

Howard League for Penal Reform submission to the Home Affairs Committee inquiry, *The Macpherson Report: twenty-one years on*

30 June 2020

Summary

1. The Howard League for Penal Reform welcomes the opportunity to submit evidence to the Home Affairs Committee inquiry, *The Macpherson Report: twenty-one years on*
2. Discrimination remains endemic within the criminal justice system at the point of entry. The Howard League has worked intensively with the police for ten years to achieve a reduction in child arrests and has a new programme to stem the flow of women into the criminal justice system
3. The number of child arrests has reduced by over two thirds since 2010 but White children have benefitted from this far more than Black and minority ethnic children who are four times more likely to be arrested than White children
4. This disproportionality grows exponentially as children go through the criminal justice system. In April 2020, over half the children in child prisons were from Black and minority ethnic backgrounds
5. Black and mixed ethnic women are more than twice as likely to be arrested as White women
6. More needs to be done to keep Black and ethnic minority people out of the criminal justice system and prevent unnecessary arrests. Focused work can dramatically reduce unnecessary criminalisation as the Howard League's programme to reduce the criminalisation of children in residential care has demonstrated. Police should work with welfare based and specialist services such as children's services and women's centres to provide tailored support to keep people from ethnic minorities out of the criminal justice system
7. Accurate and consistent recording of ethnicity data is vital for understanding and tackling systemic racism and disproportionality in the criminal justice system and reducing discrimination. Systems for recording ethnicity are inconsistent between the 43 forces in England and Wales. In 2018, ethnicity was not recorded for nearly 4,000 child arrests.

1. About the Howard League for Penal Reform

- 1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.
- 1.2 The Howard League works for less crime, safer communities and fewer people in prison. The charity achieves these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.
- 1.3 The Howard League legal team works directly with children and young adults in prison.
- 1.4 This submission draws on the Howard League's legal and policy work.
- 1.5 The Howard League would welcome the opportunity to provide further information about any of the points below.

2. Overview

- 2.1 Twenty one years on from the Macpherson Report and almost three years on from David Lammy's review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the criminal justice system, the evidence shows that discrimination remains a major problem at every stage of the criminal justice system. This submission draws on some of the Howard League's successful work with the police to stem the flow of vulnerable people into the criminal justice system. It highlights how Black and ethnic minorities have all too often not benefitted from the progress that has been made in the last ten years. It argues that lessons learned from policing that has successfully reduced unnecessary arrests and criminalisation can, and must, be used to ensure that all members of the community are protected from unnecessary criminalisation, regardless of their ethnicity.

3. Children and policing

- 3.1 Since 2010, the Howard League has been campaigning to reduce the number of child arrests with a view to "stemming the flow" of children into the youth justice system. The charity collects (and publishes) the numbers of child arrests made by police forces annually through Freedom of Information requests and works closely with police forces all over England and Wales to identify and address issues in order to prevent unnecessary arrests of children. In 2017, there were 79,012 child arrests in England and Wales, a 68 per cent reduction from the 245,763 child arrests in 2010 (Howard League for Penal Reform, 2019).
- 3.2 This research and policy work, combined with knowledge from the Howard League legal team's direct work with children and young people, has highlighted the fact that some groups of children are still being pushed into the youth justice system unnecessarily and unfairly because of systemic failings and discrimination across justice, social care and health systems. These include: (i) Black and minority ethnic

children; (ii) children living in residential care; (iii) child victims of criminal and sexual exploitation; and (iv) children with serious mental health problems.

