
Howard League for Penal Reform



Making Black lives matter in the criminal justice system

A guide for antiracist lawyers

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Contents

Foreword by Black Protest Legal Support	4
Executive summary	5
Introduction	7
Racialised social structures	9
Accumulated disadvantage leading to discrimination in the criminal justice system	10
Contact with the criminal justice system	16
An understandable lack of trust in the criminal justice system	19
Lack of diversity in the criminal justice system	19
Making a difference at the police station	22
Educate yourself	23
Ask the right questions	25
Gather the evidence	26
Make the case for a better outcome	26
Antiracist advice and representation for Sean and Alicia at the police station	28
Making a difference at court	30
Educate yourself	31
Ask the right questions	37
Gather the evidence	40
Make the case for change	41
Antiracist representation for Sean and Alicia at Court	44
Making a difference after court	46
Educate yourself	47
Ask the right questions/practical steps after court	49
Supporting Sean and Alicia after court	51
Endnote: Be part of an antiracist legal community	52
About the Howard League for Penal Reform	53
About Black Protest Legal Support	53
References	54

Foreword

Criminal law harms and punishes Black communities en masse.

In the words of Angela Davis “at this point, at this moment in history, I don’t think that there can be policing without racism. I don’t think that the criminal justice system can operate without racism.”

In the absence of radical change, my work with Black Protest Legal Support has shown that legal tools can and must be used to build the power of people and movements.

As an organisation committed to movement lawyering, Black Protest Legal Support understands that the law is not neutral and lawyers have a role in mitigating against this by bringing the fight for racial justice to the centre of their practice. This can be difficult for lawyers as legal training teaches us to do the opposite.

This guide is so important in the movement for Black lives because to effectively support the liberation of oppressed communities, more members of the legal profession need to liberate themselves from the constraints imposed by traditional legal training and use their practice to build community power.

This guide is a stepping-stone to doing just that.

Ife Thompson

Lawyer and founder of Black Protest Legal Support

Executive summary

This guide is inspired by two harsh realities that must be addressed: racial discrimination as an enduring feature of criminal justice for Black people; and legal training in England and Wales that does not equip lawyers to be antiracist. Without taking the initiative to learn about and challenge the racism inherent in our justice and social systems, criminal law practitioners can become complicit in it.

Discrimination in the criminal justice system does not exist in isolation. It is situated within the broader context of structural racism, including the disadvantage which Black people experience in housing, education, employment and health, but that is no excuse for failing to address it.

Offering clear step-by-step advice and helpful case studies, the guide is designed to support lawyers to be antiracist at each phase of a client's journey through the system. Lawyers must recognise injustice, listen to clients' stories, build trust and rapport, and work to counter bias and discriminatory evidence and behaviour in court.

At the police station, Black people – and particularly young, working-class Black men – are more likely to have experienced coercive and punitive policing. Lawyers need to recognise that past experiences with the police can shape clients' perceptions of the criminal justice system and should never blame clients for their justified distrust of it. Police intelligence about 'gangs', including the Gangs Matrix established by the Metropolitan Police, is often poorly-evidenced and discriminatory and should be challenged in court.

At court, Black people are subjected to more punitive remand and sentencing decisions than white people, often in courtrooms where racialised evidence is accepted as fact and Black people's lived experience is ignored. Throughout the system, the risks supposedly posed by Black people are emphasised, and sometimes imagined, while their vulnerabilities and unmet needs are overlooked. Lawyers can counter this by gathering information about the vulnerabilities experienced by Black clients, for example through health and social care records.

At the point of sentencing, lawyers should pay close attention to any evidence that a Black client has experienced bias during a trial and should consider this in any grounds of appeal. It is worth consulting an independent colleague about this, given that a defence lawyer may themselves have been a source of bias.

After sentencing, Black people continue to experience worse outcomes, whether they have been sent to prison or given a community sentence. Lawyers should provide practical and emotional support which recognises that Black clients may experience discrimination from probation officers or whilst in prison and advise them about how to respond.

Above all, the guide reminds practitioners of the need to listen closely and carefully to what Black clients have to say about their own experiences, and to recognise that

much more needs to be done to create a legal system that is antiracist. At every stage, Black people have more contact with the criminal justice system than other ethnic groups: they are more likely to be stopped by police, arrested, remanded to custody and to receive a custodial sentence.

In the words of the writer and barrister, Afua Hirsch: “This essential guide will not only equip lawyers to be antiracist, it will also equip them to be good lawyers. There is nothing optional about this information.”

Introduction

*‘What’s the problem with being “not racist”? It is a claim that signifies neutrality: “I am not a racist, but neither am I aggressively against racism.” But there is no neutrality in the racism struggle. The opposite of “racist” isn’t “not racist”. It is “antiracist”’ Ibram X. Kendi (2019), *How to Be an Antiracist**

Fair outcomes cannot be achieved through a “colour-blind” legal system or by treating everybody the same way.

The notion that justice is blind, and therefore “colour-blind” and impartial, is central to the way lawyers are trained to think. In the words of Professor Kimberlé Crenshaw (1988, p. 2), ‘many law classes are conducted as though it is possible to create, weigh, and evaluate rules and arguments in ways that neither reflect nor privilege any particular perspective or world view’. Structural and institutionalised racism, evidenced by numerous independent inquiries for decades, means that a different approach is required to achieve justice for Black people and reduce discrimination. In this guide, the term Black people describes Africans and people of African descent, as defined by the [Durban Declaration against Racism](#) (World Conference Against Racism, 2001). Legal practitioners need to understand the issues that affect Black people in modern day Britain. Lawyers of all ethnicities need to ensure that they understand how the prejudices that Black people face accumulate, especially for those who come into contact with the criminal justice system and even more so for people who suffer multiple disadvantages due to other protected characteristics such as gender, disability, sexuality and class.

This guide focuses on countering racism experienced by Black people in the criminal justice system. It is acknowledged that there are many other groups of people who suffer unacceptable discrimination in the criminal justice system. We hope that the ideas in this guide will assist in combating all forms of discrimination. In [her first speech](#) as Prime Minister four years before the killing of George Floyd in 2020, Theresa May stated the simple truth that “if you’re Black, you are treated more harshly by the criminal justice system than if you are white” (May, 2016). The Howard League sees the most acute manifestation of discrimination in its legal work for young people in prison: in November 2020, one in three children in prison were Black (Youth Custody Service, 2021).

Drawing on [critical race theory](#), this guide is designed to help legal practitioners begin their lifelong journey to becoming antiracist lawyers, working in ways which will disrupt and challenge the discrimination that is an enduring feature of the criminal justice system for Black people (Centre for Research on Race and Education, 2020). Antiracist lawyers will not always be able to counter discrimination in the system, but they can work towards this by disrupting the existing power structure.

The Howard League has produced this guide in association with Black Protest Legal and in consultation with an expert advisory group, to support all practitioners to achieve real change for Black people in the criminal justice system (see box).

This guide starts with a snapshot of key issues that all practitioners will need to be aware of. Subsequent sections provide suggestions and examples of ways in which lawyers may make a difference throughout the process by educating themselves, asking the right questions, gathering the evidence and making representations to ensure decision-makers take account of the reality of Black people's lives. Rather than being a comprehensive manual, it aims to provide a starting point for antiracist practitioners and must be read on the understanding that these issues are highly sensitive and personal: lawyers will always need to approach these issues with care and only act on clients' instructions. Above all, the guide should prompt lawyers to listen closely to what Black clients have to say about their own experiences and context.

We have a long way to go to create an antiracist legal system in England and Wales. This guide provides a framework for converting outrage about endemic discrimination into outcomes that counteract the disadvantages faced by Black people in the criminal justice system. The aim is to encourage lawyers to acquire the knowledge, skills and confidence to speak truth to power and make the case for fairer outcomes.

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Ife Thompson, community-based activist, writer, barrister and founder of BLAM UK.

Racialised social structures

Legal training in England and Wales does not equip lawyers to be antiracist. Without taking the initiative to learn about the racism inherent in our justice and social systems and challenge it, lawyers become complicit in that racism.

Lawyers need to know that all aspects of Black people's lives are framed by racialised social structures. According to the political sociologist Eduardo Bonilla-Silva (1997), these structures result from relations and practices based on racial distinctions developing at all levels of society. In England and Wales, racialised social structures affect the achievements and experiences of Black people in health, education and work.

Racism cannot therefore be tackled by treating everybody in the same way and antiracist lawyers need to have an understanding of Black people's lived experiences. Steve McQueen's *Small Axe* films (2020) powerfully portray the granular detail of how everyday Black lives have been framed by race in Britain for decades and should be compulsory viewing.

Discrimination exists for a Black school boy who deliberately takes a longer route to and from school to avoid being stopped and searched by the police, even though he has no intention of committing a crime. It exists for a respected female Black barrister who is treated as a defendant by court staff three times in one day.

This phenomenon is widespread and recognised by most Black people. In her novel *Girl, Woman, Other*, Bernardine Evaristo describes how Lennox, now a successful Black solicitor, was repeatedly stopped by the police as a child because of the colour of his skin and how he dealt with it:

'...it was scary, creepy and emasculating, he told Shirley the first time he let his guard down and confided in her, every time it happened I was relieved that I wasn't beaten up or killed in a police van or cell I was a good boy who didn't mix with ruffians or get into fights I started wearing suits outside of school, even though my mates laughed at me and others thought I'd become a Jehovah's Witness'
(Evaristo, 2019, p. 230)

This pervasive discrimination is the base line of what Black people in Britain are at risk of experiencing, with huge implications for their physical health and mental wellbeing. For many, this discrimination is compounded by additional disadvantage rooted in socio-economic factors. Medical sociologists have shown that both structural and interpersonal racism are associated with psychological distress, and with a greater risk of severe mental illness (Wallace et al, 2014; Nazroo et al, 2020). A 2005 study found that people who reported an experience of racist abuse – verbal or physical – were twice as likely to develop psychosis (Karlsen et al, 2005).

