The Lammy Review

Overview

David Lammy was commissioned in 2016 by the then prime minister to undertake an independent review and ‘make recommendations for improvement with the ultimate aim of reducing the proportion of BAME offenders in the criminal justice system’.

The review had a broad scope as it covers adults and children; women and men. And in terms of agencies it covers the role of the Crown Prosecution Service (CPS), the courts system, prisons and young offender institutions, the Parole Board, the Probation Service and Youth Offending Teams (YOTS). The review has also benefited from an unprecedented access to resources, data and information held by the criminal justice system (CJS) itself.

To develop its findings the review visited six countries and 12 cities around the world to understand the international context. In England and Wales, the review: gathered information through a public consultation; visited courts, prisons and probation services; spoke to those who work within the system including prison officers, court clerks and judges; and head from victims, offenders, voluntary organisations and academics.

While the focus of the review was on BAME people, the positions of other minorities are also addressed including Gypsies, Roma and Travellers (GRT) and Muslims. The report also states the expectation that its recommendations will also benefit White working class men, women, boys and girls too.

Analysis

Findings

In the report David Lammy states his biggest concern is with the youth justice system. Multi-agency Youth Offending Teams (YOTs) s were established by the 1998 Crime and Disorder Act, and were aimed at reducing youth offending and reoffending. While there has been success in this area overall, with figures showing that far fewer young people are offending and going into custody, the BAME proportion in these two areas has risen significantly in the last decade:
• the BAME proportion of young people offending for the first time rose from 11 per cent in the year ending March 2006 to 19 per cent in the year ending March 2016.

• the BAME proportion of youth prisoners rose from 25 per cent to 41 per cent in the decade 2006-2016.

The report warns that “unless something changes, this cohort will become the next generation of adult offenders”. The report also contends that there is no single explanation for the disproportionate representation of BAME groups and points to analysis of 2014/15 data that shows that:

• arrest rates were generally higher across all ethnic groups, in comparison to the White group – twice as high for Black and Mixed ethnic women, and were three times higher for Black men.

• BAME defendants were consistently more likely than White defendants to plead not guilty in court.

The report identifies plea decisions as an important factor in the disproportionate make-up of the prison system. While admitting guilt can result in community punishment rather than custody, or see custodial sentences reduced by up to a third; sentencing data from 2015 shows that at the Crown Court, BAME defendants were more likely than White defendants to receive prison sentences for drug offences, even when factors such as past convictions are taken into account.

The report found that in the youth system, young BAME prisoners are less likely to be recorded as having problems, such as mental health, learning difficulties and troubled family relationships, suggesting many may have unmet needs. The report also argues that this hinders efforts to tackle the root causes of offending and reoffending among BAME prisoners, entrenching disproportionality.

The report argues that while the Probation services and YOTs are charged with managing offenders in the community and helping them start new lives; the present criminal records regime in fact does the opposite of this. The report cites that over the last five years 22,000 BAME children have had their names added to the Police National Database. In adulthood, the result could be that their names show up on criminal record checks for careers ranging from “accountancy and financial services to plumbing, window cleaning and driving a taxi”.

The Review found that nine in every 10,000 young black people in the general population were in youth custody in 2015/16, the highest proportion of any ethnic group. This compares to one in every 10,000 for young people from white ethnic backgrounds, four in 10,000 mixed ethnic young people, and two in 10,000 ‘Asian and other’ young people; the difference between every ethnic group is statistically significant.

The analysis in the report indicates that the high proportion of young black people in custody is likely to be driven by arrest rates (i.e. the gateway to the criminal justice system), custodial sentencing at the magistrates’ court, and the fact that they have spent longer in the custodial estate on average than other groups in the past four years.

In the last four years, young black people have spent longer in custody than young white people with sentence lengths for violence against the person, theft and possession of weapons driving this trend. Between 2012/13 and 2014/15, young black people were also spending longer in custody than other BAME groups but this gap has closed in 2015/16.

Ethnic groups were compared across a range of measures including: educational attainment, looked after child status (LAC), free school meals (FSM), special educational needs (SEN), persistent absence and permanent exclusion. Overall there were few statistically significant differences between groups, and no consistent differences across measures and sentence lengths.
Published alongside the Review report was Ministry of Justice analysis of the economic impact of BAME overrepresentation. Key findings from this analysis included:

- The estimated economic cost to the CJS of net overrepresentation of BAME youths and adults in 2015 is approximately £309 million.
- Estimated cost associated with the courts stage is £50 million.
- Estimated cost associated with the prisons stage is £234 million (£26 million attributable to youths and £208 million attributable to adults).
- Estimated cost associated with the probation stage is £25 million (all attributable to adults).

