

Howard League for Penal Reform submission to the Commission on Race and Ethnic Disparities November 2020

Summary

1. Discrimination remains endemic within the criminal justice system at the point of entry, despite the Lammy Review published in 2017.
2. 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. 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
3. This disparity grows exponentially as children get deeper into the criminal justice system. In September 2020, over half the children in child prisons were from Black, Asian and minority ethnic backgrounds. The disparity is even more acute for children on remand of whom two thirds were from Black, Asian and minority ethnic backgrounds in June 2020
4. Young adults aged 18 to 20 from Black, Asian and minority ethnic backgrounds account for around a third of the custodial population of that age
5. In custody, children and young adults face discrimination. They are subject to more formal disciplinary procedures, higher levels of restraint and separation than white young people. The system for complaints about discrimination is rarely used and ineffective
6. Black and mixed ethnic women are more than twice as likely to be arrested as white women
7. More needs to be done to keep Black and ethnic minority people out of the criminal justice system, prevent unnecessary arrests and ensure fairer treatment for Black and ethnic minority people who are imprisoned. Focused work can dramatically reduce unnecessary criminalisation as the Howard League's programme to reduce the criminalisation of children in residential care has demonstrated. Welfare-based and specialist services such as children's services and women's centres should provide tailored support to keep people from ethnic minorities out of the criminal justice system
8. Accurate and consistent recording of ethnicity data is vital for understanding and tackling racial disparities 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 policy and campaigning and the charity's legal work.

2. Overview

- 2.1. 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, as can be evidenced in the annual *Race and the criminal justice system statistics* published by the Ministry of Justice (2019a).
- 2.2. 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.
- 2.3. Observations are made as to the particular difficulties faced by Black, Asian and minority ethnic children and young people who are imprisoned based on the charity's legal work. It is argued that for those young people who are detained, a sea-change in practice and culture is required to prevent discrimination in prison.

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 2018, 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).

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 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.*” In response the Ministry of Justice has progressed this recommendation across the agencies for which it has responsibility for. The Howard League notes, however, that data collection by the police is not this department’s responsibility.
- 3.10 What improvements have made 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 and this is indicative of a need for the Home Office and police forces to take the issue of data recording as seriously as the Ministry of Justice and other parts of the criminal justice system.

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 Children and young adults in prison

- 5.1 The disparity present at point of arrest grows exponentially as children get deeper into the criminal justice system.
- 5.2 In September 2020, over half the children in child prisons were from Black, Asian and minority ethnic backgrounds (HM Prison and Probation Service, 2020). This represents a significant increase since David Lammy reported in 2017.
- 5.3 The position is even more acute when it comes to children who have been remanded to custody. According to a Freedom of Information Act response, two thirds of children remanded to prison were from Black, Asian and minority ethnic backgrounds in June 2020 (FOI 200813013). In the year ending March 2019, 66 per cent of children remanded to youth detention accommodation did not subsequently receive a custodial sentence (Youth Justice Board/ Ministry of Justice, 2020). In 2019, a third of children remanded to custody in the crown court were from Black, Asian and minority ethnic backgrounds (Ministry of Justice, 2020a). The equalities statement prepared for the legislation extending the custody time limits in the crown court finds that both ethnic minorities and children are more likely to be remanded in custody and therefore "temporarily extending the CTL in the Crown Court in respect of those awaiting a trial will also disproportionately impact on people with these protected characteristics" (Ministry of Justice, 2020c).
- 5.4 Young adults aged 18 to 20 from Black, Asian and minority ethnic backgrounds account for around a third of the custodial population of that age. The Howard League recognises that individuals aged 18 to 25 are widely acknowledged to be young adults but notes that the data collected by the Ministry of Justice provides data on the ethnicity of young adults aged 18 to 20 (Ministry of Justice, 2020b).
- 5.5 In custody, children and young adults face discrimination. As the Lammy review concluded, they are subject to more formal disciplinary procedures, higher levels of restraint and separation than white young people.
- 5.6 In 2019 Black, Asian and minority ethnic prisoners accounted for almost a third of all adjudications, while making up just a quarter of the prison population (Ministry of Justice 2019b). The Howard League's briefings on additional days reveal that, year after year, Black, Asian and minority ethnic prisoners receive a disproportionately high number of additional days.

- 5.7 Restraint is used disproportionately against Black, Asian and minority ethnic people in prison. Her Majesty's Prison and Probation Service External Advice and Scrutiny Panel on the disproportionality has stated that evidence shows racially disproportionate outcomes in use of force persist and are unexplained (Ministry of Justice, 2020d). Similarly, an Equality Analysis report which evaluates the equality impact of the existing PSO 1600 recognises that there are disproportionate outcomes around use of force for BAME, young, and disabled people in prisons. The Joint Committee on Human Rights also found that rates of restraint and isolation are higher for children from Black, Asian and Minority ethnic backgrounds (JCHR, 2019). These findings are mirrored by the charity's legal work which has involved many examples of young Black boys being subjected to excessive use of force. The Howard League is aware of an incident where the trigger for the use of force was described as a young black boy having "wide" and "angry" eyes. The young man in question was autistic and found being restrained traumatic: even though his diagnosis was known to staff, he felt that in the heat of the moment, he was perceived as an angry young Black man rather than an autistic child.
- 5.8 The system for complaints about discrimination is rarely used and ineffective. The procedure for making a complaint about discrimination involves using a special discrimination incident reporting form (DIRF) which is supposed to guarantee a confidential procedure. Many young people have told the Howard League that they see no point in engaging in this process as it will not result in any positive outcome. The Howard League has assisted some young people with the process and has never known such a complaint to be upheld. The system is not therefore an adequate form of redress.
- 5.7 Support with resettlement on release from prison is a huge issue for all children and young people yet there is no research on how Black and ethnic minority young people experience this. A recent report by HMIP on resettlement experiences for adults from Black, Asian and minority ethnic backgrounds showed a big gap between prisoners from such backgrounds and staff on the extent to which race influenced resettlement prisoners. There appears to be no research on how this affects children and young adults. The Howard League has found that securing packages of accommodation and support for children from minority backgrounds is often harder than for white children and this may also explain why there is such a high proportion of Black, Asian and ethnic minority children on remand in custody.

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.

- 6.3 The proposals in the update on tackling racial disparity in custody do not go far enough to ensure meaningful change (Ministry of Justice, 2020d). A sea-change in practice and culture is required to reduce discrimination custody. This must include proactive measures to stamp out racism in prison and to promote an effective complaints system, overseen by an independent body from the outset. Time, care and attention must be paid to ensure that children and young adults from Black, Asian and minority ethnic backgrounds are seen as children and young adults first and foremost to avoid stereotypes kicking in.

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

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