The accumulated disadvantage experienced by many Black people shapes the nature and extent of their contact with the criminal justice system. In turn, the system

invariably entrenches those disadvantages. Ingrained structural racism has led many Black people to have an understandable lack of trust in mainstream institutions, which is particularly acute in the criminal justice system where power imbalances are stark. This distrust is compounded by a lack of diversity among professionals, especially at a senior level.

Given this lack of diversity, media representations can significantly impact how white judges, magistrates and police perceive Black people who are in trouble with the law. Yet academic research has shown that Black boys and young men are overwhelmingly associated with crime in news coverage, and that most of these news stories offer no context, explanation, or commentary on the structural factors which might be relevant (Cushion et al, 2011).

Meanwhile, police press releases can import bias from the criminal justice system into the media. An [investigation by the Huffington Post](#) found that between July and December 2019, almost half of sentencing press releases by the Metropolitan Police focused on Black people, even though less than a third of people sentenced in that time were Black (Turnnidge, 2021).

Accumulated disadvantage leading to discrimination in the criminal justice system

In her book, *Brit(ish): On Race, Identity and Belonging*, Afua Hirsch describes the experiences that many Black people who end up in the criminal justice system have faced:

‘These experiences – getting stopped and harassed by the police, being perceived as a troublemaker in school or a low achiever, being told you won’t amount to anything – add up. There’s evidence that exposure to racial discrimination, from schools, the media and the police, leads to decreased self-efficacy, anger, poor health and lower levels of empathy, characteristics which in turn lead to an increase in risky behaviours such as drug use and aggression, and increased risk of chronic illness.’
(Hirsch, 2018, p. 249)

Research shows that this disadvantage often begins at birth and accumulates thereafter. This accumulated disadvantage results from both structural and institutional racism.

Structural and institutional racism

“Structural racism” focuses on power relations which structure society as a whole and impact all institutions within it (Garner, 2009). The US Black Power Movement described this as “institutionalized racism”. In the words of Stokely Carmichael: “When unidentified white terrorists bomb a Negro church and kill five children, that is an act of individual racism, widely deplored by most segments of the society. But when in that same city, Birmingham, Alabama, not five but five hundred Negro babies die each year because of a lack of proper food, shelter and medical facilities, and thousands more are destroyed and maimed physically, emotionally and intellectually because of conditions of poverty and deprivation in the ghetto, that is a function of institutionalized racism” (Carmichael, 1966).

In the UK, “institutional racism” is used to describe organisations whose practices and culture discriminate against racialised people: this was the dominant meaning in the Scarman (1971) and MacPherson (1999) reports.

In this guide, “institutional racism” is used to describe discriminatory practices within particular institutions and “structural racism” is used to describe societal inequalities.

Structural racism in healthcare, employment, housing and education shapes Black people’s experiences: this is particularly pronounced in terms of class and gender, with Black girls and women and Black people from poorer communities being particularly affected. It is striking that despite these concerns being raised by academics and community groups for decades, the data is often patchy with limited information about race/ethnicity, gender and class and how these intersect.

Nevertheless, there is copious evidence of structural and institutional racism faced by Black people from childhood onwards, contrary to the findings of the Sewell report (2021) which appears to downplay the significance of institutional racism in the UK. What follows provides a brief overview, although each section would warrant an entire report. It is based on research evidence and published data which the Howard League gathered and reviewed in early 2021, following suggestions from its expert advisory group.

Understanding this broader context of disadvantage will help lawyers in the criminal justice system to:

- Recognise the structural barriers Black people face, so behaviour which comes from past (and present) experiences of institutional racism is not misinterpreted
- Develop better relationships and effectively advocate for clients
- Identify Black clients’ unmet needs, for example in education or healthcare, and signpost them to services which can help

The Howard League has compiled a [list of community organisations](#) which lawyers may want to refer Black clients to. Lawyers who are representing Black children or young adults can also refer to the Howard League's guide for adults who are supporting children facing sentence in the criminal courts (Howard League, 2018).

Education

Since at least the 1970s, it has been acknowledged that Black children are more likely than other children to be treated punitively in educational settings. Bernard Coard's *How the West Indian Child is Made Educationally Subnormal* (1971) is a detailed and searing critique of racism in the British education system. As Coard [explained in a 2005 interview](#), the book led to the establishment of Black parents' groups such as the Black Parents Movement, youth groups and supplementary schools (Coard, 2005).

Research into school suspensions in Birmingham in 1981 revealed that Black students were nearly four times more likely to be suspended from school than white children, and 45 per cent less likely to be recommended for readmission (Commission for Racial Equality, 1985). In 2018/19, students with at least one Black Caribbean parent remained three times as likely to be permanently excluded (Department for Education, 2020; Timpson, 2019).

High rates of suspension and exclusion have been accompanied by decades of research showing that Black children are more likely to be diagnosed with behavioural, emotional and social difficulties than white children. Academic research from 2018 shows that Black Caribbean students are still 'substantially overrepresented' for social, emotional and mental health difficulties (Strand and Lindorff, 2018).

There is evidence that some teachers interpret Black children's behaviour differently from that of white children. Professor Cecile Wright, a sociologist at Nottingham Trent University, carried out ethnographic research in five British schools and found a tendency for white, middle-class teachers to stereotype and "other" Black students. These teachers perceived Black girls as loud and unladylike, and Black boys as threatening (Wright, 2010). In interviews carried out for a project on race, poverty and exclusions, the organisations 4in10, Just for Kids Law and the Children's Rights Alliance found examples of anti-Black stereotyping and institutional racism in London schools (Harrison, 2020).

Schools have also been found to discriminate against Black children through uniform and behaviour policies, as illustrated by the case brought by Equality and Human Rights Commission on behalf of Ruby Williams, who was [sent home from school for her Afro hair](#) (Virk, 2020). The media has also [reported on](#) severe punishments for students who kiss their teeth or bump fists (Richardson, 2020). These policies have been especially common in 'no excuses' or 'zero tolerance' schools, inspired by the US charter school movement. In the wake of George Floyd's murder, two leading US charter school chains [admitted that their behaviour policies perpetuated anti-Blackness](#) (Lough, 2020).

School exclusions frequently lead to Black children being sent to pupil referral units or coming into contact with police on the streets, which in turn increases the risk of involvement in the criminal justice system. The All-Party Parliamentary Group (APPG) on Knife Crime has pointed out that professionals refer to a ‘pupil referral unit to prison pipeline’ (Smith, 2019).

Adultification of Black children

Black children experience “adultification” in schools, social care and youth justice: they are often perceived of and penalised as adults when they are in fact still children. Researchers from Listen Up Community Interest Company, a group which seeks to amplify the experiences of lesser heard young people in child protection, explain that adultification happens when Black children are treated as ‘less innocent and less vulnerable, and subsequently not afforded the same protection as their non-Black peers’ (Davis and Marsh, 2020).

Economic disadvantage

Black people are more likely to face structural economic disadvantages than white people. As Kalwant Bhopal [has explained](#), the increasingly popular counternarrative setting white working-class boys in opposition to young people from other ethnic groups is simply not borne out by the evidence (Bhopal, 2021). The legal scholar Robert Knox notes that this counternarrative can succeed only by ‘reaffirming the category of the “white working class” as a distinct entity, obscuring the fact that the vast majority of racialised people in Britain belong to the working class, and in fact some of its most impoverished sections’ (Knox, 2021). Around one in three Black children grow up in a low-income household (compared to around one in four white children), and Black children are more likely to grow up in households in persistent poverty (ONS, 2020a). They are also more likely to grow up in poor-quality, overcrowded rental housing, often in the most economically disadvantaged neighbourhoods (Gulliver, 2017). The government’s [ethnicity statistics](#) show that 15 per cent of Black people live in the most deprived ten per cent of neighbourhoods, compared to nine per cent of white people (Ethnicity Facts and Figures, 2020d).

Black people experience greater housing insecurity than white people. Only thirty per cent of Black households [own their own home](#), compared to seventy per cent of white households (Ethnicity Facts and Figures, 2020a). Black households are at greater risk of losing their homes. Although Black people only make up around three per cent of the population, [14 per cent of homeless households are Black](#) (Ethnicity Facts and Figures, 2018a). More than forty per cent of Black households [live in social housing](#) (Ethnicity Facts and Figures, 2020b). The ethnographer Insa Koch has catalogued the indignities which social tenants are subjected to in the wake of a political backlash against social housing, such as poor-quality homes which are inadequately maintained by the council or housing association and stigmatising depictions of residents as threatening and criminal. Additionally, parents may find that their social tenancies are at risk if their children get into trouble with the law. In this way, the entrenched classism and racism of the criminal justice system exacerbates injustice in housing (Koch, 2018).

In employment, Black people receive lower average pay, are more likely to work in elementary occupations or the care sector, and experience higher unemployment rates (Li and Heath, 2020; ONS, 2019a). Nearly sixty per cent of Black employees work in frontline jobs, compared to just over forty per cent of white employees. Fifteen per cent are care workers, a higher proportion than for any other ethnic group (ONS, 2019a). Black people are nearly three times as likely as white people to be out of work (ONS, 2020b). Young Black people particularly struggle to find work: one in four Black 16 to 24 year olds were unemployed between June 2019 and July 2020, compared to one in ten white people of the same age (House of Commons Library, 2020). Young Black people are more likely to be shift workers, or to work a second job, than young white people (Bowyer and Henderson, 2020).

Mental health

Black people's mental health needs are more likely to be met with compulsion rather than care. Black patients disproportionately receive pharmacological interventions rather than talking therapies, mandatory rather than voluntary treatment, and criminal justice responses rather than early intervention (Memon et al, 2016; Wessely et al, 2018).

Although Black people have experienced overly coercive mental health treatment since at least the 1970s, the NHS only began to publish ethnicity data in 2016/17 (Callan, 1996). Between 2016/17 and 2019/20, Black people were over four times more likely than white people to be detained under the Mental Health Act, and up to ten times more likely to receive a Community Treatment Order (NHS Digital, 2020). The government pledged to address the unequal treatment of Black people in its [Mental Health Act white paper](#), published in January 2021 (Department of Health and Social Care, 2021).

