significant disproportional outcomes in the criminal justice system.¹⁴¹ These programmes typically involve an offender participating in a meeting with members of a community panel often including *kaumātua* (Maori elders) and the victim, and are predicated on a belief that these processes will be more culturally responsive to Māori and Pacific Islander offenders than traditional court processes.¹⁴²

Case study 5:

Restorative justice conferencing in New Zealand¹⁴³

Restorative justice conferencing was first piloted at District Courts in New Zealand in 2001. The judge initially refers to the case to a restorative justice coordinator, who liaises with the victim and the offender to ascertain whether a conference is possible. If the victim agrees, the conference involves the victim, the offender, their support people, and a facilitator, and may also include police, probation officers, and defence lawyers. The victim and the offender both speak and cultural protocols such as karakia (prayers) may be included. At the end of the conference, a sentencing plan is agreed, which is then provided to the judge who can choose to integrate all or part of the plan into the final sentence. The focus is on reparation, rehabilitation, reintegration, and restoration of balance, with the intention of impacting reconviction rates over time.

An evaluation of the pilot found that 92% of victims said they were pleased they took part in a court-referred restorative justice conference and 75% felt better as a result of taking part. More than 33% of the pilot victims said they felt more positively about the criminal justice system as a result of participating in a restorative justice conference. The evaluation found that the reconviction rate of the conferenced offenders (32%) was statistically significantly lower than the average rate for the ten matched comparison groups (36%). Further evaluations of these schemes have shown mixed results on reoffending.¹⁴⁴

Case study 6:

Koori courts in Australia

The Koori court in Victoria, Australia was created under the Magistrates' Court Act 1989. It operates as a division of the magistrates' court, which sentences Indigenous defendants.

The Koori court provides an informal atmosphere and allows greater participation by the Aboriginal (Koori) community in the court process. The magistrate sits at a large table with all other participants in the case, and not on the bench. The defendant sits with their family at the table, too, and not in the dock. Participants talk in 'plain' English rather than using technical legal language.

Koori elders or respected persons, the Koori court officer, and Koori defendants and their families can contribute during the court hearing. This helps to reduce perceptions of cultural alienation and to ensure sentencing orders are appropriate to the cultural needs of Koori offenders. It also assists them to address issues relating to their offending behaviour.

The Koori court aims to:

- Increase Koori ownership of the administration of the law.
- Increase positive participation by Koori offenders.
- Increase the accountability of the Koori offenders, their families, and the community.
- Encourage defendants to appear in court.
- Reduce the number of breached court orders.
- Deter offenders from reoffending.
- Increase community awareness about community codes of conduct and standards of behaviour.
- Explore sentencing alternatives prior to imprisonment.

There is evidence that Koori courts increase defendant appearance rates and can reduce reoffending.¹⁴⁵

Tribal courts

In other jurisdictions, attempts have been made to create specific and specialist courts for indigenous populations, often known as tribal courts. There are tribal courts in the USA,¹⁴⁶ Canada, and Australia¹⁴⁷ (Case study 6). The basic process involves the offender pleading guilty to an offence that can normally be heard in court. Court hearings are then typically more informal, with the magistrate or

judge and an elder or respected member of the community sitting at eye level with the offender. At some courts, a wide range of actors are heard, including community representatives, the offender, and members of the public gallery. The discussion of sentencing options occurs with everyone present to enhance perceptions of transparency.

Discussion

There is encouraging evidence that alternative dispute resolution strategies such as restorative justice¹⁴⁸ and tribal courts can make an impact on reoffending. In addition, at a project level, these strategies have also shown improvements in other interim outcomes, such as the evidence that a tribal court can lead to an increase in the proportion of indigenous offenders showing up at court.¹⁴⁹

Of course, these alternative dispute resolution strategies are often mechanisms employed in other jurisdictions toward populations that have culturally specific needs and complex histories concerning western-style criminal justice systems. Therefore, it would be easy to see that these strategies, while interesting, as irrelevant in England and Wales as measures to reduce racial disparity. However, while it is clear that the separation of specific populations into a new and alternative process could raise equality issues if used in England and Wales, we conclude that there are broad principles at work which are worth taking note of. Part of the results they seem to achieve can be linked to defendants feeling like the processes being used are more legitimate, as they demonstrate greater understanding of the particular issues faced by individuals within those communities. Therefore, the principles of alternative dispute resolution may be useful for all defendants, rather than just those from marginalised communities. Indeed, there are some examples, notably in restorative justice, where the principles originally used for indigenous populations have been adopted in mainstream practice, such as the use of peace-making circles in courts in the USA.

