



**Magistrates Association**

## **Roundtable Report**

# **Disproportionality in the youth justice system**

**By**

**Marc Gammon**

**Jo Easton**

Contents	
Overview.....	3
Background.....	3
The roundtable.....	4
Summary of key themes.....	5
Stop and search.....	5
Engagement with the police.....	5
The Metropolitan Police Gangs Matrix.....	6
Criminal exploitation, county lines and modern slavery.....	7
Unconscious bias .....	7
Negative perceptions about BAME CYP among magistrates.....	7
Pre-sentence reports.....	7
Data collection.....	8
Reform agenda.....	8
Financial considerations.....	9
Proposals for magistrates.....	9
What can be done to improve the court process for BAME individuals in the youth court process? .....	9
What could be done once a case has reached court to redress disproportionality earlier the system? .....	10
What can be done to prevent disproportionality or bias in decisions made by the court? .....	11
Confidence in the police.....	12
Body worn cameras.....	12
Scrutiny of police interactions with BAME CYP .....	13
Responding to knife crime .....	13
Robust collection of disaggregated data.....	13
Conclusions.....	13
Next steps and resulting actions.....	14
Promoting awareness among magistrates.....	14
Court room processes .....	15
Improving trust in the BAME communities .....	15
Policy areas .....	16
Appendix 1 - List of organisations attending roundtable .....	17

## Overview

The Magistrates Association (MA) is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With 14,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

The MA has four MA policy committees: Adult, Family, Training and Youth. Each committee is made up of MA members who are sitting magistrates selected for their skills and experience. The committees bring their magisterial knowledge and experience to assist the MA's Policy Team to develop MA policy. Each committee chair sits on the Policy Board along with relevant staff and the MA's Chair and Deputy Chairs. The Policy Board sets overall priorities for the MA, and signs off final policy positions and consultations. In response to the publication in 2017 of David Lammy's review into the treatment and outcomes of BAME individuals in the criminal justice system, the MA has identified responding to disproportionality as one of its core organisational priorities. Specifically, the Youth Court Committee was alarmed by the statistics highlighting the disproportionality in both remand and sentencing outcomes for those under the age of 18.

## Background

Disproportionality in the criminal justice system has been an ongoing concern in relation to negative outcomes for those from black, Asian and ethnic minority (BAME) groups for a long time. The Macpherson Report highlighted the extent of the problem in naming the police as an institutionally racist organisation.<sup>1</sup> While efforts have been made to address the issue, reports regularly show it is still a real problem. The Young Review spoke to young black and/or Muslim men, and highlighted their 'experiences of discrimination and racism, actual and perceived'.<sup>2</sup> More recently the review by David Lammy into the treatment and outcomes of BAME individuals in the criminal justice system, published in 2017, showed disproportionality had actually increased in many areas.

Although the Lammy Review did not focus specifically on magistrates, the MA agreed that disproportionality should be a policy priority for the organisation in January 2018. In responding to the problem, it was decided that it should not be a standalone item, but we should introduce addressing disproportionality into all strands of our work going forward. This meant that for every policy issue, we try to identify any potential risks of disproportionality that may arise, and how they could be resolved. We have also embedded addressing the problem into the work we do in relation to the training and development of magistrates. The Judicial College had taken the lead in working to combat possible unconscious bias, with training material directly targeting this issue, as well as updating the Equal Treatment Bench

---

1

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277111/1/4262.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/1/4262.pdf)

<sup>2</sup>[https://www.equalcjs.org.uk/sites/default/files/articles/clinks\\_young-review\\_report\\_dec2014.pdf](https://www.equalcjs.org.uk/sites/default/files/articles/clinks_young-review_report_dec2014.pdf)

Book, which covers many issues relating to ensuring fair and equitable treatment for all in court. Along with the Judicial College, the MA has produced useful resources for magistrates to ensure fair decision-making, including steps to challenge prejudice or bias either in court or in the retiring room.

With the publication of the Youth Justice Statistics for 2018<sup>3</sup> at the start of this year showing that disproportionality was continuing to increase, the MA decided to develop a project specifically focusing on youth justice and what could be done by the MA, and youth magistrates more broadly, to address it. We were aware that many organisations were already working on this, and decided to convene a roundtable event to bring together experts.

