Youth Crime briefing
Youth offending teams, race and justice – after the watershed (Part One)

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Introduction

This briefing paper is prompted by the Race Relations (Amendment) Act 2000 which came into force on 1st April 2001 and the Stephen Lawrence Inquiry Report, published in February 1999. Part One covers the legislative framework underpinning race relations and equal opportunity, including a substantial collection of facts and statistics highlighting the importance of this issue to all our work. Part two (to be published shortly) will be practice focussed, covering strategic, operational and practice issues.

Commenting on the Stephen Lawrence Inquiry Report, the Home Secretary stated on 24 February 1999:

‘I want this report to serve as a watershed in our attitudes to racism. I want it to act as a catalyst to permanent and irrevocable change, not just across our public services, but across the whole of our society. This report does not place a responsibility on someone else. It places a responsibility on each one of us’.

This quote is significant for two reasons. Firstly, it emphasises our individual responsibilities to tackle racism. Secondly, it should warn us not to let the recommendations suffer a similar fate to Lord Scarman’s report. (Scarman L. 1981: The Sacman Report; the Brixton Disturbances) Despite its promise, this report was largely overlooked in terms of bringing about significant changes and whilst there have been many developments since then, the similarities between some of the Scarman and Lawrence findings are startling and extremely disheartening.

All available statistics continue to demonstrate the over representation of black people at all points in the criminal and youth justice systems, along with similar over representation of black young people within the welfare and ‘looked after’ systems. (see below)

Definitions

The following are taken from the Stephen Lawrence Inquiry report:

Racism

In general terms this consists of conduct or words or practices which advantage or disadvantage people because of their colour, culture or ethnic origin. In its more subtle form it is as damaging as in its overt form.

Institutional racism

This is the collective failure of an organisation to provide a
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 does not mean that all the individuals in an organisation are racist and is not limited to police services, but applies to all agencies in the criminal justice system. The report states: 'It is incumbent upon every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities'.

Responsibility

There is a striking and inescapable need to demonstrate fairness, not just by police services, but across the criminal justice system as a whole, in order to generate trust and confidence within minority ethnic communities, whose members undoubtedly perceive themselves to be discriminated against by 'the system'. Just as justice needs to be 'seen to be done' so fairness must be 'seen to be demonstrated'. Recommendation 1 of the report states that this needs to be done in order to 'increase trust and confidence in policing amongst minority ethnic communities'. This should be applied to the entire criminal justice system and the services it provides for people from minority communities as victims, witnesses, suspects, offenders and professional staff.

Direct racial discrimination

This occurs when you are able to show that you have been treated less favourably on racial grounds than others in similar circumstances.

Indirect racial discrimination

This occurs when you or people from your racial group are less likely to be able to comply with a requirement or condition which applies to everyone but which cannot be justified other than on racial grounds.

Victimisation

This has a special legal meaning in the Race Relations Act. It occurs if you are treated less favourably because you have complained about racial discrimination or supported someone else who has.

Statistics and monitoring data

- Of the UK's 56 million population, 3.2 million (6%) are from racial minorities. Estimates from the Labour Force Survey indicate that of the population aged over 10 in England and Wales, 2% were of black ethnic origin, 3% of Asian origin and 1% 'other' non-white ethnic groups.
- Black people are five times more likely to be stopped and searched than white people relative to the resident population.
- Of arrested white people, 16% are cautioned compared with 11% of arrested black people.
- Of the male prison population, 18% are from minority ethnic groups (10% excluding foreign national prisoners), 25% of the female prison population (10% excluding foreign national prisoners). Black prisoners tended to be younger and serving longer sentences.
- 44% of black and Asian defendants are acquitted in crown courts compared with 35% of white defendants.
- 19% of homicide victims are from minority ethnic groups. No suspect is identified in 28% of homicides involving black victims compared with 11% of cases involving white victims.
- The recording of racist incidents by the police increased by 107% to 47,810 in 1999/00.
- During the first full year of recording for the new racially aggravated offences 21,750 offences were recorded, of which one third were detected. 3,815 defendants were prosecuted for these offences and 1,073 convicted at magistrates' courts and 990 committed for trial at crown court.
- Minority ethnic employees are under-represented in the police service, prison service and in senior positions in all criminal justice agencies.
(The above are summarised from the main findings from the 2000 Home Office Report 'Statistics on Race and the Criminal Justice System'. This data is published under section 95 of the Criminal Justice Act 1991 and therefore includes all people in the criminal justice system over the age of 10)

**Young people and unemployment**

- Among young men aged 16-24 between Summer 1998 and Spring 1999, 67% of young white men were employed, compared to 50% of young black Caribbeans, 38% of black Africans, 49% of Indians, 35% Pakistanis and 40% of Bangladeshis.
- Among young women in the 16-24 age group, over the same period, 63% of young white women were employed compared to 38% of young black Caribbean women, 42% of young Indian women and 27% of young Pakistani women.
- In some parts of London, six out of every ten young black men are unemployed.