However, replication would face several practical barriers. The first amongst these has been the numerous attempts to expand restorative justice within formal processing in the English and Welsh criminal justice system. While the evidence suggests that these approaches can be effective,¹⁵⁰ there are doubts in the research literature about both the quality of implementation¹⁵¹ and about the true extent to which a process that rests on voluntary participation can ever be fully mainstreamed. Moreover, recent experiences of using restorative justice in courts have raised legitimately difficult questions of the extent to which participation should or should not be linked to changing sentencing decisions.¹⁵² In addition, there is also a perception amongst practitioners that, where restorative justice strategies have been employed, BAME individuals are less likely to be offered these processes (though there is no robust data to prove this).¹⁵³

Overall, while these concerns suggest that there may be limitations to the extent to which restorative justice can grow in our court system, it also seems that much can be learned from alternative dispute resolution strategies in tackling racial disparity, and that some of these approaches could be used more widely for all defendants.

2.7 Community justice strategies

The strategies in this section share the hypothesis that including the community in the justice system, giving communities a role in decision making and the co-production of services, and setting the enhancement of the local communities 'quality of life' as a symbolic goal for the justice system¹⁵⁴ can reduce racial disparity and build trust.

Community prosecutors

Community prosecution (Case study 7) is an American concept, founded on the idea that prosecutors have a responsibility not only to prosecute cases but also to solve public safety problems. This has led to prosecutors adopting new ways of working such as being based in neighbourhood offices and collaborating with others (including residents, community groups, and other government agencies) in the development of problem-solving initiatives.

The evidence on community prosecution is primarily qualitative. While there are examples where community prosecution strategies have engaged with communities to reduce racial disparity, we are not aware of any outcome evaluations that have looked at this issue. In our literature search, we found only one example of an outcome evaluation on community prosecution. While this suggested that community prosecution strategies can reduce certain categories of crime,¹⁵⁵ the study did not consider impacts on racial disparity.

Case study 7:

Community prosecution in Dallas, Texas, USA¹⁵⁶

Dallas has two prosecuting offices – the City Attorney’s Office, which prosecutes low-level misdemeanours and code violations, and the District Attorney’s Office which prosecutes juvenile cases, higher-level misdemeanours, and felonies. Both Dallas’s City Attorney and District Attorney have implemented community prosecution as a guiding philosophy. As Dallas City Attorney Warren Ernst puts it: ‘It’s not a matter of getting that last conviction. It’s not about top-down law and order—community prosecution is about doing the best for the community. The community, the City, is the client. And, as lawyers, we have a duty to zealously represent our clients.’

At the time of writing, the community prosecution team in the City Attorney’s Office is composed of 15 attorneys, 10 code inspectors from the Code Compliance Department, 2 fire prevention officers from the Dallas Fire-Rescue Department, and 3 support staff. At the District Attorney’s Office, the Community Prosecution Unit is made up of 5 prosecutors, an investigator, a programme manager for a prostitution diversion initiative, and a community relations manager.

Projects include:

- Prostitution Diversion is based out of the District Attorney’s Community Prosecution Unit and seeks to connect individuals arrested for prostitution to services, such as healthcare and counselling, rather than sentencing them to short stints in jail. The cross-office community prosecution partnership means that this diversion is offered for Class C misdemeanours and higher-level offences.
- The Junior Prosecutor Academy in the District Attorney’s Community Prosecution Unit teaches community members, especially youth, about the justice system. Community prosecutors present fictional cases to participants to help them learn lessons about the legal profession, the law, and right and wrong. Youth also work together to look at fictional crime scenes, doing fingerprints and investigating.