## The roundtable

In order to promote an informed and productive discussion, we invited a variety of representatives to attend the roundtable, including Ministry of Justice officials, statutory agencies working in youth justice and charities working specifically on the issue of disproportionality.<sup>4</sup> We focused on agencies that work in the courts, and purposefully did not involve representatives of the police, as we wanted to produce recommendations aimed towards the court process. We recognised, however, the impact that disproportionality earlier on in the criminal justice process could have on court decisions, so there was some discussion on how this could be resolved.

The roundtable involved two sessions: the morning session looked at how disproportionality in the wider youth justice system affected court processes, and the afternoon session focused on what role youth magistrates could play in redressing disproportionality.<sup>5</sup> The first session was intended as an open discussion, providing attendees with an opportunity to provide their views on the key drivers of disproportionality, and crucially how these might go on to affect sentencing outcomes. The second session was designed to bring out practical ideas on what could be done by the magistracy and others to help tackle or redress these drivers. It entailed the participants breaking into three groups to consider the following questions:

- What can be done to improve the youth court process for BAME individuals?
- What can be done once a case has reached court to redress disproportionality earlier in the system?
- What can be done to identify or prevent disproportionality or bias in the decisions that are made by the court?

The event was conducted under the Chatham House Rule.

The notes from the day were shared with all attendees, then used to draft this report. The primary purpose of the roundtable was to produce specific recommendations for the MA in relation to our policy work as well as highlighting particular opportunities for learning among youth magistrates. Although it was not the focus on the day, some recommendations relating

---

<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/774866/youth\\_justice\\_statistics\\_bulletin\\_2017\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774866/youth_justice_statistics_bulletin_2017_2018.pdf)

<sup>4</sup> A full list of attendees can be found in the Appendix

<sup>5</sup> The agenda for the day is available on request

to issues outside the remit of the MA and magistrates were raised, and these have been included in this report for completeness.

During the roundtable, all participants agreed that this was an urgent problem, especially in relation to the alarming disproportionality illustrated by the proportion of BAME children and young people (CYP) in custody. Many suggested that the need to divert children away from custody was especially pressing given the growing proportion of BAME individuals that now make up the youth custodial population; the high reoffending rates of those that are released from custody; and the alarmingly high rates of harmful practices – such as solitary confinement and pain inducing restraint – within custodial establishments.

## **Summary of key themes**

This first section sets out the key issues regarding disproportionality in the youth justice system that had the potential to affect court processes and outcomes. It is based primarily on discussions during the morning session.

### **Stop and search**

The issue of stop and search was raised as a key driver of disproportionality, particularly when looking at those that enter the criminal justice system for the first time. The point was made that while stop and search had reduced in recent years by around 72%, the arrest rate for white individuals had halved, whereas it had remained about the same for BAME individuals. This is very concerning as it illustrates that even with a reduction in stop and search, disproportionality is continuing to increase.

The point was made that disproportionate use of stop and search on BAME individuals had a number of negative impacts. Firstly, it had a negative impact on the confidence and trust that these individuals, and their wider community, have that the police will treat them fairly. This has the consequential effects of changing how people from BAME backgrounds interact with police, from whether they report crime when they are victims, to how they respond when stopped by the police. Secondly, an increased use of stop and search on one particular group may result in that group having a much higher rate of out of court disposals or arrests against them. This directly impacts on not just the rate at which BAME young people are seen in court, but also the evidence presented of previous interactions with the police which might have led to sanctions.

### **Engagement with the police**

As mentioned above, mistrust in the system was highlighted as a huge problem that had many implications. One of those raised related to the lack of trust leading to young people from BAME communities not wanting to engage with police investigations, including during interviews at the police station. This results in no comment interviews and indication of not guilty pleas, where earlier engagement might lead to diversion away from court. So inherent mistrust actually leads to young people losing opportunities to be given out of court disposals or give explanations which would result in no further action being taken.

Some participants made the point that this mistrust of the system leads to a perception that duty solicitor's work for the police. Specifically, it was explained that this could result in BAME children going unrepresented, refusing voluntary interviews, or having their case escalated beyond what would normally have been a routine out of court disposal. It was also noted that this level of mistrust is often seen in the parents of BAME children as well, which reinforces the problem. The benefit of appropriate adults being available to support children and young people (CYP) at the police station was also raised. It was pointed out, however, that CYP would need to trust anyone offering them support and that support workers from their community might therefore be more appropriate, especially if they could explain the benefit of engaging with the police.