**Young people and education**

- In 1998, 47% of young white children attained 5 or more GCSE passes at grades A-D compared to 29% of young black children, 54% of Indians, 29% of Pakistani children, 33% of Bangladeshi children and 47% of children from other ethnic groups.
- A report from the Social Exclusion Unit found African Caribbean children were six times more likely to be excluded from school than white children. Of those excluded, 83% were boys and 80% were aged 12-15.
- In 1998 people from racial minorities were just as likely as the white population to have one qualification about 'A' level standard although 22% of minority ethnic groups had no qualifications compared to 17% of the white population.

**Young people and crime**

- A 1995 Home Office study found similar rates of offending (about four in ten) among young black and white men but there was a significantly lower rate among young Asian men.
- Young white people were more likely to have used drugs, than young people from minority groups – one in three young white people, one in four young black people and between one in five to one in seventeen among different Asian communities.

Youth Justice Board data for the quarter commencing 01.07.00 gives a breakdown of ethnicity at key stages in the youth justice system. The figures for Black/Black British are as follows:

- offending population – 5.9%.  
  (Asian/Asian British – 2%)
- pre-court, reprimand / final warning – 5.1%.  
  (Asian/Asian British – 2.4%)
- granted bail – 7.7%. (Asian/Asian British – 2.5%)
- refused bail – 9.2%. (Asian/Asian British – 1.7%)
- remanded in custody – 10.2%.  
  (Asian/Asian British 2.5%)
- convicted population – 5.9%.  
  (Asian/Asian British – 1.7%)
- custody population – 9.1%.  
  (Asian/Asian British – 1.7%)

A cautionary note should be issued with these figures, due to potential inconsistencies of recording and amount of missing or ‘not known’ data. However, these figures appear to highlight the issue of over representation in all stages of the youth justice system of Black/Black British young people. Despite these figures they constitute only 2% of the general population. By comparison Asian/Asian British young people are slightly under represented at each stage, as they constitute only 3% of the general population.

**Risk of crime**

- According to the 1998 British Crime Survey, 10% of people living in multi-ethnic, low income areas are at risk of burglary, compared to 6% of all respondents. Further, 27% are at risk of vehicle-related theft compared to the average of 18% and 8% were at risk of violence, compared to 5% in the whole survey.
Children looked after (England)

As at 31.03.99, the following belonged to ethnic groups other than ‘white’.

- National average – 16.9%, (90.7% response)
- London average – 41.0%, (100% response)
- North average – 5.9%, (88.4% response)
- Central average – 10.2%, (94.7% response)
- South average – 10.3%, (80.6% response)

(Figures from year 2 Quality Protects Management Action Plans, submitted 31.01.00)

These figures are significant in their own right, but are of particular importance bearing in mind the 4:1 ratio of looked after children offending over the general 10-17 year population.

Numbers of children in receipt of services in England under the Children Act

This concerns the percentage of children belonging to ethnic groups other than ‘white’ in receipt of services across a range of ‘need’ criteria as at January 2000. On this database, figures of 13% or more constitute an over representation. (national average figures)

- Abuse or neglect – 14.4%
- Disability – 16.9%
- Parental illness/disability – 17.7%
- Family in acute stress – 19.4%
- Family dysfunction – 14.1%
- Socially unacceptable behaviour – 15.4%
- Low income – 22.2%
- Absent parenting – 20.4%

(source as above)

The legal framework

Sex Discrimination Act 1975

This Act makes it unlawful to discriminate against men or women on the grounds of gender or marital status. The provisions apply to both men and women. This can include cases of sexual harassment where a person is deemed to have been treated less favourably than a member of the opposite gender.

Race Relations Act 1976

This Act makes it unlawful to discriminate on the grounds of colour, race, nationality, ethnic or national origin. It does not specifically include religion, although this may fall under the rules governing indirect discrimination in certain cases. The Act recognises discrimination in both direct or indirect forms.

