



Ministry  
of Justice

The Right Honourable  
**Robert Buckland QC MP**  
Lord Chancellor & Secretary of  
State for Justice

**Nina Champion**

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**MoJ ref:** ADR85484

12 April 2021

Dear Nina,

**THE SENTENCING WHITE PAPER: EQUALITIES**

Thank you for your follow-up letter regarding our Sentencing White Paper, *A Smarter Approach to Sentencing*. I am grateful to the Criminal Justice Alliance's member organisations and yourself for your comments and responses in relation to the likely equalities impacts of our proposals.

Both the White Paper and the overarching equality statement that was published alongside it showed that the outcomes, experiences and perceptions of BAME individuals in the criminal justice system are still likely to be different to those who are White. Our work to consider the over-representation of BAME groups in the existing offender population is ongoing. One way we do this is, as you will know, is by showing transparency in the way we have paid 'due regard' to the Public Sector Equality Duty (PSED) by undertaking equality impact assessments. Another way we consider over-representation is through the detailed feedback we have given on progress on individual recommendations from the Lammy Review and the publication of datasets recording ethnicity. As you know, the Government has firmly stated that we wish to see race disparity, wherever it appears, directly addressed.

The equality statement we published in September included the ways in which we will consider and seek to mitigate the potentially adverse impacts of some of the White Paper's measures for BAME offenders, including out of court disposals and problem-solving courts. However, I would like to share with you the additional equalities considerations that the Ministry of Justice undertook when developing these policies for the White Paper and legislation by the way of supporting equalities statements (Annexes B-F) which give some more detail as to how we have considered the PSED. In addition, at Annex A you will find responses to the specific concerns raised in your letter. I hope that these will provide you with the information your members felt was missing from the overarching statement, which provided a summary of the White Paper's equalities considerations.

I am aware of the ongoing nature of the PSED and our obligation to consider the equalities impacts of the proposals as they develop and are implemented in light of any new evidence. I'm sure you will have seen that an updated overarching equality assessment of the impacts of the sentencing measures was published alongside the Police, Crime, Sentencing and Courts Bill on 9 March.

When the Government responded to the Lammy Review, it also created a senior-level board – the Race and Ethnicity Board, chaired by a Director General – to monitor progress and hold to account those who were responsible for carrying out recommendations within their policy or operational area. This work is likely to be boosted shortly by the submission of the independent Commission on Race and Ethnic Disparities’ report to the Prime Minister, which will include an explicit focus on criminal justice.

I understand you recently met my officials to discuss the sentencing measures further. We welcome your views in this area. The Police, Crime, Sentencing and Courts Bill has now passed its Second Reading in the Commons and will be the subject of scrutiny in the months ahead.

I have noted your letter addressed to the Prime Minister, dated 15<sup>th</sup> March. We will respond to this in due course.

Yours sincerely

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly slanted style.

**RT HON ROBERT BUCKLAND QC MP**

## Annex A: Sentencing White Paper Equalities Impacts

This annex provides responses to the specific concerns raised by the Criminal Justice Alliance regarding the impacts on BAME individuals of five of its proposals.

### Adult Sentencing

- The White Paper aims to create a smarter, more nuanced approach to sentencing. Those offenders who commit the most serious crimes must be given sentences that give the public, and victims, confidence in the system and the knowledge that justice has been done. However, we must also give offenders a fair start on the road to rehabilitation, and the proposals set out in the White Paper will give the criminal justice system more tools to identify and address individual needs.
- A number of the proposals in the White Paper will systematically increase opportunities for earlier diversion and out of court disposal. Seeking better information on individuals and making it available to sentencers through pre-sentence reports reduces the risk of individuals being stereotyped. In addition, the White Paper's proposals on criminal records will reduce the barriers to employment; a problem faced to a greater extent by some ethnic minority communities.
- However, we know that there is an over-representation of certain protected characteristics in both custodial and community settings as compared to the general population, including those who are Black or Black British, and those who are from a mixed ethnic group or Muslim. The demographics of the existing cohort mean that certain changes the White Paper announced will affect certain groups of people more than others.
- To address this to date we have focused on bringing a more co-ordinated and strategic response to race disparity, adding to and giving greater impetus to pre-existing initiatives. This has ranged from focusing on diversity in recruitment of front-line staff in prison and the probation service, to direct changes in day-to-day practice. We have also created revised practice guidance, particularly for assessment or decision-making stages of processes, such as the prosecution or reports containing sentencing proposals.
- The independent Commission on Race and Ethnic Disparities was announced in June 2020 and is expected to submit its report to the Prime Minister shortly. The date that the report will be published is not currently known as is at the Commission's discretion, but it will include an explicit focus on criminal justice and the Chair of the Youth Justice Board for England and Wales sits on the Commission. The report's criminal justice workstream will look at: causes of crime – with a focus on serious violence, stop and search, building trust in the police in BAME Communities, police workforce diversity, retention and internal misconduct proceedings, Out of Court Disposal (OCCD) and victims.