This problem is exacerbated by a lack of specialist advocates for children as duty solicitors available at the police station, which means the quality of legal representation that young people currently receive varies greatly. It was mentioned that a significant obstacle to improving youth advocacy was the legal aid framework, which has left many practitioners under significant financial pressures.

### **The Metropolitan Police Gangs Matrix**

The Gangs Matrix was raised by several participants as an important issue to be considered. It was stressed by various participants that while there are large numbers of people on the Matrix, many of the individuals have not been convicted of an offence, which is especially problematic when it is considered that the majority of those listed are BAME. It was pointed out that individuals could end up on the Matrix through being victims, or just associated with others on the list, and it was not an indication that the individual was involved in gang crime themselves.

Despite the fact the Metropolitan Police have recently been given a six-month order to make sure the Gangs Matrix is compliant with GDPR, some felt that more would need to be done to investigate and scrutinise how the data is being collected, and what it is being used for. One participant had previous experience of working in a police force, and concurred that there had been very limited guidance on how the data should be used.

It was pointed out that if being on the Matrix was being provided to the court as background information about an individual, this may be misinterpreted by magistrates. A magistrate represented in the room felt that the bench were unlikely to take much direct interest in the Matrix itself; rather they would rely on the assessment made by the Youth Offending Team (YOT), who are generally seen as best placed to consider the circumstances of the individual. However, another participant argued that in their experience it could be difficult for YOT workers to put forward information that contradicted the account provided by police. It was also suggested that if magistrates did not fully understand the aim of the Matrix, and why a certain individual was listed on it, then they may have implicit bias towards them.

If a crime is committed in association with group activity, this can be introduced as a relevant factor in relation to sentencing which may increase the overall seriousness of the offence, and therefore result in an increased sentence. In addition, some attendees were concerned that if an offender was identified as being associated with a gang, this might further influence sentencing decisions. Therefore, any misunderstanding or confusion relating to the mention of an individual being on the Matrix could exacerbate disproportionality. It was therefore

suggested that it was vital for magistrates to interrogate any mention of the Matrix, and ensure they fully understand its relevance to the individual in front of them. The involvement of YOT officers in providing magistrates with the right information was seen as key, before any remand or sentencing decision was taken.

### **Criminal exploitation, county lines and modern slavery**

An area of particular concern to some participants was that not enough was being done to investigate as to whether an individual had been groomed, exploited, or drawn into criminal activities. It was stated it was particularly relevant that some young people who have been criminally exploited are reluctant to use the tools available to help their case (such as the Modern Slavery Act's Section 45 statutory defence) for fearing of being labelled a 'grass'. As such, many in the room felt it was important for magistrates and YOTs to read between the lines of the cases that were presented to them, to ensure mechanisms like Section 45 and the National Referral Mechanism were being used where appropriate, even in circumstances where the individual or defence do not put them forward themselves.

### **Unconscious bias**

It was noted that the Lammy Review had been particularly useful in highlighting the issue of unconscious bias, and that it was now more likely to be referred to in the court room by defence practitioners. It was pointed out that unconscious bias could be present in relation to decisions made earlier on in the process (for example by police or prosecutors), therefore leading to a CYP ending up in court, as was the possibility that magistrates themselves might allow unconscious bias to affect their decision making.

### **Negative perceptions about BAME CYP among magistrates**

Some felt that there was a need to recognise that magistrates (through no fault of their own) would have a negative perception of BAME people presented to them via the media, and that there needs to be an honest discussion about the fact that this prejudice led to unfair treatment. A specific example was that there could be an implicit perception of young black men not being seen as vulnerable, which was problematic and led to them being treated as a risk, rather than being offered the support they needed.

### **Pre-sentence reports**

The quality of pre-sentence reports (PSRs) provided by YOTs was raised as a potential issue of inconsistency that might influence court decisions. However, many in the room felt that YOT reports tended to provide youth magistrates with sufficiently detailed information - including useful insights into the individual's lived experience or personal trauma. There was a perception that while the ability of the Probation Service to give sufficient detail in PSRs to adult courts might be questioned (particularly given the rise in oral reports), this seems to be less of a concern in the youth court.