Academic research shows that Black people are more than twice as likely as white people to come into contact with mental health services because of police or criminal justice system involvement (Halvorsrud et al, 2018). Psychologists at University College London and the University of Liverpool have found that Black children are twice as likely as white children to be referred to mental health services by youth justice or social care workers rather than by a doctor (Edbrooke-Childs and Patalay, 2019).

Dawn Edge, a medical researcher at the University of Manchester, explains that discrimination in mental health care is shaped by gendered racial stereotypes – of Black men as dangerous and of Black women as strong enough to cope on their own. As a result, both Black men and Black women are deprived of early intervention and support (Edge, 2013).

Though most of the research, policy and media coverage of discrimination in mental health treatment concerns Black men, mental health services also fail to recognise and respond to the needs of Black women. The government's [ethnicity statistics](#) show that Black and mixed-race women are more likely to experience common mental disorders (e.g. anxiety and depression) than any other group (Ethnicity Facts and Figures, 2017). Yet GPs are less likely to recognise Black women's mental health needs than those of white women, and Black women who seek help from GPs

are less satisfied (Wilson, 2001; Edge and MacKian, 2010). Similarly, though Black girls and young Black women are the group most likely to present to emergency departments with self-harm, they are less likely to be referred for follow-up care than their white counterparts (Cooper et al, 2010).

These inequalities mean that a high number of Black people with mental health problems end up in police custody, secure hospitals and prison. Yet even within prison, the mental health needs of Black people often go unrecognised and unmet. The Lammy Review noted that the lower rates of recorded mental health issues among Black and minority ethnic prisoners were likely to reflect unmet need: the prison inspectorate had found significantly higher levels when it carried out its own screening programme (Lammy, 2017).

Physical health

Black people face greater disadvantage in the “social determinants” of health (income, housing, education and employment) and in access to high-quality healthcare which recognises and responds to their needs. This can be seen when looking at the maternity statistics and at Black people’s higher mortality rate during the Covid-19 pandemic. The higher mortality rate is partly due to the frontline roles that Black people continued to fulfil due to economic hardship. For example, Black people are more likely to work in the care sector than any other ethnic group, and Black care workers are more often employed on temporary contracts than their white colleagues (Marmot et al, 2020; Hussein et al, 2013; ONS, 2019a).

Black patients’ worse healthcare outcomes have gone unaddressed for decades, with their pain often misdiagnosed or simply ignored. In 2020, [the co-founder of a campaign to improve maternity care for Black women described](#) how Black women continued to report that their pain was not taken seriously, and that they did not receive medication when they needed it (Patient Safety Learning Team, 2020; Raleigh et al, 2010). Black women are four times more likely to die in childbirth than white women. Their babies are 50 per cent more likely than white babies to die during or shortly after birth (National Maternity Review, 2016; Hinton, 2021).

The failure to understand and adequately care for Black patients is illustrated by the poor treatment given to sickle cell patients. [Sickle cell disease](#) encompasses a group of inherited, life-long conditions which affect the red blood cells, and which are most common among Black people. UK hospitals have mistreated and misunderstood the acute pain caused by sickle cell crises for decades (Sickle Cell Society, 2018). In the 1980s, sickle cell patients who were desperately in need of pain relief were dismissed as addicts (Redhead, 2021). Three decades later, 62 per cent of the respondents to a nationwide survey on sickle cell reported that emergency care staff had not relieved their pain quickly enough and 56 per cent felt that staff did not know enough about their condition (Witwicki et al, 2015).

In 2019, this lack of awareness led to the tragic and preventable death of Evan Smith. Evan was a young Black man who rang 999 from his hospital bed after staff failed to

recognise and treat his sickle cell crisis. An inquest in early 2021 [found that his death could have been prevented](#) if he had been given a blood transfusion sooner (BBC, 2021). As Laurel Brumant-Palmer, who lives with sickle cell, [wrote in response](#): ‘I weep as I write this piece because I know what it feels like to know what you need, ask for it but not receive it ... I weep because everybody should know that a patient in a crisis needs oxygen, hydration and pain medication’ (Brumant-Palmer, 2021).

As Evan Smith’s case illustrates, sickle cell can be extremely dangerous if it is not properly managed. The risk of this is higher in custodial settings. Health researchers have documented a ‘worrying failure to attend to the health needs of detainees who suffer with sickle cell anaemia’, leading in the worst cases to preventable deaths in custody (Dyson and Boswell, 2006). Anxious scrutiny should therefore be applied when Black people with sickle cell are at risk of custody.

Contact with the criminal justice system

At every stage, Black people have greater contact with the criminal justice system than other ethnic groups: they are more likely to be stopped by police, arrested, remanded to custody and to receive a custodial sentence (Ministry of Justice, 2019). Thirteen per cent of adult prisoners are Black, compared to around three per cent of the general population (Ministry of Justice, 2021; ONS, 2019b).

Women are far less likely to enter the criminal justice system than men. Yet Black women are more likely to be arrested and imprisoned than white women. Black women make up three per cent of the general population, but eight per cent of women in prison (Ministry of Justice, 2021). In 2018/19, [Black women were twice as likely to be arrested as white women](#) (Ethnicity Facts and Figures, 2020e).

Government data does not routinely break down other criminal justice outcomes by both gender and ethnicity. However, in 2016, the Ministry of Justice published analysis which compared the outcomes of Black and white women in the Crown Court. Black women were 29 per cent more likely to be remanded to custody, and 25 per cent more likely to get a custodial sentence (Ministry of Justice, 2016).

The intensity of contact with the criminal justice system is even greater for Black children, especially at the more serious end. The government’s [ethnicity statistics](#) show that in the ten years to 2018/19, the number of white children in custody fell by almost 80 per cent (Ethnicity Facts and Figures, 2020c). The number of Black children in custody fell by only around half as much. In November 2020, one in three children in prison were Black, compared to less than one in five children in the community (Youth Custody Service, 2021). Recent statistical research has linked administrative data on education to criminal justice data and shown that children from all Black backgrounds – including mixed-race children with a Black African or Black Caribbean parent – have a custody rate of at least three times that of White British children (Bowyer et al, 2021).

A known problem – 40 years of reports and slow progress

Despite numerous reports over the last 40 years concluding that the criminal justice system disproportionately penalises Black people, progress has been slow.

Lord Scarman's report in response to the Brixton riots (1981) highlighted the social and economic disadvantage experienced by young Black men and the distrust caused by coercive policing. The report avoided describing the Metropolitan Police as institutionally racist, claiming that only some junior police officers acted on racial prejudice (Cain and Sadigh, 1982; Hall, 1999).

The Macpherson Report (1999) catalogued the Metropolitan Police's failures in responding to the tragic murder of Stephen Lawrence. Stephen was a young Black man who died at the hands of a group of white racists, in an area with a history of racist attacks. The Macpherson report concluded that the Metropolitan Police Service and other police forces were institutionally racist. It recommended improvements in police accountability, training and recruitment of officers, the recording and investigation of racist incidents and the recording of stop and search. It also recommended reforms to education, including better recording of racist incidents in schools and a curriculum designed to value cultural diversity.

Successive prime ministers have promised but failed to tackle racism in Britain (see box).

Little progress has been made despite this policy attention. As Baroness Lawrence, the mother of Stephen Lawrence, pointed out in 2020: "We have had so many reports, and every time we have a report, they go back to the beginning again ... The lessons are there already for us to implement" (Joint Committee on Human Rights, 2020, p. 13). Two decades on from the Macpherson report, the Metropolitan Police is still reluctant to even admit that the police service is institutionally racist. Cressida Dick, the Commissioner of the Metropolitan Police, informed an inquiry into progress on the report that "It is not a label I find helpful ... There is no collective failure. It is not a massive systemic problem. It is not institutionalised" (Home Affairs Committee, 2020, HC560).

Yet in 2020, an inquiry carried out by the Parliament's Joint Committee for Human Rights found that 85 per cent of Black respondents were not confident that they would receive equal treatment from the police. The Committee raised the possibility that reviews on race equality, "which are undertaken by excellent people in good faith, are used by governments as a way of avoiding taking action to redress legitimate grievances" (Joint Committee on Human Rights, 2020, p. 14).

Prime Ministerial reviews into racial inequality since 2017

David Cameron commissioned the Lammy Review, led by David Lammy MP and published in 2017. The Lammy Review highlighted the many issues that Black and minority ethnic people face when dealing with the police and the judiciary. Though the review described worse criminal justice outcomes for ethnic minorities in general, discriminatory treatment was most common for Black people. Lammy recommended that criminal justice system agencies should have to “explain or reform” all examples of racial disproportionality, and that there should be greater transparency and scrutiny throughout the system (Lammy, 2017, p. 7).

Theresa May set up the Race Disparity Unit, to examine how Black and minority ethnic people were treated across areas including health, education, employment and, once again, the criminal justice system. Its first report, which was published in 2017, detailed (but did not try to explain) Black people’s increased contact with and worse outcomes from the criminal justice system (Cabinet Office, 2017).

Boris Johnson set up a Commission on Racial Inequalities in 2020, in response to the UK Black Lives Matter protests. Yet this was in many ways a step backwards. In 1999, the Macpherson Report accepted that institutional racism existed in policing, education and health. In contrast, the chair of the new Commission had previously argued that the evidence for institutional racism was “flimsy”, that Black Caribbean boys were held back by “a victim mentality”, and that their behaviour, not racism, was to blame for poorer educational outcomes (Sewell, 2010). Unsurprisingly, the report concluded that “we no longer see a Britain where the system is deliberately rigged against ethnic minorities” (Sewell et al, 2021, p. 8). The report was widely criticised, including [by scholars and organisations who were credited in the report but who explained that they had been misrepresented](#) (Mohdin, 2021). Two of the commissioners distanced themselves from the findings, [telling the *Observer*](#) that they had not been invited to read through or sign off on the final report (Iqbal, 2021).

An understandable lack of trust in the criminal justice system

Given the slow progress in tackling racism, it is no surprise that the Lammy Review found that trust in the criminal justice system is low among Black people (Lammy, 2017). The reality is that Black people are subject to harsher outcomes at each stage of the criminal justice system, whether they fully engage with it or not. It is in this context that some Black people choose not to follow legal advice even though this could arguably contribute to poorer outcomes for them, including harsher sentences. It is essential that practitioners work to establish trust with their Black clients, as set out in [the next section of this guide](#), and that they do not blame clients for behaviour which may be a survival mechanism.