- 3.3 Four years ago the Howard League launched a campaign to reduce the disproportionate and unnecessary criminalisation of children in residential care. In the year ending 31 March 2014 – just before the charity started this programme - 15 per cent of children living in children’s homes were formally criminalised; in the year ending 31 March 2019, this proportion had gone down to seven per cent (Howard League for Penal Reform, 2020a). This reduction demonstrates how targeted, multi-agency work can dramatically reduce the unnecessary criminalisation of children thereby improving their life chances. More information about this programme and how these reductions have been achieved is available on the Howard League’s website at <https://howardleague.org/our-campaigns/programme-to-end-the-criminalisation-of-children-in-residential-care/>.
- 3.4 A focused approach needs to be applied to tackling the disproportionate number of arrests of Black and minority ethnic children. The large reduction in the numbers of child arrests in the last decade is a success story but the data highlights continued inequalities for Black and minority ethnic children who have not benefitted from efforts to divert children to the same extent as their White counterparts.
- 3.5 In the year ending March 2019, 69 per cent of arrests were of White children. This proportion is a decrease from 82 per cent in the year ending March 2009. Arrests of Black children accounted for 16 per cent of all arrests in the year ending March 2019, which is double the proportion ten years ago (Youth Justice Board/Ministry of Justice 2020). Government data shows that Black children are over four times as likely as White children to be arrested. Children from Mixed and Chinese or Other ethnicities are around twice as likely to be arrested than White children, while Asian children had a similar chance to White children of being arrested (Youth Justice Board/Ministry of Justice 2020).
- 3.6 The impact of systemic racism in the criminal justice system on Black and ethnic minority children grows exponentially as children progress through the system, resulting in hugely disproportionate numbers of Black and minority ethnic children being held on remand and serving sentences in child prisons. In April 2020, 51 per cent (380) of the 749 children and young people held in youth custody were from Black, Asian and minority ethnic backgrounds (HM Prison and Probation Service, 2020). In Feltham and Cookham Wood prisons, around two-thirds of children being held on remand are Black or minority ethnic (Howard League for Penal Reform, 2020b).

Police recording of ethnicity for child arrests

- 3.7 As part of its annual data collection on child arrests, the Howard League asks forces to break their figures down by age, gender and ethnicity. Historically, the ethnicity data could, at best, be described as “messy”, reflecting poor data collection in this area by forces. There has been a marked improvement over the years but still it is the case that forces are not consistently using the same data recording methods and that ethnicity is not being recorded in too many cases.
- 3.8 The charity is currently analysing the responses to its requests for 2019 child arrests data. Police forces have used a variety of different systems to record the ethnicity of

children who have been arrested. Some forces have submitted data based on the IC (identity codes) '6+1' system which records officers' perceived views of a person's ethnicity based on a visual assessment. Others have sent data based on the 'Self Defined Ethnicity – 16+1' codes or the 'Self Defined ethnicity - 18+1 standard' codes. There have even been instances of forces that are using codes that do not appear in any of these systems. This inconsistent approach to data collection will be hampering efforts to analyse, understand and address problems nationally and at a local level.

- 3.9 The improvements in the recording of ethnicity data over the last ten years have not been consistent across the board. For example, there were nearly 4,000 child arrests where ethnicity was not recorded at all in the 2018 child arrests data (about five per cent of the total number of child arrests that year) and the 2019 data shows a similar, possibly higher, level of failure to record ethnicity. The government statistics record that the number of arrests with an unknown ethnicity – as opposed to simply not recording ethnicity at all which is what we have reported on - has increased by 60 per cent from the year ending March 2009 and by 72 per cent compared to the previous year to just over 6,500. Police recording of ethnicity appears to be getting worse not better (Youth Justice Board/Ministry of Justice 2020).

4. Women and policing

- 4.1 The Howard League is conducting a programme of work to reduce the arrests of women, building on its successful work with the police regarding children. The Howard League provides administrative support to the All-Party Parliamentary Group on Women in the Penal System which is conducting an inquiry into reducing the arrests of women.
- 4.2 According to data published by the Ministry of Justice (2016), Black and mixed ethnic women are more than twice as likely to be arrested as white women. As with children, the impact of systemic racism grows throughout the criminal justice system. The Lammy Review found that Black women charged with an offence were more likely to be found guilty in the magistrates' courts and more likely to be tried in the crown court than White women. Foreign national, Black, Asian and minority ethnic women are more likely than White women to be remanded to prison without sufficient reason.
- 4.3 Responses by police forces to a Freedom of Information request on arrests of women have shown that forces are not consistently using the same data recording methods to record data on ethnicity and in over five per cent of cases, ethnicity was not recorded at all or was unknown. This lack of consistency reflects the experiences described in the preceding section of requesting data on the ethnicity of children arrested by the police.
- 4.4 Many women are arrested unnecessarily and arrests frequently result in no further action. Once arrested, the Lammy Review found that Black women were less likely to be charged than White women. There should be greater challenge to prevent arrests of women when it is unnecessary and inappropriate. This would help to prevent the disproportionate criminalisation of Black and mixed ethnic women.
- 4.5 There are good examples of police forces working with specialist services, including women's centres, to keep women out of the criminal justice system. Women's centres provide support tailored to a woman's particular needs.