One participant added that the more informal approach taken in youth court meant that YOT staff often felt that it was easy to communicate with the CYP if they needed to elaborate on the information they had provided. This point was developed further by those in the room

that sat as youth magistrates, who reiterated the benefits of the youth court's collaborative approach, which facilitated the flow of relevant information. It was questioned as to whether YOTs could make more of this, and play a greater role in highlighting possible disproportionality that might have occurred previously in the justice process.

Another practical suggestion was that PSRs should include specific references to the Overarching Principles, reminding sentencers that the unique circumstances of BAME individuals should be taken into account, as a compulsory requirement for all PSRs for BAME CYP.<sup>6</sup>

## **Data collection**

Frequent references were made to the lack of data recorded from court processes, particularly in terms of ethnicity and sentence outcomes. A recent MoJ Analytical Services Report (authored by Kathryn Hopkins) was cited, which explored the associations between police-recorded ethnic background and being sentenced to prison. However, the point was made that the analysis was limited to indictable offences, because it was not possible to have the same data for the magistrates' court. A participant also referred to a recent roundtable organised by Dr Alexandra Cox at the University of Essex, which had also highlighted the need to publish more data on the decisions made by magistrates. It was agreed that without the collection of more disaggregated data in youth court, it was difficult to identify the causes of disproportionality, and therefore how to resolve them.

## **Challenges for Gypsy, Roma and Traveller (GRT) communities**

An overview was provided on the unique challenges facing Gypsy, Roma and Traveller (GRT) communities. It was noted that this cohort is not always taken into consideration when BAME disproportionality is being looked at, which means the distinct issues for this cohort are not always addressed. For example, it was suggested that rather than unconscious bias leading to unfair outcomes for GRT communities, it was often overt and blatant bias. It was argued that GRT ethnicity is frequently regarded as a risk factor when it appears on a PSR, and that there have also been examples of high level training materials that openly refer to GRT people as being 'bred to be criminals'. It was highlighted in particular that a common misconception about the accommodation of GRT communities often led to the disproportionate use of custody and the refusal of bail in the erroneous belief that compliance would not be possible due to individuals not remaining in one place for long.

## **Reform agenda**

The potential negative impact of the HM Courts and Tribunals Service court reform programme was raised as a concern. It was acknowledged that delays in the justice process were having negative impacts on the opportunity for fair decisions to be made in relation to

---

<sup>6</sup> Specifically, the document states: 'There is also evidence to suggest that black and minority ethnic children and young people are over-represented in the youth justice system. The factors contributing to this are complex. One factor is that a significant proportion of looked after children and young people are from a black and minority ethnic background. A further factor may be the experience of such children and young people in terms of discrimination and negative experiences of authority. When having regard to the welfare of the child or young person to be sentenced, the particular factors which arise in the case of black and minority ethnic children and young people need to be taken into account.'

CYP, as it could take such a long time for their cases to be processed. An anecdotal example was given of a 12-year-old boy who was charged with a serious offence of assault, but who did not appear before a court until twelve months after the offence was committed. So the stated aim of improving the efficiency of the system was seen as necessary, but it was agreed that the push for increased use of digital technology to increase efficiency was not the solution. It was felt by some that the use of technology could lead to an increasingly dehumanised system, which would work against the need to treat BAME children as individuals.

## **Financial considerations**

The economic benefits of tackling disproportionality were raised as an important aspect to keep in mind when making the case for reform. One participant explained that, as was stated in the Lammy Review, if the issue was successfully tackled we would have approximately 9,000 fewer people in custody.

Another point was made about the ‘investment deficit’ that affects BAME individuals, where there is less resource and focus put towards minority groups (including a failure of strategic planning to consider the needs of BAME communities and redress structural inequalities). This can disadvantage BAME CYP long before they come into contact with the justice system. It was also suggested by some that when a BAME child enters the criminal justice system, it can be rare for people to fully investigate and understand what is happening in their lives.