Community magistrates

Both New Zealand and Canada have community magistrates’ schemes which involve the selection and training of community representatives (often with an explicit focus on recruiting people from ethnic-minority communities) to hear non-serious criminal (and occasionally family law) cases. In Canada, since the 1970s, Native Justices of the Peace (JPs) have been appointed in different provinces, usually those with a high population density of Native peoples. Native JPs service both Native and non-Native peoples and are intended to ‘operate as a buffer between police and indigenous peoples’, and are able to offer alternative sentence options for indigenous offenders.¹⁵⁷

New Zealand has paid part-time lay judges – community magistrates – a programme which aims ‘to increase community participation in the court system’. Over a quarter of the community magistrates recruited identified as Māori and there are now 16 presiding over a wide range of less serious cases in the District Court’s criminal jurisdiction.¹⁵⁸ An initial evaluation of the New Zealand community magistrates scheme found that the pilot increased Māori participation in the legal system. But it also highlighted that Māori community magistrates raised several concerns about the initiative — for example, some Māori defendants found the experience of being judged by a Māori judge more embarrassing and shameful.¹⁵⁹ In general, the evidence on both these examples is very limited and hard to draw conclusions from.

Community courts

There are community courts in the USA, Australia, and Canada. Community courts are a type of problem-solving court and they attempt to harness the power of the justice system to address local problems.¹⁶⁰ They strive to engage outside stakeholders such as residents, businesses, churches, and schools in new ways in an effort to bolster public trust in justice. They seek to provide meaningful alternatives to standard low-level sentencing options, such as discharges, fines, and very short custodial sentences (Case study 8).

Case study 8:

The Red Hook Community Justice Center¹⁶¹

Since its foundation, one of the explicit goals of the Red Hook Community Justice Center has been to ‘invest in extensive cultivation of close ties to residents and community institutions’. These steps are intended to strengthen residents’ ties to the community and their commitment to obey the law. It has used several means to do this:

- Community engagement, such as at the planning stage when the Justice Center’s planners sought out the perspective of all segments of the community — not just influential community leaders — in a series of focus groups.
- Community outreach initiatives, such as working to reclaim the nearby public park from drug dealers and restore it and implementing a court-sponsored baseball league.
- Problem-solving, such as the court’s handling of housing disputes between residents of public housing and the New York City Housing Authority.
- Youth justice initiatives, such as youth court, youth art programmes, the Red Hook Public Safety Corps, and internships, intended to provide local youth with positive development opportunities.

Based on interviews with residents and community leaders, the Justice Center’s efforts at community engagement have been highly successful. Public housing residents in Red Hook tend to be particularly familiar with the Justice Center and its programmes due to the presence of the housing court. A recent evaluation identified that Red Hook residents perceive the Justice Center not as an outpost of city government, but as a home-grown community institution.

Evidence of the efficacy of community courts is mixed. There is, for example, some evidence that community courts can reduce reoffending,¹⁶² although there are studies, including one from England, which show no appreciable impact.¹⁶³ More importantly for this study, however, there is some evidence that ethnic minorities perceive community courts as fairer than regular courts. A study of Red Hook Community Justice Center (Case study 9) found that it had considerable success in mitigating the preconceptions of the minority groups who came to the court and

who expected, because of their ethnicity, that they would not be treated fairly.¹⁶⁴ The outcome evaluation of Red Hook Community Justice Center also concluded that offenders perceive a high level of procedural justice in the Justice Center's decision-making processes.¹⁶⁵

Discussion

As we have observed, community prosecution strategies suffer from an absence of evidence but, maybe more crucially when considering replication, there is no locally accountable prosecutorial system within which these strategies could be employed in England and Wales. Anecdotally, the drive behind community prosecution is, in part, a result of the democratic mandate of district attorneys in the USA. This democratic mandate for prosecutors is absent in England and Wales and a full consideration of the virtues and vices of democratic election for prosecutors extends well beyond the potential benefits of community prosecution as a strategy to tackle racial disparity and build trust.