- 4.6 There should be greater involvement with and investment in specialist women's centres, to divert women pre-arrest and provide specialist support for Black and minority ethnic women.

5 Improving police ethnicity data

- 5.1 In the oral evidence session for this inquiry before the Home Affairs Select Committee on 24 June 2020, the witnesses were challenged on police recording of ethnicity in relation to Fixed Penalty Notices (FPNs) issued during the coronavirus lockdown in March – April 2020. Failure to record ethnicity was hampering efforts to understand any racial disproportionality in the issuing of FPNs. In response to a question from Diane Abbott as to whether steps had been taken to standardise police recording of ethnicity, Assistant Commissioner Martin Hewitt said, *“There is work that still needs to be done”* in order to achieve consistent data capture. Chief Constable Ian Hopkins, in agreement with his colleague, went on to say that consistent data capture was *“one of the key drivers that we have to get right, and we really have to improve for transparency but also for driving improved activity from policing”* (House of Commons, 2020).
- 5.2 In his 2017 review, David Lammy highlighted the central role of accurate and consistent data recording within the criminal justice system in tackling disproportionality. His very first recommendation was as follows: *“Recommendation 1: A cross-CJS approach should be agreed to record data on ethnicity. This should enable more scrutiny in the future, whilst reducing inefficiencies that can come from collecting the same data twice. This more consistent approach should see the CPS and the courts collect data on religion so that the treatment and outcomes of different religious groups can be examined in more detail in the future.”*
- 5.3 The Rt Hon David Lidington also highlighted the centrality of good data collection in his Foreword to the government's response to Mr Lammy's report, *“In our response, we set out how we can continue to understand what and where the problems are in the criminal justice system, how we can take action to make a difference and how we will hold ourselves accountable for progress. A key part is continuing to improve the collection and analysis of data that can inform and drive action, as well as allow us to get on and improve the experience and engagement of people from BAME backgrounds with courts, prisons and rehabilitation.”* The Ministry of Justice committed to: *“implement a consistent, cross-criminal justice system approach to recording and analysing ethnicity, building on the good practice that already exists in some parts of the criminal justice system. This complements the ambition of the Race Disparity Audit towards better interpretation of Government-held data. The MoJ are also exploring how to integrate religious identity data collection into this approach.”*

6. Concluding observations

- 6.1 The reductions in the numbers of arrests of children and women show that change is possible. The Howard League's work on arrests of women has shown that arrests frequently end up with no further action being taken. The Howard League's work to reduce the unnecessary criminalisation of children in residential care shows how much can be done to prevent unnecessary arrests and divert people away from the criminal justice system. Much more emphasis needs to be placed on understanding and addressing the causes of unnecessary arrests, including the existence of systemic racism, and diverting Black and ethnic minority people pre-arrest.

- 6.2 Government and senior police officers recognise that the collation of consistent and reliable data by the police on ethnicity is essential in order to understand discrimination and disproportionality and to drive and monitor efforts to tackle these problems. The responses to the Howard League's Freedom of Information requests for data on the arrests of children and women demonstrate how far there is to go in order to achieve this and honour the commitments made by the government in its response to the Lammy Review. Clear direction needs to be given to forces in relation to recording, and monitoring needs to be undertaken in order to ensure these directions are observed.

**The Howard League for Penal Reform
30 June 2020**

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