## **Proposals for magistrates**

This section looks at what can be done by magistrates to reduce disproportionality for BAME CYP in youth justice. It focuses primarily on discussions during the afternoon session, when participants went into three breakout groups. The three main areas discussed were improving the court process itself to ensure a fair process, what courts can do to redress any disproportionality earlier in the process and ensuring fair decisions which do not lead to disproportionate outcomes.

### **What can be done to improve the court process for BAME individuals in the youth court process?**

The following suggestions were put forward:

- **Increase understanding of disproportionality earlier in the system:** this includes providing courts with information about where unconscious bias might have affected decision-making, including stop and searches or other police interactions.
- **Revise the training available to magistrates to improve awareness about how lack of trust amongst BAME communities may affect their engagement with the court process:** for example, lack of trust increases likelihood of no comment, and may affect the behaviour of CYP in court.
- **Ensure courts are fit for purpose:** both in terms of their functionality and location. For example, ensuring young people do not have to make 200 round mile trips for their court hearing; making use of travelling courts where it would be beneficial to do so; and providing an appropriate layout and design of courts for children.

- **Requirement for legal representatives in youth court to be specialists:** this would improve consistency and quality of the legal advice available to CYP. This would need not just support from central government but also resource, so that youth work was financially viable.
- **Focus on procedural fairness of all court proceedings:** magistrates should be trained in all the elements of a procedurally fair process, including explaining the process, and treating CYP with respect. This includes the need for magistrates to identify their own unconscious bias, and challenge prejudice both in the courtroom and in the retiring room.

### **What could be done once a case has reached court to redress disproportionality earlier the system?**

The following suggestions were put forward:

- **Establish a clear role for the bench to scrutinise charging decisions:** to facilitate this there needs to be a greater awareness and understanding of the criminal justice process prior to court. For example, awareness is needed around the reasons behind no comment interviews. The question of whether a young person could have been dealt with by an OOC also needs to be considered.
- **Magistrates should be encouraged to be more robust in scrutinising evidence, especially in relation to the police:** including asking questions about the source of 'intelligence' that is presented in court. For example, when stop and search has occurred based on what is described as local 'intelligence', it should be explained as to what exactly these types of expressions mean.
- **Improving the confidence of magistrates:** we need to ensure that magistrates have the confidence to ask questions of the case before them, even late into the court process. The youth court is known for its collaborative approach, which could go further in its efforts to promote dialogue between agencies.
- **Improve understanding of the National Referral Mechanism and Section 45:** effective communication is necessary between agencies with regard to how these mechanisms are used. Practitioners should also be aware of the fact that defendants may be cautious about requesting their use. More training is required for practitioners across the criminal justice system.
- **Reform PACE 38 certificates:** bail for CYP can only be refused in limited circumstances, as set out in Section 38 of Police and Criminal Evidence (PACE) Act 1984. However, where bail is refused, Section 38(6) places a duty on the police to transfer children to local authority accommodation rather than keeping them in the police station unless such a transfer would either not adequately protect the public from serious harm or it is deemed impractical by the police. In the latter case, the police must present a certificate to the court explaining why the transfer was deemed impractical. More could be done to scrutinise these certificates to ensure there is no disproportionality in practice.
- **The role of YOT reports:** these could do more to remind magistrates about the possibility of disproportionality taking place earlier in the process, as well as remind the bench of the Overarching Principles and how they relate to the sentencing of BAME individuals. There was acknowledgment that YOTs had an important role to play in redressing disproportionality.

- **Bench to ask to see body worn video footage from any police interactions:** it was argued that this wouldn't just ensure that the bench had access to all relevant information, but could also lead to a change in practice where police were encouraged to use body worn cameras more readily.

## **What can be done to prevent disproportionality or bias in decisions made by the court?**

The following suggestions were put forward:

- **Promote awareness of the issue:** the magistracy has a commitment to equality and fairness, but more could be done to improve awareness of issues around disproportionality. The use of data will be crucial in identifying the problem.
- **Encourage magistrates to ensure they are basing decisions on facts specific to the individual:** the issue of sentencing CYP from GRT communities was raised as a concern, if magistrates rely on misunderstandings rather than detailed information about the CYP and what the most appropriate sentence is for them.
- **Address unconscious bias:** one participant who had experience of delivering unconscious bias training felt that it could often be very difficult to change people's mind-sets through training. In light of this, it was suggested that firmer changes to policies and procedures would be the most effective way of improving outcomes, particularly in terms of ensuring accountability for decisions that are taken.
- **Use of language:** the use of negative language or terms in relation to CYP from BAME backgrounds was mentioned as a contributor to unconscious bias, prejudice and disproportionate outcomes. It was for example noted that people used to refer to 'negative peer influence', rather than gang involvement. Another point raised was the importance of language used in relation to county lines activity, and the need for everybody to ensure that the terminology they use does not demonise children who have been exploited or coerced into committing criminal acts.
- **Increase training of critical thinking skills and fair decision-making:** the issue of disproportionality should be emphasised in relation to biased decision-making in magistrate training materials. The recent update to training materials – including the development of the Equal Treatment Bench Book – was noted by participants, but it was suggested there could be more involvement by experts in relation to biased decision-making to ensure material is accurate and effective. Otherwise it was suggested that the lexicon may change, but only to suit those that work in the system, rather than those that the system deals with.
- **Improve understanding of BAME communities:** While the *MA's Magistrates in the Community* programme is useful, it is important for the engagement to be two-way, so that magistrates have an opportunity to learn as well. Magistrates should routinely spend time visiting community centres, youth centres etc., rather than just seeing YOIs or other custodial settings, to provide a more informed and rounded view of BAME communities. One effective way to do this is to buddy-up with other community groups, who may already be undertaking their own events or out-reach activities. For example, there is often a lot of positive work that can be done in collaborating with local faith groups.
- **Encourage the challenge of decisions and improve opportunities to whistleblow:** This covers situations both in court and the retiring room. In court, where parties to a

case are concerned that decisions may be biased, they should challenge these decisions and ask for explanation of the reasoning behind the decisions.<sup>7</sup> In the retiring room, magistrates should be confident in challenging colleagues if they feel they are allowing bias to affective their decisions. This may include raising it with appropriate individuals as an identified training need, or even a conduct issue where necessary.

- **Collect data on decisions in magistrates' court and make them accessible:** more data on youth court outcomes should be recorded and made accessible for the purposes of transparency. This data would make it clearer where white CYP are effectively receiving lenient sentences in comparison to their BAME peers. HMIP and HMCTS should assist in overcoming existing problems around data collection/sharing.
- **Focus on reflective practice in relation to court decisions:** in-court review processes should be used to discuss decisions, and identify any bias. This would not be about establishing blame, but taking responsibility for outcomes. This space for difficult but meaningful conversations needs to be factored into the court process.

## Confidence in the police

Although the focus of this report was to look at what magistrates could do to reduce disproportionality, it was clear that police interactions that lead to disproportionate outcomes were not only a problem in of themselves, but also led to a lack of trust in BAME communities, and had the potential to impact negatively on court decisions. This section therefore sets out a few of the proposals raised during the roundtable to improve confidence in the police.

### Body worn cameras

One proposal was that the use of body worn cameras by the police could be a solution to both ensuring police interactions with BAME individuals are fair and that they can be scrutinised, allowing for training for all police to be improved and any necessary changes in policy or practice to be identified. This could have the potential to increase the confidence that BAME communities have in the police, and was seen as particularly important in light of growing tensions around the use of practices including stop and search and the use of police out of court disposals. However, there was a sense in the room that body worn camera would not be a panacea for ensuring the fair treatment of BAME individuals, given that there is currently limited oversight of how the technology is being used. For example, it was noted that the use of body worn camera is not currently inspected by HMICFRS. Some participants also remarked that they had requested footage of stop and search incidents when it was relevant to a case they had worked on, only to be told that the camera was not turned on.

It was therefore suggested that policymakers should work towards a position where if a body worn camera was not turned on, the testimony or case made against the individual would be dismissed. A further suggestion was to focus on police practices around body worn camera and encourage the introduction of the capacity to record continuously while an officer was on duty. The overarching aim should be to encourage the use of cameras, and it was pointed

---

<sup>7</sup> We note that one participant felt strongly that it would be rare for YOTs to challenge a bench of magistrates, and expressed doubts as to whether a youth offending service would see it as their role to complain about instances of bias or unfair treatment in court.

out that magistrates could play a part in this by requesting video evidence automatically, and when it was regularly not available, raising it as a concern.