Ethnic monitoring and s 95 Criminal Justice Act 1991

Requires the Secretary of State in each year to publish information considered expedient for the purpose of ‘enabling persons engaged in the administration of justice to become aware of the financial implications of their decisions; or facilitating the performance of such persons of their duty to avoid discriminating against any person on the ground of race or sex or any other improper ground’

The Human Rights Act 1998

Article 14 of the European Convention of Human Rights states: ‘The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’. The Act makes it unlawful for public authorities to act in a way that is incompatible with the rights in the Act. By s 6(3) the term public authority includes ‘any person certain of whose functions are of a public nature’. Some institutions and individuals are clearly within the definition of ‘public authority’. Examples of these are government departments, police officers,
prison officers, the armed forces, immigration officers, courts of justice, including tribunals and YOTs. The Home Office has produced guidance on this subject 'Human Rights Act. Core Guidance for public authorities: a new era of rights and responsibilities'. See www.homeoffice.gov.uk/hract/hrcgpa.htm. Also the Nacro briefing paper 'Human Rights Act 1998 and the Youth Justice System' Oct 2000, provides further detail on the characteristics of a public authority, as part of an overall guide to the Act.

There has been much criticism of Article 14 and its limitations, in that the right not to be discriminated against only exists in respect of the enjoyment of rights and freedoms specifically set out in the convention. In order to address this issue the new Protocol No.12 to the European Convention on Human Rights, was opened for signature on Nov 4 2000. Article 1 of this new Protocol titled 'General prohibition of discrimination' states:

'The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. No one shall be discriminated against by any public authority on any ground such as those mentioned in (this) para.1'

The United Kingdom was not among the 25 member states who immediately signed up to the new protocol.

Protocol 12 is free standing and provides for complaints of discrimination in relation to national law as opposed to the current Article 14 limitation. It is likely to increase the number of cases in which discrimination has been found, serving to highlight discriminatory practice and put pressure on member states not only to enact enabling legislation, but to give effect to such legislation once it is in force. (Justice of the Peace Vol 165, 03/02/01).

United Nations Convention on the Rights of the Child

This convention came into force on 2 September 1990, and Article 2 on non-discrimination states: 'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.'

The Committee on the Rights of the Child has constantly stressed the need for an active approach to implementation and in particular to non-discrimination. It emphasises that Article 2 must be vigorously applied and that a more active approach should be taken to eliminate discrimination against certain groups of children. This article should be fully integrated into the implementation of all other articles. The checklist for implementation makes clear that rights should be recognised for all children in the jurisdiction, without discrimination and including, non-nationals, refugees and illegal immigrants.

The Committee emphasises that the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance. The principle of equality sometimes requires affirmative action to be taken in order to diminish the conditions that cause or help to perpetuate discrimination. This active obligation to prevent discrimination requires the application of a range of measures to ensure full implementation, such as, review, strategic planning, legislation, monitoring, awareness-raising, education and information campaigns and evaluation of measures. Further, the convention does not outlaw legitimate differentiation between children in its implementation. For example, children living in exceptionally difficult conditions may require special consideration. In this respect UN guidelines refer to 'the specific measures adopted to reduce economic, social and geographical disparities, including between rural and urban areas, to prevent discrimination against the most disadvantaged groups of children, including children belonging to minorities or indigenous communities, disabled children, children born out
of wedlock, children who are non-nationals, migrants, displaced, refugees or asylum-seekers and children who are living and/or working on the streets’.

The status of the convention remains the subject of debate. However it should be remembered that the UK is a signatory to the convention, so our legislation, practice and procedures should be consistent with it. Also it is frequently cited as an appropriate standard or model by which matters are judged, including potential breaches of the Human Rights Act. The convention is, at the very least, of persuasive authority – by virtue of the UK being a signatory and its importance in European jurisprudence.

Race Relations (Amendment) Act 2000

The Race Relations (Amendment) Act 2000 strengthens and extends the scope of the 1976 Race Relations Act. It does not replace it. This first major reform of the 1976 Act is targeted at the public sector – hospitals, schools, police, local authorities and YOTs. The standards expected of public bodies should influence practice in the private and voluntary sector, to include all those undertaking public functions, including voluntary agencies contracted to provide services to the YOT.

The ‘Race Equality Guidance for the Youth Justice Board and Youth Offending Teams’ dated November 2000, is thorough in its purpose to assist the YJB and YOTs to work towards the achievement of:

(i) race equality within the youth justice system
(ii) raising confidence amongst all minority ethnic groups in the youth justice system.