Turning to courts, it is clear that a move towards more community-based court initiatives, whether community courts or other strategies such as pop-up courts,¹⁶⁶ which seek to bring courts closer to their communities, would require a significant change in direction for our current court reform strategy. Our criminal court system is actively reducing its physical footprint in communities through the closure of courthouses. A previous attempt to develop a community court model, in North Liverpool, is seen to have had only mixed results. Moreover, while, in theory, our magistracy should help England and Wales ensure that our courts are engaged with their communities, in practice, there are legitimate questions as to whether the magistracy is losing its traditional links with communities, as benches are amalgamated and magistrates are increasingly asked to sit in courts outside their local areas.¹⁶⁷

Nonetheless, despite these challenges, we argue that they make strengthen the imperative for the justice system to actively work towards a more community-focused model. We take the view that our justice system remains too remote from the communities it is intended to serve.¹⁶⁸ There is not enough regard for how the decisions about how our justice system operates play out locally, and little in the way of meaningful consultation and engagement, outside of the efforts of the police. While we accept that the potential for community justice strategies to tackle racial disparity is not on its own a sufficient reason to move towards greater devolution and community engagement, it does represent a powerful argument in favour and there is also a clear basis for believing that it can play a crucial role in building trust.

We also argue that the justice system should take more notice of and utilise the resources and assets on its doorstep. There are many civic and community groups that can play a role in making the justice system feel fairer and be more effective by providing support, mentoring, and aftercare around the court process. Many of these groups can help to provide services which statutory services could not provide, in that they are more likely to help strengthen an individual's identity with community values. There is now substantial evidence that people's identification with society and communities shapes their prevailing reactions to and expectations of the justice system.¹⁶⁹ Recent research on policing and race seems to suggest that the extent to which individuals have strong personal identities, of which identity mediated through ethnicity can be one, can mitigate the impact of procedural injustice, suggests that processes that recognise and celebrate identity may be helpful in increasing procedural fairness.¹⁷⁰ We therefore argue that the justice system is missing a golden opportunity in not involving these community groups more within the justice process.

3. Conclusions

As we have argued, the presence of ongoing racial disparities in the flow of cases into court, within the decisions made at court and within the perceptions of fairness that BAME defendants have of the court process, makes for a troubling picture of our justice system. While we recognise that cause and effect are difficult to untangle, we think that BAME defendants and communities have reasonable grounds to have lower levels of trust in both the justice system and our courts. This trust deficit is concerning in itself. It is concerning not only because it seems to lie at the root of their much higher not-guilty plea rates, and all that means about the increased risk of facing a more severe sentence, but also because it is likely to be storing up trouble for the future, by making BAME defendants more likely to reoffend.

So, how do we build trust in our courts? After reviewing ideas from four jurisdictions, we did not find any silver bullets. Progress to rectify racial disparity has been and will continue to be slow. Evidence of strategies which have a direct impact on racial disparity is often scant, and, where it does exist, it is hard to untangle direct cause and effect, in part because many of these strategies have been tried in combination with others.

Nonetheless, we also found some cause for hope. We see promise in the work of public defence organisations tackling racial disparity through strategic litigation and advocacy. We also see potential in the idea of using data on racial disparities as a starting point for real conversations with agencies about the causes and remedies of these issues. It is clear that increasing diversity in the judicial and legal profession is symbolically important if we want to improve BAME defendant and wider community perceptions of the fairness of courts. And while there is enthusiasm for training on cultural awareness and diversity, it seems right that this type of training be accompanied by wider commitments to diversity in continuous professional development and not just be one-off events. Tribal justice, restorative justice, and community justice strategies show that involving the community in the process of justice can help defendants feel like the justice process is more legitimate and has greater understanding of the particular issues faced by individuals within those communities.

There are particularly strong arguments for the greater use of procedural fairness strategies. The evidence suggests that they can work to improve perceptions of fairness. It also suggests that they are effective for all groups, including those defendants who come into court with lower-than-average expectations of fair treatment. Their implementation would be a win for all our citizens. Focusing on how people are treated, rather than on what they get, means much can be delivered within existing legislation and resources.