The identified lack of trust in the criminal justice system felt by many Black people must be seen for what it is – a consequence of structural and institutional racism. Care must be taken to ensure that this distrust is not used by professionals as another way of blaming Black people for the failings in the system. Rather it should be a constant reminder to lawyers of the need to pay extra care and attention to build trust, which may include taking time to know and engage with the communities they serve so that they are visible, trusted and, where possible, able to refer Black clients to community led services that can better meet their needs.

Lack of diversity in the criminal justice system

The lack of trust in the system is reinforced by the lack of diversity among criminal justice professionals, which has persisted for decades, despite ongoing calls to address this (Scarman, 1981; Lammy, 2017).

In 2009, one per cent of police officers were Black. [Government ethnicity statistics](#) show that ten years later, 1.2 per cent of officers were Black: that equates to only 65 more full-time equivalent officers (Ethnicity Facts and Figures, 2021).

There are few Black people in law, especially among the upper echelons of the profession (see box). As Alexandra Wilson points out in her memoir about race and class in the criminal justice system, nearly a century passed between the first Black barrister, Christian Cole, being called to the bar in 1883 and the appointment of Britain's first Black judge, Tunji Sowande, in 1978 (Wilson, 2020).

Greater diversity among professionals in the criminal justice system is necessary but not sufficient to address long-standing inequalities. Individual Black staff members cannot be expected to transform deeply rooted organisational cultures. During the Macpherson Inquiry, a representative of the Black Police Officers' Association for the Metropolitan police cited police culture as a primary source of institutional racism,

adding: 'I say we because there is no marked difference between black and white in the force essentially. We are all consumed by this occupational culture' (Macpherson, 1999, 6.28). Similar concerns apply to lawyers. [In the words of Abimbola Johnson](#), a barrister at Bedford Row:

'The majority of lawyers are white and middle class. That whiteness and class background informs the base culture of what we do. Many in the profession mostly come across members of the Black community in court rooms. It is a fallacy to suppose that negative views and assumptions will not find their way into our work unless we consciously make sure they do not. As practitioners, we must make sure we are not applying only white middle class expectations of behaviour on citizens that are anything but that' (Johnson, 2020b).

Increased diversity must be part of a broader shift towards antiracist practice.

Diversity among legal professionals

- In 2020, around two per cent of practising solicitors, three per cent of barristers and one per cent of QCs were Black (Bar Standards Board, 2021; Ministry of Justice, 2020b).
- Four per cent of magistrates were Black in 2009, and the same proportion in 2020 (Courts and Tribunals Judiciary, 2013; Ministry of Justice, 2020b)
- 0.7 per cent of judges were Black in 2010, rising to 1 per cent in 2020 (Courts and Tribunals Judiciary, 2010; Ministry of Justice, 2020b)

The following sections explain how accumulated disadvantage manifests in the police station, at court and after court, and what lawyers can do to counter this disadvantage. Practitioners should treat the research evidence about racialised social structures as context for the facts and advice set out in the rest of the guide.

Making a difference at the police station



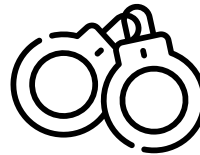
Educate yourself

Black people are subjected to more punitive forms of criminalisation than white people, especially if they live in low-income areas. Lawyers should be aware that:



90%

of police searches of Black people would not happen if they were **stopped and searched** at the same rate as white people (Home Office, 2020a; see also Equality and Human Rights Commission, 2010).



5x

Black people are five times more likely to have **force used against them by police** than white people, and around eight times more likely to have a Taser discharged against or used to threaten them (Home Office, 2020b).



72%

In London and other cities such as Manchester, Black people are disproportionately flagged for 'gang-related violence' by police. In 2018, 72 per cent of the people flagged for gang-related violence in London were Black, compared to 27 per cent of police-recorded perpetrators of serious youth violence (Amnesty International, 2018).



2x

In the decade from 2010 to 2020, Black people **died in police custody** at twice the rate of white people (BBC, 2020; Independent Office for Police Conduct, 2020).



Black people who commit violent offences are **more likely to be the focus of a press release** than their white counterparts (Turnnidge, 2021).



70%

Black working-class men are most likely to experience coercive and punitive policing. Seventy per cent of searches in London between July and September 2020 took place in more **deprived neighbourhoods**. Young Black men aged 18 to 24 were 19 times more likely to be stopped than the population average, yet over seventy-five per cent of searches ended in no further action (Ashby, 2020).

Against this background, lawyers need to understand that Black clients will not necessarily believe that a lawyer at the police station is on their side. Duty solicitors, in particular, may be perceived as working for the police (Gibbs and Ratcliffe, 2019).

A client's lack of trust may reflect a long history of disadvantage and discrimination. Research carried out by Matthew Clair, Assistant Professor of Sociology at Stanford, shows how accumulated disadvantage can lead to worse relationships between working-class Black defendants and their lawyers:

The racism and classism poor people experience in their neighborhoods, communities, and prior interactions with legal officials provide them with countless reasons to distrust the system and mistrust their current lawyers. Their resultant withdrawal from lawyers throughout their relationships constitutes what it means to be a disadvantaged person in the courts ... When disadvantaged defendants withdraw into resistance or resignation, they are often ignored, silenced, or coerced, whether by their own lawyers or by judges. Withdrawal is mutual: when clients withdraw from their lawyers, lawyers, in turn, often withdraw from their clients (Clair, 2020, p. 20).

Lawyers should try to understand how past experiences have shaped their client's perceptions of the criminal justice system, instead of reinforcing this disadvantage by withdrawing from the client.

Ask the right questions

Earning trust and establishing rapport

Trust will need to be established and the lawyer may need to go the extra mile to build rapport and confidence, especially when representing young people or people with mental health needs. Lawyers should demonstrate that they work for the client in their interactions with police officers and the way they deal with the case. That may include challenging assumptions and not appearing to be overly friendly with officers, at least not without explaining that first to the client.

It is essential that you **speak to the client as soon as possible**, rather than waiting for the interview to commence. This gives you a chance to explore underlying vulnerabilities and problems experienced by the client such as mental or physical health concerns.

It is important that your client feels valued and involved. When offering legal advice connected with their arrest, **ask them to repeat** the advice back and **confirm and commend** their understanding. **Ensure** that they understand that your relationship and what is said is confidential. If necessary, draw an analogy between a doctor and their patients.

Bearing in mind the information in section one, consider **asking** some or all of the questions below:

- ◇ Are you OK?
- ◇ Do you know I am on your side and that my job is to provide you with a confidential service with the sole aim of helping you to get the best outcome?
- ◇ Have you eaten/had some tea/coffee/water?
- ◇ Can you tell me about your experience when you were arrested?
- ◇ Have you experienced any inappropriate use of stop and search or force that needs to be investigated?
- ◇ Is there anything else on your mind, such as caring responsibilities, or anyone I need to contact to support you?
- ◇ Do you take any medication or have any health needs that may need to be factored into your treatment at the police station?
- ◇ Are you in education or employment?

Ask your client about experiences of domestic abuse or exploitation which may provide important context and mitigation for their behaviour, including whether a referral to the National Referral Mechanism (NRM) as a victim of modern slavery should be or has been made.

Stick to your promises. If you make any promises to your client, for example by saying that you will contact a relative for them, make sure that you clearly explain when you are going to do this – and that you deliver on those promises. If you do not fulfil promises to your client, you risk reinforcing the distrust of lawyers described above.

Gather the evidence

Remember that the client and their family or friends may be a rich source of information, provided that the client consents for them to be contacted. If the client has a health condition, **make sure** any evidence of it is on record.

In any request for disclosure on the actual offence, **ask for** the additional evidence that arises from the information provided by the client. This may include paperwork relating to searches or the use of force, CCTV or body-worn footage, and notes of the Forensic Medical Examiner (FME) in respect of the client's health and fitness for interview.

Make the case for a better outcome

At the police station it is always worth fighting to prevent a client from getting a criminal record, even if the first offence is petty or a caution appears to offer a quick resolution. Remember the increased system contact that Black people experience and by extension the wider benefits of not contributing further to this.

Remind clients that a caution will be recorded as being an offence committed by them and may impact their future. **Remind** decision makers of the racial disparities they will be compounding if they proceed with a matter and suggest alternative options, using the information and evidence you have gathered to support your argument.

If your client's case may be related to discriminatory policing (for example, if they have been accused of obstructing or resisting arrest but not of any other offence), you should **consider** making pre-charge representations to the CPS about whether the case meets the public interest test under the [Code for Crown Prosecutors](#) (Crown Prosecution Service, 2018). Use the [statistics about policing](#) in this guide as context. Your written representations can also challenge the quality of police evidence.

Case Study

You will follow the case of the two individuals below throughout this guide

Sean

Sean is a young Black boy. His parents, both born in Jamaica, are no longer together. He was 17 when he was picked up with a group of teenagers at the house of an older man during a police raid. He had a hundred wraps of cocaine in his pockets, each containing around one gram. Sean had been arrested before, mainly for petty thefts and some cannabis. He was living in a care home on the other side of London after his mother could not cope with having him at home anymore. He had been permanently excluded from school. He wants to go to college to do Art but is not sure he is good enough.

Alicia

Alicia is also arrested at the same time in the house. She is in her early 30s. She has been arrested for assault of a police officer when she lashed out after being grabbed by an officer during the raid. She has a small amount of cannabis in her possession, which she says she uses "to make the bad thoughts go away".

Antiracist advice and representation for Sean and Alicia at the police station

Sean is a child in care who is clearly vulnerable. He will need to know his lawyer is on his side and what he says is confidential. He will need an appropriate adult. The first thing to do will be to make sure the adult is appropriate and is somebody he feels truly comfortable with.

Explain that while you know being in a group does not mean being in a gang, pre-empt that the police may assume he is in a gang with the other teenagers and take instructions on that.