*Release points for offenders who have committed a serious violent or sexual offence and been sentenced to a custodial term of 4-7 years*

- The Sentencing White Paper included a number of measures to fulfil the government's manifesto commitment to introduce tougher sentencing and end automatic halfway release from prison for serious crimes.
- The changes to release for certain serious violent and sexual offenders ensure the most serious violent and sexual offenders given a longer standard determinate sentence (SDS) spend two-thirds of their sentence in custody. This will affect only the most serious offences that carry a maximum penalty of a life sentence, such as rape, manslaughter and grievous bodily harm, but where a judge instead imposes a SDS of 4 years or longer. This aligns the point of release for this cohort with those serving extended determinate sentences (EDS) of any length and those convicted of the same types of offences serving a SDS of 7 years or more (who already have a two-thirds earliest point of release).
- Removing this inconsistency and requiring those convicted of the most serious types of offences to serve a longer proportion of their sentence in custody is intended to give greater confidence to victims of such crimes that offenders will spend time in prison that properly reflects the gravity of

their offending. It is the nature of the offence and the seriousness of their offending, reflected in the sentence they receive, that determines whether the above change will apply. No offender will be treated less favourably in relation to any protected characteristic.

#### *Minimum terms for repeat offenders*

- The intention here is not to introduce any new mandatory minimum sentences for the commission of certain repeat offences. The law already provides minimum custodial sentences for offenders who commit certain offences of a serious nature; these provisions apply equally to those who commit these offences irrespective of their characteristics. As previously mentioned, these minimum sentences are not technically mandatory, they are a mandatory consideration that the court must make before passing a sentence. The proposal in the White Paper is to amend the existing criteria for courts to depart from giving the minimum sentence for these serious crimes to ensure it only occurs in exceptional cases. Judicial discretion to depart from the minimum is retained, as we recognise this will not be appropriate in all cases.
- While we recognise that certain characteristics are over-represented amongst those who are convicted of these offences, it is right to ensure that offenders receive custodial sentences that reflect the severity of their crime and offending history.
- The Sentencing Council include a reference to the Equal Treatment Bench Book across all of its sentencing guidelines. This gives detailed information for judges and magistrates on fair treatment and disparity of outcomes for different groups in the criminal justice system. Additionally, to raise awareness amongst sentencers, where there is sufficient evidence of disparities in sentencing outcomes for certain offences the Council is now including tailored references within offence-specific guidelines – for example, for drugs offences and firearms offences.

#### *Simplification of the Out-of-Court-disposals framework*

- Out-of-court-disposals are sanctions which allow the Police to deal swiftly, proportionately and appropriately with lower-level offending without recourse to the courts. As they are a diversion from prosecution, an admission is required for an offence to be disposed of in this way. This is an important safeguard included in the legislation to ensure fairness to those offered an out-of-court-disposal and to ensure that the offender accepts guilt before accepting a caution and the potential finalisation of the case at that point.
- Most of the existing statutory out-of-court-disposals currently in use similarly rely on an admission of guilt, and this will not change in the proposed new statutory framework.
- Penalty Notices for Disorder are an example of an out-of-court-disposal currently in use where no admission is required. However, this disposal includes a choice whereby the person offered this disposal can either pay the penalty or request that the matter is dealt with by a court.
- The giving of cautions to those who admit guilt is engrained in the existing statutory out-of-court-disposal framework (and associated legislation such as the Police Act 1997 which sets out the criminal record checking regime, PACE and the Rehabilitation of Offenders Act, which provides for when convictions and cautions become spent and Article 6 HRA), and is a key feature in those cases where there is no mechanism to elect for a case to be heard in court.
- We recognise BAME individuals may not benefit from these statutory disposals in the same way as white offenders, and therefore, as stated in our prior response, we are piloting the Chance to Change programme in two forces to test the effectiveness of deferred prosecution. This acts in a similar way to an out-of-court-disposal, in that the offender is offered a diversion from Court, and in the case of this pilot an admission is not required in order to be eligible. In these pilots the offender is given the opportunity to decline and have their case heard in court.
- We are also engaging with the NPCC on the new legislation, to discuss the retention of the use of the existing non-statutory disposal, namely Community Resolutions, for lower end offences, which do not require a formal admission of guilt, but rather an acceptance of responsibility. These do not

