

# Fairness and Belonging Plan: WS1 Narrative piece



Major reports on race and ethnicity in  
the last 40 years: a contextual analysis



Samira Ali and Georgie Hancock  
March 2021

## Introduction

On 14 June 2020, in the wake of Black Lives Matter protests, the Prime Minister indicated the Government would set up a commission to investigate “all aspects of inequality” (The Telegraph, 2020).

In July 2020, Prime Minister Boris Johnson announced his intention in the Sunday Telegraph newspaper to establish a cross-Government commission into racial inequality. This announcement came in the wake of last summer's Black Lives Matter protests following the murder of George Floyd by police. His death led to protests internationally, and forced a conversation into the treatment of Black people with the criminal justice system. It was these same events that inspired the institution of the Fairness and Belonging Plan between West Midlands Police and the Office of the West Midlands Police and Crime Commissioner.

On 16 July 2020 the Prime Minister formally established the independent Commission on Race and Ethnic Disparities. David Lammy, author of the Lammy Review into the treatment of, and outcomes for, Black, Asian, and Minority Ethnic people ("BAME") summarised his immediate reaction to the Prime Minister succinctly within the first few lines of this article in the Guardian newspaper:

### ***"It's like Groundhog Day"***

This report first explores the detail within the Scarman, Macpherson, Denman and Lammy reports. Specifically, it focuses on:

- 1) What the catalyst was that sparked the need for an inquiry;
- 2) Specific failings of the police or other criminal justice institutions;
- 3) The socio-political context at the time of the report; and,
- 4) What their key conclusions and recommendations were.

After giving a detailed overview of each of the four reports, this report makes four key observations and conclusions:

- 1) **Institutional racism is the golden thread running through all of the reports, but the extent to which it is accepted, and the ways in which it has been discussed as a cause of disproportionality and racial disadvantage towards black people does vary.** Institutional racism as the overarching theme informs the content of its recurring themes.
- 2) **Institutional racism manifested itself across the reports consistently in a number of ways.** One of the key recurring themes was the stereotyping of black people, in particular the inability to see black people as victims. Another was structural racism, where the larger community context was considered in particular in the context of being a predictor of increased police contact.
- 3) **Diverse and representative recruitment combined with openness and accountability are the main ways the reports have tried to address institutional**

**racism.** Within these themes include specific areas of focus such as: numerical recruitment targets for recruiting black officers; a review of the current systems for complaints and investigations; rectifying gaps in the data; and training and supervision.

- 4) **Systemic barriers rooted in the wider social and political context have worked to deprioritise equality and diversity within the criminal justice system.** In this section, the report more widely then seeks to place the reports within their immediate social and political context to demonstrate the impact of systemic barriers as a crucial explainer for why the themes identified in the report keep recurring.

Some of the observations within this section include:

- The homogenising nature of the term “BAME” and its implications for meaningful policy analysis;
- Recruitment targets;
- Social policy, such as austerity leading to funding cuts across all criminal justice agencies; and,
- The reporting of race issues within policing by the media, specifically their portrayal of young black men that have perpetuated stereotypes.

### **The context: the prevalence of racism and reports**

Racism and discrimination continue to persist in the UK and globally. In the UK Black and Minority Ethnic (BME) groups are more likely to be unemployed, live in poverty and suffer from mental health problems compared to White groups (Cabinet office 2017; EHRC 2016). Lammy's reaction refers to a slew of reports over the last 40 years which have investigated, and found, structural racial inequalities in state institutions and processes, from the Home Office to the Youth Justice System.

These include:

- Windrush Lessons Learned Review (2020): independent review conducted by Wendy Williams, into the events leading up to the Windrush scandal; (Home Office, *Windrush Lessons Learned Review: independent review conducted by Wendy Williams*, HC 93, March 2020)
- Race Disparity Audit (2017): announced by Theresa May in 2016, the Audit aimed to shine a light on how people of different ethnicities are treated across public services by publishing data held by the Government
- The Lammy Review (2017): Government-backed review into the treatment of Black, Asian and minority ethnic (BAME) individuals in the criminal justice system in England and Wales
- The Macpherson Report (1999): report detailing the Inquiry into the investigation of the murder of Stephen Lawrence, it found the Metropolitan Police was “institutionally racist”.
- The Scarman Report (1981) - report into the causes of the Brixton riot

Despite these successive reports, it has too often been the case that the recommendations made in these reports have not been implemented. It is certainly arguable that, even where actions have been taken pursuant to recommendations, they have been superficial and have lacked longer-term impact necessary to deal adequately with deep-seated issues like lack of trust and institutional racism.

Baroness Lawrence summed up her frustration with poor recommendation implementation in her evidence to the Parliamentary Joint Committee on Human Rights:

**“We have had so many reports, and every time we have a report, they go back to the beginning again and keep repeating the same thing. I am not sure how many more lessons the Government need to learn. It is not just the Government of today but the Government of the Labour Party.**

**How many more lessons do we all need to learn? The lessons are there already for us to implement. Until we start doing that, we will keep coming back in a year or two years repeating the same thing over and over again.”**

Baroness Lawrence's frustration is palpable, perhaps more so considering the unique position she speaks from. The handling of the Metropolitan Police's investigation into the racist murder of her son, Stephen Lawrence was subject to an inquiry, some recommendations from which are still unimplemented. The Macpherson report's "institutional racism" label is one that agencies are still, 21 years later, still struggling to operationalise and deal effectively with.

### Purpose of this piece

This report seeks to set some of these reports into their context, to analyse the reasons why major reports over the last 40 years have been so difficult to implement. Through analysis of the Scarman, Macpherson, Denman, and Lammy reports, it seeks to analyse why the inertia in this area means that the possibility of meaningful criminal justice reform to enhance trust and tackle institutional racism is growing ever more remote.

It sets out the recurring themes between the reports. It sets out the systemic barriers, the impact of social policy, and other factors that have led to inertia in implementing recommendations.

It is important to note that this report uses the term “underrepresented groups” throughout; any use of the term BAME is intentional, and seeks to match the language Lammy uses.

## **Scarman report (1981)**

### **Background**

On the 14<sup>th</sup> of April 1981 Lord Scarman was selected by the Home Secretary at the time, Rt Hon William Whitelaw, to hold an inquiry into the matters associated with the policing of Brixton. The Terms of Reference were “to inquire urgently into the serious disorder in Brixton on 10-12 April 1981, and to report with the power to make recommendations”. Since Lord Scarman’s appointment to conduct this inquiry, further disorders broke out in other urban areas across the country, including areas in the West Midlands, and so Scarman’s intention was to look at Brixton in a national context. The Scarman Report was presented to the British Parliament on November 25, 1981.

### **The Disorders**

The disorders began on Friday 10<sup>th</sup> April, after an incident involving an injured young Black man. An injured young Black man, who had a wound between his shoulder blades that was bleeding heavily, had run into a police officer. Three or four young Black men, who had been pursuing the injured youth, incorrectly interpreted the police officer’s actions as intending to arrest the injured youth and began shouting at the officer to leave him alone. The injured youth had ran off and sought assistance from people in a block of flats, who had put him in a taxi to take him to hospital. This was witnessed by another police officer, who had responded to a call for assistance from the officer who had collided with the injured youth, who followed the taxi. When stopped in traffic, the police officer opened the taxi door to examine the youth, and determined it was likely he’d punctured a lung and that moving him would be dangerous, so radioed for a first aid kit to be brought to him, whilst another officer called for an ambulance. A crowd of between thirty and forty people gathered around the officers and comments were made such as “you’re killing him” and “we will look after our own”. The crowd pushed aside the officers, carried the injured youth out of the car and put him into another vehicle to take him to the hospital. When other officers and an Inspector arrived at the scene, having responded to the call for assistance, there were around 100 young, mostly Black, people in the crowd where bottles and bricks were being thrown at officers. The inspector ordered the officers to deploy the shields and break up the crowd. Disruption continued until 7:30pm - with six arrested, six officers injured and four police vehicles damaged – and twenty uniformed police officers were left patrolling Brixton in pairs.

The Chief Superintendent arranged a meeting with community leaders that evening where they: listened to concerns from the community; asked for the community leaders’ assistance in dispelling rumours that were circulating - such as the rumour that the police were deliberately trying to stop the injured youth from going to hospital; and inform the community of their plans to increase police numbers in the area. One concern raised by community leaders was about the number of officers deployed to the area, and one of the youth workers requested that police presence be reduced, to which a Commander agreed to; provided members of the youth club left in small groups.

Scarman was satisfied that the police officers' intentions were to help the injured youth, but recognised that tensions between police and young Black people were "a fact of life" in Brixton, with many people of all ages and ethnicities lacking confidence in the police. This, combined with a substantial number of officers flooding the scene as they responded to the call for assistance, may have led to the interpretation of the crowd that they were being pursued. Scarman was confident that the disorders on the Friday were not pre-meditated, but "an act of defiant aggression by young men who felt hunted by a hostile police force". Scarman also commended the Chief Superintendent's decision to promptly hold a meeting with the community leaders, labelling it good imaginative policing, and that it was brilliant that Commander Ferguson came from Scotland Yard to conduct the discussions. However, Scarman was critical of one aspect of the Chief Superintendent's policing decisions, which was the decision to continue with Operation "Swamp". Operation Swamp was a week-long Stop and Search operation from Monday 6<sup>th</sup> April – Saturday 11<sup>th</sup> April. The occurrence of this operation was well-known within the community, especially with young Black people as it impacted them in particular. Scarman highlights that it would have been sensible to pause this operation given the level of tension in the community, and especially as with hindsight we know that an arrest on Saturday 11<sup>th</sup> by two Swamp officers was the catalyst for Saturday's disorders.

On Saturday 11<sup>th</sup> April, two police officers asked to search a taxi driver who was parked outside their car hire company, on suspected drug offences. As they were searching him, and found nothing incriminating on him, a crowd began to form. As one of the officers searched the taxi driver's vehicle, the crowd became more hostile and accused the officers of harassing the driver. One of the officers was obstructed by a Black youth, and then the youth allegedly pushed the officer in response to being threatened by him, and was subsequently arrested and put into a police van – that had responded to an earlier radio request for assistance. The situation escalated dramatically, with both the crowd and police officers at the scene significantly growing in numbers; missiles being thrown; and a police dog van set alight. The Chief Superintendent had a message put out asking all police cars not to attend the scene, out of concern that the horns and lights would be thought provocative, and asked two plain-clothed officers who were alleged by the crowd to have worn National Front badges to go back to Brixton Police Station.

Urgent assistance was requested from all over the Metropolitan Police Service (MPS) and officers were ordered to draw their truncheons to disperse the crowd. Another large crowd had formed in another area of Brixton, where further violence and damage occurred, and the first petrol bomb was thrown. Four people, acting as self-assigned mediators between the police and the crowd, explained to the police that they felt the only way to reduce tension, and disperse the crowd, was for the police to withdraw from the area; to which the Commander refused due to the risk of disruption spreading. One of the Chief Superintendents decided extraordinary measures were required to prevent further injury, and ordered officers to use the fire officers' hoses on the crowd - and maintained they were necessary when he was challenged on their use by a senior officer - and this did cause the

crowd to fall back. Whilst the disorders were occurring, many people took this opportunity to loot. By about 11pm, aside from isolated incidents, the rioting was over.

On Sunday morning rumours, including one that the National Front proposed to descend on the area, continued and police were prepared for the potential disorder later in the day. At 3:56pm police received a report that Lambeth Town Hall was to be attacked that night. Trouble broke out again at about 4:27pm. At 4:45pm another meeting of community leaders was held at Brixton Police Station. During the meeting serious disorder developed in numerous parts of Brixton. The disorders were serious but they lacked the intensity of the previous night, although they were more widespread. Outsiders attended, most likely attracted by media coverage of Saturday's disorder. There were also more allegations of aggressive behaviour and misconduct by the police in relation to Sunday than to those of the previous two days.

Similarly to the cause of the disorders on the Friday, Scarman was satisfied that the disorders were not premediated, they were a spontaneous reaction from the crowds to what they perceived as police harassment. Scarman does arrive at the conclusion however that once they began, an element of leadership and organisation emerged and it became a riot, with the common purpose of attacking the police. Scarman made a point of commending the bravery of the police, and defended officers who picked up stones or missiles that had been thrown at them and threw them back, stating that even though it may not have been lawful it was understandable when in self-defence. Scarman argued that although there was a strong racial element, it was not a race riot. The disorders came about from a complex political, social and economic situation, not unique to Brixton. Scarman's conclusion was that the disturbances on the Friday and Saturday arose from very typical police actions, but triggered serious disorder due to the level of existing tension in the community.

### **Social Conditions**

Scarman argued that the social conditions in Brixton created a predisposition towards violent protest. The provision of recreational facilities for young people at the time of the Scarman Report were deemed insufficient, and Scarman made the suggestion that the lack of an appropriate release for young peoples' energy could lead to this being converted to frustration and diverted into criminal behaviour.

The population of Brixton had a higher proportion of school age children, and fewer people in professional or managerial occupations than London as a whole. Brixton also had a higher proportion of Black people, with disproportionately high numbers of children in care and of single-parent families, and the Melting Pot Foundation – an organisation that provided hostel accommodation for young Black people – estimated that 300 young black people were either homeless, sleeping rough or squatting in the Brixton area. Evidence also showed that Black young people were struggling disproportionately at school, in particular with acquiring language and literacy skills sufficiently early enough, and Black people in Brixton were disproportionately unemployed.

Not only were young Black people disproportionately affected by unemployment and struggling to achieve educational success, which Scarman claimed to be the two most crucial elements of racial disadvantage, but they were also facing discrimination. Scarman detailed how evidence suggested that discrimination towards ethnic minorities occurred in local authority services, especially within housing. While Scarman rejected the suggestions that society knowingly discriminate against black people, he believed that practices may be adopted by public services that were unconsciously against black people.

Scarman referred to:

- An accumulation of anxieties and frustrations;
- More incidences of lower parental support;
- Fewer recreational facilities available;
- Feelings of political insecurity with low level of black representation in political institutions leading to limited opportunities to air their grievances;
- Education and employment difficulties, described as creating a “recipe for a clash” with the police who “represent a society that has failed to bring them benefits or do them justice”.

#### Policing in Brixton between 1977 – 1981

Commander Fairbairn had been Commander of “L” District (an area covering the four districts in Lambeth, one of which is Brixton) for five months prior to the disturbances, having taken over from Commander Adams who had been in post since 1977. Both Commanders were faced with the policing problem of coping with a rising level of crime, particularly street robbery, whilst retaining public confidence of all groups within the community.

In 1977 a two-fold approach was adopted which consisted of a system of street patrolling combined with establishing a system of community relations. With the former, the number of foot patrols were increased and the Commander argued for a permanent increase in officers for the area. With the system of community relations a number of initiatives were implemented successfully, such as a community policing project on an estate in Brixton. But police links with youth clubs were not successfully created and the reason given for this failure was suspicion and hostility in the community.

On a number of occasions, Commander Adams mounted special operations against crime in the district by utilising the MPS’s mobile reserve, the Special Patrol Group. The objective of these operations was to saturate the area with police officers who conducted stops and searches, and thus deter criminals. The operations did not prove hugely successful as once they were over street crime went back to their previously high levels, and with some arguing that during the operations the street crime simply moved to other areas. These operations, like the aforementioned Operation Swamp, created hostility in the young, especially black, people as they were disproportionately affected, which in turn bred hostility in the older black community from hearing of their younger generations’ experiences.



Community leaders had not been informed of Operation Swamp, however the presence of special police efforts became apparent and a number of people who gave evidence during Scarman's enquiry said that in the week of Operation Swamp tension on Brixton streets increased significantly.

A formal liaison between the police and the Council for Community Relations in Lambeth (CCRL) had been formed, with their first meeting taking place in 1978. Three days after their inaugural meeting, one of the operations utilising the Special Patrol Group began in Brixton and the Commander did not inform the CCRL, out of concern that it would diminish the effectiveness of the operation if the public were aware, which angered the community leaders as it felt the police were not upholding their role in their two-way committee. Three members of CCRL staff were arrested in relation to an investigation of assault on two plain-clothes officers and a barman, by a number of black people in a pub in Clapham and this prompted the CCRL to withdraw from the liaison committee. Commander Adams tried numerous times to get the committee restarted but his efforts were unsuccessful, however some of the community leaders who had disagreed with the decision to break-off contact continued to meet with the Commander irregularly.

When the CCRL pulled out of the liaison committee with the police, they also asked Lambeth Council to conduct an inquiry into policing in the area. The Terms of Reference for this were "to inquire into the nature of policing in Lambeth in recent years and its effect on the local community and to make recommendations". They received 275 evidence submissions, none of which came from the police as they refused invitations to give evidence on the grounds that they doubted the inquiry was impartial due to some of its members having connections to organisations which had been critical of the police. The Report was critical of the police, describing them as intimidating and harassing working-class people, and black people in particular, in Lambeth.

One chapter in the final Report was titled "Specific Areas of Attack" and criticised police raids on youth clubs, police attacks on black homes, and police behaviour towards black parents. The report made a number of recommendations that they thought would bring "limited improvement" to community/police relations. Several of the recommendations were focused on strengthening safeguards for arrested and detained persons, and for there to be not future deployment of the Special Patrol Group in Lambeth. Unsurprisingly, the publication of this report harmed police/community relations further.

### **Main criticisms of the police given in evidence during the Inquiry**

- 1) **Racial Prejudice** – this was split into some directing their criticism at the MPS as a whole, with the integrity and impartiality of its senior direction challenged just as much as the conduct of police officers on the streets. Whereas others reserved their criticism of racial discrimination for individual officers, alleging they "picked on" young black people when exercising their powers; exercised their powers with a lack of respect; and had a tendency to stereotype black people as criminals. Scarman rejects the

allegations that there is a racial bias amongst senior officers, and insisted that this conclusion some had arrived at was down to the racially prejudiced actions of a minority of officers in their interactions with black people on the streets. Scarman does acknowledge that damage in public confidence can easily be done even by occasional instances of racial prejudice and it is key that steps are taken to remove these attitudes from the force.

- 2) **Harassment** – evidence was made to suggest that there was a massive separation between the good intentions of senior officers and the actual behaviour of constables. Director of Melting Pot Foundation said in their evidence "we do not object to what they do so much as they way they do it". Scarman doesn't doubt that some of the allegations against individual officers are true, and that particularly with Stop and Search he is sure that carefully controlled behaviour was lacking in some instances, however he also suggests that there must be a temptation for every criminal to allege misconduct by the police and that could contribute to the fuelling of rumours. Issues with the complaints procedure were also raised in the evidence given in the Inquiry.

The police response to misconduct allegations was by saying that they must be tested through their complaints procedure, and then they highlighted the small number of complaints made. But a lot of the evidence submitted to Scarman suggested many in the community lacked faith in the impartiality of the complaints system, as the police investigated complaints against fellow officers. Scarman reflected that as long as there is no system for judging complaints against the police which commands the support of the public, the atmosphere of suspicion will remain.

- 3) **Unimaginative and Inflexible Policing** – In Scarman's judgement, police attitudes and methods had not yet sufficiently responded to the challenges involved in policing a multi-racial society, but this was not to be attributed to a lack of sincerity and effort but instead a lack of flexibility in their approach. Scarman defends the police's lack of flexibility by suggesting we should not be surprised that the necessary adjustments to effectively police a multi-racial community are not yet satisfactory, when British society as a whole have not yet come to terms with ethnic diversity.

Scarman also goes on to attribute the breakdown in community relations to two key factors: failure to consult and hard policing. The MPS saw consultations with the community, and their leaders, as a danger to the success of the operation and an intrusion on their independence of judgement as police officers. Scarman made a point of recognising the benefits associated with gaining the support and approval of the community if operations are to succeed long term. Street crime operations for example are dependent upon a stop and search procedure, which is inevitably going to inconvenience innocent people. If there is a local understanding of what the police intend to do, and the rationale behind this, these operations are likely to go more smoothly.

The "Swamp" saturation operation is a typical example of hard policing. The police have a responsibility to be firm against crime, but if a community becomes resentful and there is a widespread lack of confidence in the police, then it may be essential to

review police strategy and methods. Scarman was convinced that Operation Swamp was a mistake given the tension which existed in the early months of the year, and the MPS should have reassessed their strategy. Had policing methods been adjusted to properly deal with the problems of policing a multi-racial society there would have been an in-depth review of the public order implications of the operation, which would have included local consultation.

- 4) **Overreaction to the Disorders** – evidence given which fell into this category included: alleged brutality, aggressive behaviour, use of unlawful weapons, improper use of dogs/shields/truncheons, and unnecessary use of force. Other evidence also criticised the decisions of the senior command to not withdraw when, in their view, it should have been realised what was fuelling the riot was the “militant police presence”.

Scarman appreciated that there must have been instances where individual officers overreacted, and was particularly concerned by the use of unlawful weapons. Scarman defended the actions of some police officers who allegedly beat on their shields with their truncheons whilst shouting, which Scarman labelled “unfortunate” but that officers needed to maintain their efforts whilst confronted with a fiercely hostile crowd. Scarman also rejects the criticism related to the senior command’s refusal to withdraw from the scene, as they would have been massively criticised had they withdrawn and the disorder and looting continued.

- 5) **Delay and Lack of Vigour** – others in the community largely support operations to reduce street crime but, conversely to those who criticised the police for their overreaction, doubted whether the police’s reaction to the disorders was vigorous enough. They questioned whether or not MPS had been adequately trained, equipped or reinforced to suppress the riot or protect themselves and the other emergency service workers. Scarman was satisfied that MPS had learnt lessons from the disorders as they gave evidence that new arrangements were being introduced for the event of another disorder.
- 6) **Failure to Act against Looting** – the riots offered a prime opportunity for people tempted by materialism. It was clear in the evidence given that the ethnic makeup of the looters was more representative of the wider community, and therefore it could be suggested this behaviour did not have the same circumstances or reasoning fuelling it – and in a lot of cases it was outsiders who had been drawn in by the media. Looters were condemned by all who appeared at the enquiry.

Scarman’s conclusions on the criticisms of the police were that the police, both command level and on the streets, acted wisely, coolly and with commendable restraint, bar the individual exceptions. He said it was a tribute to their restraint that no one was killed in the suppression of the disorders.

## The report's recommendations

Category	Recommendation
Recruitment	<ol style="list-style-type: none"> <li>1) Home Office with Chief Constables and Police Authorities to urgently study ways of improving ethnic minority recruitment into the force and involving ethnic minorities more in police-related activities such as the Special Constabulary and Cadets</li> <li>2) the work currently being undertaken in the Metropolitan Police designed to identify scientific ways in which evidence of racial prejudice can be identified should be vigorously pursued with the support of the Home Office, and the results should be incorporated into the procedures for selecting recruits to all police forces</li> </ol>
Training	<ol style="list-style-type: none"> <li>1) minimum length of the initial training period for the police recruits be increased to six months</li> <li>2) An officer's period on probation should include, if possible, a period in a city area where ethnic minorities form a substantial proportion of the population</li> <li>3) training courses designed to develop the understanding that good community relations are not merely necessary but essential to good policing should be compulsory from time to time in a police officer's career up to, and including, the rank of superintendent</li> <li>4) training in the handling of public disorder should be provided for officers of all ranks up to and including commander or its equivalent (ACC in the provinces)</li> <li>5) the Home Office, with Chief Officers of the police, should seek to establish common programmes and minimum standards for in-service training in both community relations and the handling of disorder (observance of these minimum standards by forces should be monitored through HM Inspectorate of Constabulary)</li> </ol>
Supervision and Monitoring	<ol style="list-style-type: none"> <li>1) Greater attention be given to management training in the supervisory responsibilities of officers of Inspector and Sergeant rank</li> </ol> <p>Scarman acknowledged that a lot of people were critical of the younger police officers who had been deployed in sensitive areas of Brixton who lacked maturity and good judgement. Scarman also emphasised the importance of supervision particularly with stop and search operations.</p>
Discipline	<ol style="list-style-type: none"> <li>1) racially prejudiced or discriminatory behaviour should be included as a specific offence in the Discipline Code</li> </ol>

	2) It should be understood throughout the police that the normal penalty for racially prejudiced behaviour is dismissal
Methods of Policing	<p>1) Procedures for briefing an officer transferred to an inner city area should be strengthened</p> <p>2) Action should be taken to make it known to the public what the purpose and achievements of the Special Patrol Group are</p> <p>3) In consultation with police authorities and local community leaders, Chief Officers of police should re-examine the methods of policing used, particularly in inner city areas, with particular reference to: the pattern of patrolling (the mix of foot and mobile patrols); the role of Home Beat Officers (ways in which they can be integrated more effectively into the mainstream of operational policing); the provision of opportunities for operational officers to get to know the community they are policing; ways of ensuring greater continuity and a balanced spread of officers of different in more sensitive inner city areas, and of ensuring that officers transferred to work in such areas are given an effective introduction to the needs and problems of the area</p>
Consultation and Accountability	1) Consultation is largely an administrative matter, accountability has to be statutory. Exclusive reliance on "voluntary" consultative mechanisms is not sufficient, recommended that Chief Officers of police should take authorities fully into their confidence, and should cooperate with Police Authorities in establishing consultative arrangements in their police areas. Scarman recommends the establishment of statutory liaison committees, or other appropriate consultative machinery
Police Handling of Disorder	1) Whilst recognising the importance and necessity of equipment such as water cannon, CS gas and plastic bullets being available to police, such equipment should not be used except in grave emergency (specifically where there is a real apprehension of loss of life) and then only on the authority of the Chief Officer of Police.