## **Scrutiny of police interactions with BAME CYP**

A number of suggestions were put forward as to how police interactions with BAME CYP could be scrutinised more robustly and lessons could be learnt to improve decision-making to reduce disproportionality.

- **Improve the work of scrutiny panels:** training could be useful to ensure panels take more of an inquisitorial approach, to go beyond the overview of the case given. It would also be useful to have more magistrates represented on scrutiny panels.
- **Increase rates of diversion:** a pilot programme in Durham around pre-court diversion has offered an example of good practice - its findings should be considered specifically in terms of its impact on BAME children.
- **Review the use of ‘cannabis warnings’:** there is an unhelpful disparity in the way young people are dealt with in relation to drug possession charges, when compared to the equivalent disposals that are used for adults. This needs to be addressed to ensure it does not exacerbate disproportionate outcomes for youths.

## **Responding to knife crime**

There was a lot of concern among participants that there was a risk of a ‘moral panic’ being created around knife crime, with sensationalist media reporting focusing on the details of the incidents without considering the underlying causes. The concern was that this often resulted in people proposing the only response to the problem was more harsh punishment. It was felt that this trend could increase disproportionality further. One example briefly discussed was the introduction of Knife Crime Prevention Orders, which many felt would impact most negatively on CYP from BAME communities. It was suggested that the MA could play a role in reiterating to its members that sentencing guidelines have not changed, and that the underlying principles of the youth court remain the same.

## **Robust collection of disaggregated data**

The importance of collecting more data which is disaggregated by ethnicity was raised as fundamental to understanding what key factors are leading to disproportionality. This data should be recorded with a view to analysing it, and then ensuring agencies ‘explain or reform’ if disproportionality is evidenced.

## **Conclusions**

Final recommendations and suggested actions for the MA:

- Continue to ensure the issue of disproportionality is considered in relation to all MA policy work and internal communications.
- Raise awareness about the impact of disproportionality throughout the youth justice system, and how it may be impacting on the information that comes before court.

- Encourage magistrates to scrutinise evidence in relation to potential biases.
- Work with the Youth Justice Board, the Association of YOT Managers, and YOTs to increase the reference to possible disproportionality in PSRs.
- Encourage magistrates to be more pro-active in challenging the language that is used in PSRs - particularly where individuals are labelled as gang members - and should ask for justification or supporting evidence if it has not been provided.
- Provide magistrates with information about procedural fairness, and how it can address a lack of trust amongst BAME communities.
- Make use of examples of best practice in other agencies. For example, the CPS's recent work to improve inclusion and develop a community engagement strategy.
- Encourage improvement in the collection and understanding of data, to allow magistrates to self-reflect and make improvements, 'what gets measured gets done'. The MA should also lead the way in calling for data collection in youth courts.
- Develop a clear MA position statement around knife crime, reminding those that work in the youth courts that the sentencing guidelines have not changed and need to be adhered to.
- Improve awareness and understanding around the differences between 'intelligence' and 'information' when used in a court setting. Look at working with the Judicial College to improve awareness of the potential impact of bias on fair decision-making.
- Make use of critical friends to support the development of appropriate training materials on disproportionality issues.
- Continue to prioritise disproportionality and monitor new research or reports on the topic, especially those that rely on the voice of CYP from BAME communities.

## Next steps and resulting actions

The MA has recently refreshed its policy priorities and has decided to retain disproportionality as a key area of its future work.

In light of the recommendations put forward during the roundtable discussion, and building on further feedback provided by the Youth Court Committee, the MA will prioritise the following actions as part of its future work:

### Promoting awareness among magistrates

- **Magistrates in the Community (MIC):** The MA will continue to develop its MIC programme to promote active engagement with the communities that magistrates serve. In particular, we will explore opportunities to collaborate with third sector experts to reach hard-to-reach groups.
- **Promote awareness of the reference to disproportionality in the Overarching Principles for Sentencing Children and Young People:** We are aware that more could be done to promote awareness of the recently updated Overarching Principles for Sentencing Children and Young People document, which specifies that the courts should consider the unique factors that BAME individuals may have experienced when having regard to their welfare.