Check whether he is on a full care order or is a “looked after child” and how he gets on with social services – don’t assume he trusts social services.

Ask why he is far from home in the house of an adult.

Explain that, if he is a victim of child criminal exploitation, there may be an argument that he should not be charged at all. Explain what exploitation is and how in law he is a child, even though he may feel older and that he has to fend for himself. This will help him in this situation. Make it clear that you understand he might be worried about the consequences of admitting he has been exploited. He can share this without naming anyone and it for the duty of professionals to support and protect him, which can include moving to a new area.

Explain how the NRM works and that as a lawyer you cannot make a referral. However, if he consents, you can get a first responder, like the Youth Offending Team (YOT) or social services, to make the referral. Explain that once he gives consent, the matter is out of his hands and he can tell anyone who asks that it is not his decision as YOT, or social services are dealing with it.

Consider making a pre-prepared statement setting out that he is a victim of exploitation and make representations that there should be no investigation and charge, or any investigation should be suspended pending the outcome of the referral.

Advise Sean that while this is hanging over his head, going to college and doing Art may help him with getting a better outcome on his criminal matter – encourage him to talk to his social worker or offer to do so to facilitate this. Consider whether there are any Black community organisations that can support Sean.

Check whether his current care home is meeting his needs and consider asking his social worker to review the placement. If there is a problem with his care and support, remind Sean that he has the right to a community care lawyer who can support him with that.

Alicia is an adult.

Find out if she has had any previous contact with the criminal justice system, making sure she also understands that you are on her side and that you need to find out more information to help her to the best of your ability.

From the facts, it looks like she is self-medicating, may have mental health problems and may have experienced trauma.

Discuss Alicia's own experiences with her, ascertaining whether she has had contact with mental or other support services in the past. **Consider** whether she needs an appropriate adult and whether or not she needs to be seen by the forensic medical examiner (FME).

Take instructions on the nature of the arrest and try to ascertain whether any unreasonable force may have been used; if so, seek disclosure of the relevant paperwork. Try to explore Alicia's previous experience with the police and attempts by others to physically restrain her in order to identify the context of the assault on the police officer (assault PC).

Find out from Alicia whether she has ever been cautioned or convicted for cannabis possession before. Make representations to the police that this should result in "no further action" or be dealt with as lightly as possible (Release, 2020).

In terms of the assault PC, **check** whether she has been assaulted. Take a detailed account of her experience of the arrest, take photographs of her injuries yourself to preserve the evidence and advise Alicia about her right to make a complaint to the police or consider a civil claim for compensation.

Consider making representations that it is not in the public interest to pursue this charge in light of context of the assault and Alicia's vulnerabilities.

Making a difference at court



Educate yourself

Structural and institutional racism affects Black defendants in the Magistrates' and Crown Court throughout the process: including decisions about remands and admissibility of evidence, decisions about whether and when to plead guilty, and decisions about sentencing. Counteracting bias is particularly difficult in the context of a predominantly white legal profession and judiciary. Lawyers should be aware of this context.



57%

of Black defendants pleaded guilty in 2018, compared to 70 per cent of white defendants (Ministry of Justice, 2019).



1.4x

The average custodial sentence length for Black people is 1.4 times longer than the average custodial sentence length for white people (Ethnicity Facts and Figures, 2018b).



47%

Black people are more likely to be remanded to custody in both the Magistrates' and the Crown Courts. This is particularly pronounced in the Crown Court: in 2019, forty-seven per cent of Black defendants who came before the Crown Court were remanded to custody compared to thirty-eight per cent of white defendants (Ministry of Justice, 2020a).



1.4x

Black defendants are 1.4 times more likely to receive an immediate custodial sentence for drug offences than white defendants (Sentencing Council, 2020a).



1%

In 2018, eleven per cent of those subject to court proceedings were Black (Ministry of Justice, 2019). In contrast, two per cent of practising solicitors, three per cent of barristers and four per cent of magistrates are Black. **One percent of judges are Black** (Ministry of Justice, 2020b).

These statistics show that the court room is not a level playing field and that it is not possible to address racism in court by being “colour-blind”. As Matthew Clair writes: ‘Unequal relationships also *reproduce inequality*’ (Clair, 2020, p. 21). Unequal relationships structure Black clients’ experiences in court, and this includes their relationships with defence lawyers. Lawyers need to recognise this context and work to create equitable and empathetic relationships with their client, which will involve calling out discrimination in court where appropriate.

Discrimination can manifest in the courtroom through the environment itself, which can be intimidating and alienating. Key professionals may lack an understanding of Black people’s lived experiences. Evidence may be presented in a racialised manner which further alienates individuals and contributes to the entrenchment of racial stereotypes. An antiracist lawyer will need to work to counter these inter-related barriers to justice for Black clients.

The courtroom as an alienating environment

Black clients may experience the courtroom as an alienating and largely white environment which mirrors their experiences with the police, undermines their voice and agency and is likely to create an inequality of arms. In interviews carried out to inform a project on young adults, race and the criminal justice system, Black and minority ethnic young adults reported that they found it hard to trust a system which was dominated by white judges and juries. As one participant put it, “[t]he system don’t trust us so we don’t trust the system” (Transition to Adulthood Alliance Young Adult Advisory Group, 2017, p. 27).

The courtroom can be especially alienating for young people and for clients with mental health or communication needs. Concerns about speech, language and communication were recorded for nearly six in ten Black children sentenced at court in 2019/20 (Youth Justice Board, 2021b). Children’s agency is undermined when these needs go unmet in court, especially in the context of discrimination and perceptions of Black children as risky rather than vulnerable.

For Black women, the whiteness of the courtroom is compounded by the fact that it is dominated by men and by gendered assumptions about defendants' behaviour. Research on joint enterprise laws shows that Black women in conflict with the law are subjected to sexist and racist narratives from both the media and the judiciary in these cases. In joint enterprise cases, these narratives usually 'refer to the "honey trap" or the woman "luring" men to violent situations' (Williams and Clarke, 2016, p. 29). In research carried out by Agenda, Black and minority ethnic participants reported that their circumstances (for example, their mental health issues or responsibilities for children) had not been considered in court, and that judges were dismissive of or prejudiced against them (Cox and Sacks-Jones, 2017).

[In the words of Abimbola Johnson:](#)

'Many times, I've seen defendants being reprimanded for looking at the ground or having their hands in their pockets when addressing the court, without recognition that these are young people intimidated by an unfamiliar and intimidatingly pale and stale environment' (Johnson, 2020a).

Set against this background, it is unsurprising that many Black people view the court almost like a colosseum, a place where they are under attack. A guilty plea may be seen as resistance or a concession to the system and hence there may be reluctance to plead guilty. As the Lammy Review noted, Black defendants often opt for trial in the Crown Court because they have more confidence in juries than magistrates, even though the Crown Court has the power to pass longer sentences. The review attributed the higher number of not guilty pleas among Black defendants to distrust in the criminal justice system as a whole. It concluded that without 'a step change in the diversity of the magistracy and especially the judiciary ... there will continue to be a pervasive sense of "them and us" among BAME defendants' (Lammy, 2017, p. 31). As the [statistics above](#) show, there has been little sign of a step change in the diversity of the judiciary since 2017.

The experience of being in court can also be painful and distressing for Black people, especially where the court process reinforces trauma from past experiences of police racism. According to Ife Thompson, founder of Black Learning Achievement and Mental Health and Black Protest Legal Support, and member of the advisory board:

The court space, like most other institutions, is a white space. Most people within that space are white. We've seen how often Black lawyers are mistaken for defendants because the only time Black people are supposed to be in that space, according to the dominant narrative, is when we're in trouble. The court may be retraumatising, especially for a Black person who has been brutalised by the police and is then forced to sit in the dock and be confronted with police evidence in support of their prosecution. Many people after experiencing such institutional harm will need extra support in court to make sure there is someone who is actually thinking about the toll on their wellbeing.

Research shows that the physical arrangements in court, such as placing defendants in the dock rather than allowing them to sit by their lawyers, can be highly prejudicial (Mulcahy et al, 2020). The prejudicial effect is no doubt compounded for Black defendants.

Lack of understanding of the lived experiences of Black defendants

There is a high risk that many of the key players in the court room will not understand or be familiar with their lived experiences of Black defendants. This may lead to erroneous assumptions and to the court interpreting ordinary behaviour as criminal or interpreting low-level behaviour as more serious than it is. For example, a recent academic study on joint enterprise found that young Black people may remain silent in police interviews to protect themselves from ‘the racialised misinterpretation of talk’ but in court this silence is often interpreted as evidence of guilt (Hulley and Young, 2021, p. 15).

Black clients often face expectations in court which are based on culturally specific norms among upper- and middle-class white judges, but which the court itself perceives as universal such as the approach to remorse (see box).

Expectations of remorse

Psychological research suggests that when a juror or judge decides whether a defendant is remorseful, this is a projection based on their own social and cultural experience. The way that each person shows remorse is inevitably shaped by how they are used to expressing emotions, what they consider acceptable and their own lived experiences. Defendants may be treated with less sympathy if they do not express themselves as the court expects them to (Feldman Barrett, 2017).

Black clients are also likely to be treated as riskier than clients of other ethnicities. In discussions and focus groups carried out by the advisory group to inform this guide, legal practitioners reported that different charging decisions were made for their Black and white clients. Defence lawyers noted that their Black clients were more likely to be charged with the more serious offences of robbery rather than theft, violent disorder rather than affray, and possession with intent to supply rather than simple possession. Police data suggests that Black boys are more likely to be arrested overall, but that arrest and charging decisions exacerbate these inequalities. For example, in 2019/20, Black boys in London were arrested for robbery at six times the rate of white boys (Home Office, 2020a; Greater London Authority, 2017).

The bias in charging decisions reflects a tendency among police, YOTs and the judiciary to assume that Black people pose a greater risk than their white counterparts. Recent analysis by the Youth Justice Board (YJB) shows that Black children are assessed as riskier than children of any other ethnicity, and that this cannot be explained by offence-related or demographic factors (Youth Justice Board, 2021a). The Lammy Review found that Black and minority ethnic people in prison were more likely to be recorded as posing a risk to other people, but less likely to be recorded as having needs which would entitle them to support, such as mental health and educational needs (Lammy, 2017).