Scarman also reviewed three key areas of need in relation to support for black people. Firstly, housing. Scarman endorsed the findings of the Home Affairs Committee in its report on Racial Disadvantage that there is a strong case for local authorities to review their housing policies to ensure that they do not discriminate against minority groups. Secondly, education. Scarman emphasised the importance of police involvement in schools and said that the areas that need to be carefully considered where: provision of facilities for under-fives; the training of teachers in the particular needs/cultural backgrounds/expectations of minority group children and parents; teaching of English; involvement of parents in the work of the school. And finally, unemployment. Unemployment was a major factor underlying the disorders in

Brixton, and we know that unemployment affected black people disproportionately. There will be a long-term need to provide employment and recreational opportunities for young people. Numerous proposals for law reform were suggested during the inquiry which Scarman provides his thoughts on. Stop and search is necessary to tackle street crime, but Scarman agreed with the Royal Commission on Criminal Procedure's proposals for an explanation of the law and for additional safeguards. Scarman also recommended that lay police stations visitors were implemented, where random checks by people other than the police were made on the detention of suspects in the police station.

As mentioned previously, there is a lack of public confidence in the complaints against the police system, and the introduction of an independent element to the investigation of complaints is vital to Scarman. And finally, Scarman recommends that the Public Order Act 1936 be updated to include a requirement of advance notice of a procession to the police; that "serious" is removed from the public order test; and that it should be possible for one specific march to be banned (for example on grounds that it is deemed a "racist" march in a racially sensitive area).

### **Scarman Report Final Conclusions**

- "Urgent action is needed if it (racial disadvantage) is not to become an endemic, ineradicable disease threatening the very survival of our society".
- Scarman was confident that racial disadvantage was prevalent in British life, and that it was the prominent factor in the underlying causes of the Brixton disorders, but rejects the idea that institutional racism exists in Britain.
- Scarman stated that efforts towards eliminating racial disadvantage must be more direct than it previously had been, ensuring funds made available are directed effectively – particularly on areas of education and unemployment.
- Scarman also emphasised that this was not a policing issue, but that all sections of society needed an equal persistence in striving towards attacking racial disadvantage and that "good policing will be of no avail, unless we also tackle and eliminate basic flaws in our society".

### **Criticisms of the Scarman Report**

Lord Scarman's report was publicly supported almost uncritically, by everyone (Sim, 1982), however it was largely ignored by the Thatcher government who failed to adjust government policies in line with Scarman's recommendations to address racial disadvantage (Law, 2015). Scarman was criticised for his methodology for the phase of the inquiry which involved examining underlying social conditions. This phase of the inquiry lasted for just six days and a large portion of this time was spent cross-examining two senior police officers, and some have argued that this bias was reflected in the construction of Scarman's report. While there were mild criticisms of the individual officers, and elements of uncertainty in Scarman's examination of policing, the media and response in government was unequivocal

in its support of the police (Neal, 2003). Scarman did make a number of criticisms of the police however he failed to make any criticisms of the officer's misconduct and even went as far as to defend highly problematic police behaviour (such as police officers throwing stones or missiles back into the crowd, or beating their shields with their truncheons) stating that although it was "unfortunate" it was understandable in the circumstances. Blake (1981) highlighted in particular Scarman's failure to criticise, or even raise, the issues around the clear evidence of three reputable journalists and of photographic evidence of plain clothes officers carrying unauthorised weapons from Brixton Police Station in the company of senior officers.

## **Macpherson report (1999)**

### Background

On the 31<sup>st</sup> July 1997, Sir William MacPherson was asked by then-Home Secretary Jack Straw, at the request of Mr and Mrs Lawrence, to inquire into the matters arising from Stephen Lawrence's murder on 22<sup>nd</sup> April 1993. The objective was to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes. The Report was presented to Jack Straw on 15<sup>th</sup> February 1999, with the report published on 24<sup>th</sup> February 1999 and at the time of its publication nobody had been convicted of Stephen Lawrence's murder.

Before the Macpherson enquiry, the Police Complaints Authority (PCA) utilised Kent Police to investigate complaints made by Stephen Lawrence's parents that the Metropolitan Police Service (MPS)'s first investigation had been botched. Macpherson agreed with the PCA's criticism of decisions made by senior officers, poor family liaison, conduct during the first investigation (including the misleading Barker Review), but do not agree with the PCA's conclusion that the initial response to the murder was satisfactory. In terms of allegations of racism, the PCA inquiry found no evidence to support allegation of racist conduct in the investigation of Stephen's murder, which Macpherson believed to be an incomplete assessment of institutional racism that was clearly at play.

### Stephen Lawrence's Murder

Stephen Lawrence and his friend, Duwayne Brooks, were on their way home and came to a bus stop at around 10:30pm, when Stephen went to see if a bus was coming Duwayne called out to ask if there was a bus coming. This was responded to by one member, of a group of five or six white youths, with a highly offensive and aggressive racist remark who then proceeded to surround Stephen and attack him. Duwayne ran away, shouting to Stephen to run also, the attackers ran away and Stephen managed to get up and follow Duwayne. Due to the severity of Stephen's injuries, he collapsed after running after 130 yards. Three eyewitnesses were at the bus stop and all said the attack was sudden and quick. Large quantities of blood did not mark the scene of the attack due to Stephen wearing five layers of clothing, however all of the witnesses mentioned there being a substantial amount of blood. Medical experts suggest that Stephen probably died within a short time of his fall, and almost certainly before he was removed by the ambulance staff.

### First Aid and the Initial Response

The first police officer on the scene felt it best to leave Stephen where he was and allow the paramedics to take over when they arrived, as he seemed to be in the recovery position and the officer was unaware how injured he was. Macpherson believed that any deficiency in the actions taken by this officer were due to a lack of first aid training, as opposed to a lack of will to help, and specifically stated that he had no hesitation in saying that there was no racist motivation or reluctance in the officer's decision to not perform any first aid on Stephen.



Another officer who arrived at the scene called for the ambulance to be sped up as she saw the large volume of blood, however she did not notice an obvious wound where the blood was coming from. Misreading the nature of Stephen's injury was a repeated feature of the evidence from all officers who were present, and as in the case of the first officer on the scene, this seemed to be down to a lack of adequate training as opposed to having a casual approach to what they witnessed. First aid training, and their refresher courses, were revealed to be utterly inadequate. Nobody at the scene did anything for Stephen except for limited testing of his breathing and pulse.

Officers were also heavily criticised by Macpherson for their total lack of support for Duwayne who was clearly, and understandably, in a level of severe distress and suffering from trauma. Officers failed to pay Duwayne sufficient attention, nor did they provide adequate support for someone who was a victim. One officer even went as far as to refer to Duwayne as "nothing but a bloody nuisance that night". There was a consistent pattern of officers showing little sympathy for Duwayne, and they also neglected to use him to assist in immediate searches for the perpetrators – which Macpherson concluded as the officer stereotyping Duwayne and a complete failure to treat him as a primary victim.

The most severe criticism with regard to first aid was directed at the most senior officer at the scene, who did nothing to ascertain what was being done, if things were being done properly, or that people qualified in first aid were dealing with Stephen. When he received no reply from officers when he asked what was happening, he simply left the scene under the belief that there had just been some kind of fight. Macpherson concluded that his attitude and dismissive conduct were contributed to by unwitting, but certain, racism and that he would not have been as dismissive if the victims involved had been white.

Whereas Macpherson's conclusions in relation to the other officers' inaction was not due to racism but the lack of sufficient first aid training and the tendency to rely on the arrival of medical professionals. It was confirmed by the doctor who saw Stephen that nothing that could have been done at the scene would have saved Stephen's life, as his injuries were so severe. However, this does not mean that more first aid should not have been carried out, especially as the officers did not know the extent of Stephen's injuries and therefore could not have known that their efforts would have proved futile.

This lack of action and command in relation to providing first aid was also shown in the rest of the initial response to the crime. There was an almost total lack of documentation of the first night's operations. The limited notes that were made during the initial response were destroyed after four years, and Macpherson commented on how highly unusual it was for them to not have been kept considering the high level of attention this case had. One notebook was produced for the inquiry with short notes. The lack of proper documentation made it difficult to reconstruct exactly what happened during the first hours after Stephen's murder, however what Macpherson did confidently conclude was that there was a complete lack of command and organisation at the crime scene, with supervisory officers displaying a total failure in leadership and providing direction.

Chief Inspector McIvor, the most senior uniformed officer on duty for the area during the night of the murder, felt the scene was being well conducted and believed his presence was superfluous and that he had other duties to attend to elsewhere. The Macpherson inquiry claimed that the Chief Inspector should have taken charge and ensured that the correct steps were being taken, but instead he distanced himself from operational responsibility. The Macpherson inquiry were very shocked that the Kent inquiry had found that the initial response to Stephen's murder was properly carried out, as their conclusions were entirely contradictory to this and emphasised everyone's dissatisfaction with the evidence given by all relevant officers.

Overall the presence of all these more senior officers added little to the investigation. Macpherson acknowledged that a murder scene is likely to be hectic and initially disorganised, but it should have been the responsibility of senior officers to handle this disorganisation and "attack the situation with energy and imagination", which they totally failed to do. Macpherson concluded his remarks on the initial response by saying that the lost opportunities for proper searches and investigation in the initial hours after Stephen's death were to be deplored.

### **Failings of Senior Investigation Officers and Policing Strategy**

Detective Superintendent Crampton was the Senior Investigating Officer (SIO) until 26<sup>th</sup> April. A vital mistake that was made was failing to swiftly arrest the suspects despite there being sufficient information available to make the arrests by the evening of the 24<sup>th</sup> April. Crampton claimed he made a strategical decision not to arrest, although there is no recorded evidence of this decision being made. By the 26<sup>th</sup> April evidence about a previous serious assault case (that of the stabbing of Stacey Benefield) supported the information the police had on two of the suspects and would have given sufficient grounds for the arrest of David Norris and Neil Acourt, which would have also entitled the police to search their premises for evidence in connection with Stephen's murder, but arrests were still not made.

When the investigation lead was transferred to Detective Superintendent Weeden, Weeden simply adopted the same approach as Crampton. He failed to assess whether the right decisions had been made; showed that he was unsure on his powers of arrest; and lacked any imagination to adopt a new approach. This led to the arrests being delayed until 7<sup>th</sup> May, which were largely carried out due to public pressure. It should be made clear that the grounds for arrest applied on the 7<sup>th</sup> May, also applied with just as much force on Saturday 24<sup>th</sup> April. To not arrest the suspects during that first weekend was a fundamental error in judgement and decision making of Crampton, which was then simply adopted by Weeden and other senior officers.

Alongside criticising the senior officers' delay in making arrests, Macpherson made numerous other criticisms related to policing strategy in the investigation. They are not necessarily an indication of institutional racism, but their discussion is important and warrants brief mention in this report. These delays give an indication as to the number of poor decisions made and multiple failings as it does perhaps show a consistent approach to the investigation that

lacked professionalism and any sense of urgency. And this approach and attitude being adopted in the case of Stephen's murder could be due to unwitting racism.

The names of prime suspects were consistently mentioned to the police from a number of different sources, but there was no determined action taken to find out whether this information could be supported from other sources, for example no officers checked at the schools or extracurricular clubs of the suspects.

There were also critical issues with the flow of key information – such as information from informants about multiple suspects and how they were linked to previous cases – as it was rarely efficiently filtered to officers or recorded properly. Detective Chief Superintendent Burdis produced a report for the Inquiry on the use of HOLMES, and he stated that he “genuinely believe(d) that given three times the numbers of staff actually allocated to this investigation all the necessary evidence would have been captured in a timely fashion and would have played a very positive part in a subsequent prosecution”.

His final conclusion was that given the circumstances of the murder and the numerous immediate lines of inquiry, the staff allocation was inadequate and failed to give support to the SIO. Given the lines of enquiry generated by the media attention and the appeals for public support made by the Lawrence family, those charged with outside investigations could not cope quickly enough with the amount of work allocated to them.

A lack of supervision was also raised by Macpherson in relation to one of the Detective Inspectors. Until he was interviewed in the PCA inquiry he had never before seen the MPS manual which sets out the Area Major Incident Pool (AMIP) guidelines for the role he was to adopt in the investigation of Stephen's murder. This detective inspector should not have been allowed to hold a position in this inquiry that he was so ill-equipped for; was clearly beyond his abilities; and lacked supervision.

The surveillance operation was poorly planned, poorly executed, and poorly documented. Officers also failed to suitably prioritise Stephen's murder, and the surveillance team were instead being used to observe a young black man suspected of theft.

The identity parades were also poorly run by the officers and they breached the Codes of Practice governing identity parades. They left witnesses together unsupervised which led to other witnesses feeling nervous when Duwayne was pacing and giving a running account of what was happening, to his lawyer on the phone, in front of the other witnesses. Another witness refused to attend any further parades after his name was accidentally revealed to the men in the parade, which led to him being afraid for his safety in the event that his name would be passed on.

The police were also criticised for: their failure to take necessary measures to arrest Clifford Norris, who was the father of one of the suspects and it was believed that his influence was preventing people coming forward with evidence. There were a number of other criticisms raised in the inquiry related to the failure to follow up on other lines of inquiry and for not performing sufficient searches of the suspects' premises after their arrests.

The final issue raised in Macpherson that is worth mentioning is that most of the exhibits associated with the suspects did not start coming into the system until after the arrests had been made. This meant that suspects had over two weeks to get rid of offending items, and it meant that fibre and blood traces may have begun to degrade. Adrian Wain was primarily responsible for the scientific evidence and he only found very weak support linking the suspects' clothing to Stephen. Macpherson made no criticisms about the scientists, but reserved them solely with those responsible for holding up the investigation.

### **Family Liaison**

Macpherson dubbed the family liaison as one of the saddest and most regrettable aspects of the case, with appropriate communication and sensitivity being wholly lacking. A clear example of poor communication between the police and the Lawrence family is the fact that Stephen's parents say they did not hear of the arrests on the 7th May until they saw the television announcement.

Two officers were tasked with liaising with the family, one had no previous experience as a Family Liaison Officer, and the other had liaised with just two families in murder cases. They were appointed on 23 April and visited the family that evening. Both officers were also later involved in general activity in the investigation, including arrests and interviews with suspects and one of the officers was in charge of a team in the murder investigation. Macpherson is of the belief that these separate roles may have detracted from their role as family liaison, particularly as it was believed that one of the officers may have held back information from the Lawrence family, which may have reduced their anxieties, due to not wanting to compromise any pending prosecutions.

It was clear that family liaison was a failure from the start of this case, which admittedly both officers do agree with. One of the officers was not aware that there were guidelines to support officers with family liaison. Macpherson made it clear that untrained officers who were unfamiliar with the specifications or guidelines of their role should not have been undertaking this crucial task, as nothing was more important than the police establishing a good relationship with the Lawrence family.

The family liaison officers failed to gain the confidence from the Lawrence family from the very beginning, and this should have been communicated to their superior at an early stage and more appropriate people should have taken over the task. The liaison officers did say that the problems were discussed at regular meetings with senior officers, but that the senior officers just told them to do their best and keep on trying. This was clearly an unimaginative and inadequate response by those officers.

It was made clear, at an early stage, to Detective Superintendent Weeden that there were issues with family liaison that required his intervention. Mr Khan (the Lawrence's lawyer) had written three letters, in quick succession, seeking more information for the Lawrence family. Weeden had replied to this saying he would visit the Lawrence family himself but he never did, the first time he met with the Lawrence family was over a year since his appointment of SIO to the case. Weeden's lack of action on this was a focus of major criticism from Macpherson.

Comments were consistently made by the police about the large number of people surrounding the Lawrence family during the investigation. Macpherson criticised the police for

not simply blending in with the family's wishes and their inability to not be put off by the high volume of people trying to assist the bereaved family. This highlighted a lack of training and total insensitivity in understanding how a black family may react to the tragedy that the Lawrence's were experiencing.

Investigation into the background of a victim is necessary in a murder investigation, as it could lead to key information that would assist the case. The investigation in this case only showed Stephen to be a highly regarded man, however the Lawrence family got the impression that their son was under suspicion of criminal behaviour due to the lack of tact and failure of officers to fully explain their actions to the Lawrence family. One particular example of this was when a pair of gloves and hat that had been found at the scene were shown to Stephen's parents. The officers should have given a clear explanation of the reasons for bringing these items to the Lawrence family (the reason being solely to establish ownership of the items) but Stephen's parents felt a suggestion was being made against their son. This displays the total failure of the family liaison officers to sensitively explain what they were doing.

A particular incident at a meeting between Stephen's parents and Detective Chief Superintendent Ilsley was raised. During a meeting with Stephen's parents, Mrs Lawrence handed a note to Ilsley which contained a list of suspects. Ilsley folded up the piece of paper into a small packet, and the perception of Mrs Lawrence was that this was done in a dismissive way, and was insensitive. It was folded up so tightly that the impression formed by Mrs Lawrence was that the paper was of no importance to Mr Ilsley, especially as he did not express any gratitude for receiving it. He did enter the information into the system as soon as he returned to the Incident Room but the damage of trust had already been done.

The other recurring theme in relation to the Lawrence family was the negative attitude of senior officers towards the Lawrence family. A statement was made by Weeden which stated how his, and the team's, patience towards the family and their lawyer were wearing incredibly thin after damaging comments were being made on the radio, television and print. Weeden had wrongly assumed that the family's solicitor was an Anti-Racist Alliance (ARA) member and had his own secret agenda. Weeden also allowed himself to become involved in the negative and hostile stereotyping of the family, and Macpherson concluded that he was affected by unwitting racism.

Racism in this case will be discussed in more detail later on in this piece, however Mrs Lawrence was asked specifically whether racism had played its part in preventing a good relationship being built between the family and the liaison officers and she responded with:

"Racism is something you can't always just put your finger on, racism is done in a way that is so subtle. It is how they talk to you..... It is just the whole attitude..... It was patronising the way in which they dealt with me and that came across as being racist."

The two family liaison officers would deny that the race of the Lawrence family contributed to their failures as family liaison officers.

Macpherson reached the conclusion that inappropriate behaviour and patronising attitudes towards this black family were the product of unwitting racism. Combine this with the failure of the senior officers to visit the Lawrence family to resolve the family liaison problems, and some senior officers expressing their annoyance with the family, and we see a clear example

of the collective failure of the team to treat the Lawrence family appropriately professionally because of their race.

To the credit of Assistant Commissioner Johnston, at the outset of his evidence he indicated he wished to first make a statement. And, in the presence of Stephen's father, Johnston made a total apology for the failures of the MPS in the investigation of Stephen's murder. He indicated on his own behalf, and the behalf of the Commissioner, their deep regret that the police had failed the Lawrence family and the community, and hoped they would eventually be forgiven.

### **The Barker Review**

Deputy Assistant Commissioner Osland decided there should be a review of the case, after the CPS indicated they were not going to proceed with the prosecution of two of the suspects, and gave this task to Detective Chief Superintendent Barker. Macpherson was convinced that Barker produced a misleading and inaccurate review.

Barker had concluded from his instructions from his Commander that he was to ensure that the Review was constructive but not be in the form of a complaints investigation and, although it is disputed what exactly was said, it had been suggested to Barker that he should not criticise the SIOs. Macpherson concludes that Barker may have misinterpreted his instructions but that it was clearly absurd to omit anything from the report on the grounds that it may be disclosable and discredit prosecution witnesses.

Barker told the Macpherson inquiry that he considered making two documents; one to be disclosable and the other made confidential and only for the police service. Macpherson massively criticised this as a clear indication that a senior officer in the MPS contemplated creating a document, disclosable to the defence, which was not the whole picture and was designed to mislead.

The Review opened with remarks that the investigation had developed satisfactorily with all lines of inquiry pursued, which is entirely inaccurate. The Review was also highly offensive and derogatory towards the Lawrence family and their lawyer, as it referred to the liaison officers having a mammoth task in trying to "satisfy the thirst for information by the family, often generated by their solicitor". Macpherson concluded that it was entirely reasonable for the Lawrence family to request additional information about their son's murder, and that Barker had adopted the negative views towards the family that the team had and repeated them with more emotive language. The family were repeatedly seen as problematic and demanding, and Macpherson deemed this a clear example of institutional racism.

The Barker Review should have been thoroughly scrutinised by senior officers, especially given the level of external interest, and appropriate follow-up actions carried out. Osland failed to communicate with the Lawrence family and it was not until almost six months after the Review that the family were given any information about it. The family's lawyer had requested knowledge of the Review amongst his communications with the police on other matters, and MPS failed to mention the Review in their responses. It was not until their solicitor wrote directly to the Commissioner that there was a response. To the credit of the Commissioner, he did then promptly meet with the Lawrence family and agreed that his Assistant Commissioner, would provide them with a summary of the Review.

The summary they received from the Assistant Commissioner stated:

- The investigation had been progressed satisfactorily and all lines of inquiry were correctly pursued;
- Liaison between the victim's family and the investigation team deteriorated at an early stage (which affected communication and confidence between the two parties); and
- Press and media relations were hampered by the involvement of active politically motivated groups.

This lack of information offered to the Lawrence family emphasises the consistent failure of the police to commit to open communication with them.

Macpherson's report concluded that The Barker Review must be condemned. Barker's unquestioning acceptance in repeating the criticisms, made by other officers, of the Lawrence family are to also be condemned. Other officers accepted the Review with no scrutiny and all allowed themselves to be misled that the investigation was satisfactory.

Again, to the credit of Assistant Commissioner Johnston, when it was put to him during the Inquiry that matters had been omitted by Barker, Mr Johnston said that he was "absolutely appalled". He said that this was totally unacceptable and he was ready throughout his evidence to accept major criticisms of what had taken place.

## **The Second Investigation**

In June 1994 the CPS had indicated twice that they did not believe there was a case to take forward. External publicity was growing, adverts seeking witnesses were not proving fruitful, and Weeden had delayed his retirement in the hope that he might further the investigation. Senior officer Nove joined Assistant Commissioner Johnston's command team and they both decided there should be virtually a fresh start with the investigation, and Detective Superintendent Mellish was appointed as SIO. Mellish had no doubt that this case was a racist murder and his brief from Nove was that there should be a radical and innovative strategy to revive the investigation.

Macpherson made no criticisms of this investigation by Mellish and praised it for being managed with imagination and skill, and applauded Nove for regaining the trust from the Lawrence family through his sensitive approach to family liaison.

Mellish focussed on surveillance of the suspects, through the use of intrusive video and audio surveillance of a flat occupied by one of the suspects which proved them to be violent racists, and the position of Clifford Norris, who was successfully located and arrested and Mellish hoped with his removal from the scene fresh information would emerge.

In Mellish's evidence given during the Inquiry it was confirmed that Mellish had been made aware of the lack of communication between the police and the Lawrence family and that he was told their lawyer had been the main cause of this. In Weeden's briefing note to Mellish, the Lawrence's lawyer was described as "closely linked to ARA. Within hours of the murder he interposed himself between the Lawrence family and the Police. Has turned the case into a political bandwagon". This reinforces the impression Macpherson got that deprecatory

views were expressed in an attempt to form other officers' opinions on the family and their lawyer.

## **Racism**

Macpherson define institutional racism as the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

It was stated very clearly in Macpherson's report that his conclusion was that institutional racism exists in the MPS, other police services, and other institutions across the UK. Macpherson listened to a warning which stated that "incompetence does not, without more, become discrimination merely because the person affected by it is from an ethnic minority" but felt his conclusion that racism affected the investigation of Stephen's murder was fully justified.

Dr Oakley, an independent consultant who provided evidence to the Inquiry, stated "It could be said that institutional racism in this sense is in fact pervasive throughout the culture and institutions of the whole of British society, and is in no way specific to the police service. However, because of the nature of the police role, its impact on society if not addressed in the police organisation may be particularly severe. In the police service, despite the extensive activity designed to address racial and ethnic issues in recent years, the concept of 'institutional racism' has not received the attention it deserves."

In relation to institutional racism being a wider issue than just the police service, housing and education were also raised as areas that "suffer from the disease". For racism to be eradicated there needs to be a co-ordinated approach to action within organisations and by society, especially in the education of children from a young age.