**Recommendations**

David Lammy recommends that the response to the disproportionate representation of BAME people in the criminal justice system should be based around three core principles:

- Robust systems in place to ensure Fair Treatment in every part of the CJS. The key lesson is that bringing decision-making out into the open and exposing it to scrutiny is the best way of delivering fair treatment.

- Trust in the CJS is essential. The reason that so many BAME defendants plead not guilty, forgoing the opportunity to reduce sentences by up to a third, is that they see the system in terms of ‘them and us’. Many do not trust the promises made to them by their own solicitors, let alone the officers in a police station warning them to admit guilt.

  - Trust is low not just among defendants and offenders, but among the BAME population as a whole. In bespoke analysis for this review which drew on the 2015 Crime Survey for England and Wales, 51 per cent of people from BAME backgrounds born in England and Wales who were surveyed believe that ‘the criminal justice system discriminates against particular groups and individuals’.

- The CJS must have a stronger analysis about where Responsibility lies beyond its own boundaries. Statutory services are essential and irreplaceable, but they cannot do everything on their own. The system must do more to work with local communities to hold offenders to account and demand that they take responsibility for their own lives.

  - For example, the youth justice system should be more rooted in local communities, with hearings taking place in non-traditional buildings such as community centres. Addressing high reoffending rates among some BAME groups, can only be done through greater partnership with communities themselves.

The Report make 35 recommendations in total, including:

- Better use of data including criminal justice agencies publishing datasets held on ethnicity
- An “explain or reform” principle be adopted by all criminal justice institutions – if agencies cannot provide an evidence based explanation for ethnic group disparities they should introduce reforms to address those disparities
- The Mayor’s review of the Trident Matrix should address disproportionality
- Redacting police information to enable “race-blind” decision making by the CPS
- Implementing the “deferred prosecution” model for young offenders and adults which enables interventions before pleas are entered as opposed to afterwards
- Improving court processes; working towards a more representative magistracy and judiciary by 2025
- Local Justice Panels to put a stronger emphasis on parenting and holding other services to account
- Prison service should have a more diverse and representative workforce
- The CJS should learn from the system for sealing criminal records employed in many US states. Individuals should be able to have their case heard either by a judge or a body like the Parole Board, which would then decide whether to seal their record. There should be a presumption to look favourably on those who committed crimes either as children or young adults but can demonstrate that they have changed since their conviction.
David Lammy’s long awaited report is welcome for its detailed setting out of the scale of disproportionality for black, Asian and minority ethnic young people and adults in the criminal justice system. The focus of the Review was the impact within the criminal justice system. For local authorities, given the key role they have in managing the youth offending service the growing disproportionality in youth justice will provoke thought.¹

It is clear from the review findings that a better understanding of the influence of local courts on sentencing issues will be beneficial in tackling disproportionality as will greater local involvement in the development of problem solving courts.

The review identifies Trust as one of the three core principles to tackle disproportionality. Not just among defendants and offenders but among the BAME population as a whole. Building community trust is an issue for the whole community safety and criminal justice partnership; local authorities including councillors as community leaders have a role to play here.

Better data is a key theme that runs through many of Review’s recommendations and the Report and associated MoJ analysis themselves provide a wealth of data in this area, and it is now for partner agencies to utilise this data to inform all about the issues as well as improve practice and interventions.

The report qualifies its findings and recommendations with the point that many causes of and solutions to BAME over-representation in the criminal justice system lie outside the CJS itself. It points out that black children are more than twice as likely to grow up in a lone parent family, and that black and mixed ethnic boys are more likely than white boys to be permanently excluded from school. Early intervention, children’s services, public health and schools are all within the local authority remit and are part of the wider picture in respect of disproportionality in the criminal justice system.

There are examples of good practice in this field including London Borough of Hackney’s work on improving outcomes for young black men, which implements a theory of change to address disproportionality in a range of areas including school exclusions and offending. The London Borough of Lewisham also conducted its own review of disproportionality in the criminal justice system which included collectively looking at the recommendations of the Young Review, interim report of the Lammy Review and Casey review and finding opportunities for local implementation. Newham and Hammersmith and Fulham Youth Offending Services use the Ether Programme to support young people from BAME background to increase personal development and leadership skills.

¹ The figures relating to the BAME proportion of young people offending for the first time (rising from 11 per cent in the year ending March 2006 to 19 per cent in the year ending March 2016) and the figures for the BAME proportion of youth prisoners rising from 25 per cent to 41 per cent in the decade 2014–2016 are of particular concern, despite the overall number of young offenders being in decline over the last decade.

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