The focus groups carried out for the guide also suggested that myths about absent Black fathers and “gang culture” continue to impact court proceedings. It is important to be aware that these ideas have no basis in fact. For example, narratives about absent fathers perpetuate a long history of discrimination against non-nuclear Caribbean households and are contradicted by sociological research about Black families in the UK. As Dr Leighan Renaud explains in an article for *History Workshop Online* (2020), Eurocentric assumptions about matrifocality have always failed to recognise the love, care and connectedness of Caribbean families. Sociological research has shown that most Black fathers who do not live full-time with their children remain actively involved in childcare and fathering, and that non-resident Black fathers work hard to maintain close relationships with their children (Reynolds, 2009).

Similarly, courts too often rely on inaccurate or irrelevant information about “gangs”. For example, in a case which Howard League lawyers were engaged, the judge’s sentencing remarks cited an article about gang violence in Chicago as “context” without acknowledging the significant differences between the US and the UK.

As Emma Dabiri puts it in *What White People can do Next* (2021), read, read, read! Make sure you educate yourself about the lived experiences of Black people, and do not confine that to books on anti-racism but read literature too.

Legal guidance

Structural and institutional racism may have a particular impact on sentencing outcomes, a fact which has been acknowledged by the Sentencing Council and the judiciary in recent years. The Sentencing Council guidelines and Equal Treatment Bench Book can be used to remind judges and magistrates that it is right and proper to make efforts to reduce unnecessary disproportionality in sentencing experienced by Black people:

- The Sentencing Council’s [Overarching Guideline on Sentencing Children and Young People \(2017\)](#), notes at paragraph 1.18 that Black and minority ethnic children are over-represented in the youth justice system and states that decisions about the welfare of a child must consider the particular factors that arise in the case of Black and minority ethnic children.
- The Sentencing Council’s [Overarching Guideline on Sentencing offenders with mental disorders, developmental disorders, or neurological impairments \(2020b\)](#), states at paragraph 5 that courts should take the cultural and ethnic background of offenders into account and notes that Black and minority ethnic people are more likely to enter mental health services via the courts or the police rather than primary care.
- The Sentencing Council’s [Guideline on Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another \(2021\)](#) notes that Black defendants are more likely to receive an immediate custodial sentence than white defendants.

- The Sentencing Council's [Guidelines for firearms offences](#) (2020c) note that Black defendants are more likely to receive an immediate custodial sentence than white defendants.
- The [Equal Treatment Bench Book](#), describes in Chapter 8 the disproportionate outcomes for people from Black, Asian and minority ethnic backgrounds and recommends: building trust with clients who may have had bad experiences with the criminal justice system: scrutinising evidence provided by other agencies for bias; challenging representations of young Black people which overstate their risks and overlook their vulnerabilities; and bearing in mind that Black and minority ethnic children may have experienced criminal exploitation (Judicial College, 2021).

Racialised evidence

The lack of understanding of Black people's lived experience leads to the use of racialised evidence by the prosecution. Racialised evidence is persuasive evidence that is directly shaped by the racially stratified system in which the defendant lives (Gonzales Rose, 2017). As with expectations about remorse, the culturally specific norms of the privileged white judges and lawyers will affect decisions as to the relevance (and admissibility) of prosecution evidence, including racialised evidence. The impact of racialised evidence has been recognised in other jurisdictions, for example in a case heard by the Canadian Supreme Court two decades ago: this acknowledged that determinations of relevance 'will be filled by the particular judge's experience, common sense and/or logic', which may be 'informed by stereotype and myth' (*R v Seaboyer* [1991] 2 SCR 577, p. 679).

Racialised evidence includes witness statements which use general racial descriptors to describe Black clients rather than describing specific characteristics, and dubious "gang intelligence" from police. Lawyers should subject such evidence to the legal tests for admissibility and seek to exclude it. If such evidence is admitted, skilful cross-examination can be effective in exposing its bias or unfairness. Thought should also be given to instructing experts on subjects such as gangs.

Misidentification has a devastating impact in the criminal justice system, leading to wrongful arrests, trials and even convictions. As [analysis by Dr Julia Shaw](#) (a psychologist at UCL) explains, police officers describe suspects who are from a different racial background to them less accurately (Shaw, 2020). This means that police officers who are not Black – [which is 99 per cent of all officers](#) – are more likely to write vague or inaccurate personal statements for Black suspects (Ethnicity Facts and Figures, 2021). The consequences are clear: Abimbola Johnson [describes seeing cases prosecuted](#) 'on the basis of identification evidence that simply categorises a person as "IC3" [the police category for Black] without going into further detail about skin tone or shade' (Johnson, 2020a).

There is also a more general risk of cross-racial misidentification in court. Even where a witness makes a positive identification, they are more likely to get this wrong if the suspect is a different race from them. Research shows that white witnesses are less accurate in identifying people of other races (Wells and Olsen, 2001).

Racism is also imported from policing into the court through police evidence about “gang affiliation”. For example, research by the Centre for Crime and Justice Studies and Manchester Metropolitan University found that Black people convicted under joint enterprise laws were subjected to racist and (for Black women) sexist narratives about “gang culture” (Williams and Clarke, 2016). Similarly, research by Amnesty International and StopWatch shows that the Metropolitan Police’s gang matrix imposes an ill-defined “gang” label which can be backed by nothing more than hearsay evidence (Amnesty International, 2018; StopWatch, 2018). In 2021, the Met [removed a thousand young Black men from the matrix](#) after it had been ordered to review its records and found no evidence that these men posed a risk of violence (Dodd, 2021).

Drill lyrics, or even participation in drill videos, are increasingly used as dubious and discriminatory evidence of gang affiliation (Owusu-Bempah, 2020). This is possible because police and the judiciary inaccurately interpret drill as a straightforward description of reality, rather than a form of artistic expression. Jonathan Ilan, a criminologist at the University of Kent, has studied both drill and the law enforcement response to it. His work concludes that oppressive and “street-illiterate” policing will continue for as long as police fail to understand that ‘drill is primarily performance and that it is more likely a step away from violence than an attempt to precipitate it’ (Ilan, 2020, p. 1009; see also Fatsis, 2019).

These three areas of concern stem from structural racism that exists in the wider community. Lawyers need to counter these hurdles to prevent Black clients being treated unfairly.

Ask the right questions

Countering alienation in the court room

Countering the alienation of the court process requires you to acknowledge that it is an issue and ask Black clients questions that demonstrate that you are committed to doing everything you can to support them. **Be mindful** that you may be perceived as “part of the system”. You will need to counter this by showing that you recognise and are willing to challenge its injustices.

Racial and class differences affect the relationship between a client and their defence lawyer. Even where lawyers are from the same racial background as their clients, the intersection of race and class may mean that they do not fully understand their clients’ experience. Black lawyers from middle or upper middle-class backgrounds need to be aware that their experience may differ from that of their working-class Black clients.

Be aware that you may not understand your client's context and that you need to give clients the time, space and support which will enable them to tell their story:

“If you don't have that cultural awareness, then your starting point has to be to delve deeper from the outset. You are not starting at the start line. You are in the run-up to the start line. It's not that a lawyer with a lack of cultural understanding is not able to get there. It's about acknowledging what it's going to take to build that trust. You can get there but it's about taking the time.” (Aika Stephenson, legal director at Just for Kids Law, and member of the advisory board)

“You need to be vulnerable, open yourself up to your lack of knowledge and experience and be prepared to learn.” (Garry Green, barrister and member of the advisory board)

This may be particularly difficult where proceedings are being carried out remotely. Remember that you do not have to be remote from your client if they are in the community.

Ask your client whether they want to meet either in person or virtually with the person representing them before court and **encourage** them to do this. Just as at the police station, anyone representing a defendant at court will need to build trust and learn about their personal background and circumstances, which will always have a bearing on sentence and may affect the way the whole case is run.

Ask clients facing remote hearings if they want to link to the courtroom from your office so you can be with them, if they are not in custody. If your client is in custody, ask if they would like you to come to prison to attend with them.

Ask your client about their experience and perceptions of lawyers and courts: this may provide a chance to explain that you understand that the disconnect between the judiciary and much of the legal profession and defendants has practical implications. If you need to develop a good relationship with the prosecution and the judge, **explain** to your client why you need to do this to support their case. **Remind** your client that you are on their side and you are not going to be party to processing another person through the system.

Ask your client about experiences of domestic abuse or exploitation which may provide important context and mitigation for their behaviour. Find out if your client has ever been referred to the NRM as a victim of modern slavery, including exploitation in county lines drug supply.

If you think your client is likely to be found guilty but is not inclined to plead guilty, take the time to **discuss** this with your client in an open and direct way. Take the time to go through the evidence and explain why you have formed that view. **Ask** for their opinion on the evidence as you explain it: the process should be collaborative. **Ask** your client if they are willing to have a hypothetical discussion about the consequences of not

pleading guilty early. **Explain** that any client who is banged to rights should plead guilty as that will serve them better and explain credit for guilty pleas. Explain that you are aware of research which shows that there is an understandable lack of trust in judges to make fair decisions which results in lots of Black people getting longer sentences in the end.

Remember that in delivering any advice to plead guilty, you may be perceived as just another dismissive person who does not understand the intricacies of their story, or the systemic injustices that they are pushing back against. **Show** that you do understand and that you are aware of the issues but also that you do not want your client to be another statistic exacerbating existing disparities. **Explain** that if the client does plead guilty you will do everything in your power to get the best possible sentence, including in your recommendations contextual statistical information and personal mitigating factors.

Countering lack of understanding of Black people's lived experiences

Ask your client about their life experiences so that you can understand how that may affect their attitude to authority and their approach to remorse if they plead or are found guilty. You are helping your client to tell their story in a way which the court will recognise and engage with. Think about this as a collaborative story which you are telling in partnership with your client, witnesses, academic or psychological experts, and the client's friends, family or community members.