Macpherson stated that they had heard no evidence of overt racism, except for the use of inappropriate expressions used by officers such as "coloured" or "negro", which some officers, when pulled up on the use of such language, still failed to understand that it was offensive. One officer, who had spent over four years working as an officer in Brixton, was shocked to find out that anybody might find it offensive to be labelled "coloured" as opposed to black. Each officer who provided evidence during the Inquiry genuinely believed that she/he had acted without overt racist bias or discrimination, however there was an undeniable pattern of unconscious racism across officers.

Where any person alleges a racist motivation for a crime, it should have been known to all officers that the Association of Chief Police Officers' definition required that case to be dealt with as a racist incident. One of the family liaison officers would not accept that Stephen's murder was a solely racist crime, which was a common pattern across so many of the detective working on the case, but this was possibly most problematic with this officer given their close proximity to Stephen's family, and would have done nothing to encourage the family to trust the police or review their opinion on the police being racist. A detective sergeant on the case did not believe the attack was purely racist, but that the killers were thugs who would kill people irrespective of their ethnicity. One of the inspectors had the



attitude that a racist murder was just like any other murder, and was totally unaware that there are certain issues that need to be addressed with racist crimes, such as support for victims and their family.

This Inspector also referred to both Stephen and Duwayne as “the two young coloured lads” and he was totally oblivious to his own insensitivity. This attitude was mirrored by another Inspector who said that he treated these cases as just a murder, with the justification for this being that “everybody should be treated the same”. At best, it is insensitive to suggest the murder had mixed motives and that it was not solely racist, and only led to the conclusion that appropriate focus was not brought to bear upon the investigation of the racist murder and this approach must have skewed the nature and direction of the investigation. A briefing note ahead of the first press conference stated “if asked about the motive, say believe it was a racist attack”. This note shows a clear reluctance to label Stephen’s murder as a racist attack unless directly asked, which shows a total lack of understanding the importance to the black community in recognising and acknowledging racial incidents as such.

The reluctance of officers to label Stephen’s murder as a racist crime was a consistent recurring theme, however it is important to note that the more senior officers were very alive to the fact that Stephen’s murder was a racist attack as Superintendent Crampton, the first SIO, treated the case as a racist murder as soon as he first spoke to Duwayne who had said the attack was totally unprovoked by white guys who had shouted racial language. Macpherson did not believe this senior officer was influenced by the victims being black nor that he held back on racist grounds. Senior officers regarded this as a purely racist murder, so Macpherson was unclear as to why others would not accept this, except for this being down to their collective unconscious racism.

The lack of race awareness training for officers was also criticised by Macpherson. Numerous officers indicated that they had received little, if any, race-related training. This was shown in officers’ lack of understanding that the investigation of racially motivated murders had special features. The night manager at the hospital Stephen was taken to was asked questions about her experience with the treatment of racist attack victims and told the Inquiry that “it was true to say that on occasion I felt a general sense of unease about the police approach to such attacks in that the police tended to assume that such attacks were drug related and therefore of less importance than other assaults”. The lack of training on race issues was also reflected in the concerning number of officers who believed referring to Duwayne and Stephen as “coloured” as acceptable and would not cause any offence.

Macpherson criticised officers for stereotyping both the Lawrence family and Duwayne Brooks. Stephen’s mother Doreen said “basically, we were seen as gullible simpletons. This is best shown by Detective Chief Superintendent Ilsley’s comment that I had obviously been primed to ask questions. Presumably, there is no possibility of me being an intelligent, black woman with thoughts of her own who is able to ask questions for herself. We were patronised and were fobbed off...”. Some of the unwitting racism aimed at the Lawrence family was more sinister, for example when Deputy Assistant Commissioner Osland retired he wrote letters to newspapers and provided information which was highly critical of Stephen’s parents, which was incredibly unfair and unbalanced given his lack of contact with them.

It was clear to Macpherson that Osland had accepted, unquestioningly, what he was told by officers involved in the investigation. Repeating this so publicly is another example of institutional racism at work. One of the Detective Sergeants also made false statements

about the Lawrence's and their solicitor, and Macpherson is of the belief that this hostility was down to unquestioning acceptance of negative views officers had about the demands for information that had been made by the Lawrence's lawyer, which they were entitled to make. Macpherson concluded that this DS's attitudes influenced the work he did and the amount of energy given to the activities of the Incident Room, thus providing another clear example of institutional racism at work. Collectively, officers failed to treat the Lawrence's and their lawyer with sensitivity and professionalism.

Duwayne was consistently failed by officers in their stereotyping of him and consequent failure to treat him as a victim of a traumatic crime. A repeated theme in evidence from officers was that they were prepared to give negative reports on Duwayne, despite the majority of them having fairly little contact with him. He was consistently labelled as disruptive, uncooperative, surly and troublesome. When Duwayne was at the hospital he was largely side-lined and ignored, and never treated properly like a victim. At the scene of the crime, Macpherson concluded that no officer dealt with Duwayne properly. He was described as being very agitated, aggressive, highly excitable and virtually uncontrollable, which should not have been surprising considering what he had just witnessed. Macpherson also concluded that Duwayne was stereotyped as a young black man exhibiting unpleasant hostility and this stereotyping played a part in the failure to give him appropriate support as a victim.

Macpherson concluded that Institutional racism affects the MPS and other police services, but that there is a collective failure in many other agencies and organisations and that it is necessary for each to review their policies to prevent disadvantaging any groups.

## **Community Concerns**

Part two of the Inquiry looked at wider societal issues that were concerns for the community.

Mr Alleyne (Head of the Department of Race Equality of Greenwich Council) gave evidence as in this part of the Inquiry. He commented on the reluctance of the general public to report racist incidents and the tendency for police to "de-racialise" racist incidents. This evidence was supported by a volunteer from Greenwich Action Committee Against Racial Attacks (GACARA), who said that they received far more complaints, and support more victims, than the police and that the council took more action against perpetrators.

The Macpherson inquiry were repeatedly told at public hearings that black victims who reported racist crimes were "turned into" perpetrators and that the "white" versions of events were readily accepted by the police, furthering the lack of confidence black victims had.

A consistent pattern in this part of the Inquiry was the lack of trust between the police and people from underrepresented groups. There was huge disparity between the positive descriptions of policy initiatives by senior police officers and the impression from people from ethnic minorities had that they were being discriminated against. One universal area of complaint was Stop and Search. Underrepresented groups did not buy into the convoluted arguments that tend to be given by the police to justify disproportionate stop and search figures. Underrepresented groups found attempts to justify these disparities, whilst not seeming to address the discrimination, worsened the distrust these groups had in the police. The complaints around Stop and Search was also linked to the widely held view that junior

officers discriminate in practice at operational level, and that they support each other in such discrimination.

Openness and accountability were also referenced in this part of the inquiry, in relation to the complaints and investigation system. The majority view was that the whole system needs to be independent, as there was an air of discomfort and unease felt at the regularity of investigations of one police service by another. Distrust is generated by what is perceived to be a lack of openness and accountability in both areas, and this cannot have been helped by the fact that it was felt that the initial internal review (the Barker Review) deliberately left out damaging information about the MPS. Independent investigation is crucial.

A number of other concerns from the community were raised which are reflected in the recommendations Macpherson made.

**Recommendations**

Category	Recommendation
Openness, Accountability and the Restoration of Confidence	<ol style="list-style-type: none"> <li>1) That a Ministerial Priority be established for all Police Services to increase trust and confidence in policing amongst minority ethnic communities</li> <li>2) The process of implementing, monitoring and assessing the Ministerial Priority should include Performance Indicators in relation to: i. the existence and application of strategies for the prevention, recording, investigation and prosecution of racist incidents; ii. Measures to encourage reporting of racist incidents; iii. The number of recorded racist incidents and related detection levels; iv. the degree of multi-agency co-operation and information exchange; v. achieving equal satisfaction levels across all ethnic groups in public satisfaction surveys; vi. The adequacy of provision and training of family and witness/victim liaison officers; vii. The nature, extent and achievement of racism awareness training; viii. The policy directives governing stop and search procedures and their outcomes; ix. Levels of recruitment, retention and progression of minority ethnic recruits; and x. levels of complaint of racist behaviour or attitude and their outcomes. The overall aim being the elimination of racist prejudice and disadvantage and the demonstration of fairness in all aspects of policing.</li> <li>3) That Her Majesty's Inspectors of Constabulary (HMIC) be granted full and unfettered powers and duties to inspect all parts of Police Services including the Metropolitan Police Service.</li> <li>4) That in order to restore public confidence an inspection by HMIC of the Metropolitan Police Service be conducted forthwith. The inspection to include examination of current undetected HOLMES based murders and Reviews into such cases.</li> <li>5) That principles and standards similar to those of the Office for Standards in Education (OFSTED) be applied to inspections of Police Services, in order to improve standards of achievement and quality of policing through regular inspection, public reporting, and informed independent advice.</li> </ol>

	<ol style="list-style-type: none"> <li>6) That proposals as to the formation of the Metropolitan Police Authority be reconsidered, with a view to bringing its functions and powers fully into line with those which apply to other Police Services, including the power to appoint all Chief Officers of the Metropolitan Police Service.</li> <li>7) That the Home Secretary and Police Authorities should seek to ensure that the membership of police authorities reflects so far as possible the cultural and ethnic mix of the communities which those authorities serve.</li> <li>8) That HMIC shall be empowered to recruit and to use lay inspectors in order to conduct examination and inspection of Police Services particularly in connection with performance in the area of investigation of racist crime.</li> <li>9) That a Freedom of Information Act should apply to all areas of policing, both operational and administrative, subject only to the "substantial harm" test for withholding disclosure.</li> <li>10) That Investigating Officers' reports resulting from public complaints should not attract Public Interest Immunity as a class. They should be disclosed to complainants, subject only to the "substantial harm" test for withholding disclosure.</li> <li>11) That the full force of the Race Relations legislation should apply to all police officers, and that Chief Officers of Police should be made vicariously liable for the acts and omissions of their officers relevant to that legislation.</li> </ol>
<p>Definition of Racist Incident</p>	<ol style="list-style-type: none"> <li>1) That the definition should be "a racist incident is any incident which is perceived to be racist by the victim or any other person"</li> <li>2) That the term "racist incident" must be understood to include crimes and non-crimes in policing terms. Both must be reported, recorded and investigated with equal commitment.</li> <li>3) That this definition should be universally adopted by the Police, local Government and other relevant agencies.</li> </ol>
<p>Reporting and Recording of Racist Incidents and Crimes</p>	<ol style="list-style-type: none"> <li>1) That Codes of Practice be established by the Home Office, in consultation with Police Services, local Government and relevant agencies, to create a comprehensive system of reporting and recording of all racist incidents and crimes.</li> <li>2) That all possible steps should be taken by Police Services at local level in consultation with local Government and other agencies and local communities to encourage the reporting of racist incidents and crimes. This should include: the ability to report at locations other than police stations; and the ability to report 24 hours a day.</li> <li>3) That there should be close co-operation between Police Services and local Government and other agencies, including in particular Housing and Education Departments, to ensure that all information as to racist incidents and crimes is shared and is readily available to all agencies.</li> </ol>
<p>Police Practice and the Investigation of Racist Crime</p>	<ol style="list-style-type: none"> <li>1) That ACPO, in consultation with local Government and other relevant agencies, should review its Good Practice Guide for Police Response to Racial Incidents in the light of this Report and our Recommendations. Consideration should be given to the</li> </ol>

	<p>production by ACPO of a manual or model for such investigation, to complement their current Manual of Murder Investigation.</p> <ol style="list-style-type: none"> <li>2) That ACPO devise Codes of Practice to govern Reviews of investigations of crime, in order to ensure that such Reviews are open and thorough. Such codes should be consistently used by all Police Services. Consideration should be given to such practice providing for Reviews to be carried out by an external Police Service.</li> <li>3) That MPS procedures at the scene of incidents be reviewed in order to ensure co-ordination between uniformed and CID officers and to ensure that senior officers are aware of and fulfil the command responsibilities which their role demands.</li> <li>4) That the MPS review their procedures for the recording and retention of information in relation to incidents and crimes, to ensure that adequate records are made by individual officers and specialist units in relation to their functions, and that strict rules require the retention of all such records as long as an investigation remains open.</li> <li>5) That MPS review their internal inspection and accountability processes to ensure that policy directives are observed.</li> </ol>
Family Liaison	<ol style="list-style-type: none"> <li>1) That Police Services should ensure that at local level there are readily available designated and trained Family Liaison Officers.</li> <li>2) That training of Family Liaison Officers must include training in racism awareness and cultural diversity, so that families are treated appropriately, professionally, with respect and according to their needs.</li> <li>3) That Family Liaison Officers shall, where appointed, be dedicated primarily if not exclusively to that task.</li> <li>4) That Senior Investigating Officers and Family Liaison Officers be made aware that good practice and their positive duty shall be the satisfactory management of family liaison, together with the provision to a victim's family of all possible information about the crime and its investigation.</li> <li>5) That good practice shall provide that any request made by the family of a victim which is not acceded to, and any complaint by any member of the family, shall be formally recorded by the SIO and shall be reported to the immediate superior officer.</li> <li>6) That Police Services and Victim Support Services ensure that their systems provide for the pro-active use of local contacts within minority ethnic communities to assist with family liaison where appropriate.</li> </ol>
Victims and Witnesses	<ol style="list-style-type: none"> <li>1) That Police Services should together with the Home Office develop guidelines as to the handling of victims and witnesses, particularly in the field of racist incidents and crimes. The Victim's Charter to be reviewed in this context.</li> <li>2) That Police Services and Victim Support Services ensure that their systems provide for the pro-active use of local contacts within minority ethnic communities to assist with victim support and with the handling and interviewing of sensitive witnesses.</li> </ol>

	<p>3) That Police Services ensure the provision of training and the availability of victim/witness liaison officers, and ensure their use in appropriate areas particularly in the field of racist incidents and crimes, where the need for a sensitive approach to young and vulnerable victims and witnesses is paramount.</p>
<p>Prosecution of Racist Crimes</p>	<ol style="list-style-type: none"> <li>1) That the standard of proof of such crimes should remain unchanged.</li> <li>2) That the CPS should consider that, in deciding whether a criminal prosecution should proceed, once the CPS evidential test is satisfied there should be a rebuttable presumption that the public interest test should be in favour of prosecution.</li> <li>3) That Police Services and the CPS should ensure that particular care is taken at all stages of prosecution to recognise and to include reference to any evidence of racist motivation. In particular it should be the duty of the CPS to ensure that such evidence is referred to both at trial and in the sentencing process (including Newton hearings). The CPS and Counsel to ensure that no "plea bargaining" should ever be allowed to exclude such evidence.</li> <li>4) That the CPS ensure that a victim or victim's family shall be consulted and kept informed as to any proposal to discontinue proceedings.</li> <li>5) That the CPS should have the positive duty always to notify a victim and victim's family personally of a decision to discontinue, particularly in cases of racist crime, with speed and sensitivity.</li> <li>6) That the CPS ensure that all decisions to discontinue any prosecution should be carefully and fully recorded in writing, and that save in exceptional circumstances, such written decisions should be disclosable to a victim or a victim's family.</li> <li>7) That consideration should be given to the Court of Appeal being given power to permit prosecution after acquittal where fresh and viable evidence is presented.</li> <li>8) That consideration should be given to amendment of the law to allow prosecution of offences involving racist language or behaviour, and of offences involving the possession of offensive weapons, where such conduct can be proved to have taken place otherwise than in a public place.</li> <li>9) That the ability to initiate a private prosecution should remain unchanged.</li> <li>10) That consideration should be given to the proposition that victims or victims' families should be allowed to become "civil parties" to criminal proceedings, to facilitate and to ensure the provision of all relevant information to victims or their families.</li> <li>11) That there should be advance disclosure of evidence and documents as of right to parties who have leave from a Coroner to appear at an Inquest.</li> <li>12) That consideration be given to the provision of Legal Aid to victims or the families of victims to cover representation at an Inquest in appropriate cases.</li> </ol>

	<p>13) That Police Services and the Courts seek to prevent the intimidation of victims and witnesses by imposing appropriate bail conditions.</p>
<p>Training – First Aid</p>	<ol style="list-style-type: none"> <li>1) That First Aid training for all "public contact" police officers (including senior officers) should at once be reviewed and revised to ensure that they have basic skills to apply First Aid. Officers must be taught to "think first aid", and first and foremost "A (Airways), B (Breathing) and C (Circulation)".</li> <li>2) That training in First Aid including refresher training should include testing to recognised and published standards in every Police Service.</li> <li>3) That Police Services should annually review First Aid training, and ensure that "public contact" officers are trained and tested to recognised and published standards.</li> </ol>
<p>Training – Racism Awareness and Valuing Cultural Diversity</p>	<ol style="list-style-type: none"> <li>1) That there should be an immediate review and revision of racism awareness training within Police Services to ensure: that there exists a consistent strategy to deliver appropriate training within all Police Services, based upon the value of our cultural diversity; and that training courses are designed and delivered in order to develop the full understanding that good community relations are essential to good policing and that a racist officer is an incompetent officer.</li> <li>2) That all police officers, including CID and civilian staff, should be trained in racism awareness and valuing cultural diversity.</li> <li>3) That police training and practical experience in the field of racism awareness and valuing cultural diversity should regularly be conducted at local level. And that it should be recognised that local minority ethnic communities should be involved in such training and experience.</li> <li>4) That consideration be given by Police Services to promoting joint training with members of other organisations or professions otherwise than on police premises.</li> <li>5) That the Home Office together with Police Services should publish recognised standards of training aims and objectives in the field of racism awareness and valuing cultural diversity.</li> <li>6) That there should be independent and regular monitoring of training within all Police Services to test both implementation and achievement of such training.</li> <li>7) That consideration be given to a review of the provision of training in racism awareness and valuing cultural diversity in local Government and other agencies including other sections of the Criminal Justice system.</li> </ol>
<p>Employment, Discipline and Complaints</p>	<ol style="list-style-type: none"> <li>1) That the changes to Police Disciplinary and Complaints procedures proposed by the Home Secretary should be fully implemented and closely and publicly monitored as to their effectiveness.</li> <li>2) That in order to eliminate the present provision which prevents disciplinary action after retirement, disciplinary action should be available for at least five years after an officer's retirement.</li> </ol>

	<ol style="list-style-type: none"> <li>3) That the Police Services should through the implementation of a Code of Conduct or otherwise ensure that racist words or acts proved to have been spoken or done by police officers should lead to disciplinary proceedings, and that it should be understood that such conduct should usually merit dismissal.</li> <li>4) That the Home Secretary, taking into account the strong expression of public perception in this regard, consider what steps can and should be taken to ensure that serious complaints against police officers are independently investigated. Investigation of police officers by their own or another Police Service is widely regarded as unjust, and does not inspire public confidence.</li> <li>5) That the Home Office review and monitor the system and standards of Police Services applied to the selection and promotion of officers of the rank of Inspector and above. Such procedures for selection and promotion to be monitored and assessed regularly</li> </ol>
<p>Stop and Search</p>	<ol style="list-style-type: none"> <li>1) That the powers of the police under current legislation are required for the prevention and detection of crime and should remain unchanged.</li> <li>2) That the Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all "stops" and "stops and searches" made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so called "voluntary" stops must also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped.</li> <li>3) That these records should be monitored and analysed by Police Services and Police Authorities, and reviewed by HMIC on inspections. The information and analysis should be published.</li> <li>4) That Police Authorities be given the duty to undertake publicity campaigns to ensure that the public is aware of "stop and search" provisions and the right to receive a record in all circumstances.</li> </ol>
<p>Recruitment and Retention</p>	<ol style="list-style-type: none"> <li>1) That the Home Secretary and Police Authorities' policing plans should include targets for recruitment, progression and retention of minority ethnic staff. Police Authorities to report progress to the Home Secretary annually. Such reports to be published.</li> <li>2) That the Home Office and Police Services should facilitate the development of initiatives to increase the number of qualified minority ethnic recruits.</li> <li>3) That HMIC include in any regular inspection or in a thematic inspection a report on the progress made by Police Services in recruitment, progression and retention of minority ethnic staff.</li> </ol>
<p>Prevention and the role of Education</p>	<ol style="list-style-type: none"> <li>1) That consideration be given to amendment of the National Curriculum aimed at valuing cultural diversity and preventing racism, in order better to reflect the needs of a diverse society.</li> <li>2) That Local Education Authorities and school Governors have the duty to create and implement strategies in their schools to prevent and address racism. Such strategies to include: that schools record all racist incidents; that all recorded incidents are reported</li> </ol>



	<p>to the pupils' parents/guardians, school Governors and LEAs; that the numbers of racist incidents are published annually, on a school by school basis; and that the numbers and self-defined ethnic identity of "excluded" pupils are published annually on a school by school basis.</p> <p>3) That OFSTED inspections include examination of the implementation of such strategies.</p> <p>4) That in creating strategies under the provisions of the Crime &amp; Disorder Act or otherwise Police Services, local Government and relevant agencies should specifically consider implementing community and local initiatives aimed at promoting cultural diversity and addressing racism and the need for focused, consistent support for such initiatives.</p>
--	---

**Macpherson Report Final Conclusions**

Macpherson’s final conclusions were that Stephen Lawrence was unlawfully killed in an unprovoked racist attack by 5 white youths. The investigation into Stephen’s murder was considerably flawed due to a combination of: professional incompetence, institutional racism and a failure of leadership by senior officers. A flawed MPS review failed to reveal these inadequacies so that steps could be taken to rectify the situation. The second investigation could not salvage the numerous mistakes made in the investigation.

The Commissioner himself said to Macpherson: "I believe that the way the police meet the needs of minority ethnic communities in terms of their experience of crime and harassment is of such importance that a Priority is needed in order to achieve lasting change. It has become increasingly clear that nothing short of a major overhaul is required". Macpherson was under no illusion that the recommendations from this report would solve the problems within policing, and wider society, but that the inquiry had elevated the debate about policing and racism, which needed to be pushed forward into action.

Finally, Macpherson emphasised that imaginative thinking and long-term action are essential and “society (must work to) to purge itself of such racist prejudice and violence which infected those who committed this crime for no other reason than that Stephen Lawrence was black”, suggesting that if it had not been the particular young people that killed Stephen, he was sure there would have been other similarly motivated young people at large that night that would have committed this racist attack. “Institutional racism exists in all organisations, infiltrates the community and starts amongst the youngest in society”.

## **Denman Report: Race Discrimination in the Crown Prosecution Service (2001)**

The Denman Review is a review of race discrimination in the Crown Prosecution Service. It was commissioned by the CPS in January 2000, and Sylvia Denman CBE appointed its Independent Investigator.

**The terms of reference for the Review, formally agreed in early February 2000, were:**

- 1. To identify the barriers to ethnic minority recruitment and progression resulting from existing CPS recruitment methods, practices and criteria.**
- 2. To explore and analyse:**
  - **Why race-related grievances have not been resolved internally;**
  - **The extent to which complainants have experienced difficulties following up a complaint of discrimination;**
  - **Why grievances, tribunal decisions and settlements have not been followed up by appropriate disciplinary action.**
- 3. To investigate the processes, behaviour and attitudes present in the CPS to determine the extent to which race discrimination and institutional racism may exist in the Service nationally**
- 4. To make recommendations to the CPS on what steps the Service should take in relation to race in order to ensure the policies set out in its Equality Statement, and the outcomes sought in the agreed Action Plan, can be met and integrated within the Service's employment practice.**

### **The Crown Prosecution Service: an organisation profile**

The Crown Prosecution Service ("CPS") was created in 1985 and began operating as the principal prosecution authority in England and Wales in October 1986. Often referred to as "the country's lawyer", the CPS prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales.

According to their website, the CPS:

- Decides which cases should be prosecuted;
- Determines the appropriate charges in more serious or complex cases, and advises the police during the early stages of investigations;
- Prepares cases and presents them at court
- Provides information, assistance and support to victims and prosecution witnesses.

Crown Prosecutors must follow the Full Code test when making the decision to prosecute. It is a two-limb test:

- The evidential stage – Crown Prosecutors must be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge
- The public interest stage - If the case does pass the evidential stage, Crown Prosecutors must then decide whether a prosecution is needed in the public interest. They must balance factors for and against prosecution carefully and fairly.

The CPS will only start or continue a prosecution if a case has passed both stages.

## **Context**

The Denman Review must be placed in its context. It was commissioned following long-held concerns from the Commission on Racial Equality about the race practices of the CPS workforce. This was heightened by:

- i) a slew of employment tribunal claims against the CPS (all alleging serious forms of racial discrimination), and;
- ii) the national context surrounding the Stephen Lawrence Inquiry.

This is explored in more detailed below.

### **1. The national context: the impact of Macpherson**

The 1999 report of the Stephen Lawrence inquiry, led by Sir William Macpherson, and its resulting pronouncement of the Metropolitan Police as “institutionally racist” sent shockwaves across criminal justice agencies.

As the Denman Review itself writes, Macpherson “forms the inescapable context within which all agencies in the criminal justice system have been called to examine their policies [...] to guard against discrimination”. In another way, a number of Macpherson’s recommendations relate to the work of the CPS.

