Introduction

The recent report from the House of Commons Home Affairs Committee, *Young Black People and the Criminal Justice System*,1 (the report), published in June 2007, makes a significant contribution to addressing the enduring concerns about disproportionate representation of black, and other minority ethnic, young people at different stages of the criminal justice system. The inquiry carried out by the Home Affairs Committee (HAC) is perhaps the most comprehensive of its sort in recent decades. The issue was previously considered by a Select Committee in 1966 and by Lord Scarman (following ‘race riots’) in 1981. The substantial main report is supplemented by a volume of written submissions amounting to some 400 pages2 and the linked statistical evidence provided by Dr Marion FitzGerald,3 one of two specialist advisers to the HAC.4

The report refers to a ‘serious crisis for sections of black communities and for some young people of a mixed ethnic background’. It states that ‘Government action to date has made little impact’ and comes to a critical conclusion:

*While the actual numbers of young black people entering the criminal justice system are small in relation to the figures for white young people, the proportion of young black people coming into the system is unacceptable. Black communities’ vast social, economic and cultural contribution to this country is being held back by the proportion of young people who are arrested, convicted, imprisoned and victimised by crime. The broader trend of overrepresentation of black people of all ages in the system is being driven by the disproportionate involvement of the young. We saw little evidence during this inquiry that overrepresentation is diminishing, and heard that it may be increasing. Despite the Government’s evident commitment to reducing this overrepresentation, the number of young black people in custody is growing at an alarming rate, and much faster than for the general population. Our evidence painted a picture of patchy and diffuse initiatives that are often insufficiently focused and resourced. Until such a time as the number of young black people in the criminal justice system begins to mirror that of the population as a whole, we urge government to review, revise and redouble its efforts to address overrepresentation and its causes. A great deal depends on its success in doing so.*

Having benefited from oral and written evidence from a wide range of individuals and agencies, and from young people, the report does more than re-iterate statistical trends and restate what are sometimes well known problems. It considers a comprehensive range of possible causes of over-representation of black young people in the criminal justice...
system and identifies important factors both within and beyond the system itself: The report identifies that the causes of over-representation of young black people in the criminal justice system are multiple, complex and interrelated, introducing three themes:

The evidence we received indicated that there are three overarching causes of overrepresentation, all of which interact and feed into each other. Social exclusion—both historic and current—is the key, primary cause of young black people's overrepresentation. Factors specific to the black community—such as family patterns and cultures amongst young black people themselves—are both fuelled by and compound socio-economic deprivation. Thirdly, the operation of the criminal justice system, including both the reality and perception of discrimination, mean more young black people come into contact, and stay in contact, with the system.

For the most vulnerable young people, these factors reinforce each other to become a complex web of involvement from which it is difficult to escape.

The report makes 76 recommendations, although some of these remain lacking in detail, and urges further review of specific policy areas by relevant departments or agencies. This briefing provides an outline of the findings and recommendations for action contained in the report.

The background to the inquiry and report

The terms of reference for the HAC were to inquire into the relationship between young black people and the criminal justice system and, particularly, public perceptions of criminality among young black people and the reasons for their over-representation in the system. The terms were not specific to young people under the age of 18 although much of the evidence submitted was focussed on that age group. Although the inquiry considered evidence regarding to all black and minority young people, it maintained an emphasis on those of 'Black or Black British' ethnic background within the categories used by the Census 2001, which is the system used by the YJB and youth offending teams across England and Wales. This category includes those of Caribbean, African and 'any other' Black backgrounds.

Reports from the HAC, a cross-party committee chaired in this instance by John Denham, are presented to the government with the views of the committee and its recommendations. The government normally responds to Select Committee reports, accepting or rejecting recommendations, by way of a Special Report or Command Paper.

Statistical background and over-representation

Statistical data have for many years indicated that young black people are over-represented in the formal youth justice system and with regard to other aspects of criminal justice such as stop and search incidents. Given an overall over-representation, however, there are some points where disproportionately few young black people are represented, including reprimand and unconditional bail, indicating a greater tendency for disposals of a more severe nature to be imposed. Perhaps most stark is the high proportion of custodial disposals, particularly long term detention.

There has been somewhat less clarity as to how, and to what extent, over-representation results from discrimination in the system, from a difference in the nature and level of offending by young black people in comparison to those of other ethnic or cultural backgrounds, or from other factors, including socio-economic. However, in Nacro's experience, many practitioners have been frustrated at the focus on identifying problems that have persisted for too long. As the report found, 'many ... witnesses expressed weariness at constantly discussing the causes of young black people's over-representation, and a desire to start implementing solutions'.

Despite that view, the report identifies some gaps in information and contradictory statistical evidence and, alongside the need for action, it remains of crucial importance to understand the nature and level of offending by ethnicity, alongside other variables including, for example, age, gender and socio-economic status. The report made a number of observations in this context.