Perhaps most importantly, when we consider the evidence from judicial diversity, procedural fairness, alternative dispute resolution, and community justice together, a clear connection emerges between people's expectations and perceptions of treatment and the extent to which the authorities in question demonstrate that they understand and represent the communities from which defendants come. Trust in the courts is rooted in perceptions of fairness and the connection between those authorities and the communities they operate in. We need to make greater efforts to provide clearer explanations of the court process, before, during, and

after court; to continue making our judiciary more diverse; and to re-connect our courts and other justice institutions to our communities, and involve civic and community groups that seek to build strong personal and civic identities, especially in communities that suffer from disparity.

Recommendations

Based on our conclusions, we recommend the following initial strategies be adopted:

The Ministry of Justice should work with HMCTS to expand existing data on racial disparity in the adult criminal court system, specifically to:

- Ensure that ethnicity data on magistrates' courts are brought into line with that of Crown Courts, especially around remand and plea decisions.
- Create data on access to justice, especially on legal representation, that can be analysed via ethnicity as well as via other diversity considerations.
- Commission research on BAME perceptions of the fairness of the court process.

Further research is needed in the following areas:

- Given the extensive use of both sentencing guidelines and assessment tools in our justice system, more research is needed on whether these tools increase or reduce racial disparity.
- Given the extensive use of diversity awareness training in our justice system, more publicly available research is needed both on how practitioners and judges receive this type of training and the extent to which it impacts how they go about their work.

The Ministry of Justice should require that each local criminal justice area (as defined by police force boundaries), bring together agencies from across the criminal justice system to look at their local rates of racial disparity and produce action plans, led by either the Police and Crime Commissioner or the Local Criminal Justice Board, to reform any identified policies and practices that create such disparity.

HMCTS should ensure that making the court process feel fairer for all defendants is at the heart of its court reform programme by:

- Providing clearer explanations of the court process, before, during, and after court for all court users.
- Training judges, magistrates, and court staff in better courtroom engagement between defendants, judge, and court staff.
- Reviewing how online and virtual court processes can be exploited to increase the perceptions of fairness of all defendants.
- Considering how judicial and magistrates' procedural fairness performance is considered within their performance appraisals.
- Introducing ways of measuring, consistently and over time, the perceptions of fairness of victims, witnesses, and defendants in the court process.