For example, the report recommends that, if there is sufficient evidence of a “racist crime” (defined to include any crime which is perceived to be racist by the victim or any other person), the CPS should consider that it will normally be in the public interest to prosecute.

It is also recommended that the CPS should take care to recognise and refer to any evidence of racist motivation, and should consult victims of racist crimes and their families and keep them informed of any decision to discontinue proceedings.

These recommendations highlight the importance of the CPS commanding the confidence of ethnic minorities at an institutional level. The Macpherson report forced a serious analysis of all institutions’ sensitivities to race, trust, and confidence. Against this backdrop, a similar review into the CPS became necessary.

### **2. The local/internal context: employment tribunal cases by employees**

The Review also highlighted cases of discrimination of ethnic minority staff. The Commission on Race Equality raised serious concerns about perceived race discrimination within the Service, particularly in relation to the CPS’ employment practices.

Some of these grievances made their way to Employment Tribunals. The Review explains that the volume of legal challenge from CPS employees to their employer could be

symptomatic of issues within organisational culture and race-related issues and discrimination, which could prompt further inquiry of the functioning of the whole institution:

The Review notes that, from 1995, the CPS saw that a number of successful challenges have been brought against them in the Employment Tribunal:

- In December 1998 a Tribunal found that the CPS had unlawfully victimised Ms Neeta Amin, a Senior Crown Prosecutor.
- In June 1999 a Tribunal sitting at Bedford held that the CPS had directly and indirectly discriminated against Mrs Maria Bamieh, also a Senior Crown Prosecutor.

In a separate set of proceedings, a London South Tribunal held in October 1999 found that the CPS, again, had directly discriminated against Mrs Bamieh. Following a remedies hearing in the Bedford proceedings, the Tribunal found that the CPS had aggravated the damage caused to Mrs Bamieh through its conduct both before and after the initial hearing.

*It made an award in respect of injury to feelings of £30,000, one of the highest awards for injury to feelings ever to have been made by an Employment Tribunal.*

- In December 1999, in the course of a further set of Tribunal proceedings brought by Mr Peter Shah, another Senior Crown Prosecutor, the CPS conceded that it had indirectly discriminated against him.

Away from legal action, the Commission for Racial Equality had received approaches made to it by CPS staff. As a result, from early 1999 it began signalling on a number of occasions that it was considering a formal investigation into the CPS under its powers contained in section 48 of the 1976 Act, unless the CPS was able to deliver a challenging race equality action plan within an agreed time scale.

On 2nd December 1999, following the CPS' failure to adopt what the CRE considered to be an appropriate programme of action, the CRE wrote to the CPS informing it of its decision to announce a formal investigation into the Service.

### Sources of evidence/methodology

The Inquiry obtained evidence from three principal sources:

- An extensive documentary review was conducted, particularly in the preliminary stages of the Inquiry.
- A Staff Advisory Group was established.
- Interviews were carried out with staff throughout the Service.

### Documentary evidence

Documentary evidence was sought in relation to the following matters from Headquarters and selected individual Areas:

- Grading and management structures.
- Equal opportunities structures, policies and procedures.
- The collection and use of ethnic origin monitoring statistics.
- Equal opportunities employment practices, including: recruitment, progression, retention; the Performance Appraisal Reporting system; training and development.
- The monitoring of race crime.
- Employment Tribunal claims alleging race discrimination.
- Internal complaints alleging race discrimination.
- Papers and policy documents presented to a variety of boards, committees and working groups.
- Contact and correspondence with the CRE.

In addition, written representations were invited and received from a number of individuals and groups during the course of the Inquiry.

### **The inquiry's principal findings**

The Inquiry's principal findings, in summary, are below:

- For a large public employer, the CPS responded slowly to modern equal opportunities legislation and practices.
- Although ethnic minority staff are well represented overall, they are seriously under-represented in both the higher administrative grades and the higher lawyer grades. This pattern cannot simply be attributed to historical factors. Barriers to ethnic minority recruitment and progression persist.
- Poor management, and in particular poor management training, underlie many of the CPS' problems in this area.
- Performance on race equality varies markedly across the 42 Areas. Devising an effective mechanism for holding all 42 Areas accountable for such performance is key to securing improvement.
- A significant number of ethnic minority staff have experienced race discrimination at one time or another within the CPS. Some of this discrimination has manifested itself at the institutional level.
- Most minority staff who consider that they have been discriminated against have not complained, in part due to lack of confidence in the internal complaints procedure, fear of victimisation and a record of delay.
- The CPS has been reluctant to make hard findings against its managers in the field of equal opportunities.

- Recent organisational upheavals have made it difficult for managers to give race equality priority over the last two years.
- The establishment of numerous committees, working groups, units and other bodies with responsibility for race equality has lacked strategic coherence.
- The CPS has produced many policy documents and action plans without ensuring that they are reflected in day-to-day practice.
- The concept of “institutional racism” is not generally understood or acknowledged.
- The manifestations of a growing backlash against equal opportunities initiatives amongst white staff need to be confidently managed.
- There is unwarranted complacency over the possibility of race discrimination in the prosecution process.
- Modest progress has been made during the period of the Inquiry, in seeking to ensure that the Service develops a national culture which embraces all sections of the community. There is a very clear commitment to change at the most senior level

## **Recommendations**

The Inquiry’s recommendations are as follows:

- The Personnel Directorate and ERU should retain the central role in implementing equal opportunities employment practices.
- The EDU’s role should be in the formulation in policy, but with regular direct contact with the Service Centres and Areas to ensure its work is understood and reflected in practice on the ground.
- Each of the 10 Service Centres should have a full-time EOO, to act as the arterial link between Headquarters and the Areas. Each Area should have an EOO, with a specified portion of their working time devoted to equal opportunities.
- The Equality Committee should retain a general remit to advise and scrutinise. Its membership should be reduced and rotated. As much of its detailed work as possible should be carried out in the Sub-Groups.
- The make-up of the DAC should be reviewed. It should ensure that every Area and Directorate achieves tangible equality objectives.
- Recruitment and progression should be based increasingly on the more objective techniques, including use of written and/or oral tests and assessment centres.
- Equality and diversity should form an integral part of all management and staff development training.
- Positive action is required, particularly to redress the current under- representation of ethnic minority staff at the lower and middle management grades.
- Monitoring should be used as a means to achieving change in the Service, particularly in relation to setting targets.

- The current proposal for the external investigation of equal opportunities complaints should be implemented without delay. In addition, an external mediation service should be available to staff.

### Aftermath

The then-DPP, Sir David Calvert-Smith, accepted the Review's findings in full. He stated "I am determined that equality and diversity will be woven in to the fabric and ethos of the CPS so that we become a truly diverse organisation":

- The establishment of the Equality Committee and Diversity Unit proceeded with drive and purpose;
- New IT systems have been introduced-Connect 42 implemented new desktop systems that provide access to legal reference material and effectively "joins" all the CPS areas.
- A virtual training programme for the CPS staff was installed immediately after the report. This aimed to ease communication between CPS areas so that performance could be standardised.
- A programme of "Direct Communication" with the victims was introduced, which means that where the CPS discontinue a case or change the charge, a letter must be sent to the victim with an explanation, inviting the family to a meeting to address the reason.

In the longer-term, a "people-centred" approach is firmly embedded into its CPS 2020 vision. This 2018 a document set out how the CPS hopes to better serve diverse communities and foster inclusion. It does so under three main headings:

- Public confidence:
  - The public trusts the CPS to deliver justice fairly and equally
  - Build trust with all communities
  - Make inclusion everyone's business
- Success of our people:
  - Build the CPS as an employer and a place that attracts, develops, retains and engages the diverse talent across our organisation
  - Continue to increase the representation of under-represented groups at all levels across the CPS
- High-quality casework:
  - Ensure prosecutions are fair and transparent
  - Work with communities and partners to deliver high quality casework

## **The local picture: Denman in the West Midlands**

The CPS operates across England and Wales, with 14 regional teams prosecuting cases locally. Each of these 14 CPS Areas is headed by a Chief Crown Prosecutor.

In 2017, the West Midlands CPS was subject to a HMCPSI (the CPS inspectorate) “Area Assurance” inspection. Findings related to the Denman recommendation about workforce culture is below:

1. A “root-and-branch” change of management approach has had encouraging results which saw:
  - Improvements against almost every measure in their latest staff survey results
  - Its culture and vision regularly disseminated through the workforce
  - Managers having an excellent working relationship with criminal justice partners
  - The Area developing a contribution to the Victims and Witnesses Committee that is inclusive, effective and solution-focused.
2. The quality of data the CPS provides and shares in joint arrangements with criminal justice partners has resulted in early guilty pleas in 46.9% of Crown Court cases, 7.0% above the national average.
3. The Area has made significant investment in legal training, which has directly improved casework outcomes and enabled better decision-making. It has also worked with all police forces to deliver joint training on disclosure, involving imaginative use of technology such as webinars.
4. An effective performance management regime has led to an increase in conviction rates in a number of areas. There are good mechanisms to check data integrity, including regular and robust consideration of cracked and ineffective trials.



## **The Lammy Review: The Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System (2017)**

### **Background to the Review**

The Lammy Review is a 2017 review on discrimination within the policing and criminal justice systems in the UK, led by David Lammy and commissioned by David Cameron and Theresa May. The Lammy Review found significant racial bias in the UK justice system.

Although the review finds that disproportionality is not unique to England and Wales, it highlighted the overrepresentation of BAME communities in the criminal justice system and its costs to wider society, and concluded that “BAME individuals still face bias, including overt discrimination, in parts of the justice system.”

*“Despite making up just 14% of the population, BAME men and women make up 25% of prisoners, while over 40% of young people in custody are from BAME backgrounds.” (p3)*

For Lammy, the solutions to this must go beyond just CJS reform to address the wider and persistent, social, economic and political factors disproportionately affecting these individuals before they end up in prison and custody.

The Lammy Review identifies three key indicators that a robust response to disproportionality and lack of trust in the CJS must engender: ensuring trust, promoting fair treatment, and ensuring allocation of responsibility.

The Review offers a panoramic view across the criminal justice system, both within adult provision and within youth justice. His Review is different also because of international comparisons, and willingness to learn from “What Works” in other jurisdictions.

He says that there is a “trust deficit” endemic to all agencies in the criminal justice system from BAME people, who feel an “us and them” relationship. This lack of trust belies much of the bias Lammy argues the system perpetuates. From increasing not guilty pleas to the rejection of legal advice by BAME people from duty solicitors who are thought to “catch people out”, at every stage, this lack of trust materialises as higher arrest rates, longer sentences due to not guilty pleas (and loss of the Guilty discount), and policing tactics and metrics, such as the gangs matrix, that lead to disproportionate arrests of young Black men thought to be in gangs.

To illustrate this trust deficit, the Lammy Review sets the scene by offering some key facts on overrepresentation:

- The economic cost of overrepresentation in the CJS in England and Wales is estimated to be £309 million per year
- The problem of overrepresentation of BAME individuals in the Criminal Justice System exists all over the world. In France, Muslims comprise an estimated 8% of the population and between 25% and 50% of the prison population
- The report’s largest concern is for the youth justice system. Despite a fall in the overall numbers of young people offending and reoffending compared to a decade ago, the BAME proportion of each of these measures has been rising significantly

## **The Lammy Review's recommendations: an outline**

### **Gaps in CJS data impacting accountability (emphasis on fair treatment)**

“The best way to ensure fair treatment is to subject decision-making to scrutiny. Bringing decisions out into the open achieves two things at once. First, it encourages individuals to check their own biases. Second, it helps identify and correct them.”

- The courts and Crown Prosecution Service (CPS) do not record as much information as prisons on ethnicity and religion leading to obscurities and a lack of accountability
- There is an absence of Gypsies, Roma and Travellers from official monitoring
- The CJS must enable more scrutiny by becoming more transparent
- The creation of a Relative Rate Index (RRI) would allow data to provide better insight by isolating the effect of decision-making on disproportionality at each stage in the CJS

The Lammy Review called for the UK criminal justice system (CJS) to have more scrutiny in their data on ethnicity and religion, in order to move towards fairer treatment. It highlighted some gaps in information recorded. These gaps in reporting make it impossible to analyse whether disproportionalities are a result of charging rates, sentencing decisions or reoffending rates. The review concluded that fair treatment was more likely when institutions are open to scrutiny.

### **Crown Prosecution Service**

- Arrest rates are generally higher across minority ethnic groups in comparison to the white group causing the caseload for CPS prosecutors to be skewed from the offset
- Too often, groups of young people are assumed to be gangs
- More attention should be given to the ‘powerful adults much further up criminal hierarchies’ who take advantage of vulnerable young people. There is the potential to deter these leaders using Modern Slavery legislation
- ‘CPS decision-makers are making broadly proportionate decisions across ethnic groups’ and so other institutions within the CJS can learn from the CPS

The courts and Crown Prosecution Service (CPS) do not record religion, which makes it harder to hold them accountable for discrimination. Prisons do record religion and have seen an increase in the number of Muslim prisoners by 50% in the prior ten years, from 8,900 to 13,200, but the lack of data at the courts and CPS obscure this fact. Muslims make up 15% of the prison population despite making up only 5% of the overall population. Since information on religion is not recorded at the earlier stages of the CJS, too little is known to determine the true cause of this disproportionality. The Lammy Review proved that this significant increase in prisoners could not be linked to terrorism offences, because only 175

Muslims were convicted of terrorism-related offences between 2001 and 2012 (less than 1% of the Muslim prison population). Despite this the most prominent frustration of Muslim prisoners has been found to be stereotypical portrayals of Islam, leading to unfair treatment and higher levels of restraint and segregation being used against them by staff.

Gypsies, Roma and Irish travellers are estimated to account for 5% of male prisoners, despite accounting for only 0.1% of the UK population, however this is not covered in the official CJS monitoring systems. Leaving this information out could be particularly damaging to a vulnerable group, since the Lammy Review also found that 27% of Gypsy, Roma and Traveller prisoners reported feeling depressed or suicidal on arrival compared with 15% of all prisoners. Furthermore only 35% received information on what support was available to them compared to 44% of all prisoners.

### **Relative Rate Index**

The Lammy Review proposes that the UK should adopt a similar system to the US for attempting to gain insight into why there are disproportionalities in ethnicity at each stage of the CJS and tracing the impact of decisions made at each stage. A relative rate index (RRI) is effectively the number of people experiencing an event or outcome out of the total number who were 'at risk' for experiencing the event or outcome. The comparison to previous stages is particularly useful because proportionality numbers alone do not pinpoint which stages of the CJS are particularly influenced by ethnic bias.

The Lammy Review uses the example of rates of proceeding women's cases at the Crown Court or Magistrates' Court to demonstrate the method used and found that once charged Black women were 63% more likely to be proceeded to the Crown Court than White women, and Asian women were 108% more likely than White women.

### **Recommendations**

- All stages of the CJS should collect more consistent data on religion and ethnicity, so that differences in treatment and outcomes can be examined in more detail.
- The relative rate index analysis completed as part of the Lammy review should be repeated biennially as part of the 'Statistics on Race and the Criminal Justice System' reports.
- The principle of 'explain or reform' should be applied to every CJS institution, where reforms should be introduced to address disparities between ethnic groups if an evidence based explanation cannot be provided.

### **Crown Prosecution Service**

Arrest rates are higher across minority ethnic groups compared to white groups. Methods such as stop and search disproportionately target Black and minority ethnic groups. Once arrested, the CPS reports that suspects from different ethnic groups are charged at similar rates, with the exception of those charged for rape and domestic abuse. The report suggests that this issue can be dealt with through "race-blind" prosecuting, where identifying information (such as name and ethnicity) is redacted from case files passed by the police to CPS prosecutors.

## **Policing and prosecution of suspected gang members**

The Review argues that the current system of policing those suspected to be part of "gangs" is both ineffective and based on misunderstanding. The Review suggests that using Modern Slavery legislation to target those at the tops of complex criminal hierarchies would be a more effective approach than targeting groups. The targeting of groups disproportionately affects BAME people in several ways:

- *Joint Enterprise*

One of the key tools used to prosecute suspected gang members is the doctrine of Joint Enterprise. Individuals in a "Joint Enterprise" can be either "principals" or "secondary parties" - a principal is the person that carries out the substantive offence, and the secondary party is one who assists or encourages the commission of the substantive offence. The doctrine of Joint Enterprise enables the secondary party to be prosecuted as if they were the principal offender themselves. Of the thousands that have been prosecuted under this doctrine over the last decade, a survey of prisoners suggests that half of those convicted identify as BAME.

- *Trident Matrix*

The Metropolitan Police, cited in the report, argue that gang affiliation and crime are "fluid and chaotic" and attempting to address associated issues on a group level is ineffective. The Metropolitan Police argue instead for targeting individual criminal activity - however, this has led to the disproportionate targeting of BAME individuals on surveillance-based databases such as The Trident Matrix. At the time of the review, records showed that 86% of names on the Trident Matrix were BAME.

## **Structural racism beyond the CPS**

The report explains how wider systemic factors affecting BAME young people feed into the CPS. A written submission to the report's Call for Evidence by the Black Training and Enterprise Group said that "the main pathways and risk factors for young people into the youth justice system all record high levels of disproportionality: from school exclusions, the care system, Child and Adolescent Mental Health Service and first contact with the police." The London Criminal Courts Solicitors' Association's written submission states: "In the absence of educational or employment progression...it may become a default position to fall in with a 'gang'."

## **Plea Decisions**

- BAME defendants are more likely to plead not guilty than white defendants due to a lack of trust in the legal advice they receive
- BAME defendants are more likely than white defendants to change their plea from not guilty to guilty
- Early evaluation of Operation Turning Point (OTP), a 'deferred prosecution' scheme providing offenders with structured interventions such as alcohol or drugs treatment, has shown positive outcomes for victims, offenders and the wider society

This section presents the significant difference in plea decisions between BAME and White ethnic groups and explains the disproportional effects of the justice system on these groups.

### **The role of plea decisions**

Plea decisions are critical to Criminal Justice System, by providing incentives for those who have committed crimes to admit guilt, in order to prevent the stress placed on victims. Those who plead guilty can see sentences reduce by a third, or gain access to interventions which seek to keep them out of prison altogether.

Several older and more recent studies have found that BAME defendants are less likely to enter guilty pleas, in most types of offences. The Relative Rate Index analysis of 2014/15 data found that:

- Black and Asian men were more than one and a half times more likely to enter a 'not guilty' plea than White men. Mixed ethnic men were also more likely to plead not guilty.
- Black, Asian, Mixed ethnic and Chinese/Other ethnic women were all more likely than White women to enter not guilty pleas at Crown Court, with Asian women more than one and a half times more likely to do so.
- While there were too few cases to examine plea decisions for young women, young men from a Black, Asian or Mixed ethnic background were more likely to enter a not guilty plea compared to their White counterparts.

### **Lack of trust**

The primary reason for this difference in plea decisions is a lack of trust in the Criminal Justice System among BAME communities. This makes BAME defendants less likely to cooperate with the police or trust the advice of legal aid solicitors, who can be seen as part of the 'system'. At the same time, Black, Asian and Mixed ethnic defendants are all more likely to request legal advice in police station than their white counterparts.

Instead, it is that many BAME defendants neither trust the advice that they are given, nor believe they will receive a fair hearing from magistrates. In some cases, this means defendants pleading not guilty and then electing for a jury trial at the Crown Court, rather than be tried in a Magistrate's Court, despite the higher sentencing powers available at the Crown Court.

The suggestions as part of this section were that:

- The Home Office, the Ministry of Justice and the Legal Aid Agency should work with the Law Society and Bar Council to experiment with different approaches to explaining legal rights and options to defendants.

## **Deferred prosecutions**

In England and Wales, an innovative scheme named Operation Turning Point was piloted from November 2011 to July 2014. It was designed with racial disparities in plea decisions in mind, and saw offenders participate without the requirement that they first admit an offence. Defendants were given the opportunity to go through a structured intervention, such as drug treatment, instead of facing criminal charges. The latest published information indicates that almost as many BAME offenders took part in the scheme as White offenders. Early evaluation of the scheme indicates that the risk of reoffending is reduced and that the cost is lower than traditional prosecutions.

The suggestions as part of this section were that:

- The ‘deferred prosecution’ model pioneered in Operation Turning Point should be rolled out for both adult and youth offenders across England and Wales. The key aspect of the model is that it provides interventions before pleas are entered rather than after.

## **Courts**

- Verdicts: Jury conviction rates are similar across different ethnic groups, falling between 66% and 68% for White, Black, Asian and Mixed ethnic defendants.
- Sentencing: ‘Under similar criminal circumstances, imprisonment is more likely for offenders from self-reported Black, Asian, and Chinese or other backgrounds than offenders from self-reported White backgrounds ... Within drug offences, the odds of receiving a prison sentence were around 240% higher for BAME offenders.’
- Demystifying courts: All sentencing remarks in the Crown Court should be published in audio and/or written form to provide victims and offenders with a better understanding of sentencing decisions
- Judicial diversity: Only 7% of court judges are from BAME backgrounds. This is not due to a lack of applications, but instead, it is due to BAME candidates not getting through the process
- Youth justice: To tackle reoffending, youth courts must focus on the young people themselves AND the adults around them. 45% of Black young people re-offend within a year of being released from custody

20% of cases brought before the UK courts involve BAME defendants, despite the fact that BAME people comprise approximately 13% of the UK population. The Review finds that juries generally do not deliver racially discriminatory results. However, the review argues that more diversity is needed in the magistracy and the judiciary.

## **Magistrates**

Magistrates deal with 90% of criminal court cases each year - those acting as magistrates do not require legal training or qualifications but are understood to be 'representatives of the people'. Of those tried at magistrates' courts, Black women, Asian women, Mixed ethnic women and Chinese/Other women were all more likely to be convicted than white women. Magistrates keep sparse records of pleas or defendants' legal representation, thus lowering accountability.

## **Sentencing and imprisonment**

For those convicted of recordable, indictable offences in the Crown Court in 2015, there was an association between ethnicity and being sentenced to prison. An especially strong effect was observed within drug offences (within which the odds of receiving a prison sentence were around 240% higher for BAME offenders) - this is despite the fact that research has found that Black British people consume drugs at lower rates than white British people. The Review suggests that the judiciary should provide an evidence-based explanation for this disparity. Defendants can appeal sentencing decisions to the Court of Appeal but decisions will only be overturned if they are found to be made in error or "manifestly excessive". Sentencing judges are given wide discretion and the Review says that the appeal process cannot capture "collective differences" in the application of this discretion which may contribute to racially skewed incarceration rates.

## **Prisons**

- If the demographics of our prison population reflected that of England and Wales, we could have over 9,000 fewer BAME people in prison.'
- BAME individuals are less likely to be identified with problems concerning learning difficulties or mental health upon admittance into prison. The University of Manchester have developed the Comprehensive Health Assessment Tool (CHAT) which offers a standardised approach to screening and assessment for all young people (age 11 to 18)
- On average, BAME men and women in prison report poorer relationships with prison staff. A lack of diversity among prison officers contributes to perpetuating an 'us and them' culture among BAME prisoners
- With 99% of those who go to prison eventually being released, the emphasis must be on the role of prisons to reform offenders and reduce reoffending
- BAME men were more likely than white prisoners to report being victimised and in almost two-thirds of inspected prisons, the use of force was increasing and/or high

## **Rehabilitation**

- The estimated cost of reoffending to the taxpayer is £9.5 - £13 billion. Half of all crime is committed by those who have already been through the CJS
- Local communities can help to reduce reoffending
- Ex-offenders need jobs to rebuild their lives, but the criminal records regime contributes to the difficulties they have finding them. There is 40% unemployment among Black ex-offenders

This section found that there had been a lack of improvement in rehabilitation for BAME groups.

## **Probation**

The report found that Criminal Rehabilitation Companies (CRCs), private sector companies tasked with rehabilitation low to medium risk offenders, are not giving BAME groups the specialized services that they require. Furthermore it found that offenders managed by the National Probation Service (NPS), public sector organization dealing with high risk offenders, are more likely to receive the types of support needed than with the CRCs and that CRCs were not involving specialist BAME organizations in the way that they were intended to.

The suggestions as part of this section were that:

- The Ministry of Justice should create a working group to assess what is stopping CRCs subcontracting to specialist support groups
- The Ministry of Justice should improve reporting about the CRCs handling of groups with protected characteristics (this includes BAME groups)

## **Youth Re-offending**

The report found that there has been a history of knowledge regarding BAME children being disproportionately affected by the Criminal Justice System, specifically Youth Offending Teams (YOTs).

This previous work found that:

- Youth Offending Teams were more likely to detain black children than white children
- BAME children committed less crimes but still received custodial sentences
- BAME children would enter the Criminal Justice system at a younger age and be less able to escape it

This report found that there had been no substantial follow up of the previous findings.