To avoid duplication, the reader is directed to this document. It identifies where responsibility rests for the action to be taken. These responsibilities are attributed to:

- the Youth Justice Board for England and Wales
- the steering group for the YOT partnership
- the YOT manager / head of service
- practitioners within YOTs

The reader is referred to Annex C of the guidance for a succinct summary of the scope of the Act and its main aims:

Annex C

(i) outlaw discrimination (direct, indirect and victimisation) in public authority functions not covered by the 1976 Act and provide remedies;

(ii) define ‘public authority’ widely, as in the Human Rights Act 1998, for the purposes of outlawing discrimination so that it includes public functions carried out by private sector organisations and has only limited exemptions;

(iii) place a general duty on specified public authorities to work towards the elimination of unlawful discrimination and promote equality of opportunity and good relations between persons of different racial groups;

(iv) empower the Home Secretary to extend the list of public bodies in the Act that subject to the general duty to promote race equality, to include other bodies exercising public functions;

(v) empower the Home Secretary (or the Scottish Ministers where appropriate) to impose specific duties on some or all public authorities which are subject to the general duty to promote race equality to ensure better performance of the general duty;

(vi) give the Commission for Racial Equality powers to enforce the specific duties to be imposed on public authorities;

(vii) give the Commission for Racial Equality powers to issue Codes of Practice to provide guidance to public authorities on how to fulfil their general and specific duties to promote race equality;

(viii) allow race discrimination claims to be brought against education bodies direct to a county or sheriff court without, as now, a two month ‘cooling off’ period of notification to the Secretary of State for Education;

(ix) make chief officers of police vicariously liable for acts of discrimination carried out by officers under their direction and control and provide for compensation, costs or expenses awarded as a result of a claim to be paid out of the police fund or in Scotland from payments from the police authority.
(x) remove the power for a Minister to issue conclusive certificates in race claims to the effect that an act of racial discrimination was done for the purposes of national security and was therefore not unlawful;

(xi) extend the coverage in the 1976 Act in relation to public appointments made of the recommendation or approval of Ministers or Departments, and to recommendations made for the conferment of dignities and honours. It will also prohibit discrimination in the termination and terms and conditions of public appointments.

Enforceable public duty to promote race equality

- This duty may be the most significant aspect of the Act, because it gives statutory force to the imperative of tackling institutional racism. It is critical to making sure that all public services put race equality in the mainstream of all their activities in the same way that s 17 of the Crime and Disorder Act highlights the duty to prevent crime.

General duty

The Act replaces s 71 of the 1976 Act with a new general duty on specified public authorities to carry out their functions with due regard to the need:

(a) to eliminate racial discrimination
(b) to promote equality of opportunity and good relations between persons of different racial groups

They will be expected to consider the implications for racial equality of everything they do. This is a positive duty, requiring public authorities to be proactive, seeking to avoid discrimination before it occurs.

Specific duties

The Home Secretary may, by order, impose specific duties that state what each public authority must do to achieve better compliance with the general duty. Different duties could be imposed on different types of authorities and could include ethnic monitoring of the workforce, monitoring the impact on racial equality of current policies and publishing the results of assessments.

Codes of practice

The CRE is given the power to issue codes of practice to provide practical guidance to public authorities on how to fulfil their general and specific duties.

Compliance

The critical feature of the new duty is that it will be enforceable. If the CRE is satisfied that a public authority is not complying with its specific duties, the CRE will be able to serve a compliance notice. This will require the authority to comply with its duties and inform the CRE of the measures it has taken. If necessary the CRE can ask a county or sheriff court to order the authority to comply. Compliance with the new duty could also be the subject of inspections or audits.

Conclusion

The emphasis in this paper has been to highlight the need for a fundamental conceptual change in the way race and criminal justice is approached, to one of rights and responsibilities. The statistics set out in this paper justify (if any were necessary) the mainstreaming of race equality across the range of public services including criminal justice practice. It also sets out the legislative framework to achieve this. To date, discussion of race and criminal justice is usually presented in terms of problems – problems caused by the nature of minority communities – problems for the police, as these communities require more sensitive policing – or the additional problems encountered by black staff in reaching senior positions. This thinking puts the responsibility for the problem ‘out there’ in the communities concerned. It does not examine the nature of the organisations concerned or individual practice or responsibilities of staff, to see whether they could be part of both the ‘problem’ and the solution.

This approach is at the root of the current debate, raised by the inquiry into the death of Stephen Lawrence, and is further developed in Part Two of this paper.