

Anti-racist Wales inquiry (Crime and Justice)

Cardiff University's Wales Governance Centre has carried out wide-ranging research into the topic of criminal justice in Wales over the last decade. This research has helped to uncover a range of issues including those relating to sentencing and imprisonment, alternative criminal justice models, the legal economy, and the 'jagged edge' of criminal justice in Wales. In this evidence submission I focus on two areas. The first draws upon official data to provide the inquiry with the latest information on the extent of racial disproportionality within the Welsh criminal justice system. The second relates to the effectiveness of the crime and justice section of the *Anti-racist Wales Action Plan* and the unique constitutional arrangements for criminal justice in Wales.

1. Racial Disproportionality in the Welsh Criminal Justice System

- 1.1 The Ministry of Justice's (2021: 3) *Ethnicity and the Criminal Justice System 2020* identified that minority ethnic groups are 'over-represented' within most stages of the criminal justice system in England and Wales. This research follows the publication of the Lammy Review in 2017 and its conclusion that people from minority ethnic backgrounds in England and Wales are drawn disproportionately into the criminal justice system (Lammy Review, 2017). However, while both publications provide a clear insight into the problems facing minority communities across England and Wales as a whole, neither the Ministry of Justice nor the Lammy Review provide a disaggregated picture for Wales.

- 1.2 Over the past five years, research by the Wales Governance Centre has evidenced the prevalence and extent of racial disproportionality within the Welsh criminal justice system. Drawing upon official data, much of which gathered using the Freedom of Information Act 2000, *Sentencing and Immediate Custody in Wales* (Jones, 2019a), *Sentencing and Imprisonment in Wales* (Jones, 2019b), and the *Welsh Criminal Justice System: On the Jagged Edge* (Jones and Wyn Jones, 2022) found that individuals from non-White backgrounds in Wales were over-represented in almost all stages of the criminal justice system. The conclusion drawn from this research is that racial disproportionality within the Welsh criminal justice system is both *systematic* (found in all areas of the system) and *consistent* (trends are observed across multiple years).

1.3 Official data show that racial disproportionality can be found within every stage of the Welsh criminal justice system:

Policing

- Home Office data show that there is a disproportionate use of stop and search on Black and Mixed ethnic groups in Wales. In 2021/22, there were 18 stop and searches per 1,000 Black (or Black British) people in Wales and 7 per 1,000 for Mixed groups. The number of searches per 1,000 people was the same for White (5) and Asian (5) groups in 2021/22.¹
- Despite comprising 0.9 per cent of the general population, 2 per cent of all those arrested by Welsh forces in 2021/22 belonged to a Black ethnic group. In 2021/22, there were 30 arrests per 1,000 Black (or Black British) people in Wales and 11 per 1,000 for Mixed groups. The lowest arrest rate was recorded for individuals from an Asian (8 per 1,000) background followed by those from a White background (13 per 1,000).²
- Data on the number of times police tactics were used show that individuals from a Black, Asian or Mixed background were overrepresented in police use of force statistics in 2021/22. While the 2021 Census found that 4.9 per cent of the Welsh population belonged to a Black, Asian or Mixed ethnic group, 8.1 per cent of all incidents of police restraint were against individuals from a Black, Asian or Mixed ethnic background in 2021/22.³
- Individuals belonging to a Black, Asian or Mixed ethnic group in Wales were also over-represented within police use of ‘Less lethal weapons’ in 2021/22. 5.9 per cent of all incidents where a Conducted Energy Device (i.e. a TASER) was used by Welsh forces was against someone from a Black, Asian or Mixed ethnic background in 2021/22.⁴

¹ Data were obtained from the Home Office via the Freedom of Information Act 2000.

² Data were obtained from the Home Office via the Freedom of Information Act 2000.

³ Data were obtained via the Home Office’s (2022) *Police use of force statistics, England and Wales: April 2021 to March 2022*. This information is available at: <https://www.gov.uk/government/statistics/police-use-of-force-statistics-england-and-wales-april-2021-to-march-2022>

All population data used in this submission were taken from the Census 2021 using a custom data set. This information is available at: <https://www.ons.gov.uk/census>

⁴ This total includes all incidents including where a CED device is drawn, aimed, arced, red-dot, drive-stun, fired and angle drive-stun.