carry the implications of formal OOCDS, but can be an effective tool, particularly for swift intervention for first time offenders in suitable cases.

### *The power to refer potentially dangerous offenders to the Parole Board*

- The purpose of the power to detain an offender beyond their automatic release point is to protect the public from harm. This is by enabling an offender serving a standard determinate sentence who is assessed as posing a significant danger to the public to be referred to the Parole Board for review – and where necessary – continuing to hold them potentially until the end of their sentence.
- We anticipate this power will be used rarely, and only if the Secretary of State has grounds to believe that an offender would pose a significant risk of serious harm to the public if released early. That risk of serious harm may be in the form of terrorist risk, or other serious violent or sexual offending. In those rare cases, the Secretary of State will be able to refer their case to the Parole Board – and it will be for the Board to consider whether the offender is safe to be released before they have served their full sentence in prison.
- As we have publicly stated, this power will not be used to keep anyone detained due to their religious beliefs. It is not specifically designed to prevent early release where an offender has become ‘radicalised’. It is instead intended to be used in rare cases where the offender poses a significant risk of serious harm to the public or a national security threat. As such, we do not anticipate that any faith-based equalities issues will arise as a result of this power.
- We will ensure that the threshold that will apply in order for the power to be used, the safeguards needed in the process, and the Parole Board test are clear on the face of the Bill. It will be accompanied by operational guidance to underpin the legislation, to ensure it is not used inappropriately or to target particular groups. We will be happy to discuss the detail further as the legislation is introduced and progresses through Parliament.

### **Youth sentencing**

- The White Paper aims to provide the court with simpler, more flexible sentencing options and we believe that, wherever possible, children should be diverted from custody. We want people to have confidence in a justice system that is fair and open - one where no person suffers discrimination of any sort.
- The number of Black, Asian and minority ethnic children entering the youth justice system for the first time has fallen by 76% since December 2009 (10,036 to 2,447 in December 2019), but we recognise and absolutely share concerns about the changing proportions within the youth justice system by ethnicity.
- We are working across government to tackle the deep-rooted causes of BAME children’s over-representation in the criminal justice system. There’s no quick fix to tackling the deep-rooted racial disparities in the criminal justice system but Government investment in education and early intervention will help, along with action to support practical work on diversion and better data for front line justice services.
- We continue to prioritise the understanding and tackling of disproportionality within the youth justice system. This is why we have recently;
  - Provided the tools and data to help frontline youth justice services to understand the needs of ethnic minority children.
  - Worked with the Magistrates’ Association to build awareness of disproportionality
  - Secured over £1m in funding to use physical activity and trauma-informed practice to improve outcomes for 11,000 ethnic minority children at risk of entering the criminal justice system.
  - Reviewed each quarter the Youth Custody Service (YCS) Diversity and Inclusion Action Plan which includes efforts on workforce diversity in both recruitment and progression and placing a focus on capturing the voices of children in setting YCS culture. In addition to effective practice briefings, training on cultural intelligence and best practice is being developed.

- The proposals in the White Paper also form one part of a more significant piece of work to review the current use of remand for children, which includes a strategic aim to reduce the over-representation of Black, Asian and Ethnic Minority children being remanded to custody by understanding and addressing disparities in the process. Research into the drivers of ethnic disproportionality in remand and sentencing outcomes has recently been published the Youth Justice Board and will help inform this review.