Advise your client about perceptions of remorse. Judges are likely to view defendants who do not plead guilty, or who try to explain the context for their offending, as more culpable (Belton, 2018). This attitude overlooks the impact of coercive policing, and defendants' broader experiences of societal and racial injustice. It also overlooks the fact that remorse may be deeply shameful and a sign of weakness within your client's cultural context, and that this may make it extremely difficult for your client to publicly display remorse in front of the courtroom and their relatives.

Recognise and acknowledge this context but give your client practical advice about judges' and magistrates' expectations.

Countering racialised evidence

Explain to your client that you need to understand their case better than anyone else in the room and be in a position to counter evidence based on erroneous assumptions, such as membership of a gang.

Ask your client to comment on the evidence including errors that may stem from prejudice and ignorance.

Gather the evidence

If the prosecution proceeds, **seek out** information about:

- The source of any police intelligence used against a client, especially if it is being used to argue that they are “gang affiliated”, with a view to interrogating the nature and quality of the evidence which it is based on.
- The client’s medical history, especially if the client has a rare disease or is at risk of being passed over due to systemic racism in health services.
- Any mental health issues or neuro-disabilities which your client experiences, including issues which have not previously been diagnosed. Consider commissioning psychiatric and psychological reports to inform your representations.
- Any social care files held by children’s services about the client.
- The client’s educational history, for example from schools and/or pupil referral units they have attended.
- The client’s background and history, through building a strong relationship with the client themselves and through consulting trusted family members.
- The client’s communication needs – if this is something which they struggle with, they may benefit from an intermediary or speech and language reports.
- The relationship between your client and any co-defendants, especially if your client is particularly young or vulnerable (and so at risk of exploitation) or is in a relationship with a co-defendant. Bear in mind that criminal justice involvement for women and girls is often related to abusive relationships, and that gender and race intersect to disadvantage Black women in court. Be prepared to challenge racist and sexist narratives such as the “honey trap” narrative found in joint enterprise prosecutions against Black women. Give your client the support and space which they may need to disclose a history of domestic and/or sexual violence.

Think about your choice of experts and what you instruct them to deal with.

Consider whether they are qualified to reveal or counteract inherent bias, to deal sensitively with a client’s lived experiences and the impact of discrimination on them.

Make sure the expert has all the relevant background about your client’s history and experiences.

Gather the information you need to challenge the racialised evidence used against your client, such as evidence from the gang matrix, social media or music videos.

In addition to the research evidence cited above about the inadequacies of such evidence, **consider** instructing an expert. For example, another drill artist or specialist in Black British youth and rap culture may be able to provide an informed opinion about how such music should be interpreted and contextualised. Explaining the context, background and conventions of the genre is just as (and sometimes more) important than interpreting the lyrics. Drill artists are best placed to provide an opinion, but the court is more likely to accept the evidence of academics or youth workers.

Gather reports and information about the wider context that is relevant to your client's case including information about discrimination in the system, taking inspiration from the "social history reports" used in Canadian courts, which highlight the impact of systemic racism (see box).

Social history reports in Canada

In [R v Morris \[2018\]](#), the defence presented two reports: one on anti-Black racism in Canadian society, and the other on the specific history of their client. The reports set out the wider context of disadvantage and racial trauma which helped to explain their client's offence (possession of a firearm). The judge not only passed a shorter sentence length than he would have done otherwise, but also stated that it would be "invaluable" to have such a report available every time a Black person is sentenced.

Make the case for change

Avoid colluding with the low expectations and assumptions often placed on Black defendants, both in the conduct of the case with the client and your representations for the court. **Compliment** your client where appropriate about their strengths and virtues, bearing in mind that your client may have never been praised for their positive attributes or told that they are capable of being successful in a lawful pursuit.

Think about when your client will appear in the proceedings. If there is any room for cases involving similar circumstances concerning both Black and white defendants, consider inviting the court clerk to list the white defendant first. This may help to achieve parity for the Black defendant when he or she is dealt with.

Think about whether you can challenge the need for your client to be placed in the dock to counter the alienating experience of the courtroom, in line with research on the prejudicial impact of the dock.

Challenge attempts to reprimand a client for their presentation in court and point out the difficulties posed by the environment.

Put your client's case in the context of the wider picture and the [data in this report](#). Be **bold** in openly addressing the need to avoid bias and discrimination unless your client objects to this.

Present your case in a clear and accessible way so as to reduce the risk of your client feeling alienated by the process; **take the time** to ask your client whether they would like you to explain what has happened in court.

Double your efforts to secure bail and help reduce the disparity in the remand prison population, which is especially acute for Black children. Where you can, ensure that a bail package is available and suitable. If your client is young or has social care needs, **engage** the support of a community care solicitor if necessary.

Scrutinise the decision to prosecute to see whether it meets the tests set out in the Code for Crown Prosecutors (Crown Prosecution Service, 2018).

Challenge the charging decision if it appears to be harsher than necessary, pointing out that Black defendants are more likely to be charged with robbery than theft, violent disorder than affray and possession with intent to supply rather than simple possession of drugs. Such charging decisions exacerbate the disproportionality in the system.

Eradicating bias in evidence

In evidence

- **Question the validity and admissibility** of cross-racial misidentification that simply categorises a person as 'IC3' (the officer-identified ethnicity code for Black) without going into further detail about skin tone **and uses vague** generic descriptions of clothing. **Question whether** prosecutors apply the same evidential standard to witness statements identifying white and Black defendants
- **Challenge** assertions that clients are gang members by unpicking the evidence that underpins it and **question** the reliability of the gangs matrix where that is used
- **Challenge** adverse inferences in respect of "no comment" interviews by Black people at the police station, raising the issue of whether it is indicative of reasons other than guilt, such as the person's treatment or experiences with the police. Prepare your client to articulate this in evidence, pointing out that research shows that this is just as likely an explanation, and explaining how individual and community experiences of policing lead to racial trauma (referred to as 'racial stress' in the clinical literature)
- **Challenge** the use of school records or stop and searches as indicative of a propensity towards negative behaviour by pointing out that Black children are over-punished in the school system and Black people are more likely to be stopped and searched
- **Argue** that lyrics are not indicative of criminal behaviour and that admission will cause undue prejudice against your client. Where lyrics are used as evidence, present contextual evidence to counter the prosecution narrative and point to examples of other genres of music which include sexist or violent narratives but have not been seen as indicative of criminal intent. Think about instructing a defence expert for this purpose
- **Counter** expectations about how defendants should behave and think, by making sure your client's story is told in full to provide better context and understanding

Sentencing

- **Ask** for time to put together a thorough mitigation package, adjourning for that purpose if necessary, to enable pre-sentence reports and other information to be prepared. Ask for time to gather your own evidence with your client which should include past experiences of discrimination and victimisation, including exploitation in county lines drug supply as well as evidence of any health issues or experiences of loss and bereavement, positive character references and community ties
- If a pre-sentence report is ordered, **take the time** to explain the process that will be undergone to complete it, and explain that probation or YOT workers are not on your client's side in the same way as you may be. They will look for and challenge evidence of remorse and rehabilitation
- **Encourage** your client to raise issues of discrimination and racially accumulated disadvantage with the pre-sentence report writer so it can be included
- **Present** your client's story to the court, making sure that the package of mitigation provides as much information as possible about the reality of their experiences and the context of the offence
- **Prepare** a sentencing note where appropriate that sets out the issues and [data on the systemic discrimination experienced by Black people](#) and actively warns the court of the risks of its decision contributing to structural and institutional racism
- **Actively** counter common misconceptions such as treating Black children as if they were adults (adultification) or assumptions that your client is dangerous and violent rather than unwell. Highlight the evidence that these are common misconceptions
- **Use** the hooks provided by the Sentencing Council and the Equal Treatment Bench Book, as well as the broad consensus that there is a need to counter disparity in the criminal justice system, to ask the court to factor in the accumulated disadvantage that your client may have experienced as mitigating rather than aggravating factors

Antiracist representation for Sean and Alicia at Court

Sean

Sean is young and vulnerable and there will be issues about his ability to effectively participate. **Think** about how to avoid the inevitable effects of adultification in his case and ensure his effective participation. **Consider** obtaining a speech and language assessment or an assessment by a psychologist to gain a picture of his cognitive functioning and whether he is suffering from trauma. **Determine** whether he needs an intermediary or a supporting adult. **Ensure** that the NRM referral has been made and chase up the response. **Ensure** that no pleas are entered until the decision has come through. **Use** the Criminal Practice Directions (2015, 3G.8) to argue that your client should not have to sit in the dock.

Make representations to the CPS that the matter should not proceed based on public interest considerations, highlighting the overcriminalisation of Black children in the system, the overcriminalisation of children in care and the risk that they are criminalising a victim of modern slavery.

If representations not to proceed fail, **consider** a modern slavery defence. An expert report from an adolescent forensic psychologist about his vulnerability to manipulation may assist with his defence.

If Sean is at risk of being remanded to custody make sure that his community package of accommodation and support meets his needs, and has factored in the risk of modern slavery, removing him from risk of harm. **Contact** Sean's YOT worker as soon as possible to establish whether they are supporting bail and look over any bail package which they have put together. If they are not supporting bail, **ask** why they do not believe that they can manage Sean's risk in the community and whether changes to the bail package (for example, the availability of different accommodation) would change their assessment. If that is the issue, **contact** Sean's social worker to arrange a better package. Research by the YJB suggests that YOTs tend to assess Black children as riskier than children of other ethnicities, even when they have been charged with the same offences (Youth Justice Board, 2021a). If you believe that Sean is being perceived of as riskier than he is, point out this research and **ask** follow-up questions about why they have these concerns.

Scrutinise the prosecution case for evidence of gang affiliation and **seek** full disclosure of the evidence of this so you can interrogate it with a view to undermining it. Go through the disclosure with Sean to properly understand the evidence and how he perceives the group he is said to be in a gang with.

If Sean pleads or is found guilty then **ensure** that full reports are prepared for sentence and you are able to put forward a full mitigation based on as full information as possible. Also highlight the excessive sentences routinely given to Black defendants for drugs offences. **Emphasise** the terrible conditions for children in prison.