Courts and Sentencing

- The Lammy Review (2017) found that individuals from a Black, Asian or Minority Ethnic (BAME) background were less likely to enter guilty pleas due to a lack of trust in the criminal justice system. Disaggregated data show that between 2010 and 2022 a higher proportion of White defendants (73.4 per cent) pleaded guilty at the Crown Court compared to individuals from a Black, Asian or Mixed ethnic background (67.8 per cent) background.
- Between 2010 and 2022, individuals from a Black (74 per cent), Asian (73 per cent) and Mixed (67 per cent) ethnic group recorded a higher average custody rate at the Crown Court in Wales than White (61 per cent) defendants.⁵
- Academic research has identified clear racial disparities in sentencing outcomes when considering offence type. In particular, studies have shown that individuals from ethnic minority backgrounds are far more likely to receive custodial sentences for drug related offences (Hopkins et al. 2016; Isaac, 2020). In Wales, over a 12 year period between 2010 and 2022, the average custody rate for defendants sentenced for drug offences at the Crown Court was higher for Black (79.7 per cent), Asian (79.2 per cent), and Mixed (70.9 per cent) individuals than those from a White (56.2 per cent) ethnic background.⁶
- Individuals from Black, Asian or Mixed ethnic backgrounds are also more likely to receive longer custodial sentences than those belonging to a White ethnic group. Between 2010 and 2022, the average custodial sentence length in Wales was higher for Black (25.4 months), Asian (24.6 months) and Mixed (18.7 months) offenders sentenced in Wales than for those from a White (16.9 months) ethnic group.⁷

⁵ Data were obtained via the Ministry of Justice's (2023) *Criminal Justice System Statistics Quarterly: December 2022 (Crown Court Data Tool)*. This information is available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022>

⁶ Data were obtained via the Ministry of Justice's (2023) *Criminal Justice System Statistics Quarterly: December 2022 (Crown Court Data Tool)*. This information is available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022>

⁷ Data were obtained via the Ministry of Justice's (2023) *Criminal Justice System Statistics Quarterly: December 2022 (Outcomes by Offence Data Tool)*. This information is available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022>

The Prison and Probation Population

- Since 2017, the number of Welsh prisoners (based on home address prior to entering custody) from a Black, Asian or Mixed ethnic background has increased by 11.8 per cent at a time when the overall Welsh prison population fell by 2.8 per cent.⁸ In 2017, prisoners from a Black, Asian or Mixed ethnic background represented 8.1 per cent of the total Welsh prison population, this figure had increased to 9.3 per cent in 2022.⁹
- In 2022, there were 53 Black people from Wales in prison for every 10,000 of the population. This rate compared to just 14 White people per 10,000 of the population. There were 20 Asian people in prison per 10,000 and 29 people from a Mixed background per 10,000 in prison in 2022.
- Individuals from Black and Mixed ethnic groups are also over-represented amongst the probation population in Wales. For every 10,000 Black people living in Wales, 90 were under probation supervision in 2022. This compared to a rate of 44 per 10,000 for individuals from a White background, 35 for Asian and 56 for those from a Mixed ethnic group.
- The Ministry of Justice's (2021) most recent *Ethnicity and the Criminal Justice System* report found that Black prisoners are consistently more likely to serve a higher proportion of their determinate sentences in prison than any other ethnic group. Disaggregated data show that between 2015 and 2018, Mixed prisoners from Wales (63 per cent) served a higher proportion of their determinate sentences in prison followed by Black (61 per cent), White (57 per cent) and Asian (57 per cent) prisoners.¹⁰

⁸ From 390 prisoners in 2017 to 436 prisoners from a Black, Asian or Mixed ethnic background in 2022.

⁹ Data were obtained from the Home Office via the Freedom of Information Act 2000.

¹⁰ Data were obtained from the Home Office via the Freedom of Information Act 2000.

The Ministry of Justice are currently handling a request for the latest data on the proportion of determinate sentences served broken down by ethnic group in Wales.