- Young black people's overrepresentation must be kept in context. The extent of youth crime overall is not as high as the public often perceive. Young black people commit a disproportionately high number of offences of certain types, notably robbery and drugs offences, but a lower number of others, such as burglary. Nacro submitted evidence to the inquiry that whilst young black people in the youth justice system are dealt with for a disproportionately high number of offences of robbery, nevertheless, robbery constitutes only 1.8% of offences overall. Indeed, robbery offences committed by young black people constitute only 0.5% of all offences. Over 90% of young black people do not come to the attention of the formal youth justice system.

Nacro also referred to the results of an important survey that more strongly indicate that young black people may not commit more offences than other ethnic groups. This self-reporting based survey considered not only offending, but also anti-social behaviour and drug use. As well as ethnicity, it took account of age and gender. It found that young black people...
The HAC found that interpretation of statistics indicating over-representation is often 'highly contested'. It was able to determine that patterns of offending vary between ethnic groups but was less clear that levels of offending vary significantly. In particular, many witnesses asserted that over-representation in the criminal justice system does not necessarily equate with a higher level of offending. For example, it is apparent that when young black people do commit an offence, they are more likely to come to police attention. In some instances, this may be explained by the offending pattern of some young black people. With regard to 'contact offences' such as robbery, it is more likely that the perpetrator will be successfully identified, by victim or witnesses, to the police, than would be the case with offences such as burglary. Offending rates for young people can also be affected by differences in the mean age of ethnic populations, with some black communities having a younger age profile (a larger number of young people as a proportion of the whole black population in the community).

• The causes of over-representation – social exclusion

The report finds that social exclusion is the primary cause of over-representation of young black people in the criminal justice system:

*Not only does it fuel involvement in crime directly, it makes young people vulnerable to a host of other risk factors, such as living in neighbourhoods where crime is high and underachieving at school.*

Young black people are subject to high levels of deprivation on average, which has a long historical background that dates back to the post-war period – or, as some witnesses testified, can be traced back to slavery. National statistics indicate that black ethnic groups are vastly over-represented proportionately in the most deprived parts of England, in Neighbourhood Renewal Fund areas and experience higher average unemployment and lower income.

Young black people are consistently below the
average for educational attainment, although there is a marked gender difference, with girls’ outcomes being significantly better overall. The underachievement of black boys is a major cause of entry into the criminal justice system. Underachievement is associated with socio-economic factors but there are differences between minority ethnic groups in this respect. Black young people experience high levels of school exclusion – approaching double the average of some groups – which is another factor associated with the risk of offending. The report heard from a ‘significant proportion’ of witnesses who felt that school exclusion resulted from direct or unwitting discrimination. This discrimination was reported as arising from, for example, differences in disciplinary measures and approaches, often explicable in terms of cultural misunderstanding rather than intentional discrimination. The HAC paid considerable regard to the DfES report, *Getting it: Getting it Right* which, the HAC records, was only published after its repeated requests:

> These views are supported by a DfES report—published at this Committee’s request—which found that “a compelling case” can be made for the existence of “institutional racism” in schools. The report … found that “whilst overt racism (at least on the part of staff) is now unusual in schools, discrimination against the grandchildren and great grandchildren of the early Black migrants persists in the form of culturally unrepresentative curricula and low expectations for attainment and behaviour on the part of staff.” The report found that excluded black pupils were less likely to fit the typical profile of white excluded pupils, such as having Special Educational Needs, being eligible for Free School Meals, longer and more numerous previous exclusions, poor attendance or criminal records.

> The report found the “key factor” in the persistence of disproportionate exclusion of black pupils was the marginal status of race equality in schools and the wider education system.

The report considered that, despite a correlation between school exclusion and underachievement with crime, there has been a lack of ‘joined up’ response between relevant government departments.

The sustained nature of deprivation and underachievement results in a lack of positive role models (in wider society) for young black people and many believe this to be a key underlying factor, to do with aspiration and identity, that contributes to involvement in crime – perhaps as an alternative way to achieve some success.

The report suggests that young black people may have a ‘distinctive’ reaction to disadvantage that increases involvement in crime:

> Above and beyond factors ‘pushing’ young black people towards involvement in the criminal justice system, our witnesses thought there were ‘pull’ factors which, in the absence of conventional means of fulfilment or achievement, drew young black people towards involvement in crime. It was suggested to us that, in some cases, young black people may choose to become involved in crime because they believed it would have rewards in terms of image, street credibility and material wealth.