Alicia

If the representations to the CPS not to charge Alicia failed, further representations can always be made at court to argue that it is not in the public interest to prosecute her. **Highlight** the government's own "female offender strategy" which advocates 'an entirely different approach' that 'addresses vulnerability, acknowledges the role of gender, treats female offenders as individuals with the potential to make a positive contribution to wider society, and ultimately breaks the cycle of reoffending' (Ministry of Justice, 2018, p. 5). **Point** to the evidence supporting the need to reduce the criminalisation of women (see All-Party Parliamentary Group on Women in the Penal System, 2016), as well as the high rates of police brutality Black people have experienced. **Explain** that Alicia's experiences of police brutality and history of trauma may account for her reaction on arrest.

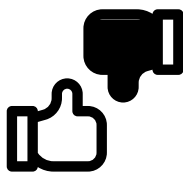
If the prosecution continues nevertheless, as with Sean, **consider** how Alicia can participate effectively. **Seek disclosure** of the body worn footage so the case can be considered in context. **Consider** getting an expert report at an early stage to assess Alicia's mental state and any underlying vulnerabilities that may be relevant to her reaction to being touched by the police. Such a report may also assist with sentencing should it come to that. **Make sure** that if Alicia pleads or is found guilty, time is taken to prepare a full package of mitigation that will look at the impact of any sentence on her health, well-being and life chances, relying on medical notes and an expert report if necessary. **Take the time** to speak to the probation officer writing her pre-sentence report to help ensure that the process runs smoothly.

Making a difference after court



Educate yourself

After being sentenced, Black people continue to experience worse outcomes in the criminal justice system whether in the community or in custody.



50%

of Black and minority ethnic people in prison report that they have experienced bullying, verbal or physical abuse from staff, compared to 40 per cent of white people (Her Majesty's Inspectorate of Prisons, 2020a)



9%

of Black and mixed-race people in prison are on the lowest level of the incentives and earned privileges (IEP) scheme, compared to 5 per cent of White and Asian people (Her Majesty's Inspectorate of Prisons, 2020b)



4 in 10

An inspection report on race equality in probation found that more than 4 in 10 pre-sentence reports for Black and minority ethnic people were inadequate. For example, there was insufficient analysis of Black and minority ethnic service users' experiences of racism and trauma (HMI Probation, 2021).



Analysis by London probation services found that Black and minority ethnic people were **more likely to be recalled to prison** (HMI Probation, 2021).



In the community, Black children are **more likely to be convicted for breaching an existing order** than children of other ethnicities (Youth Justice Board, 2021a).

There is a tendency for lawyers to focus on the live legal process which drives them into action and provides a discrete objective to work towards. But clients may have different priorities and concerns. These may relate to their circumstances, which formed the context of the actual or alleged offending or their experience in the criminal justice system, all of which may be particularly acute for Black clients for the reasons set out in the first section of this guide.

The court case may be over, but for the client the consequences will remain. There is surprisingly little literature about the experiences and needs of Black people who have been through the criminal justice system on: the impact of the process on their mental well-being; their ability to seek effective redress from abusive police treatment; their experiences on community orders; their experiences in prison and in obtaining advice on appeal where they feel their conviction is unsafe or the sentence is manifestly excessive.

The advisory board and focus groups acknowledged these major gaps in research but affirmed their importance.

While, with the exception of providing advice on appeal, these post-court issues do not form part of the lawyers' work, there are things that lawyers can do or suggest in order to help Black clients with some of these issues.

Ask the right questions/practical steps after court

Upon conviction or sentence

Remember that trust in the system among Black defendants is low and will be at its lowest upon conviction and sentence. More emotional labour is needed on the part of the advocate to ensure the defendant has understood what has happened and what their rights now are.

Advise clients who have been convicted or sentenced at court on their rights to appeal, both orally and in writing. The court process can be overwhelming, and clients will benefit from written advice to refer back to, even if it is negative. Before finalising your advice, **consider** whether there are any grounds of appeal against conviction and/or sentence, paying particular attention to any evidence that a Black client may have faced bias during the running of the trial. Given this involves self-reflection and self-assessment, consider running it by an independent colleague. **Remember** that there are strict time limits on appeals and that your advice is likely to be the last chance for clients to lodge an appeal within the time limit.

Remind your client that they can request access to their case papers. **Advise** them that they can then request a second opinion on appeal in future if they wish to do so. JUSTICE's guide to the criminal appeal system (2018) may be helpful to clients.

Acknowledge that being convicted and sentenced is highly emotional and overwhelming, and the defendant may require a cooling off period to get their head around what has happened.

Offer a follow up call or visit to discuss appeal rights if this is possible.

Issues arising from the sentence

Explain the sentence and how it works in detail to your client so they are aware of what it means in practice, acknowledging that the discrimination that Black clients experience from the point of arrest may well continue. It is therefore important that the client knows exactly how the sentence should work and what to do if it is not operating as it should.

For clients on community orders

Make sure your client understands the circumstances in which breach proceedings can be initiated. Inform them that there is evidence that breaches are more likely in the case of Black people.

Advise clients of the importance of compliance but also raising any concerns with their supervising officer if they have difficulties in complying.

Remind clients that they can be represented if breach proceedings are initiated and that they can choose their own lawyer.

Remind clients that supervising officers in the community can be subject to complaints either under the Children Act 1989 and subsequently the Local Government Ombudsman, or through the probation complaints process and then to the Prisons and Probation Ombudsman (PPO). Concerns about discriminatory treatment form a valid basis of complaint.

For clients sentenced to prison

Make sure your client understands the way that the sentence operates, including the earliest opportunity for release, how that will be considered and when preparation for that should start. Follow up with this advice in writing and make sure it is accurate as your client is likely to rely on it. Remember and remind your client that just because a judge says release will operate in a certain way, that does not mean that must be right: the release mechanism will be governed by law. Suggest that your client seeks a copy of the sentence calculation on arrival in prison and that if the release date or earliest date of release is disputed, they should seek legal advice from a prison lawyer.

Advise clients who will be subject to parole, to secure the assistance of a specialist prison lawyer between six months and a year before the parole eligibility date and explain that this is especially important for Black people in prison given the discrimination that exists at every stage of the process.

Warn clients that there is evidence that Black people in prison may suffer from racism in custody, both from other prisoners and staff, as well as institutional racism. **Tell** them that there is a special system for complaints about discrimination called Discrimination Incident Reporting Forms. The Prisoners' Advice Service (PAS) supports adults in prison and the Howard League supports people aged 21 and under.

For clients who are acquitted

Acknowledge how difficult the process may have been for your client given systemic discrimination in the criminal justice system and, if applicable, the issues that surrounded the allegations.

Offer to signpost your client to community organisations and other relevant legal services that may help to deal with any underlying issues. You can find a list of community organisations which you may wish to refer your client to [on the Howard League's website](#).

Supporting Sean and Alicia after court

Sean

Sean was convicted despite securing bail to social services accommodation out of the area, getting a conclusive grounds decision that he was a victim of trafficking and putting forward a modern slavery defence. A strong package of mitigation was put forward and he received an 18-month Detention and Training Order (DTO). He has never been to custody before, so it will be important to let him know how he can access support. As he is still a child, he will be placed in the secure estate for children, which contains different types of accommodation according to need and vulnerability.

Discuss the differences in the types of accommodation and consider asking his YOT worker to make representations to the Youth Custody Service for him to go to an establishment with higher levels of support. **Tell** him that he can get support from the advocacy service in prison and that as a looked after child, his social worker should continue to visit him in prison and support him. **Tell** him he can access free legal advice from the Howard League if he has any questions about his time in prison, if he experiences discrimination or anything he feels is unfair.

Explain to him that his sentence means he will be automatically released in 12 months' time but should be released on tag early after ten months.

Consider whether there are any grounds of appeal against conviction and sentence, especially since he has conclusive grounds and is a vulnerable child in need. The DTO is the highest possible tariff and there is strong evidence that Black people tend to get sentenced more harshly than white people for drugs offences (Sentencing Council, 2020a).

Alicia

Alicia is relieved when the charges are dropped at the door of court.

Acknowledge her likely frustration with the process, including if relevant, her concern about not having her chance to make her case and be acquitted.

Ask if she wants support in pursuing a claim against the police for the way she was handled when she was arrested. **Consider** signposting Alicia to mental health services to support her, including both universal services and relevant community groups.

Endnote: Be part of an antiracist legal community

This guide is a starting point to support the legal community to be antiracist and to encourage lawyers to take active steps to reduce racism in the criminal justice process.

- Use and share this guide
- Encourage diversity within the profession
- Ensure that you do not make such assumptions and call out anyone who does
- Challenge any discrimination that you witness

References and further reading lists are available at www.howardleague.org

Note: The statistics used in this guide were calculated using the 2019 ONS population estimates by ethnic group (referenced in full below). The figure for frontline workers was calculated using ONS occupation statistics (referenced in full below) and includes the following categories: health professionals, teaching and educational professionals, health and social care associate professionals, protective service occupations, skilled construction and building trades, caring personal service occupations, leisure, travel and related personal services, process, plant and machine operatives, transport drivers and operatives, elementary trades, and elementary administration and service occupations.

About the Howard League for Penal Reform

The Howard League for Penal Reform is a national charity working for less crime, safer communities and fewer people in prison. We campaign and research on a wide range of issues including short term prison sentences, real work in prison, community sentences and youth justice. We work with parliament and the media, with criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change to create safer communities.

Our legal team provides free, independent and confidential advice, assistance and representation on a wide range of issues to young people under 21 who are in prisons or secure children's homes and centres. By becoming a member, you will give us a bigger voice and provide vital financial support for our work. We cannot achieve real and lasting change without your help.

Please visit www.howardleague.org and join today.

About Black Protest Legal Support

Black Protest Legal Support is a non-profit organisation led by Black and Brown lawyers who act as Legal Observers, provide free legal support to protesters and monitor police intimidation and harassment at protests. It maintains a network of over 250 volunteer barristers, solicitors and law students who provide pro bono advice and representation to protesters. The organisation was set up by Ife Thompson in the wake of the global uprisings against the murder of George Floyd. They also have a network of over 100 Legal Observers across London, Manchester, Bristol and Birmingham.

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2021

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