- **MA Platforms:** We will seek to utilise future MA events as an opportunity to highlight disproportionality as an area of concern. For example, the programme for our Annual Conference in October currently includes sessions and speakers on intersectionality in the justice system.
- **Internal MA communications:** We will continue to make our members aware of latest publications, data and work being undertaken by government and others on disproportionality. This will include communication through our MAGISTRATE magazine and bi-weekly news bulletins.
- **The training of magistrates:** We will champion the need for a greater and more regular focus on disproportionality within non-essential training materials. We will also seek engagement with the Judicial College on future opportunities to collaborate on the issue of critical thinking and fair decision-making.
- **Knife crime:** further to recommendations put forward, the MA will continue to raise awareness among its members and the public with regard to the sentencing process for children and young people. The Chair of our Youth Court Committee recently had an opinion piece published in the Law Society Gazette about the challenges that knife crime currently poses for magistrates, which touched on this issue. We will seek to build on this in future communications with our members via relevant articles and news updates.

### **Court room processes**

- **Scrutinising the decisions of other agencies:** the MA will seek to clarify and highlight the opportunities that magistrates have to challenge decisions made earlier in the process of charging an individual - including where it is appropriate to scrutinise the language or evidence that is presented in court, particularly if gang association is alleged.
- **Communication with children and young people:** Youth magistrates already undertake rigorous training to ensure they are skilled in communicating with children and young people in a court setting. Building upon this, we will seek to highlight to our membership the importance of communicating the independence of the magistracy from other criminal justice agencies, notably in terms of the separate functions of the police and the Crown Prosecution Service.

### **Improving trust in the BAME communities**

- **External MA communications:** as part of an existing MA project to refresh the public facing aspects of our website, we will consider what more we can do to clarify common misconceptions about the work of the magistracy, and the framework that underpins decision making and sentencing.
- **Scrutiny panels:** building on existing research undertaken by the MA in 2015, we will undertake a further project to establish the coverage of existing scrutiny panels. Following this refresh, we will seek to communicate opportunities for our members to

join local panels where appropriate. We will continue to encourage PCCs to set up scrutiny panels where they do not already exist, and to check that youth cases are considered separately from adult out of court disposals, as well as ensuring all panels specifically consider any disproportionality.

- **Recruiting more diverse magistrates:** we will continue to encourage and support the Ministry of Justice to actively encourage recruitment of magistrates from BAME communities.

## Policy areas

The following areas were identified as potential areas which may impact most negatively on BAME communities, and the MA will ensure that any work we do on these areas considers possible disproportionality and proposes steps to prevent this.

- **Reform agenda:** The MA will continue to call for robust safeguards to ensure judicial discretion is maintained around the use of video link for children and young people as the reform agenda progresses, to ensure it is only used in exceptional circumstances. In addition the impact of court closures on minority communities should be considered.
- **The Modern Slavery Act:** The MA has previously raised its concerns about the lack of training and guidance around the use of the National Referral Mechanism for victims of modern slavery, as well as the MSA's statutory Section 45 defence. We welcome the findings of the Independent Review of the MSA<sup>8</sup>, which echoed some of these concerns. Specifically, the report calls for guidance in order to clarify how the NRM process should interact with the criminal justice process, and also states that judges and magistrates should be prompted to question whether the Section 45 defence is applicable at the pre-trial hearing for all cases involving children (where it has not already been raised by the defence). We are anecdotally aware that defendants may be apprehensive in using either of these mechanisms, and welcome these proposals.
- **Youth advocacy:** The MA will continue to attend the MoJ's Youth Court Advocacy stakeholder group, to input into future discussions on this important topic.

---

<sup>8</sup> <https://www.gov.uk/government/collections/independent-review-of-the-modern-slavery-act>

## **Appendix 1 - List of organisations attending roundtable**

Organisations represented at the roundtable were as follows:

- Association of YOT Managers
- Black Training and Enterprise Group
- Crown Prosecution Service
- Howard League
- Her Majesty's Courts and Tribunal Service
- House of Lords
- Just for Kids Law
- Magistrates Association Youth Court Committee
- Ministry of Justice
- Sentencing Council
- Standing Committee for Youth Justice
- StopWatch
- The Traveller Movement
- Wipers
- Youth Justice Board