The suggestions as part of this section were that:



- The Youth Justice Board should commission and publish an evaluation of what has been learned in the past and identify actions for the future

### **Work, Education and Training**

The report found that work reduces dependency on crime and that training increases self-respect and stake in society. Therefore work is key to reducing re-offending. Despite this, previous convictions have a hugely detrimental effect on future work prospects and BAME groups are disproportionately effected as they are already more likely to be discriminated in employment. The report finds that the Criminal Record system is key in this system and needs reform.

Conclusions here were:

- The Criminal Justice System should allow for sealing criminal records, stopping record checks seeing offenses, based on a court hearing
- The government should publish a study to highlight the cost of unemployment in ex-offenders

## **Institutional Racism**

This report positions institutional racism as the golden thread running throughout, joining the four reports together. Institutional racism was a term first coined in 1967, and differs from overt racism in both its comparative subtlety and its origins in the running of respected forces in society, such as the police. Because of this, institutional racism is far less condemned than individual, overt racism (Carmichael, Ture, Hamilton, 1992). Macpherson popularised this definition by defining institutional racism as the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. The existence of institutional racism has been said to create inequality in the level of access to services and opportunities within society because of a person's ethnicity (Morgan et al, 2018).

This section will outline how institutional racism is presented in each of the four reports, taking into consideration the extent to which it is accepted and how it manifests itself.

### **Scarman**

Scarman completely rejected the suggestion that institutional racism existed in Britain, including the rejection of the idea that institutional racism existed in the police force and had a part to play in the tensions that led to the Brixton disorders. When it came to racism within the police, Scarman was confident that it was just an issue with a minority of individual officers who were racially prejudiced and needed rooting out of the organisation. He totally rejected the criticism, made by many in the evidence gathering sessions, that there was racial prejudice in MPS as a whole institution – including with the direction set by senior officers. Scarman was firmly of the belief that there was no racial bias amongst senior officers, but did recognise that public confidence in the entirety of MPS could be damaged easily by occasional instances of racial prejudice amongst individual, usually junior, officers on the street. Scarman seemingly took a rather simplistic stance that if you were to remove these individuals from the force, and check for racial prejudice in the recruitment of police officers, the issue around racial disadvantage within policing would be eliminated.

In spite of this, Scarman did address the public's criticism of the police not being imaginative or flexible with their policing methods, particularly in relation to saturation and stop and search operations, by defending the police as it should not be surprising that police strategy had not yet been satisfactorily adjusted to effectively police a multi-racial society as society more widely have not properly addressed how ethnically diverse Britain is. This defence of the police by Scarman was a recurring theme throughout his report where he consistently praised the police for their handling of the disorders and attributing the cause of the frustrations the black community had for the police on the police representing a society that has failed them.

Although Scarman rejected the idea that institutional racism existed in Britain, he did make numerous references to the existence of "racial disadvantage" but focussed this concept on structural and societal factors, as opposed to an institutional problem within the police. Scarman posited unemployment, low educational success, and problems securing appropriate housing as key issues that created disadvantage, all of which disproportionately affected black people in Brixton, and more widely. Scarman made the case that

discrimination towards underrepresented groups occurred in local authorities in the shape of practices being adopted that were unconsciously disadvantaging black people. He also referenced the lack of representation of black people in the political sphere, which may have made the black community feel like they did not have trusted people in power that they could air their grievances to. Scarman suggested that the combination of these societal issues that created racial disadvantage, also created a “recipe for a clash” with police who represented those injustices.

I would argue that his explanation, and the features, of racial disadvantage are closely linked to institutional racism, however it is perhaps a more palatable, and less emotionally charged, phrase to be used. Scarman also directs blame totally away from the institution of the police force and attributes it to an issue with individual attitudes and other structures in society. This script was flipped in the Macpherson report as he placed the failings in the Stephen Lawrence murder firmly with the MPS and their institutional racism.

## **Macpherson**

Macpherson made an acknowledgement to wider society’s involvement in institutional racism, which will be explored in the next section of this report however, he moved away from Scarman’s structural-analysis of racism, and focussed on how institutional racism within the police force led to the failings in the investigation of Stephen Lawrence’s murder. As introduced earlier, Macpherson defined institutional racism as the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

It is important to acknowledge how institutional racism may have played a part in the delay between the murder of Stephen Lawrence and Macpherson being appointed to conduct an inquiry into the investigation. With the Scarman report, Lord Scarman was appointed on the 14<sup>th</sup> of April 1981 to hold an inquiry into matters associated with the policing of Brixton. The 14<sup>th</sup> of April was just two days after the disorders stopped, and thus, by any standards, the call for an inquiry was a very quick response. Conversely, Sir Macpherson was asked by the Home Secretary, at the request of Stephen’s parents, in July 1997 to inquire into the circumstances surrounding Stephen’s murder. This was over four years after Stephen’s murder, with the final report published nearly six years after the tragic event. One could argue there was a much more proactive sense of urgency in calling for an inquiry into the Brixton disorders, where police officers, buildings and vehicles were injured and damaged. Whereas with the case of Stephen Lawrence’s murder, where the only victims were black people, the Inquiry was years later and came off the back of years of campaigning by the Lawrence family. This lack of proactive action when black people are the victims is perhaps a reflection of institutional racism within society and is mirrored in the institutional racism present throughout the investigation of Stephen’s murder which lacked any sense of urgency or drive.

Institutional racism in the Macpherson report manifested itself in the abject failure in the murder investigation. Macpherson found pockets of good practice but ultimately determined that the investigation, at all stages, was irredeemably flawed and failed the family of Stephen Lawrence and his friend Duwayne Brooks, who was present at the attacks.

Reluctance, largely from the more junior officers, to label Stephen's murder as a racist attack was considered by Macpherson as a classic example of institutional racism at work in the murder investigation. Numerous officers made it clear that they treated Stephen's murder as any other murder and justified this by saying that everyone should be treated the same. They failed to take into consideration that racist murders had specific features that needed to be sensitively managed, particularly when it came to supporting the family, and Macpherson put this down to their collective unconscious racism. This could be interpreted as reinforcing Scarman's take on racism within the police, in the sense that it was an individual issue with junior officers who took this stance – whilst senior officers totally accepted that it was a racist attack. However the impact this stance had I would interpret as an institutional problem, as Macpherson was firmly of the belief that this skewed the direction the investigation took from the very start.

Stereotyping of black people was also consistently referenced through Macpherson's report and was key to the concept of institutional racism. The theme of stereotyping will be explored in more detail later in the report but it is important to briefly summarise how stereotyping black people manifested itself in the investigation of Stephen Lawrence's murder. Officers stereotyped Duwayne Brooks as an aggressive and hostile man at the scene of the murder, which led to multiple failures as a result of their inability to see him as a primary victim; the Inspector at the murder scene, after seeing Duwayne, interpreted the situation as just a fight (which was reinforced by a member of staff at the hospital saying she felt officers readily assumed racist attacks were drug related and as a result less important); and the police stereotyped the Lawrence's through their failure to see them as just a grieving family and dubbed them a nuisance when they were requesting information.

Macpherson also discussed the workplace culture within the context of institutional racism. Offensive language used to describe black people was used quite freely by a number of officers. Terms such as "coloured" and "negro" were used by officers during the Macpherson inquiry, and when challenged on their use of these words they did not understand that it was offensive to the black community. This clearly suggests race awareness training is essential, so that officers understand what language is appropriate, and training will be discussed later in this report.

Evidence was given by representatives from the MPS Black Police Association about how institutional racism was a part of the workplace culture:

"A second source of institutional racism is our culture, our culture within the police service. Much has been said about our culture, the canteen culture, the occupational culture. How and why does that impact on individuals, black individuals on the street? Well, we would say the occupational culture within the police service, given the fact that the majority of police officers are white, tends to be the white experience, the white beliefs, the white values..."

This shocking statement highlights the normality and everyday nature of racial disadvantage and how the white majority set the tone for the institution.

A specific example of a racist culture in the workplace was given to the Macpherson inquiry in evidence by another member of the MPS Black Police Association who referred to a scenario they were in where

" ... as a Sergeant I was in the back of a car and a female white officer on seeing a black person driving a very nice car just said "I wonder who he robbed to get that?", and she then realised she was actually voicing an unconscious assumption."

This example shows how unconscious stereotyping and racism can present itself within an institution. These assumptions and attitudes are particularly dangerous within institutions as they can influence the attitudes of others. This was seen consistently in the Macpherson inquiry with how easily and unquestioningly officers who had had little contact with the Lawrence family and Duwayne adopted the negative opinions that had been formed. Duwayne was labelled as uncooperative and surly by numerous officers who had not spent much time with Duwayne, and the Assistant Commissioner at the time wrote public letters that were incredibly critical of Stephen's parents which was really unfair as he had not had much contact with them and so it was clear that he had thoughtlessly adopted the opinions of other officers. Macpherson labelled this institutional racism at work. It is this last point, about the endemic and pervasive nature of workplace cultures, that the 2001 Denman Report uses as its starting point. The report uses the definition of institutional racism as a starting point for much of its lines of enquiry.

## Denman

The Denman Review's terms of reference committed it to a far-ranging view of institutional racism within the Crown Prosecution Service that drew inspiration from the Macpherson report. The institutional racism inflection is therefore very influential, both in analyses of the workplace, and its impact on the CPS charging rates.

### Drawing from Macpherson

IR was a powerful label that made inquiry into the operations, policies, and practice of other criminal justice agencies more pertinent. The Denman Review, initiated just two years after the Stephen Lawrence inquiry made its famous pronouncement of IR, used this as the springboard which would frame the focus of its inquiry.

The sources of institutionally racist outcomes, as central to Denman's inquiry, can be split into two sections, covering both the workplace culture of the Crown Prosecution Service, and the charging decisions that come from it.

#### i. The workplace culture of the Crown Prosecution Service itself

The main manifestations of IR found in the Denman report are those which revealed perceptions of inequitable treatment among CPS staff from underrepresented groups. <Denman's main recommendations here relates to the overhaul

The report addresses issues that constitute institutional racism in the most visceral scene, with recommendations geared towards culture change. This piece identifies this, and it is elaborated on under the "Pervasive work culture" heading further on.

### Case study: Croydon CPS Branch

A study of the CPS branch in Croydon illustrates, at a local level, the institutional racism issues endemic to the CPS as a whole identified by Denman.

Among other critical observations on the state of racial equality practice at the CPS, the Denman report suggested that the Croydon CPS branch office staff might actually be segregated by ethnicity.

This triggered its own formal investigation by the Commission on Race Equality, then chaired by Gurbux Singh.

The report, published July 2001, found categorical evidence that staff within the Croydon branch had been separated along racial lines within the office, delineating a race boundary between the 8th and 9th floors of Prospect West House, where the branch was based.

It identified a number of reasons for the separation, such as:

- Historic patterns of work
- Personal convenience
- Expression of personal preference

While the reasons above are neutral-sounding and appear, on the face of it, to reflect business need, the report found evidence that "ethnic minority staff who were assigned to work on the 9th floor found themselves exposed to a climate of subtle harassment on racial grounds, and, as a consequence, asked to be transferred to the 8th floor".

These reasons uncover evidence of institutional racism. It is clear that race was therefore NOT an insignificant factor in the preferences expressed by staff which led to the establishment and maintenance of the teams on the 8th and 9th floors respectively.

While concerning, the report found this concerning but ultimately found that this did not meet the statutory threshold to support a finding of unlawful segregation. The Race Relations Act 1976 requires evidence of the organisation acting to keep staff apart. The investigation did not find such evidence.

While not mandated by above, IR had at that point been firmly embedded within the practices of the CPS. This represents a different and less stark picture of institutional racism; one that is not public but still as insidious. While the findings in Croydon differ from Macpherson in this way, the themes in Denman more widely reflect how IR is expressed in less public-facing organisations like the CPS, and accordingly, manifests itself differently within such organisations.

Denman's recommendations reflect this intimately. Most strongly expressed is the importance of culture change within the organisation so that equality would become integral to day-to-day business. This included recruitment, training and the setting of expectations for behaviours.

The establishment of the Equality and Diversity Unit, as a clear governance system responsible for equality, whose role was to enable the CPS to mainstream equality effectively and encourage strategic coherence. This was established as part of package of governance

structures to determine the structure of equality work within the organisation, such as the Senior Managers' Advisory Group and the Diversity Accountability Committee, the latter of which supporting a coherent CPS response across the then-42 CPS Areas.

i. Racism within charging decisions:

Another potential breeding ground for institutionally racist outcomes looks away from the CPS as a workplace, and focuses on its outputs; observed racism within its decisions to prosecute or not.

While not in the purview of the Denman Review itself (which restricted its terms of reference to an analysis of the CPS as a workplace), an analysis of racism in charging decisions remains relevant to later Reviews like the 2017 Lammy Review and, for the sake of fullness, warrant further analysis. Any semblance of bias within the CPS' charging decisions also operates as a direct output of perceived institutional racism, which (like in Macpherson) is an outward facing concept with a causal relationship in the way the organisation makes decisions, including on its most important parts of its work; the making of charging decisions.

#### Making a charging decision

As explained earlier in this paper, charging decisions for the CPS are guided by a two-limb test called the Code test:

- The evidential stage – Crown Prosecutors must be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge
- The public interest stage - If the case does pass the evidential stage, Crown Prosecutors must then decide whether a prosecution is needed in the public interest. They must balance factors for and against prosecution carefully and fairly.

The CPS will only start or continue a prosecution if a case has passed both stages.

Denman found evidence of bias within these charging decisions that the CPS failed to correct the bias in police charging decisions, and took decisions that allowed a disproportionate number of weak cases against ethnic minority defendants to go to trial. She suggests that the reasons for this were rooted in lack of vigilance, rather than the pernicious and conscious discrimination observed in Macpherson, but that this could nonetheless give rise to institutional racism.

A report by the CPS' inspectorate - HMCPSI - is instructive as to institutional racism within charging decisions. The Inspectorate's 2002 report aimed to assess progress in the implementation of the Denman recommendations. It found:

- In respect of cases relating to the stirring up of racial hatred, inspectors found that the combination of the introduction of specifically racially aggravated offences and failure, by the police and CPS, to refer cases appropriately has increased the likelihood that they may not be pursued at their correct level.

- Police are more likely to overcharge in cases involving minority ethnic defendants. Inspectors considered that the police had overcharged in 123 of the 1,831 cases in their sample (6.7%). The comparative figure for overcharging of white defendants in the control sample of 1,255 white defendants was 67 cases (5.3%). It appears, however, that prosecutors rectify overcharging in almost all cases by the time that they are finalised. (HMCPSP, 2002).

The findings in Denman had a demonstrable impact on the practices of offices in individual CPS areas. An evaluation of the West Yorkshire CPS branch five years on said that Denman report "caused the organisation to take hard stock of where it wants to be. We have also put a lot of emphasis in terms of race cases to ensure that people are effectively trained and supervised".

### **The Lammy Review**

For such a wide ranging review, the absence of the term "institutional racism" to describe the origins of differential treatment of "BAME" people (the term preferred by this Review) is peculiar. It bucks a trend set by the other three reports

Instead, Lammy uses the language of bias, describing the racist attitudes and mistrust felt towards BAME people being infused in critical decisions in all areas, from sentencing to arrests. He suggests that this creates a "trust deficit" and a sense of "us and them", which describes the adversarial relationship between BAME people and the criminal justice agencies that make decisions about them when they come into contact with them.

The way to diffuse sentiments of IR, therefore, is to foster a sense of procedural justice, which is a general desire for openness and fairness. It has been operationalised and applied to criminal justice by Sunshine and Tyler (2003), who suggest that criminal justice actors display it in three ways:

- High-quality and transparent decision-making
- Decisions based on careful consideration of relevant facts
- Determined efforts to reduce officer bias

Research seems to suggest a positive correlation between an individual's perception of procedural justice in a given procedure and the consequent legitimacy with which they regard the procedure as having. (Nuno and Morrow, 2020). Legitimacy here refers to the belief that the police, and other institutions and agencies that are part of the criminal justice, are 'an appropriate, proper and just authority, worthy of respect'. (Radburn and Stott, 2019). Lind and Tyler (1988) emphasise the importance of fair treatment to marginalised communities because it communicates to citizens that they are respected group members. The literature seems to suggest that a sense of procedural justice is vital for acceptance of decisions and the perceived legitimacy of the system as a whole. This evidence is one that lays the foundations for Lammy's recommendations.

Transparency and open justice is vital to the perception that the system is a fair arbiter of justice. This is manifested mainly within the setting of recruitment targets for judiciary and prison officers, and calls for services across the piece to be made more cultural competent.



In another move away from the all-engrossing label of IR, Lammy calls for a more sophisticated analyses of where the major points of disproportionality lie within the criminal justice system.

Unlike Scarman, the Review's focus on structural factors is comparatively little. Lammy recognises the aggravating impact that features of the structural environment such as poverty and unemployment might have on the likelihood of Police contact but is not more explicit than this. Perhaps this is due to the Terms of Reference for the review given to him by the government when they commissioned his analysis not including any analysis of policing, instead choosing to begin at the point of arrests instead.

## **KEY AND RECURRING THEMES**

### **Structural Racism**

#### i) **Structural factors, structural racism: the evidence**

The following discussion of structural factors takes the question of mistrust beyond the purview of the criminal justice system, in the way it considers the larger community context. Research has shown that racial differences in crime and the lack of trust *even where individual status characteristics are controlled*, 'may reflect unmeasured features of the larger structural context'.

Incisive analysis by Keir Irwin-Rogers, in his qualitative analysis of non-White men in prison, suggests that Black people occupy different and unique 'ecological niches' to White people, reflective of concentrated social disadvantage, which 'reinforces the discriminatory impact of ethnicity' in a process described as 'amplification'.

Other analyses of racially disaggregated data have found that 'residential segregation, concentrated poverty, and social isolation from mainstream society are key determinants of Black crime rates'. Poor social conditions and the lack of supporting structures may leave people trapped in cycles of crime which 'seem linked to [...] larger structural constraints related to poverty, lack of capabilities and exclusion'.

Literature suggests that this mix of structural conditions acts as a predictor of increased police contact. Irwin-Rogers observes that these characteristics of the surrounding environment 'have knock-on effects that increase the likelihood of BAME individuals being identified and targeted by agents of social control, such as the police'. Differential arrest rates are symptomatic of this; recent statistics seem to suggest that Black people are over three times more likely as White people to be arrested.

Differential rates of arrests are perceived as manifestly unfair, and are communicative of stereotypes which lead to 'a sense of being singled out – a situation in which people feel targeted because of their appearance, rather than any suspicious behaviour'. The exertion of stigmatising, labelling perceptions directly stemming from these structural factors are, therefore, the central causes of mistrust. Williams and Durrance suggest that this can lead to unfair assumptions being made about an individual's 'propensities for crime simply because

they belong to certain ethnic or religious groups'. Negative experiences of system contact 'communicates to these groups their status as 'Other'. This process is referred to as labelling.

The combination of racialised police practice, its ensuing labels and stereotypes (the latter of which will be discussed later on in this piece), and structural disadvantage are a toxic cocktail for BAME people that 'affects self-image if these negative beliefs become internalised'. In this regard, labelling effects are destructive and far-ranging in the way they create of a sense of hopelessness in those who are labelled. Such labels work to 'mortgage the future' by making things worse in offenders' lives, and result in the 'knifing off' of future opportunities.

### **Structural factors: the reports**

Reports have differed in the importance they place on structural factors to explain differential treatment and outcomes for Black people in contact with the criminal justice system.

As mentioned earlier in this report, Scarman lay the cause of the Brixton disorders with a combination of societal issues that bred racial disadvantage and tension and ultimately formed a recipe for a clash with the police. The concept of structural racism within society, although varying in significance, was a recurring theme throughout the four reports.

Macpherson echoed Scarman's focus on particular areas of society where racism and racial disadvantage were more prevalent by referencing housing and education as areas that, as well as the police service, "suffer from the disease". He said that for racism to be dismantled in society there needed to be a combined effort from organisations, particularly those who interact with people from a young age, such as education. Macpherson made a number of recommendations linked to the role of education, most notably his suggestions for the National Curriculum and the recording of racist incidents. Macpherson suggested that consideration should be given to amending the National Curriculum to better reflect the needs of a diverse society by including topics aimed at preventing racism and valuing cultural diversity. It was also suggested that strategies be implemented in schools by local authorities and governors to ensure that all racist incidents are recorded; reported to the pupils' guardians, governors and local authorities; and the ethnicity of pupils who have been excluded from school are published annually (as we know black pupils are more likely to be excluded than other young people).

While this theme received little attention in Denman, whose focus, like Macpherson, was an inward-looking one that focused on the working of the CPS, the Lammy Review did build on this.

Though his report and its findings pertained to the treatment of Black, Asian and minority ethnic (BAME) individuals in the CJS and their subsequent overrepresentation in the system, Lammy stresses that understanding the roots of such disproportionality is a line of enquiry that needs wider consideration of the complex intersections between racial background, ethnic background, and other forms of social division and structural disadvantage. As he put it, key to this analysis are factors like:

'poverty, lone-parent families, school exclusions, and growing up in the care system. And what more is there left to say about stop and search?' (Lammy, 2017)

In light of this, it is disappointing that Lammy was precluded from providing more incisive

analysis beyond the quote above. This was due to the restrictive Terms of Reference given to him by the Government, which said the inquiry would not cover anything before the point of arrest (which is at the point structural factors bear on the most).

The implications for Lammy's deprioritisation of structural factors are discussed later on in this piece, but it is clear how the removal of policing also necessitates a removal of a discussion of the structural features of the environment that are, as Irwin-Rogers has shown above, risk factors for earlier and more frequent police contact. Intimately and implicitly connected to the discussion of structural factors is the role of stereotyping, as discussed in all four reports.

## **Stereotyping**

### **Failure to recognise the Lawrence family as a grieving family**

As introduced earlier, one of the ways stereotyping played a part in the failures in Stephen Lawrence's murder investigation was the inadequate support for the Lawrence family as they failed to recognise them solely as a grieving family. The failure of support for the Lawrence family was a collective failure, as the officers appointed to the task failed to treat Mr and Mrs Lawrence professionally and sensitively and senior officers failed to intervene to rectify this and gain the trust of the Lawrences. One of the specific failings of the two officers, initially assigned as family liaison officers, was their consistent and insensitive comments about the large number of people surrounding the family after Stephen's murder. The family liaison officers also blamed the numerous people surrounding the family, including their lawyer and organisations who wanted to offer support, for the reason there was a communication barrier with the family by referring to them as "hangers on" and saying that there were "lots of outside bodies who wanted to make their own statement" which had an effect on the ability to communicate. Macpherson commented that they lacked any understanding of how a black family may react to tragedy, particularly one that was a racist attack, and they should have just blended in with the family's wishes.

Negative comments about the Lawrence family, and their lawyer, were freely shared amongst officers, which was another example of their inability to recognise the Lawrences as a bereaved family due to stereotyping them. Officers, from a wide range of ranks, openly criticised the family for being a nuisance, in particular with utilising their lawyer to be persistent in requesting information – which they were well within their rights to do. One of the Detective Superintendents publicly stated that his patience towards the family was wearing thin, which is an appalling reaction to a family grieving the death of their son. These comments were reiterated by others, including a Detective Sergeant allowing untrue statements about Mr and Mrs Lawrence to appear in the PCA Inquiry. This behaviour by officers was evidently stereotyping of a black family, and Macpherson concluded that it was unwitting racism that led to officers, including those who had little contact with the Lawrence family, unquestioningly accepting and repeating these negative views. A theme we also saw in the treatment of Duwayne Brooks.

### **Trauma of Black boys not being as valid in the eyes of the system**

Just as perceptions of the Lawrence family were set in stone by those in the police before they had met them, much of the stereotyping happens before formal contact with the criminal

justice system, but sets the tone for what happens when people come into contact with it. In the evidence, this is a link that becomes less and less tenuous when it is applied to the treatment and stereotyping of Black men.

### **Stereotyping, Black trauma, and the legitimacy of the Black male victimhood**

The particular focus on criminal justice's treatment of Black men in this section is deliberate; Long (2021) writes that, in criminal justice, women are produced as 'risk-prone' (as victims) and men as 'risk-free' (as perpetrators).

The American writer bell hooks typifies stereotyping as endemic to the global experience of the Black man:

'[a]t the center of the way black male selfhood is constructed [...] is the image of the brute' (hooks, 2004)

Academia has focussed on deconstructing what makes the "ideal victim", in opposition to what makes the "blameworthy victim". For Long (2021), the perceived worth of the victim is central to the decision to act on a reported crime. Worthiness is assessed in relation to socio-economic, structural and demographic factors, as well as the perceived legitimacy and innocence of the victim.

In order to successfully claim the legitimate status of victim, the individual must have sufficient power to make their case known, and must also not be prevented from being heard by 'counter-powers'. However, the evidence suggests that the racialized relations between the police and Black complainants position the police as a 'counter-power' in the reporting process.