The causes – other issues within black communities

The report found a range of other factors experienced in black communities that exacerbate disadvantage and exclusion. Among these the high rates of lone parenting are prominent and, in particular, the issue of the absence of fathers, as positive role models. The inquiry found this to be a complex issue, certainly not merely to do with separation of parents. What may be most damaging is the combination of the absence of the father with a lack of engagement. The potential for young black people to turn to negative adult role models is thought to be significant.

The report devotes considerable attention to powerful and negative role models, not only in the local community, but in the media and popular culture. Many witnesses expressed concern about the effects of, for example, rap, grime and hip hop music, films and video games – ‘glamorising violent, criminal lifestyles’. Whilst such influences may have an impact on all groups, it may be that ‘deprivation and discrimination give these cultural images particular power to speak to young people’. However, the report does not reach a clear conclusion:

> There was no consensus in the evidence we received as to whether music and video influences reflected or contributed to criminal activity by young black people. However, the balance of the evidence suggests these influences can be damaging to those young people who might for other reasons be most vulnerable to being drawn into criminal activity.

The inquiry also heard much evidence suggesting that parental discipline might lack quality and quantity. The bulk of evidence indicated that the community might be still in a process of adjustment in a shift from traditional to contemporary methods and theories of discipline, nuclear family, as well as interpretations of inter-generational respect.

Other issues raised in the report include the higher rates of teenage motherhood experienced by young women of many black and mixed ethnic backgrounds (many of whom are lone parents) and the higher than average proportions of young black people who are looked after by local authorities.
The causes – criminal justice factors

A key point made in the report is that young black people who have offended are more likely to enter the system than other groups. To illustrate this powerfully the report refers to the Dr FitzGerald’s statistical annex² and states:

Twenty four percent of white respondents aged 10–15 ... admitted to having committed an offence in the last year but only 1% of the sample had been arrested. By contrast, although just 12% of the black sample admitted to having offended, a quarter of this group (3%) had been arrested. In addition, black respondents who admitted to having ‘ever’ offended were significantly more likely to have been arrested and to have been to court than their white counterparts. By contrast, there were no significant ethnic differences in the extent to which respondents who were treated as “non-offenders” by the survey had been arrested.

The Offending, Crime and Justice survey⁸ considered social and demographic characteristics associated with the likelihood of being arrested and young black people are more at risk than white young people on half of the factors (such as associating with others known to the police, school exclusion and homelessness). Thus, a high arrest rate is not conclusively related to discrimination alone.

Other reasons for over-representation may be the type of offences committed by young black people, including those with a victim or witness who can identify the offender. Also, the police can give more attention to certain types of crime according to local targets and priorities, with robbery and efforts related to class A drugs, for example, having had a high profile in recent years. Local police ‘hot spots’ drawn from crime and disorder mapping are often deprived areas which overall have a higher population of young black people.

Nevertheless, the report does conclude that discrimination does contribute to over-representation in some instances, citing stop and search and the low number of these that result in an arrest (11%) despite there being a requirement for there to be reasonable grounds for suspicion of a person carrying prohibited or stolen items. Black people of all ages are stopped and searched more often than other groups although much of that disproportionality nationally is a result of stop and search in just a few police force areas. There a numbers of factors considered that may indicate reasons for young black people being stopped and searched in some areas that fall short of discrimination. What is certain is the perception of many young black people of being targeted through negative stereotypes.

In that sense, the report also considered the effects of the perception of discrimination (as well as the reality) on young black people:

Notwithstanding the existence of some discrimination in practice, the perception that it may exist is contributing to the numbers of young black people entering the criminal justice system. It may prevent young black victims or witnesses of crime from contacting the police and may encourage young people to use informal and illegal means of redressing wrongdoing and protecting themselves.

The inquiry found that trust in the police was an issue of importance. Young black people tended to respect individual police officers, but not the force as a whole. This reflects the distrust of the criminal justice system overall leading to the potential for young black people to turn to ‘informal street’ justice and sometimes to carry weapons for self-protection. Such self-protection may be more overtly threatening that defensive, as illustrated by the quote from one witness:

If you are feared you are safe. It is important you understand that. If you are feared you are safe.

The report expresses concern about remands to custody. Nacro’s submission was that:

... black young people represent 9.9% of all bail and remand episodes, but constitute 19.1% of remands to local authority secure accommodation, 17% of remands in custody and higher percentages of all other bail and remand outcomes other than unconditional bail.

There was also evidence of possible discrimination raised by a comparison of cases where custodial remands were made with no subsequent conviction.

Solutions – recommendations

Amongst the report’s many recommendations are those that are specific to the YJB and youth offending teams. Overall, the HAC expressed some concern at the ‘lack of challenge’ by the YJB in ‘driving change at YOT level’. The HAC reported evidence of commitment at some YOTs visited but with some inconsistency. The report recommends:

We recommend that the YJB should make greater efforts to ensure YOTs can demonstrate that they have identified and analysed any pattern of over-representation in their area. Where overrepresentation is a significant issue, YOTs should be required to show that the support they provide for young black people is designed to meet the particular needs of these young people and to reduce their risk of reoffending.