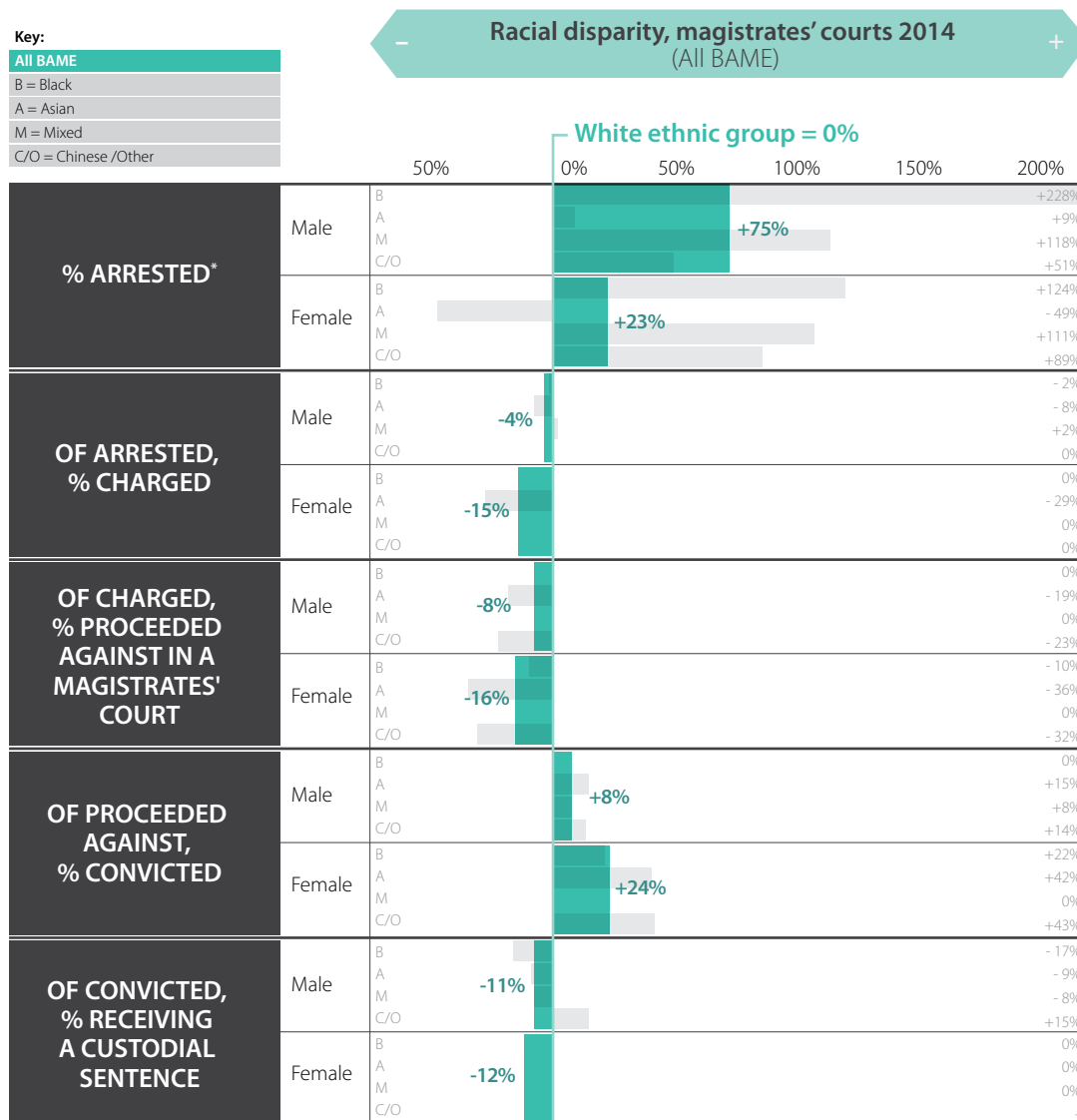
The HMCTS courts reform programme should ensure the criminal courts system engages and understands the communities within which it works by:

- Introducing more local, pop-up courts in civic buildings in more accessible locations and building support, mentoring, and aftercare around the court process involving local civic organisations and services.
- Requiring local justice areas to set out how they participate in wider community-engagement initiatives, especially to excluded minority groups and families of defendants, as they develop and deliver their plans of action locally.

Appendix:

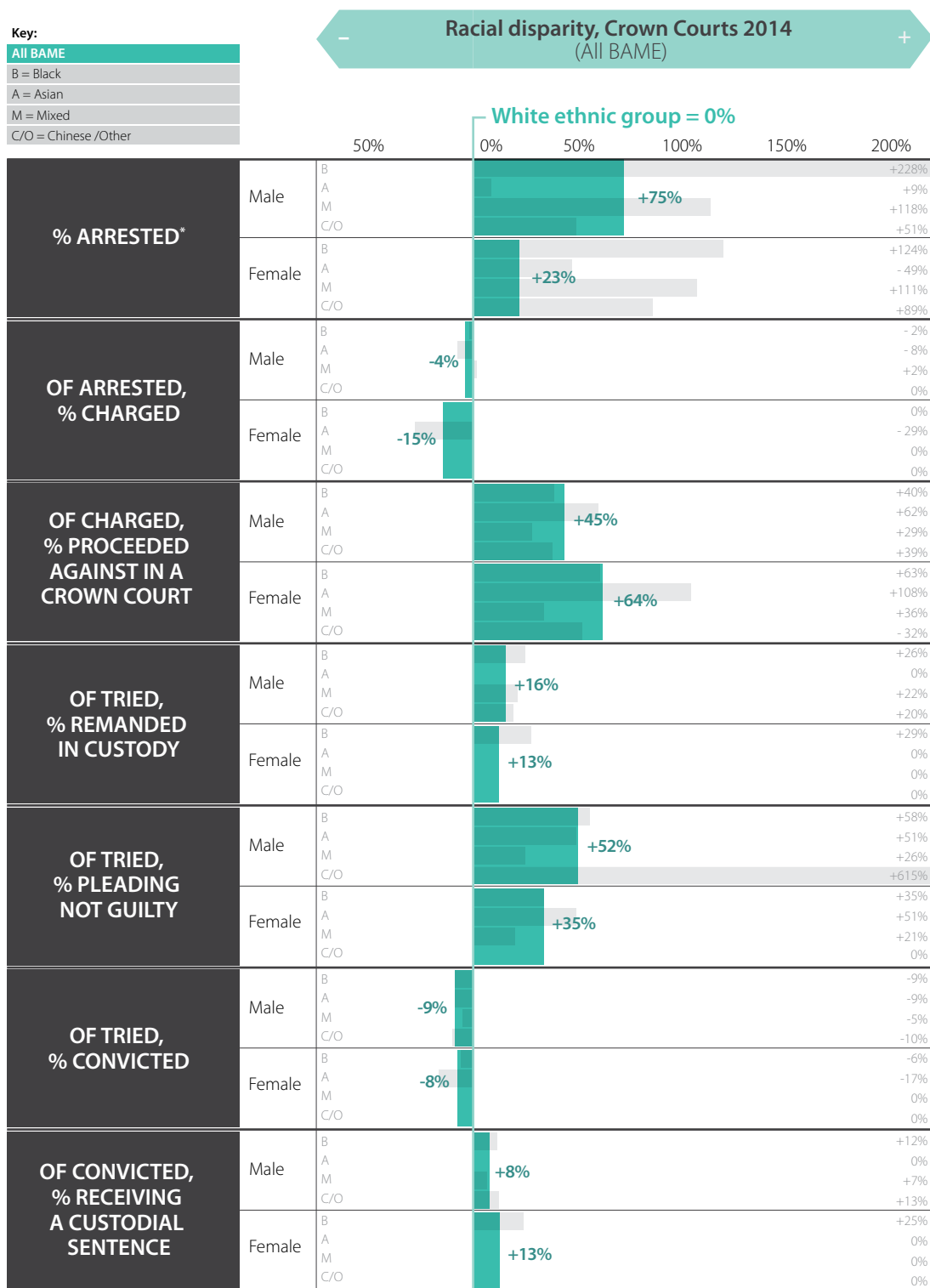
Racial disparity in the decisions within the adult criminal courts process

Table A1: Racial disparity in the decisions within the adult criminal court process, 2014, magistrates' courts.



* Rates were obtained for specific offence group categories by counting the number of arrests in 2013/14 within age, gender, ethnicity and offence group out of an 'at risk' age, gender and ethnicity specific population from the 2011 census of England and Wales.

Table A2: Racial disparity in the decisions within the adult criminal courts process, 2014, Crown Courts.



* Rates were obtained for specific offence group categories by counting the number of arrests in 2013/14 within age, gender, ethnicity and offence group out of an 'at risk' age, gender and ethnicity specific population from the 2011 census of England and Wales.

Table A3: Racial disparity for adult Black males in the decisions within the adult criminal courts process, 2014, for specific offence types.

| | Statistically significant % difference in outcome compared to white ethnic group | | | | | | | | | |
|--|--|-----------------|---------|----------------|---------------------------|---------------|-----------------------|-----------------------|--------------|-------|
| | Violence against the person | Sexual offences | Robbery | Theft offences | Criminal damage and arson | Drug offences | Possession of weapons | Public order offences | Misc. crimes | Fraud |
| Of charged, % proceeded against in a magistrates' court | -5% | -6% | -7% | -9% | -2% | 24% | | | | -25% |
| Of proceeded against, % convicted in a magistrates' court | 65% | 0% | | 25% | 27% | -10% | 20% | 0% | 0% | 0% |
| Of convicted, % receiving a custodial sentence in a magistrates' court | 0% | 108% | | 13% | 0% | -29% | 0% | 0% | 0% | 0% |
| Of charged, % tried in a Crown Court | 30% | 0% | -1% | 44% | 0% | 15% | 16% | 26% | 33% | 12% |
| Of tried in a Crown Court, % remanded in custody | 30% | 34% | -5% | 6% | 0% | 83% | 36% | 23% | 29% | 21% |
| Of tried in a Crown Court, % pleading not guilty | 76% | 44% | 67% | 88% | 0% | 116% | 62% | 68% | 67% | 0% |
| Of tried in a Crown Court, % convicted | -15% | -32% | -14% | 89% | 0% | 5% | -9% | -10% | -7% | 0% |
| Of convicted in a Crown Court, % receiving a custodial sentence | 15% | 0% | -4% | -5% | 0% | 41% | 33% | 0% | 19% | 0% |