Black people, as this piece has shown, are routinely over-policed and constructed as criminal, and means they live their lives as 'perpetual suspects' in the eyes of institutions of justice. This may serve as a limiting factor to the Black male victim's ability to make their case heard or be taken seriously as victims of crime by strong, institutional counter-powers.

It follows, then, that in institutionally racist structures, worth is predicated on proximity to Whiteness. This limits the victim's power to make their case 'known'; a factor that is only aggravated by the racialised relationship between police and Black communities.

### **The narrative of stereotyping within reports**

The Metropolitan Police Service's evidence to the Stephen Lawrence inquiry is revealing as to what this racialised relationship manifests from police contact with Black communities in particular being exclusively in negative or adversarial contexts. Their evidence provides a valuable insight regarding what this looks like in practice;

*"Given the fact that these predominantly white officers only meet members of the black community in confrontational situations, they tend to stereotype black people in general. This can lead to all sorts of negative views and assumptions about black people, so we should not underestimate the occupational culture within the police service as being a primary source of institutional racism in the way that we differentially treat black people"*

The treatment of Duwayne Brooks, a friend of Stephen Lawrence who was with him at the time of his murder - is another way the evidence is borne out in practice. Within the Met's investigation of the murders, police officers consistently failed to recognise Duwayne Brooks as a young man who had experienced severe trauma. He was noted as being incredibly agitated at the scene of the crime, which should have been considered as completely understandable given the fact that he had just witnessed the murder of his friend, and narrowly avoided being physically attacked himself. Officers at the scene stereotyped Duwayne as an aggressive and hostile black man and failed to see him as a victim.

An important question to consider is: would a white victim, displaying their trauma in the same way as Duwayne, be considered aggressive and hostile, or would officers be more sympathetic of their situation? The support for Duwayne once at the hospital, the night of Stephen's murder, echoed the reaction to him at the murder scene as he was largely sidelined and ignored. It is also important to note that there was no evidence that any steps were taken to arrange full victim support for Duwayne.

Duwayne was not only stereotyped as aggressive, and failed to be recognised as a victim, but he was also failed to be seen as someone who could help with the investigation. When the inspector arrived at the scene he failed to take advantage of the help Duwayne may have been able to provide, perhaps stereotyping him as someone who was unlikely to be useful, which links in with the evidence Stephen's mother gave where she said:

"Presumably, there is no possibility of me being an intelligent, black woman with thoughts of her own who is able to ask questions for herself. We were patronised and were fobbed off... "

Macpherson also concluded that the Inspector stereotyped Duwayne and Stephen, but assuming that the situation had been as severe as just being a fight, and this insensitive and incorrect assumption led to inadequate leadership through failing to direct proper searches. This conclusion Macpherson made about stereotyping black victims by making assumptions about what crime they had been involved in was backed up by evidence from the night manager at the hospital Stephen was taken to, who said that when it came to racist attacks she felt uneasy about the police's approach to assume these attacks were drug related and, on that basis, less importance than other assaults.

For Lammy, the root cause of stereotyping is intimately linked to the structural context. He suggests that disproportionate police contact polarises tensions between police and minority communities, in a tense and adversarial relationship he typifies as being between 'us and them'.

At its worst, labelling BAME offenders is a pernicious process that works to perceive all members of specific ethnic groups as adhering to such 'alternative cultural values' deemed by the police to be conducive to offending behaviour'. These stereotypes situate BAME people as existential threats to social order and British values. In this paradigm, BAME people are not, from the police perspective 'like us'.

While Lammy stops short here, remnants of institutional racism here are clear. Stereotyping is so damaging to trust in the way that it transcends individual police officers (and other actors in the criminal justice system that make decisions about Black people, such as

judges), such that it becomes part of the practice of the system itself. This, incidentally, is also the nature of institutional racism.

### **Has a shift in policy towards victims benefitted Black people since Macpherson?**

Criminal justice agencies, to their credit, have since become more victim-centred. With the publication of the Government's 2018 Victims Strategy, action to create this shift has been backed up with clear funding commitments to help improve the rights of and support to victims. Whether this shift has extended the same grace to Black offenders - or done enough to dispel stereotypes when they report crime - is a different debate, but warrants discussion here.

Put simply, it may be argued that it has not been. Despite underrepresented groups' disproportionate rates of victimisation, pervasive stereotypes continue to shape treatment in real ways that requires serious scrutiny. The wider social and political context that has only worsened this is explored further later on in this paper.

Deborah Coles of INQUEST, giving evidence to the Home Affairs Select Committee, said:

"[t]here are questions about how racial stereotyping has kind of seeped into the culture of policing, which results in perceptions, particularly of black men as being big, dangerous and more likely to be subject to the immediate use of force."

David Lammy, giving evidence to the Justice Select Committee's inquiry into the implementation of his Review, suggested that stereotyping affects treatment provision and attention given to even the youngest offenders in youth prisons:

When I spoke to prison psychiatrists, they presented evidence and statistics to me that suggested that white offenders had a higher preponderance towards self-harm than some ethnic minority groups. I can only repeat what they said to me. They said that some communities internalise trauma and some communities externalise trauma. I was speaking to a young black offender about that.

He said to me, "But, Mr Lammy, it's interesting. When Joey, who is white, attempts to cut his wrists, he gets therapy and support to stop him doing that. When I punch the wall, I get put in solitary. Why is that not self-harm?"

Amnesty International's 2018 paper also mentions how Black person being a victim of a gang is even more likely to get them onto the "Gangs Matrix", the Metropolitan Police Service's Gang-Mapping database (discussed later on this piece). Plainly, this criminalises all proximity to a gang, even if as a victim. It makes Black people offenders, even when they are the opposite. It is particularly unhelpful for the perception of Black people as victims of crime.

Stereotypes are powerful perceptions which impact and inform actions of the criminal justice system, resulting in negative treatment. Later portions of this piece will explore an intimately linked phenomenon to this one; the use of discretion in criminal justice and the way reports suggest it manifests to the detriment of Black people. It will also explore whether reforms to training have helped in the prevention of stereotype creation that criminalise Black men.

## **Scarman's distinction between "hard" and "soft" policing**

Scarman highlighted the difference between "hard policing", which could be argued that this is the type of policing predicated of pejorative connotations and stereotypes of Black people, and softer policing which is embedded into the community. People who made criticisms about the police in the evidence giving sessions of Scarman's Inquiry made this distinction between these two styles of policing, referring to hard policing as the use of saturation operations and stop and searches, whilst community policing was best epitomised by the "friendly bobby-on-the-beat" as the human face of policing. The police pushed back on the criticisms of hard policing by saying community policing fails to acknowledge the challenges of crime in urban areas, but the public were of the belief that hard policing disproportionately affected young black men and if more community policing was incorporated where a greater understanding of the feeling and tension on the streets then this may mitigate that.

## **Discretion in the criminal justice system**

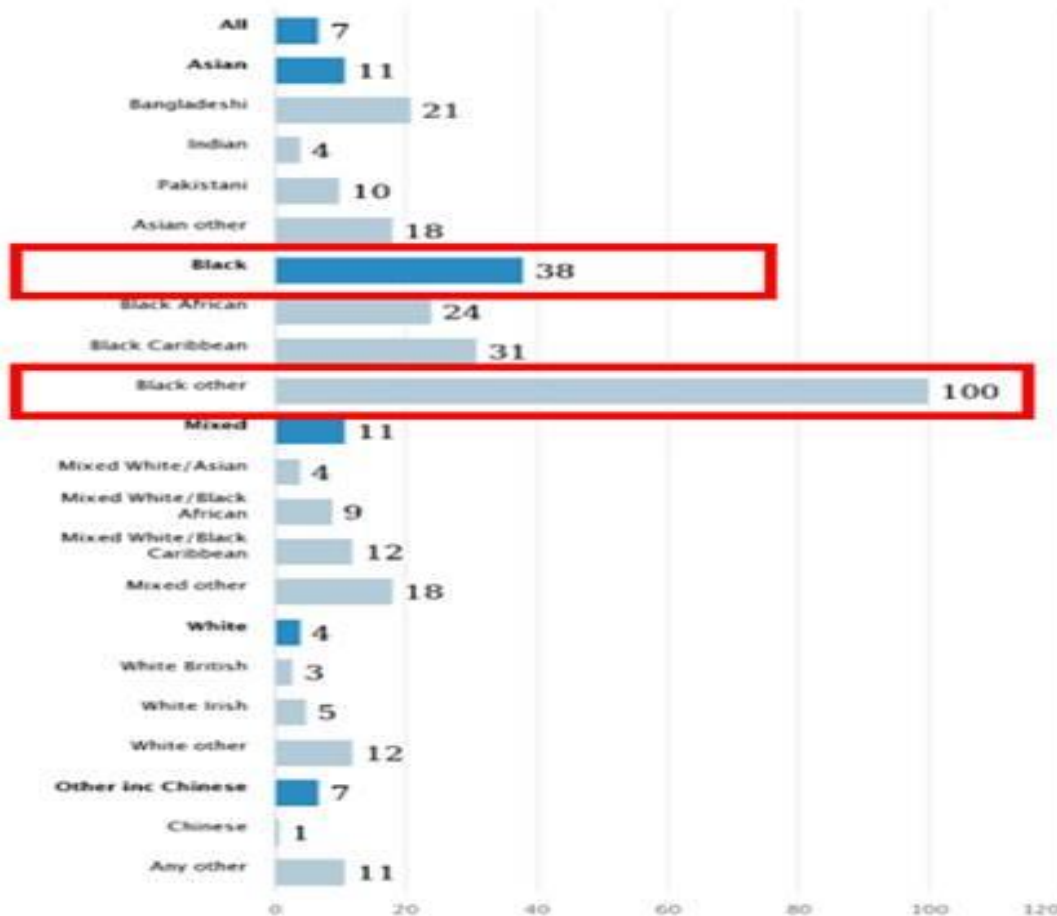
### **Discretion within policing: the evidence**

Discretion within policing refers to the leeway that junior police officers have in key aspects of their work, and this is pronounced when officers are 'on the streets' and require a level of flexibility in the way they react to situations. Interestingly, this, as Sam Poyser highlights, is the level at which both Scarman and Macpherson have directed the most reforms. This may suggest that the use of discretion bears on racially discriminatory practice.

While this piece accepts that police discretion is central to police policy and practice, it also argues that it may provide a wide freedom for decision-making that opens a space for injustice.

Research seems to suggest that high discretion may result in inconsistent and racially discriminatory decision-making, and that the police use discretion to make decisions in opaque ways that lie in stark contrast with procedurally just practice.

Minority ethnic groups are more likely to be stopped unsatisfactorily and without being given a reason, and other research finds that stops are conducted in an 'unnecessarily demeaning manner' and do so unabated, with little external scrutiny. Black men, in particular, are disproportionately targeted by stop and search.



This adds to the feeling that they are being unnecessarily targeted, and is a feeling borne out in statistics. The graph below shows great disparity between ethnic groups in stop and search; in the year between April 2018 and March 2019, police made 4 stops for every 1,000 White people, compared with 38 for every 1,000 Black people. This may be evidence that police discretion used in ways which discriminate against Black people. Therefore, as Dingwall and Harding impactfully conclude, '[p]olice discretion is not an equal opportunity phenomenon'. In his interviews with Black and Mixed-race men serving sentences of imprisonment, Irwin-Rogers notes that these experiences resulted in 'the sharpest perceptions of unfairness' in these men.

### **The reports' analyses of discretion**

#### **i) Scarman and Macpherson: discretion in stop and search policing**

This theme is a powerful theme in most of the reports that are part of this piece. Scarman acknowledged in his report that stop and search operations disproportionately affected young black men, and the black community were well-aware of Operation "Swamp" occurring the week of the Brixton disorders. Scarman said that the hostility and tension in the young black community, that was created due to stop and search operations, seeped into the older black community as they heard more stories of their younger generations feeling like they were being unfairly "picked on" by the police.



Police harassment was a criticism made by the public in the evidence gathering sessions of the Scarman Inquiry, particularly in reference to the behaviour and conduct of officers carrying out stop and search operations. Scarman made it clear that he recognised the importance of stop and search operations in being a necessary method of tackling street crime. However he also was confident that some of the allegations made by the public were true and that a minority of officers would have lacked controlled and appropriate behaviour when conducting stops and searches. He attributed a lot of this to a lack of maturity and experience, which could be aggravated by a lack of supervision by more senior officers. Scarman did also go a step further in his defence of the police by suggesting that there must be the temptation for each criminal to allege misconduct by the police, and by saying this, he suggested that he questioned the validity of some of the evidence given on inappropriate conduct during stop and searches.

A universal area of complaint made by the public in the Macpherson Inquiry was the disproportionality in stop and search operations. People from underrepresented groups felt a lot of reasons were used by the police in an attempt to explain away figures that proved black people were being disproportionately stopped and searched, and this created a heightened feeling of distrust towards the police. Underrepresented communities also felt that junior officers did discriminate at the operational level and the workplace culture of having each other's backs, that has been referenced a number of times in the reports, meant that they felt junior officers supported each other in such discrimination.

Macpherson acknowledged these complaints and concerns and included a specific section in his recommendations that were dedicated to stop and search. These included measures such as ensuring police officers record all "stops" and all "stops and searches", and also specified that all non-statutory or "voluntary" stops also be recorded. Other recommendations were linked to this, such as what information must be recorded and that all records should be analysed by Police Authorities and reviewed by HMIC.

## **ii) Discretion in gangs policing**

Of particular concern to Lammy is how policing has reacted to concerns, first voiced by Scarman, about the perceived risk posed by Black youths, and the structural forces that bring them into contact with policing earlier and more frequently. This warrants discussion of the Gangs Matrix.

The Metropolitan Police Service's Gangs Matrix is a gang-mapping database of those considered to be in gangs or adjacent to them; it designates those believed to fall into this category as "gang nominals".

A key criticism of the use of a matrix is that is based on a loosely defined use of the concept of "gang". Amnesty International suggest that many of the young people included on the matrix have not been involved in violence.

Amnesty International's report also sheds light on the "chaotic and inconsistent approach" to how somebody gets onto the list. The decision-making here is not published, and appears to vary dramatically from borough to borough. The threshold for getting added to the Matrix is very low, and requires just two pieces of "verifiable intelligence" with no clear guidance or criteria as to acceptable forms, with extremely wide discretion is given to both police and

various other agencies. It is perhaps unsurprising that their report finds that 80% of those on this database are Black.

It is worrying that Lammy's sentiments are, in effect, a report of Scarman, published over 35 years prior. In itself a response to the 2011 London riots, the Gangs Matrix is inextricably bound to its political context in important ways that are discussed later on in this piece.

### iii) **Lammy: discretion in the system as a whole**

Although policing practice was excluded from the Lammy's analysis, he positions the use of discretion as another powerful counter-weight to the procedurally just practice that promotes trusts across the whole system, not just policing.

Key decision points, where criminal justice actors use discretion, are recognised as flashpoints for disproportionality. The Review includes a litany of statistics on this point; Black men in court are 240% more likely to be convicted of a drug offence.

For Lammy, the use of discretion is only part of a suite of elusive practices that are hidden to everyone outside of the system, and is something that urgently need demystifying. His Review's recommendations around the publication of data at these key decision points, and a focus on justification and explanation of decisions taken at charging level, at Crown Courts, Parole Board hearings, and other venues where binding decisions are unilaterally taken within the criminal justice system about offenders from underrepresented groups.

His principle of "explain or reform" is founded wholly on this central basis; if a decision cannot be explained, the process that gives rise to that system must be reformed.

### **Community Involvement**

The importance of community involvement and openness when it comes to police strategy and practices has been stressed since Scarman's report. Scarman suggested that the community should be involved in the planning of police operations, such as ones that involve stop and search, to make the operation as transparent as possible (without compromising the effectiveness of the operation). This would mean that the community, and particularly the young black men who would be most affected by certain operations, understood what was going to be happening and why. The formal liaison group set up in Brixton before the Brixton disorders largely broke down due to the police's failure to inform the group that they had planned an operation utilising the Special Patrol Group, and had there been open communication with the community the week leading up to the outbreak of the disorders then police may have rethought Operation Swamp, which was exacerbating tension on the streets.

A lack of open communication was also highlighted in Macpherson's report, with the failure to keep the Lawrence family up to date with developments in Stephen's murder investigation. They were consistently not given information about the investigation that they were entitled to have, and when their lawyer requested this information on their behalf they were seen as being troublesome. Mr and Mrs Lawrence also found out through media announcements that the suspects had been arrested, and it is a shocking communication failure that they did not first hear this from the police. A note was put on the system on 7<sup>th</sup> May suggesting the family

representative was informed that morning, prior to media announcements, however this message had not been relayed to Mr and Mrs Lawrence promptly. An officer had also visited Mr and Mrs Lawrence the previous day, but Detective Superintendent Weeden had not been able to reach this officer before the meeting, to inform him that the arrests were imminent, which is an indication of poor communication even between officers.

As mentioned previously in this report, withholding information about the investigation was a recurring issue in the Stephen Lawrence case. The family liaison officers were also involved in some of the operational work in the investigation and failed to provide sufficient updates to the Lawrence family, out of concern that it may compromise pending prosecutions. However the Lawrence family being kept in the dark about what was happening exacerbated their anxieties and created further suspicion and mistrust in their confidence in the police. Finally on this issue, when the MPS conducted their internal investigation, the Barker Review, reviewing how the first investigation had gone, the Lawrence family did not receive any information on this report until six months after it was completed. Their lawyer repeatedly wrote to MPS requesting information on the review, which was ignored. When they did eventually receive information, it was incredibly brief and largely inaccurate which again aggravated the Lawrence's lack of trust due to the police consistently failing to commit to open communication.

A key feature of newer reports, such as Lammy, is a 'need for stronger analyses about where responsibilities lies beyond its own boundaries'. This refers to involvement of stakeholders in the community, embodying a more holistic approach that not only in addressing causes of offending in the individual offender, but demands that an offender takes responsibility for the harm their actions have caused to the community, involving them in the process. Lammy looks at this through the lens of procedural fairness. If communities don't know the decisions being made at a local level, how can they be sure it's fair? As a counter to the damaging features of police contact, he suggests that the system must undertake work with local communities to hold offenders to account, and must ensure that communities feel they have a sense of "buy-in" and investment the offender's life.

Specific recommendations Lammy makes to further involve the community, include criminal justice diversion schemes, youth courts modelled on Maori community courts, and restorative justice. For now, an important contextual point for readers to note pertains to the shift in the 21st century in the fervour and willingness of policymakers and report authors to make international comparisons and learn from good practice globally.

### **Workplace culture**

As the Denman Report built on the legacy of Macpherson, its extensive reference to a pervasive work culture of "casualised" racism and reticence to equality reform is perhaps unsurprising. This theme is one which was a major flashpoint in the Denman report, and prevailed above all factors. Denman's specific concerns about the operation of the entire CPS is best reflected in a report from the Commission on Racial Equality (CRE) on workplace practices in one branch: Croydon.

## **Case study: the Commission on Racial Equality's 2002 report on the Croydon CPS branch**

This report followed an investigation that was called by the CRE to investigate reports it had received about the Croydon branch, that workplace culture and practices had caused a physical segregation between Black and White lawyers across two floors. Black lawyers dominated the 8<sup>th</sup> floor, while White lawyers were mainly based on the 9<sup>th</sup> floor.

This is a very visceral example of the impact of work culture on other recommendations. Institutional racism arose here from a failure to adopt an inclusive work culture. Direct quotes are illustrative of the pernicious ways that racism seeped into workplace culture to effect this segregation. One Croydon CPS employee interviewed for the report, told the CRE:

“One of the lawyers who stated a preference to work on the 9<sup>th</sup> floor wrote on his preference form that he'd rather work with someone he respects”

The CRE's report into Croydon concluded that this was not enough to prove segregation, as it was not positively enforced by management. This was the threshold required to satisfy a finding of segregation under the Race Relations Act 1976. However, it does shed light on the overt nature of racism that can contribute to a finding of institutional racism, and whether – as well as positive instances of discrimination peculiar to the Stephen Lawrence investigation - failure to act to fix discrimination is also just as bad.

Other themes found at Croydon that Denman found was reflective of the wider working culture at the CPS. The CRE's report finds a palpable “general reluctance” at the Croydon branch office to refer to “race” in the context of undertaking meaningful equality work, which led to the following consequences:

- Croydon staff who felt that they were subject to less favourable treatment on racial grounds felt less able to complain.
- Across the Board, there was a categorical and endemic failure to recognise or deal with racial discrimination
  - 1) Management within the Branch did not consider that racial discrimination or equality were relevant to the day-to-day business of the CPS.
  - 2) Just like that observed in Lammy, there was an observed undercurrent of “us and them” that governed relationships between White and Black staff
  - 3) Many White staff unashamedly held stereotyped views, and believed that complaints about discrimination were as a result of overly sensitive or “overly PC” members of staff

These determinations about Croydon bear direct relevance to Macpherson's definition of institutional racism. The report arrived at the conclusion that the situation was one reflective of institutional racism, a key feature of which was the wholesale denial of race being a factor. Complaints reflected this, and took on a “race blind” theme that downplays a claimant's experiences of racism.

### **Discipline**

A recurring theme was a recommendation for an increase in strictness when it came to disciplining racist behaviour in officers. In both the Scarman and Macpherson reports there

sections in their recommendations dedicated to discipline, and both made it clear that the recommended penalty for racially prejudiced behaviour should be dismissal – which suggests it was not taken seriously when Scarman made this recommendation as Macpherson echoed it. Macpherson also went a step further than Scarman and said that disciplinary action should be available for at least five years after an officer's retirement. This recommendation came from the fact that in the Inquiry that the PCA ran on the investigation of Stephen Lawrence's murder (prior to the Macpherson Inquiry), at least five officers faced criticism that would have led to disciplinary charges, however each of these officers had already retired and therefore disciplinary action could not be taken.

## **Ways to address institutional racism**

### **Recruitment and retention**

#### **The effectiveness of workforce diversity: the evidence**

Baroness McGregor-Smith's review sets out the business case for diverse workforces. From a purely economic perspective, the potential benefit to the UK for the full representation of underrepresented groups within the labour market is estimated to be £24bn a year (representing 1.3% of GDP).

Unlike McGregor-Smith, reasons for setting recommendations in the race reports this piece deal with do not reflect a business case. All reports recognise lack of diversity as the biggest driver of mistrust in the criminal justice system, and make reference to, and recommendations regarding, the recruitment of officers from underrepresented groups, under the belief that having a diverse police force is helpful for reducing the negative effects of institutional racism and enhancing trust. The reports did however differ on the extent to which they felt this would be beneficial and how much of an impact it would make.

#### **Recruitment as a recommendation in the reports**

In the first report, Scarman's, it was made clear that the ethnic composition of the police force should reflect that of the society they serve, but the situation at the time was that those from ethnic minorities were severely underrepresented. Specifically, Black people were the group who were the least represented and in October 1981 only 0.5% of MPS officers were black (132 officers). Scarman pointed out the issue was with the number of black people applying to the force, as opposed to black people disproportionately failing to meet the requirements for appointment, but that steps had been taken to try to address this such as specially directing advertising campaigns – but these had not been successful. The issue lay with deep-rooted issues members of black communities had with the police, and reasons given by some black people for not wanting to join the police was fear of being ostracised by their community due to being seen as a traitor, and also fears of being alienated at work in an institution they believed to be deeply racist.

Scarman did not believe that a quota system, to get more black recruits, would be appropriate as this would involve positive discrimination or a lowering of entrance standards. Scarman thought this would be particularly problematic as it may create a division between

those who entered the police force by meeting the usual requirements, and those who has not. Instead Scarman suggested that additional training, in the form of providing tuition to assist with the academic requirements, be offered to black people who may in the future apply to the police force.

As the previous targeted advertising had not been successful at attracting more black applicants, Scarman suggested a direct approach was required, and should be given high priority. Scarman made suggestions of making contacts with schools and youth clubs and other organisations where young black people may be. Scarman also suggested a more targeted approach at getting black people involved in the police in voluntary roles, such as the Special Constabulary and Cadets. Handsworth in Birmingham was mentioned as an area that suggested recruiting older members of the black community to the special constabulary as if the older and respected members of these communities show an affiliation with the police this may encourage others to have a more positive view on the force and feel like they are being represented. Similarly with cadets, if black people are involved in a positive way with the police force from a younger age they will be more likely to, at the least, grow up with less hostility towards the police but may also grow up feeling such a strong affiliation to the police that they decide to pursue it as their career.

Scarman acknowledged that it would take time to change attitudes in the black community enough for change to be seen in the black representation of the police force, and it would require a close relationship with black community leaders. Interestingly, despite focussing his discussion on the issues around getting more black representation in the police force, the specific recommendation that Scarman made was that urgent action needed to be taken to improve ethnic minority recruitment and involving ethnic minorities more in police-related activities such as the Special Constabulary and Cadets. This recommendation fails to fully address the issue of black people specifically being underrepresented in the police force.