YOTs should be required to identify the support they will require from other agencies and voluntary organisations. They should be required to show that they possess or are...
developing appropriate partnerships with these organisations.

Given the multifaceted causes of the problem and the shared responsibilities involved in resolving these, YOT indicators should form part of the wider, overarching performance framework for local government and its partners.

Throughout, close collaboration will be needed with the adult Probation Service to ensure a coordinated response at both local and national level.

The HAC devotes a significant proportion of its report to solutions to over-representation containing considerable detail. In summary, the following recommendations have been submitted to the government:

• there is considerable scope to improve existing services to be appropriate, accessible and targeted, but there is also some need for extra resources in areas such as mental health services, drug treatment and housing policy.

• a new national strategy, co-ordinated across departments and between national and local level, should include a coherent overview of what is being done at present and why it has failed. It should specify the contribution from each department and agency with regular assessments of progress (but not targets) towards reducing disproportionality.

• the DfES should do more work on alternatives to full exclusion and ensuring that proper educational provision is made for excluded students, and consult on a more inclusive curriculum

• more support for positive adult role models and influences including increased support for mentoring programmes

• local authorities should adopt a strategic approach to overrepresentation, mirroring the approach for central government, and housing for young people of all ethnicities should be reviewed

• the DoH should develop targeted drug treatment and mental health programmes

• the Committee were concerned that a “lack of challenge” by the Youth Justice Board was reflected in an inconsistent response by Youth Offending Teams and says they should have to demonstrate their specific strategy for support to young black people

• greater assessment of and support for initiatives, including voluntary sector, that are working “on the ground”

• information about successful gang exit programmes should be collected at national level and disseminated to local agencies and additional “pump prime” funding provided

• the Committee considered concerns that rap, grime and hip hop music, films and video games glamorise violent, criminal lifestyles. The Committee says greater censorship of broadcasters or producers is not desirable or practical, but given the impact of music and videos on young people who are already vulnerable, public service and commercial broadcasters should state how they intend to tackle these concerns – and that young people themselves should be involved in developing policy.

Data and research recommendations

The report found significant issues that require improvement in collecting and analysing data and made recommendations to achieve this. Not surprisingly, the report recommends that all agencies should use the same categories of ethnicity and that within ‘section 95’ reports and in the youth justice system, data should be disaggregated by gender and ethnicity together. Currently, the YJB collects data on the main five categories of ethnicity (not broken down into further sub-classifications) and by gender, but not gender within ethnic categories. There are substantial differences in systems and practice between criminal justice and the wider range of policy areas, such as health and education, which might be taken into account by those seeking a consistent approach as this is not clearly laid out in the report.

There are a number of recommendations to improve data by ethnicity regarding the use of anti-social behaviour orders and fixed penalty notices as well as by age in the context of firearms and knife related offences. The report suggests improved monitoring of various pre-court or arrest related issues, including collection of data on numbers where no further action follows an arrest, charging and disposals. In particular, it is recommended that the government monitor Crown Prosecution Service charging decisions with the purpose of verifying that there is no bias in decisions by ethnicity.

The report identifies research needs arising from the inquiry. The HAC notes research that the YJB is undertaking relating to interventions and racially motivated offending but recommends other research that is related most notably to:

• Reasons for offending patterns among different ethnic groups

• Progress through the system (from arrest to custody release)

• Differences by ethnicity in charging decisions, remands and sentencing, including how this might be accounted for, or not, by case characteristics.

• Youth affiliation, peer groups and gangs in relation to criminal behaviour.
Improvement in collection and analysis of data by police forces, regarding for example stop and search, is regarded by the HAC as particularly pressing and specific recommendations are made.

Conclusion

Nacro welcomed the report which indicates that solutions should focus on deprivation and social exclusion as well as discrimination within and without the youth and criminal justice systems. The government, in considering the recommendations, has the apparent responsibility to clarify elements of leadership and accountability at departmental levels. Other specific recommendations, including those to increase mentoring and provide more sustained funding for services such as mentoring, rehabilitation and gang exit programmes should be implemented.

More questionable, is the HAC decision not to recommend the setting of targets to reduce over-representation by young black people within the youth and criminal justice systems. Such targets may well be beneficial in achieving proportionality and imposing accountability on across criminal justice agencies.

References

4. The other specialist adviser was Professor Ben Bowling, Professor of Criminology and Criminal Justice in the School of Law, King's College London.
7. See reference 3 above.
8. See reference 5 above.
9. Summary from Home Affairs Committee Press Notice on publication of the report.