Table A4: Racial disparity for adult Asian males in the decisions within the adult criminal courts process, 2014, for specific offence types.

| | Statistically significant % difference in outcome compared to white ethnic group | | | | | | | | | |
|--|--|-----------------|---------|----------------|---------------------------|---------------|-----------------------|-----------------------|--------------|-------|
| | Violence against the person | Sexual offences | Robbery | Theft offences | Criminal damage and arson | Drug offences | Possession of weapons | Public order offences | Misc. crimes | Fraud |
| Of charged, % proceeded against in a magistrates' court | -10% | -7% | -6% | -30% | -9% | 7% | | | | -18% |
| Of proceeded against, % convicted in a magistrates' court | 55% | 0% | | 29% | 25% | 0% | 0% | 34% | 0% | 0% |
| Of convicted, % receiving a custodial sentence in a magistrates' court | 22% | 93% | | 14% | 13% | 0% | 0% | -19% | 0% | 0% |
| Of charged, % tried in a Crown Court | 25% | -6% | 0% | 33% | 44% | 35% | 27% | 77% | 1005% | 44% |
| Of tried in a Crown Court, % remanded in custody | 13% | 21% | -21% | -24% | 6% | 60% | 20% | -19% | 0% | -22% |
| Of tried in a Crown Court, % pleading not guilty | 75% | 26% | 36% | 69% | 88% | 67% | 66% | 69% | 58% | 21% |
| Of tried in a Crown Court, % convicted | -20% | -17% | -8% | -8% | 89% | -3% | -14% | -11% | -6% | 0% |
| Of convicted in a Crown Court, % receiving a custodial sentence | 0% | -6% | 10% | -14% | -5% | 42% | 18% | -34% | 9% | 0% |

End notes

1. In this report, we use the term BAME in line with the Ministry of Justice's statistics, where ethnicity is self-defined by an individual, and categories are based on the classifications as defined by the 2001 and 2011 Census. The Census Categorisation has five broad categories: White, Black, Asian, Mixed, and Chinese or Other. Generally, where applicable and where evidence allows, we discuss the broad categories individually, to reflect their different experiences, but given the much greater numbers of white individuals in the population, it is sometimes necessary or appropriate to consider the 'other' groups together. In these circumstances, the combined group is referred to as BAME— Black, Asian, and Minority Ethnic. We do so recognising that BAME communities are far from a homogenous community and that individual circumstances and needs are complex and varied.
2. In looking at these issues, we consider racial disparity as a statistically significant likelihood that particular ethnic groups experience a different outcome compared to the white majority. Traditionally, research has looked at over-representation of BAME individuals at particular stages in the criminal justice system, and compared this to BAME representation within the total population. However, more recent analysis has looked at the likelihood of particular ethnic groups being 'at risk of' experiencing an adverse outcome. An 'at risk' population is the number of individuals who are at risk of a further criminal justice system decision. For example, those at risk of being charged are those who have been arrested. The use of data on populations 'at risk' helps more specifically to look at particular decisions at points in the criminal justice system and is more accurate than broad total population figures.

Where we can, we have therefore preferred to use data drawn from 'at risk' analyses, from the following source: Uhrig, N. (2016). *Black, Asian and Minority Ethnic Disparity in the Criminal Justice System in England and Wales*. Ministry of Justice. Retrieved from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/568680/bame-disparity-in-the-cjs.pdf

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Building Trust

How our courts can improve the criminal court experience for Black, Asian, and Minority Ethnic defendants

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Centre for Justice Innovation

Unit 3.08, Canterbury Court
Kennington Park Business Centre
1-3 Brixton Rd, London, SW9 6DE
Telephone +44 (0) 203 735 9436

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