Scarman concluded by stating that it was essential that more black officers were appointed, however also made it clear that the recruitment of black officers was not going to solve all the issues between black people and the police, which was a sentiment echoed by Macpherson in his report.

Macpherson was a little more sceptical about how much of an impact recruiting more black officers would have on improving relationships between the police and the black community, and how much this would reduce racial discrimination and stereotyping. Evidence given during the Macpherson Inquiry by representatives from the MPS Black Police Association say that there is “no marked difference between black and white in the force essentially. We are all consumed by this occupational culture. Some of us may think we rise above it on some occasions, but, generally speaking, we tend to conform to the norms of this occupational culture, which we say is all powerful in shaping our views and perceptions of a particular community”. This is a really powerful statement that was said in reference particularly to how the police treat black people, so therefore the implication is that both black and white officers stereotype and discriminate against black people, which suggests recruiting more black officers is not the solution whilst the police force still has an institutional problem with racism.

Efforts may be better placed with breaking down barriers in black communities when it comes to black victims feeling confident to report crimes, as the same representative from the MPS Black Police Association also said that predominantly white officers largely only come into contact with black people when in confrontational scenarios, which further perpetuates the

stereotype of black people being aggressive and hostile. If black people had greater trust in the police and therefore felt that they could report crimes that they have been the victim of, this would further break down the stereotypes officers have formed of black people. Importantly, the distinction made by this representative that officers are predominantly white does suggest that they set the tone for the stereotyping that officers who are not white adopt as there is “no marked difference between black and white in the force essentially”. Clearly, having greater numbers of black officers would be beneficial but from this evidence given to Macpherson it is clear this will not be effective on its own if the attitudes of officers already in the force are so strong that they influence others, including those who are black.

The recommendations Macpherson made on recruitment and retention also, as in Scarman’s recommendations, failed to fully address the fact that the problem was with low numbers of black officers, as Macpherson just specified that targets should be set for recruitment, progression and retention of minority ethnic staff. Police forces could recruit more people from every ethnic minority group, except for black people, and meet the targets set but they still will not have addressed the issue of low black representation.

Lammy was able to build meaningfully on this last point. While his Review did not address policing beyond arrests, he built on the legacy of Scarman and Macpherson reports to set targets for recruitment. His justification for this remains fundamentally the same: he positioned lack of representation as a key driver of the “trust deficit”. The inability to identify with actors in the criminal justice system who make decisions for BAME people, such as an overwhelmingly White judiciary and duty solicitors (who, even if diverse, are believed to be an extension of them and therefore “biased” in their legal advice) materialised in greater Not Guilty pleas which meant that, if convicted, it had a lengthening effect on any prison sentence. This was a key source of mistrust for Lammy, so recruitment featured heavily in his report. For example, in response to statistics showing that 20% of defendants appearing before courts in 2016 were from BAME backgrounds compared to just 11% of magistrates and 7% of court judges, he recommended that the Government set a clear, national target to achieve a representative judiciary and magistracy by 2025.

Regarding prisons, he highlights the lack of diversity in the prison workforce and suggests that the Government’s recruitment of 2,500 prison officers offers an opportunity to redress this. 14% target set, with public targets set for movement of these officers into leadership positions.

To engender trust, recruitment must not work in a vacuum. It is reductionist and too deterministic to suggest that disproportionality is due to offenders not being able to identify with the system. The explanation is more nuanced than this; efforts to recruit a more diverse workforce must also ensure that the entire workforce has the necessary cultural competence with which to carry out their duties.

### **Police complaint procedures and investigations**

A lack of confidence, from the public, in the police complaints and investigation procedures process was a recurring theme. The main issue, identified in Scarman’s report, which the

public had was the fact that it was police officers investigating other police officers and the public questioned the impartiality of this and felt the process was susceptible to being biased in favour of the police. Scarman suggest that an independent element to the investigation of complaints was essential. Ironically, when Lambeth Council conducted an inquiry into policing in the area, prior to the Brixton disorders, the police declined the offer to give evidence on the grounds that they questioned how impartial the inquiry was because some of its members had connections to organisations that historically had been critical of the police.

The Police Complaints Authority (PCA) came about as a consequence of the Scarman report, as it led to a new code for police behaviour being put forward in the Police and Criminal Evidence Act 1984, and the act created the independent Police Complaints Authority, in 1985, to address the low public confidence in the police. However, in the case of Stephen's murder, the PCA engaged the Kent Police to investigate complaints made against the MPS by Stephen's parents, prior to the Macpherson Inquiry. They found no evidence to support allegations of any racist conduct in the murder investigation, which Macpherson found to be an incomplete assessment. So one could argue that the Police Complaints Authority failed to restore public confidence.

Macpherson went a step further than Scarman and said that the majority view was that the whole complaints and investigation system should be independent, not just an element of it due to public unease towards investigations of one police service being conducted by another. As mentioned earlier in this report, the fact that the Barker Review, which was the internal investigation into the conduct of the Stephen Lawrence case, was misleading and inaccurate supports the argument that police investigating other officers is susceptible to bias.

Denman also explored the issue around lack of confidence in the complaints system, but from the perspective of members of staff within the CPS, as opposed to members of the public. Denman found that the majority of staff from underrepresented groups did not make complaints when they felt they had been discriminated against, and one of the reasons they gave for this was their lack of confidence in the internal complaints procedure. Denman recommended that the proposal for the external investigation of equal opportunities complaints should be implemented immediately. Clearly the recurring suggestion is that external, independent investigation of complaints is crucial.

Research conducted in 2014 by the Home Office into improving police integrity, looked at the role of the Independent Police Complaints Commission (IPCC), which was an organisation that oversaw the police complaints system in England and Wales from 2004 – 2018. They found, again, that independence is a key part in attempting to improve public confidence in the complaints system. Since 2018, the Independent Office for Police Conduct (IOPC) have overseen the police complaints system in England and Wales. Most complaints are still handled by the relevant police force, in their professional standards department, with just the most serious complaints - that could affect public confidence - being independently investigated by the IOPC. The IOPC run surveys to gain a better understanding of the public's perception of them, and one of the key findings was the confidence in the impartiality of the IOPC was high, except for amongst people from underrepresented groups. Sufficient changes have clearly not been made to improve confidence in the complaint system in the black community.

### **Rectifying gaps in the data**



Lammy's concerns at the glaring gaps in data form a central part of his Review and its recommendations. It is a theme to which his Review dedicates an entire chapter in his report. He expresses concern at "important blind spots" within data collection and recording which preclude our understanding of the extent of inequality within the criminal justice system. Although agencies are meeting their obligations to publish some data under the Public Sector Equality Duty, Lammy suggests that the existing suite of data published under does not provide enough information on particular religious and ethnic groups.

Lammy believed that data provides the evidence basis for reform, and that it is critical that data is published and shared. He points to gaps in data monitoring for Gypsy, Roma and Travellers (GRT); while only 0.1% of the population, they make up 5% of the male prison population. Similarly, there is very little data recorded for Muslims in the criminal justice systems. For example, in the youth justice system, where Lammy expressed particular concern, Hunter (2019) writes that the "particular nature and extent of the overrepresentation of looked after children is less clear as a result of insufficient official data".

Publishing more data revealing the points at which the most disproportionate outcomes, for Lammy, is an exercise which will inform the policy and reforms needed to tackle this disproportionality where the data shows it arises

### **Relative Rate Index (RRI)**

Lammy calls for a more sophisticated analysis of where the major points of disproportionality lie within the criminal justice system. He endorses the "Relative Rate Index", which is better illustrative of the disproportionality created at different points in the system. It isolates specific decisions and their impact on disproportionality, and provided a more robust analysis of where the key issues are and how these bear on each other as somebody goes through the criminal justice system, from arrest until probation.

### **Evaluation**

In assessing the impact of publishing more data, the concept of data governance - the processes that govern how data is used to effect change - is key. Lammy suggests that "real scrutiny comes when data is turned into insight", but gives no information as to what the processes and pathways look like between publication of a wider breadth of data, and the processes used to hold to account where the data shows evidence of bias. Data governance is the missing link between them.

Clinks' briefing on the Review terms the latter's reluctance to install any meaningful forms of data governance (the process by which the data will used to effect scrutiny).

#### **i) Probation**

One example where the risk of this is created is in the area of probation. In this area, Lammy concludes that

“[t]here is a lack of accountability for meeting the needs of those with protected characteristics.....The equality duty too often produces only a superficial, tick-box approach. In future, all Community Rehabilitation Companies (CRCs) should publish detailed information about outcomes for different ethnic and religious groups” (Lammy, 2017)

Yet, there is nothing to suggest that this recommendation is not just another box to tick. The meaning of what constitutes "detailed information" is not fully operationalised elsewhere in the report. How meaningful this will actually be to improving support for BAME prisoners and their experiences in the CJS remains to be seen.

ii) Implications for Lammy’s “explain or reform” principle

Analysing the shortcomings of this recommendations through the angle of Lammy’s “explain or reform” mantra is worthwhile too. This principle – later adopted by Government – states that if the causes of disproportionality at any point in the system cannot be explained, it must be reformed.

iii) **Parallels with other reports: Denman**

Reports that assess the effectiveness of publishing greater data make the same central point as Lammy above. For example, statistics collated as part of the Denman Report found that, while performance on race equality varies markedly across the 42 CPS Areas surveyed, there was no system or effective mechanism for holding all 42 Areas accountable for such performance, which the report recognised as key to securing improvement.

Even where there was oversight and scrutiny for race equality within the CPS, Denman found that these groups lacked the strategic coherence needed to make scrutiny effective and initiate sustained analysis and co-ordination of solutions to issues these groups identify.

iv) **Does openness with data always lead to accountability?**

Beyond the publication of extensive data across the criminal justice system, Lammy's report falls short of the necessary next step to ensure the data is used to ensure accountability. Learning lessons from Denman, then, requires effective and regular methods of scrutiny to use the data to drive meaningful activity.

The disparity here in these recommendations - comparing Denman to Lammy - suggests either a de-prioritisation of accountability, or a feeling that openness itself will lead to accountability. Lammy's philosophy of procedural fairness that underpins his report aligns him to the second point. However, the relationship between openness and accountability is not a deterministic relationship. The accountability Lammy wants may not flow from openness through rectifying gaps in the data, yet merely publishing the data is enough to satisfy his recommendations. This risks turning data publication into yet another box ticking exercise.

**Training and supervision**

Recommendations related to police officer training were made by both Macpherson and Scarman. Scarman found that the training arrangements for officers, with regard to resources and the amount of time dedicated to training, were inadequate. Scarman specifically raised a concern over the fact that young officers were allowed to exercise their powers after just 15 weeks of initial training in the MPS and 10 weeks in the training centres which served the provincial forces. Scarman also acknowledged that a lot of the criticisms made by the public about junior officers were related to when they were exercising their powers, particularly stop and search powers, as they lacked maturity and good judgement. As a result, Scarman recommended that training be given to officers, of Inspector and Sergeant Rank, related to their supervisory responsibilities.

The emphasis with Scarman's recommendations on training were to enable officers to gain a better understanding of the communities they serve and in particular what it is like to police an inner city, multi-racial society. These recommendations included: the minimum length of the initial training period for police recruits to be increased to six months; an officer's period on probation should include a period in a city area where ethnic minorities form a substantial proportion of the population; and training courses that develop the understanding of good community relations should be compulsory throughout a police officer's career up to, and including, the rank of superintendent.

The recommendations Macpherson made on training, aside from those dedicated to improving first aid training, were more direct about their link to racism. Macpherson criticised the lack of race awareness training officers were received, and highlighted that this was reflected in multiple officers thinking words such as "coloured" and "negro" were acceptable, and it was reflected in officers' lack of understanding that the investigation of a racially motivated crime had special features. Some of Macpherson's recommendations on training included: the training of family liaison officers must include race-awareness and cultural diversity training; there should be an immediate review of racism awareness training within police services to ensure there is a consistent strategy to deliver appropriate training within all police services; and police training and practical experience in the field of racism awareness and valuing cultural diversity should regularly be conducted at local level, and local minority ethnic community should be involved in such training and experience.

A key question that needs to be asked of police forces now is: **is the race awareness training police officers undertake sufficient at addressing institutional racism and breaking down stereotypes of black people?**

There are mixed feelings on how effective anti-racism training is, with psychological research suggesting that it is easy to change attitudes for a short period of time, but it becomes more challenging for this impact to last longer than a day as the attitudes are so deep-rooted (Lai et al, 2014). Some psychologists have questioned whether we can ever fully get rid of our biases, and so efforts are better placed looking at strategies to manage our behaviour when we recognise our biases influencing our thoughts and decisions.

Another concern raised about anti-racism training was that there is the danger that if stereotypes are normalised as implicit biases we all have then it could encourage others to refuse to take responsibility for prejudiced behaviour if they have been taught it is something beyond their control (Duguid and Thomas-Hunt, 2015). Macpherson's recommendation that

ethnic minority communities be involved in anti-racism training is backed up by psychologists who found that one of the most robust ways to reduce both implicit and explicit discrimination and change stereotypes towards people from certain communities is long-term social contact with those other communities as a part of daily life (Wen, 2020). It is clear that training modules on antiracism may not have a profound impact on breaking down stereotypes officers may have towards black people, but community interaction being incorporated into anti-racism training may be the crucial element.

Research conducted before the Macpherson Inquiry looked at factors that would make anti-racism training most effective. These included: working only with organisations that are committed; black trainers should be strongly represented in the training team (and this representation should include “different ethnic backgrounds, so as to reflect the diversity as well as the commonality of the black experience” (Luthra and Oakley, 1991)); training contracts should be organisational not personal (as opposed to having an element of voluntarism about participating in the training); black activists should be involved in training; and training should be monitored and evaluated.

### Moving away from the criminal justice system

Here, recommendations entailing a move away from the criminal justice involve a commitment to look deeper and act on the root causes of offending in a culturally competent sphere, adjudicating away from the discriminatory impacts of courts Lammy identifies elsewhere in his Review.

Nina Champion, Director of the Criminal Justice Alliance, told the Justice Select Committee in March 2019 that community involvement breaks down a "wall of silence" and dismantles the "element of mistrust" within the criminal justice system. (House of Commons Justice Select Committee, 2019)

CJS recommendations more widely are moving in this direction. Within the context of prison (about who Lammy also makes recommendations), Lord Farmer's 2018 Review of family ties in prisons has emphasised that responsibility must be seen to lie with families who

"are willing and able to engage with the rehabilitation process [...] [this way,] imprisoned men will have far less incentive and motivation to reform their ways. "  
(Farmer, 2018)

Community involvement in outcomes for an offender before release, Farmer argues, is key to resettlement. Indeed, the 2014 Joint Thematic Review by the prisons inspectorate and Ofsted (from which Farmer draws inspiration) concluded that, in the context of prison, "[a]n offender's family are the most effective resettlement agency' (HMIP, 2014)

The Lammy Review considered this within the purview of the youth justice system, for which he expresses special concern with in his Review. The proportion of underrepresented groups of youth prisoners has risen from 25% to 41% in the decade 2006-2016.

To tackle these concerning figures, Lammy draws various international comparisons for how such a departure from the CJS could look like. Lammy is the only review considered in this

piece that looks beyond the UK at international good practice, and is more willing than other reports in this piece to innovate outside the criminal justice system.

It makes recommendations here in three main ways.

### **i. Rangatahi courts**

Lammy recommends that youth offender panels are replaced with local justice panels. He takes direct inspiration from the Rangatahi courts in Maori communities, where local people with a direct stake in a young offender's life, such as teachers, contribute to hearings (Puffet, 2017).

A Rangatahi Court judge, interviewed as part of research by Toki (2018) notes that:

"[t]he best way to encourage [young offenders away from crime] change is to place the offender in a community of people who understand and recognise his or her feelings, but who also have the power and respect to alter those feelings."

### **ii) Restorative justice**

While not a novel or unique invention, an expansion of restorative justice approaches is preferred by Lammy, as it involves a sense of reparation or restoration to the victim or wider community.

According to Willis and Hoyle (2019), restorative justice describes processes used within rehabilitative context which

'provide offenders with the opportunity to account for their behaviour, to apologize to victims, and possibly to make amends by undertaking an activity that symbolically or materially restores the harm'.

Restorative justice 'allows offenders to take this accountability in a non-retributive environment that 'values healing, non-coercion and democratic participation'. It entails a process of 'community restoration' which sees the 'restoration of prior social relationships.'

### **iii) Diversion**

Diversion in criminal justice refers to 'any type of programme whose aim is to avoid formal processing of an offender by the CJS, offering an alternative to prosecution and imprisonment' (CordisBright, 2019) to preclude the entry of low-level criminal offenders into the correctional system'. (DeLisi and Conis, 2011). Diversion create 'off-ramps' (Tallon et. al, 2017)-away from formal criminal justice processing, channelling offenders instead to 'non-court institutions, community support services, and treatment programs' (Smith, 2020)

The idea here, for Lammy, is that if more BAME offenders can access turning points for the better, this will positively impact their offending trajectory, reduce their contact with the CJS, and reduce overall levels of disproportionality.

Deferred prosecution is centred on alleviating the negative impacts of structural factors and labelling. They incorporate understandings of 'historical, institutional, and cultural forces that inhibit or enable individual pathways' by addressing causes of offending behaviour insofar as they are rooted in such forces. In doing so, it effects meaningful "Turning Points" not only away from crime, but away from aspects of repressive structures that propagate mistrust in the system.

These programmes represented a shift away from the criminal justice system. While ensuring better outcomes by providing more holistic and individualised treatment as focused on structural factors, it does not do anything about the discriminatory outcomes in the Criminal Justice System.

Such moves away from formal criminal justice processing may also be explained by the social and political context. So far, reasons for non-implementation of recommendations has been explained through deficiencies in the recommendations themselves. But recommendations are made within a particular social and political context. A discussion of non-implementation is not complete without considering the impact of these wider systemic barriers that operate outside the report but act on its content, its recommendations, and, importantly, its implementation. This is discussed below.

### **Systemic Barriers**

Wider social attitudes of the time the reports were written, one could argue, influenced the direction of the report and also the portrayal of reports in the media.

Critics have said that then-Prime Minister Margaret Thatcher paid little attention to Scarman post-1981, and whilst Macpherson did bring about legislative reform, his report was subject to both police and media challenges since publication (Solomos, 1999; McLaughlin and Murji, 1999). It could be suggested that both faced challenges, in terms of acceptance, due to the societal attitudes towards racism, and stereotypes of black people, at the time.

It is notable that the earliest report, Scarman's in 1981, was the most defensive and complimentary of the police, as Scarman largely applauded the conduct of the police and said it was a testament to them that nobody was killed in the disorders. Some of the behaviour exhibited by the police was incredibly concerning, such as: throwing bottles/bricks back into the crowds; beating their truncheons on their shields and chanting; and the accusations that some officers were wearing National Front badges and this behaviour would almost certainly have been condemned in more recent times. One could argue that Scarman's report reflected his own biases and attitudes towards policing more than it did a robust investigation into the causes of the disorders, for example the phase of the inquiry that looked at underlying social conditions only lasted for six days and a large proportion of this was spent interviewing two senior police officers. Media articles at the time of the Macpherson report coming out also made the distinction between two very different social and political landscapes between 1981 and 1999, particularly with regard to Black representation. In the 1980s there were far fewer people from underrepresented groups in powerful positions compared to 1999, as well as in the police force; and in 1993 the Black Police Association was formed.

The media portrayals of both the Scarman and Macpherson reports also differed hugely, which could be argued to reflect societal attitudes at the time, with some research arguing that the Scarman and Macpherson reports “have framed the changing story of race relations in Britain” (Neal, 2003). The media reporting of the Scarman Report centred Lord Scarman as the headline with the majority of images used being Scarman holding a copy of the report (and in some cases neo-colonial images of Scarman walking through Brixton were used), whilst the content largely focussed on central government’s acceptance of the findings – despite us knowing now that the Thatcher administration did little to address the findings (Benyon and Solomos, 1986). Media coverage also, arguably, perpetuated stereotypes of black people through their contradictory messaging of how young black men were suffering more from deprivation juxtaposed against their consistent reminders of the “consequences of having a criminally inclined, volatile population living in urban Britain” (Neal, 2003). Coverage of the Scarman Report, as in the Scarman report itself, repeatedly used disease and sickness metaphors when discussing racism (examples of headlines include ‘Scarman tells of “Disease Threatening our Society’ and ‘Close up Special on the Disease That Threatens our Survival’), which reflects the extent of racialised social anxieties of the time and creates a sense of ambiguity about the cause of the disadvantage (Neal, 2003), which perhaps in turn alleviates blame from institutions such as the police.

The publication of the Macpherson Report generally got far more coverage than the Scarman Report, and was more focussed on the themes of grief, tragedy and a recognition of institutional racism, and it was the emotionalism of the media receptiveness, and a willingness to criticise the police, which marked a shift in the media reporting on race (Neal, 2003). Notably, the media reporting on the Macpherson Report focussed much more on the tragedy by giving William Macpherson a low visual profile and focussing on pictures of Stephen, the Lawrence family and Duwayne Brooks, which led to a common occurrence of people referring to the report as the Lawrence Report. This also marked a huge shift from the stereotypical depictions of black people as dangerous, and this was reinforced even more so by the sharing of images of the five white suspects and images of the police officers that resembled mugshots. Of course, not all publications or articles followed this, with some still seeking to reaffirm “British pride” and with some arguing Macpherson had gone too far, but generally speaking there was a marked difference in the approach the media took to publishing articles on the two reports (Neal, 2003).

However, it is important to recognise the temporary nature of the media’s responses to race issues, because less than a year after the widespread coverage of the Macpherson report, the response to the Parekh Report (which was a report into the state of multi-ethnic Britain which proposed ways of addressing racial discrimination and disadvantage) was given a hostile reception. This may reflect what was discussed earlier with regards to anti-racism training, in that a lot more work needs to be done to change biases long-term.

### **Other systemic barriers to meaningful reform**

#### **i) Social policy: austerity**

Austerity had led to funding cuts in all criminal justice agencies that have reduced their resources and increased pressure. The negative impact of lack of resources is addressed in older reports, long before austerity became Government policy. For example, the Macpherson report makes clear that the pressure on staff led to a worse service being provided to the Lawrence family.

Moreover, the Runnymede Trust observes that the impact of policy and legislation instituted in the backdrop of such funding cuts have seen key welfare and policy reforms with a highly racialised impact, which have been observed to have a 'particularly large impact for Black and Asian households'. (Runnymede Trust, 2012). Building on this, it is easy to see how this fuels reticence to commit to targets, as the Government did with Lammy in rejecting his targets for judicial representation

Austerity is only one feature, however; it may reflect wider ideological and structural factors which pertain to a creep towards managerialism, and a culture of efficiency and performance. Against this backdrop, it may be argued that the drive for efficiency and value for money at all costs has deprioritised interventions aimed at underrepresented groups. It is one which lacks appreciation of structural factors in favour of insular policies that drive results in efficiency that is not designed to ensure outcomes for underrepresented groups. This tension between managerialist forces and the needs of ethnic minorities is a theme endemic in most reports this piece considers.

## **ii) Managerialism and “the new penology”**

While managerialism is a generic term describing a move towards performance management, targets, and efficiency, the main output of managerialism within the criminal justice system can be understood as “the new penology”. This philosophy describes a shift which emerged in the 1980s, which 'require[d] individual practitioners to organise themselves as a response to targets, indicators, and evaluations'

For criminal justice, this has entailed a "conscious uncoupling of probation work from its social work values, which valued individuals and their capacity for change, in favour of targets for risk, public protection”.

This move has been seen most starkly in the context of probation, and the Transforming Rehabilitation programme Deering and Feilzer (2015) write

"Over the last 20 years, probation values have come under pressure from the government promoting its new agendas of punishment, public protection, risk, and enforcement".

This change in emphasis away from the purely rehabilitative content of probation has accelerated more recently and reached a peak with the part-privatisation of probation provision as part of the Transforming Rehabilitation programme.

## **Transforming Rehabilitation**

A March 2021 thematic inspection from the Probation Inspectorate (HMIP, 2021) found that the probation service's focus on racial equality has declined since Transforming



Rehabilitation reforms were introduced in 2014. They also found the service has no specific strategy for delivering activity to ethnic minority service users. Concerningly, in the 100 ethnic minority service users surveyed, there was little evidence that probation staff had spoken with service users about their ethnicity, culture, religion, and experiences of discrimination, or planned interventions that were responsive to these diversity factors.

A clear example of the focus on value for money within probation through its privatisation has deprioritised interventions for underrepresented groups. This is the consequence of 40 years of marketisation, and has, all along, created a fundamental part of the social context that ALL recommendations are made in. In the case of probation, clearly, it has had a markedly stifling effect.

### **The rise of risk in policymaking**

Ugwudike (2019) charts the course of a significant shift away from approaches that espoused empowerment to redress racialised inequalities and criminalisation toward strategies that concentrated resources on the 'risks' posed by particular communities, groups and individuals. She writes

'risk management and risk prediction technologies are key features of rehabilitative work in contemporary systems across several Western and non-Western jurisdictions.

She notes that by 2004/05 'the Government felt that they had discharged their responsibilities for implementing the measures arising from the Macpherson report [...] and wanted to demolish the CRE [Commission for Race Equality].

This period saw a reconfiguration of criminal justice practice to prioritise an efficient and cost-effective CJS through which risky populations could be identified, assessed, and managed.

Paterson-Young (2019) writes that current policy and practice in the youth justice field is not focused on the needs of young person, but on the perceived needs of wider society.

The need to exercise informal social control is an extension of the new penology, which was well underway by the time Scarman wrote his report. Reports like Scarman conflate 'Broken windows' policing with community policing, as both emphasise informal social control and underlying problems. This imprecision of language leads of "myth-making", and estimating the risk posed by people, instead of their needs. Within the new penology, there is no meaningful or sustained effort to get under the skin of structural factors in a way that can help recommendation implementation.

It is easy to see how the negative effects of such myth making makes the Black community the scapegoats to their own socio-structural conditions. The role of wider social attitudes, propagated through negative media portrayal, inflated the perceived risk posed by Black men. Academic research on media portrayals of Black young men is summarised below.

### **Media portrayal of young Black men**

This paper also posits that this may be exacerbated by media portrayals, which can act as conduits for negative stereotyping. In its role as transmitter, the media promotes and aggravates these myths in the way it portrays young Black men and boys.

Solanke (2019) writes "there emerges a picture of continued racialised criminal stereotyping and bias toward BAME people through the contemporary constructs of the 'gang', extremism and radicalisation, which have, arguably, inflated the (imagined) risk posed by particular groups and in turn, legitimises punitive criminal justice interventions"

Garland, writing in 2001 [soon after the Denman report] said that the shift towards a culture of control was further characterised by the emergence of "law and order" rhetoric conceptualised around a media ordained need to contain and manage 'risk' to 'protect the public'.

These sentiments may be argued to have allowed stereotyping to continue unabated. This is an argument borne out in evidence, notably, media bias.

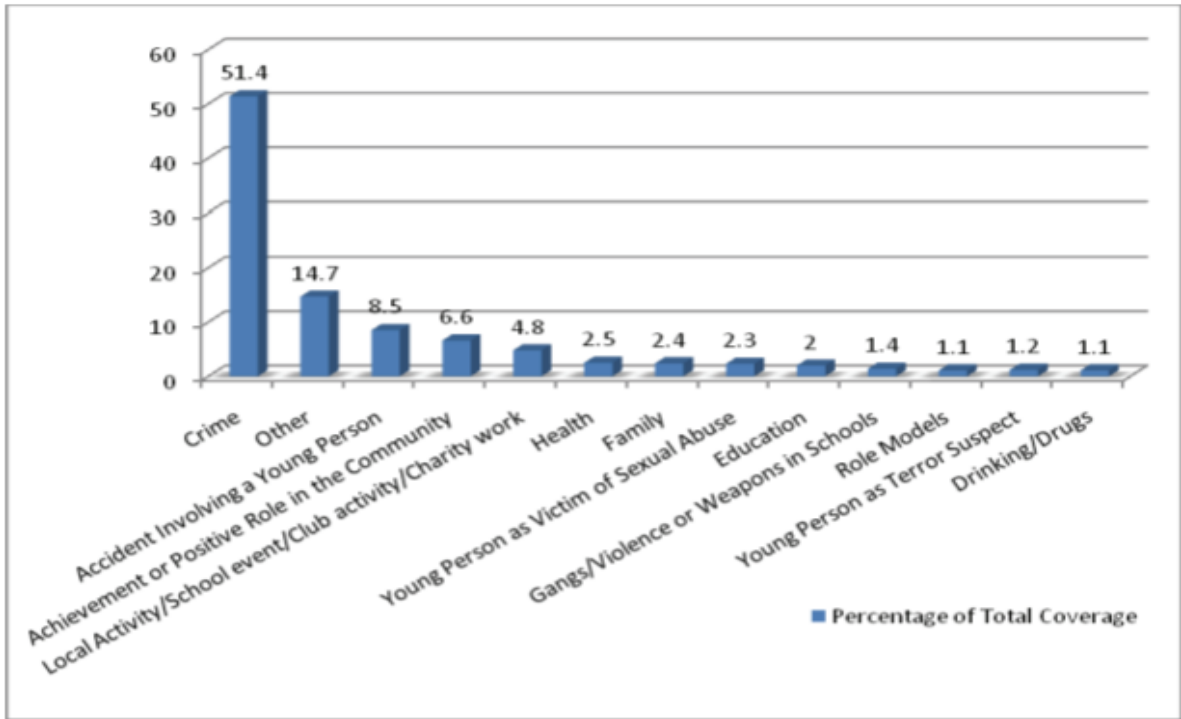
**i) REACH report into media portrayal**

A 2011 report by REACH commissioned by the Labour Government investigated media representations of Black men and boys. In their sample of 1,532 news items, 51.4% of their sample of 1,532 news items were centred on crime.

This category included (but was not limited to):

- discussions and critiques about policy relating to gun and knife crime as well as policy proposals on the subject, murders, violent and non-violent crimes;
- 'Controlling gangs/violence/weapons in schools' includes gang or other violence including controlling gangs or youth gang violence and weapons in schools
- 'Family' includes stories about parental irresponsibility or neglect;

**Graph 1.4: Subject matter of coverage of young men and boys in print and broadcast news (n=1532)**



This adjacency to negative news values such coverage creates for Black people places blame on Black people. It is an important feature of the environment. As the REACH project themselves conclude,

"Since the news media play a powerful role in shaping people’s understanding of crime and social issues, the overwhelming focus of young men and boys in this context could impact on the way they are viewed and treated by society".

Such media coverage, both in intensity of subject matter and sheer volume, communicates to Black people that structural factors is their fault alone. Labelling and stereotyping perpetuated through such a powerful medium, plainly, has deleterious effects on self-image of Black men.

As Robinson (1995) states:

"An unfortunate by-product of these conceptualisations is a tendency to perceive all members of specific ethnic groups as adhering to those 'alternative cultural values' deemed conducive to offending behaviour. This can lead to assumptions being made, often erroneously, about an individual's motivations and propensities simply because they belong to certain ethnic or religious groupings. Disadvantage, when combined with discrimination, not only limits access to opportunity but can also affect self-image if these negative beliefs become internalised.

Negative media portrayal contributes to what Solanke calls "hypervisibility in criminal justice:

"if Black criminality is all that can be seen, young Black people - of any gender - are more likely to default to that path" (Solanke, 2019)

While Solanke's analysis is slightly deterministic, "[i]nterventions based on these explanations have a tendency to decontextualise the lived experience of offenders and locate responsibility for change firmly with the individual". Media portrayal to the extent and intensity as pictured in the above study is damaging.

### **Managerialism: the effectiveness of targets without action**

For critical commentators, such as Bourne (2001) even 'changing the colour of the incumbent, however, does not necessarily change the colour of the policy'. Her concerns lie with the structures and cultures of organizations such as the police which allow operational racism in organizational practices, a concern exemplified in Macpherson's (1999) definition of institutional racism.

Importantly, target setting and league tables have shifted the focus of control from the state to the individual organisation.

### **Did Lammy "tone down" the racism debate?**

There is evidence that other features of the social context would have precluded Lammy from making a finding of IR within his review- He concludes that while explicit racial prejudice in Britain's criminal justice system is declining, implicit bias is increasing (Solanke, 2019). Richard Garside of the Centre for Crime and Justice Studies (2017) has argued that this toning down is palpable in Lammy, and will not be enough to effect the fundamental reform needed to implement recommendations:

"[a]t most, the argument might continue, his report highlights the need for some minor tweaks and changes – improved data collection and processes here, better training and staff diversity there – rather than fundamental reform."

As concluded earlier in the paper, recruitment targets alone will not change culture. Openness through rectifying data gaps will not lead to accountability that can be said to be rigorous or sustained. The social context has seeped into his report and, additionally due to its sheer breadth, has precluded any deeper joined-up systemic analysis that could have informed his recommendations beyond this.

The most glaring deficiency in Lammy's analysis is his exclusion of any analysis of the police. This would have been a good opportunity to build on Scarman and Macpherson in meaningful ways. We know that such of the existing disproportionalities that start with arrest, so it is concerning, therefore, that Lammy's analysis explicitly excluded the police. Whether this was a conscious political decision is a matter of conjecture, but it meant that the work of the Scarman and Macpherson reports has not been meaningfully developed on to the same level since, particularly because the structural factors he talks about are risk factors for police contact, and minimises the police's role as the gateway into the criminal justice system.

## **The homogenising nature of the term “BAME”**

Another factor is the potentially obscuring effect of the term ‘BAME’. According to Census data, the term Black, Asian, and Minority Ethnic describes around 14% of British people who do not identify as White (UK Census, 2011).

A breakdown of the UK's ethnic composition, as in 2011 Census statistics, is below:

- White is the ethnic group with which the majority of people identify – 48.2 million people (86.0% of the population).
- Within this group, the largest proportion of people identify themselves as being White British – 45.1 million (80.5%), followed by Any Other White – 2.5 million (4.4%).
- The next largest ethnic group with which people identify is Indian – 1.4 million people (2.5%), followed by Pakistani – 1.1 million (2.0%).
- The level of ethnic diversity in the UK continues to increase over time. All non-White groups in the UK have been growing since 2001.
- Projections by the University of Leeds predict large differences in the growth of ethnic minority groups to 2051, with the White British group growing by 4% but the BME share of the population expected to increase to 21%<sup>24</sup>.

Discussions around race and ethnicity in the UK have long centred on this White/non-White dichotomy, as historically, non-White people have banded together in the UK to fight race-based discrimination, such as under the political blackness movement.

### **i) Political Blackness as a precursor to “BAME”**

Black British scholar Kehinde Andrews (2016) explains that "In Britain, political Blackness grew out of the anti-racist movement and was a specific response to the problems of racism that people faced" at that time.

The debate around the right term "has not found a consensus among Britain's racial and ethnic minority communities and the question of racial categorisation and political identification continues to be deeply unsettled" (Ambikaipaker, 2018)

However, as Stuart Hall has pointed out, this definition of Black British has “essentialised Blackness as a fixed commodity, and ignored "the immense diversity and differentiation of the historical and cultural experience of black subjects".

BAME may be argued to be built on the legacy of political blackness. This piece argues that the term has had a homogenising effect on the public discussion, in the way that it groups together a wide variety of ethnicities as one distinct group. The term - not least because of its presence in Lammy - is ubiquitous in the policy context.

In its application to race and the criminal justice system, it is easy to see how the essentialising effect of the term "BAME" does not account for the different ways in which different ethnic minorities experience racism. Arguably, speaking of the 'BAME' experience is reductive in a way that forms a barrier to recommendation implementation as it obfuscates the structural reality that Black people live within. Going further than that, the term masks intra-group differences, and fails to recognise the importance of intersectionality, which considers how gender and nationality operate within this "BAME" level to make experiences within criminal justice even more different between groups. This may, like the political and social backdrop, also work to deprioritise structural factors.

Hough (2019) points out that "offenders and their circumstances constitute many disparate scenarios, contexts and profiles. The tendency of successive government reports and reviews – however well-intentioned – as a default, perceive these varying contexts as equivalent, not as cases where several individual factors are at play".

Ugwudike (2019) even suggests that the homogenising effect of the term "BAME" suggests that the needs of all BAME offenders are the same, which is arguably another form of oppression. BAME may also be an issue for the following reasons:

- **It undermines other recommendations**

"BAME" also has the potential to undermine recommendations where Lammy calls for more specificity and breadth within the data to rectify blind spots within it. Under the heading of BAME, data will never be specific enough, even where gaps along the BAME categorisation are fixed.

- **It limits critical understanding of the Black experience**

Robertson and Wainwright criticise the little critical understanding of the specific experiences of desistance by young Black men.

There has been limited qualitative research of Black boys' and young men's experiences with the justice system in England and Wales. In particular, there is a lack of evidence on their experiences with sentencing and courts. What is known tends to focus on Black, Asian, and minority ethnic and/or Muslim men's experiences more generally. A lack of critical understanding of the specific experiences of desistance by young Black men has been criticised in the literature.

- **BAME recruitment targets may conceal disparities within groups**

Lammy's targets all relate to BAME representation. This creates a situation where, if recruits in this target were mainly Indian, Black people and other non-Indian underrepresented groups would still be underrepresented in recruitment, despite the "BAME" target being fulfilled. It is easy to see how this could then be used to evade scrutiny by Government and criminal justice institutions. More locally, this picture becomes even starker. Regarding police recruitment, that occurring under WMP's Uplift programme only recruited 10 Black officers, despite meeting its diversity targets for the ethnic makeup of those recruited through the programme.

Perhaps the insistence on BAME, from a purely political perspective, is by design. Rather pessimistically, Garside (2017) argues that

"A Prime Minister keen to show a commitment to tackling racism in the criminal justice system, while minimising the risk of having to deal with politically toxic findings, might well set up a review such as the one just completed by David Lammy."

The implication here is that commissioning a review has become the new marker for progress, with the implementation of recommendations being demoted to second-order issues for other agencies. This must not become the norm.

## **Conclusion**

This narrative piece was completed on the same day the Government released the “Sewell Report”, on 31 March 2021.

This report sits in stark contrast with the rest of the reports; it is a policy shift from a Government keen to move past the strength of the institutional racism label in previous label and look elsewhere for drivers of disproportionality, such as an increased focus on the structural drivers of mistrust and disproportionality.

Rightly, the COVID-19 pandemic has illustrated the major contribution structural factors make in increasing risk to the virus, and the increased awareness and appreciation within policy circles has been notable. But we must be careful not to underestimate or disregard the importance of institutional factors. It is naïve to believe that Lammy’s trust deficit issues have been completely fixed in the four years since he published his Review. We must be careful that reports are not commissioned as part of a political legacy or commissioned to be tied to a moment in time – be it an event, a murder, a riot - with no drive attached to it for longer-term impact required to deal with the deep-rooted systemic issues this piece has outlined and analysed.

In the Denman report, it was lack of vigilance - not overt racism - that was the key driver of racism and mistrust. Sadly, this 20-year old observation continues to be a powerful parable for the findings in today’s report. As this piece has shown, many themes are recurring and there exist real structural barriers to their implementation. For real, proactive change, Government and other policymakers must be vigilant and work to implement the findings in key reports within the last 40 years. Mistrust is still palpably high, and will stay high unless lessons are learned from previous reports.

## **Bibliography**

- Ambikaipaker M., 'Political Blackness in Multiracial Britain' (University of Pennsylvania Press 2018)
- Amnesty International. (2018) 'Inside the Matrix.' <<https://www.amnesty.org.uk/press-releases/met-police-using-racially-discriminatory-gangs-matrix-database>> (accessed on 17 December 2020).
- Andrews K. (2016). 'The Problem of Political Blackness: Lessons from the Black Supplementary School Movement'. 39(11) *Ethnic and Racial Studies* 2060, 2064).
- BBC, 'Is it possible to rid police of bias?' (28th August 2021)  
<<https://www.bbc.com/future/article/20200827-is-it-possible-to-rid-police-officers-of-bias>>
- Benyon, J. and Solomos, J. (1986), *The Roots of Urban Unrest*, London: Pergamon Press
- Blake, N. (1981). *The police, the law and the people*. London: Haldane Society of Socialist Lawyers.
- Bourne J., 'The life and times of institutional racism' (2001). 43 (2) *Race & Class* 1
- Cabinet Office, *Race Disparity Audit Summary Findings from the Ethnicity Facts and Figures website*, October 2017
- Carmichael, S., Ture, K., & Hamilton, C. V. (1992). *Black power: The politics of liberation in America*. Vintage.
- Centre for Crime and Justice, 'Racial bias and the problem of policing' (2017)  
<<https://www.crimeandjustice.org.uk/resources/racial-bias-and-problem-policing>> (accessed 12 February 2021)
- CordisBright, 'What works in delivering court diversion and deferred prosecution schemes' (CordisBright 2019) < <https://cordisbright.co.uk/admin/resources/10-evidence-reviews-diversion-and-deferred-prosecution.pdf>> accessed 20 March 2021
- Crown Prosecution, 'The Code for Crown Prosecutors' (2018)
- Deering, J. and Feilzer, M., *Privatising Probation: Is Transforming Rehabilitation the End of the Probation Ideal?* (Bristol: Policy Press 2015)
- DeLisi, M. and Conis, P J., *American Corrections: Theory, Research, Policy, and Practice* (Jones and Bartlett Publishers 2011) 181



- Denman, S., Race discrimination in the Crown Prosecution Service – Final Report (July 2001)
- Dingwall, G. and Harding, C., 'Diversion in the Criminal Process' (Sweet and Maxwell 1998)
- Duguid, M. M., & Thomas-Hunt, M. C. (2015). Condoning stereotyping? How awareness of stereotyping prevalence impacts expression of stereotypes. *Journal of Applied Psychology*, 100(2), 343.
- Farmer, M. 'The Farmer Review: The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime' (2018).
- Gov.uk, The Lammy review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System, September 2017)
- Hall S., 'New Ethnicities' in David Morley and Kuan-Hsing Chen (eds), 'Critical dialogues in cultural studies' (Routledge 1996"
- Her Majesty's Crown Prosecution Service Inspectorate (2006), 'Equalities Driving Justice - A Report on the Thematic Review of Equality and Diversity in Employment Practice in the Crown Prosecution Service' <<https://www.justiceinspectrates.gov.uk/crown-prosecution-service/wp-content/uploads/sites/3/2014/04/EDJNov06ExecSum.pdf>> (accessed 28 March 2021)
- HMI Probation (2021), 'Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff' <<https://www.justiceinspectrates.gov.uk/hmiprobation/inspections/race-equality-in-probation/>> accessed 14 February 2021
- Home Office, Windrush Lessons Learned Review: independent review conducted by Wendy Williams, HC 93, March 2020
- Hooks, B. (2004). *We real cool: Black men and masculinity*. Psychology Press.
- Hough, C V., 'Post-crash austerity, geo-political turmoil and the Criminal Justice System'. Ideas for a critical criminological approach that identifies the current challenges to the Criminal Justice Sector' <http://clou.uclan.ac.uk/21966/1/Hough%20C.V.%20%282017%29%20Post-crash%20austerity.pdf> (accessed 13 March 2021)
- Independent Office for Police Conduct, 'Public confidence and engagement' <<https://www.policeconduct.gov.uk/research-and-learning/statistics/public-confidence-and-engagement>>
- Commission on Racial Equality, 'The Crown Prosecution Service, Croydon Branch: Report of a Formal Investigation' (2001)

- Johnson, B. (14 June 2020) (London, Telegraph)  
 <<https://www.telegraph.co.uk/politics/2020/06/14/rather-tear-people-should-build-others/>>
- Lai, C. K., Marini, M., Lehr, S. A., Cerruti, C., Shin, J. E. L., Joy-Gaba, J. A., ... & Nosek, B. A. (2014). Reducing implicit racial preferences: I. A comparative investigation of 17 interventions. *Journal of Experimental Psychology: General*, 143(4), 1765.
- Law, I. (2015). Scarman Report, The. *The Wiley Blackwell Encyclopaedia of Race, Ethnicity, and Nationalism*, 1-2.
- Luthra, M., & Oakley, R. (1991). Combating racism through training: A review of approaches to race training in organisations.
- Macpherson, W. (1999), The Stephen Lawrence Inquiry, London: Home Office.
- McLaughlin, E. and Murji, K. (2000), 'After the Stephen Lawrence Report', *Critical Social Policy*, 19: 3, 371–85.
- Moore, K., Jewell, J., Cushion, J. (2011). 'Media representations of black young men and boys' <<http://orca.cf.ac.uk/28559/>> (accessed 10 March 2021)
- Morgan, J. D., De Marco. A. C., LaForett, D. R., Oh, S., Ayankoya, B., Morgan. W., Franco, X., & FPG's Race, Culture, and Ethnicity Committee. (2018). What Racism Looks Like: An Infographic. Frank Porter Graham Child Development Institute, University of North Carolina at Chapel Hill.
- Motz A., Dennis M. and Aiyegbusi A., 'Invisible Trauma: Women, Difference and the Criminal Justice System (Routledge 2020) 78
- Nagin, D. and Paternoster, R. (2000), 'Population Heterogeneity and State Dependence: State of the Evidence and Directions for Future Research' 16(2) *Journal of Quantitative Criminology* 117, 127
- Neal, S. (2003). The Scarman Report, the Macpherson Report and the media: how newspapers respond to race-centred social policy interventions. *Journal of Social Policy*, 32(1), 55-74.
- Nuno, L E. and Morrow W J. (2020), 'Assessing the process-based model of regulation within a jail setting: arrestees' perceptions of procedural justice, trust and obligation to obey' *Journal of Crime and Justice* <<https://www.tandfonline.com/doi/abs/10.1080/0735648X.2020.1722727>> accessed 14 January 2020
- Office for National Statistics, 2011 Census aggregate data. UK Data Service (Edition: June 2016). DOI: <http://dx.doi.org/10.5257/census/aggregate-2011-1>

- Pamela Ugwu-dike, 'Applications of risk prediction technologies in criminal justice: the nexus of race and digitized control' in Pamela Ugwu-dike, Hannah Graham, Fergus McNeill, Peter Raynor, Faye S Taxman and Chris Trotter, *The Routledge Companion to Rehabilitative Work in Criminal Justice* (Routledge 2019) 56
- Paterson-Young C. (2019), 'Youth Justice: The Impact of Policy on Current Practice', Springer
- Puffett, N. (2017), 'Plan to tackle disproportionality' 14 *Children and Young People Now* 12
- Radburn, M. and Stott, C. (2019), 'The social psychological processes of 'procedural justice': Concepts, critiques and opportunities' 19(4) *Criminology and Criminal Justice* 421
- Robertson, L. and Wainwright, J P., 'Black Boys' and Young Men's Experiences with Criminal Justice and Desistance in England and Wales <<https://www.mdpi.com/2313-5778/4/2/50>> (accessed 13 March 2021)
- Robinson, L. (2001) 'Race, Communication and the Caring Professions, Buckingham: Open University Press
- Runnymede Trust, *Intersecting Inequalities: The impact of austerity on Black and Minority Ethnic Women in the UK* (Runnymede Trust 2012)
- Scarman, L. (1982). *The Scarman Report: The Brixton Disorders 10-12 April 1981*. London: Pelican Books.
- Sim, J. (1982). Scarman: the police counter-attack. *Socialist Register*, 19.
- Smith, R., 'Diversion, Rights and Social Justice' (2020) *Youth Justice* <<https://doi.org/10.1177/1473225420902845>> accessed 15 March 2021
- Solanke, I. (2018), 'The stigma of being Black in Britain' 25(1) *Global Studies in Culture and Power* 49
- Solomos, J. (1999), 'Social Research and the Stephen Lawrence Inquiry', *Sociological Research Online*, 4, 1.
- Sunshine, J. and Tyler, T. (2003), 'The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing' 37(3) *Law & Society Review* 513, 515
- Tallon, J A., Spadafore, J C., Labriola M., 'Creating Off-Ramps: Lessons Learned from Police-led Diversion Programmes' (2017). 11(2) *Policing: A Journal of Policy and Practice* 214, 216
- The Guardian, 'Facing the ugly facts' (17 Feb 1999) <<https://www.theguardian.com/society/1999/feb/17/guardiansocietysupplement4>>

Toki, V. (2018), 'Indigenous Courts, Self-Determination and Criminal Justice'. Taylor and Francis  
Williams P. and Clarke B., 'The Black Criminal Other as an Object of Social Control' (2018) 7 Social  
Sciences 234, 235.

Williams, P. and Durrance P., 'Resisting Effective Approaches for BAME Offenders in England and  
Wales: The Triumph of Inertia' in Pamela Ugwudike, Peter Raynor and Jill Raynor (eds),  
*Evidence-Based Skills in Criminal Justice: International Research on Supporting  
Rehabilitation and Desistance* (Policy Press 2019) 377

Willis, R. and Hoyle, C., 'The Good, The Bad, and The Street: Does 'street culture' affect offender  
communication and reception in restorative justice?' (2019).  
<[https://journals.sagepub.com/doi/full/10.1177/1477370819887517?casa\\_token=il9O6YijatIAAAAA%3AtzS4UKHLCE84NL2qYksQvtGTz75ZKA\\_5SXchO2zCnSstqxkoqFhYZWJs3Ovrs4iaicJszm6fEqg](https://journals.sagepub.com/doi/full/10.1177/1477370819887517?casa_token=il9O6YijatIAAAAA%3AtzS4UKHLCE84NL2qYksQvtGTz75ZKA_5SXchO2zCnSstqxkoqFhYZWJs3Ovrs4iaicJszm6fEqg)> accessed 29 March 2021