2. The Anti-racist Wales Action Plan: On the Jagged Edge

- 2.1 *The Welsh Criminal Justice System: On the Jagged Edge* charted the emergence of a distinct Welsh criminal justice system. These distinct and highly anomalous arrangements reflect the fact that the institutions formally responsible for criminal justice in Wales simply cannot operate in isolation from those areas of social policy that fall under the auspices of the Welsh Government. In post-devolution Wales, those charged with the responsibility for conceiving and operationalising criminal justice policy are almost invariably operating across the line between devolved and reserved responsibilities. The Welsh criminal justice system, therefore, is best characterised as being constituted across a ‘jagged edge’ of intersecting competences and responsibilities shared between two governments with different political priorities and accountable through different electoral mandates (Jones and Wyn Jones, 2022: 8).
- 2.2 What emerges out of this unprecedented and highly unusual set of constitutional arrangements is enormous complexity and inherent frustration.¹¹ The Welsh Government’s commitment to tackling racial discrimination in the Welsh criminal justice system, as set out in the *Anti-racist Wales Action Plan*, offers a clear insight into the limitations imposed upon it when operating as a subordinate or ‘minor partner’ in the Welsh criminal justice system (Jones and Wyn Jones, 2022: 110). For example, while the *Anti-racist Wales Action Plan* sets out to ‘improve outcomes’ and ‘tackle systemic racism’, the plan also acknowledges that the Welsh Government (2022: 113) ‘cannot deliver real change in this area’ without the support of its criminal justice ‘partners’ from the Criminal Justice Board for Wales. The effectiveness of the Welsh Government’s strategy to combat racism in the Welsh criminal justice system is, therefore, heavily dependent on the work of agencies and organisations for which they have no formal control or responsibility. The Welsh Government subsequently finds itself in a position where it is responsible without power (Jones and Wyn Jones, 2022).
- 2.3 If the Equality and Social Justice Committee’s inquiry is to fully gauge how effective the *Anti-racist Wales Action Plan* is, it will need to closely scrutinise the actions of those formally responsible for the criminal justice system in Wales. This includes partners in the Criminal

¹¹ Wales is the only common law country in the world to have an executive and legislature without its own distinct legal jurisdiction (Huckle, 2016; National Assembly for Wales’ Constitutional and Legislative Affairs Committee, 2012).

Justice Board for Wales, such as HM Prison and Probation Service, HM Courts and Tribunals Service, the Crown Prosecution Service, and Chief Constables in Wales. However, while the many partners that comprise the Criminal Justice Board for Wales are undoubtedly key to the operational delivery of justice services in Wales, many of the intractable problems responsible for racial disparity in the criminal justice system are rooted in the criminal law itself. Examples include the guidance on reasonable grounds for a stop and search as set out in Code A of the Police and Criminal Evidence Act 1984 (Independent Office for Police Conduct, 2022), the law on joint enterprise (Hattenstone, 2023), and the provisions included in the Police, Crime, Sentencing and Court Act 2022 (Criminal Justice Alliance, 2021). Significantly, despite the support being leant by criminal justice partners in Wales to the *Anti-racist Wales Action Plan*, the legislative and policy levers which are crucial to delivering systematic and overarching change in this area reside in the highly centralised Ministerial departments in Whitehall (Jones and Wyn Jones, 2022). The extent to which that members of the Criminal Justice Board for Wales can *successfully* lobby for legislative or policy change on Wales' behalf in Westminster/Whitehall is, however, subject to a high degree of uncertainty.

- 2.4 There is good cause to be sceptical about the prospect of achieving meaningful change in Wales. Firstly, despite the efforts being made by criminal justice partners in Wales to support the aims behind the *Anti-racist Wales Action Plan* or even its own *Criminal Justice Anti-Racism Action Plan for Wales*, the highly centralised nature of Ministerial departments in Whitehall means that Wales often 'counts for very little' in and for the institutions of the England and Wales criminal justice system (Jones and Wyn Jones, 2022: 81-82). It is perhaps a little hopeful, it not unrealistic, to therefore expect members of the Criminal Justice Board for Wales to successfully lobby Ministers and senior officials in Whitehall to deliver the sweeping reforms needed to deliver a truly *Anti-racist* system in Wales. This point is further reinforced by the fact that previous efforts to tackle racial discrimination in the criminal justice system for England and Wales have failed to deliver meaningful change. Despite accepting all 35 of the recommendations made by the Lammy Review in 2017, for example, the UK Government has yet to implement many of the review's recommendations in full (House of Commons Debate, 30 June 2020). A report published by the Prison Reform Trust (2022), five years on from Lammy Review, found that not one recommendation relating to prisons had been met in full. Crucially, while the Welsh Government cites the 'explain or reform' principle set out in the Lammy Review in its

Anti-racist Wales Action Plan, the Prison Reform Trust (2022: 5) concluded that the recommendation has yet to produce ‘the desired outcome’ in prisons across England and Wales.

- 2.5 The success of the Welsh Government’s *Anti-racist Wales Action Plan* is also likely to depend on the impact of the Criminal Justice Board for Wales’ own *Criminal Justice Anti-Racism Action Plan for Wales*. While the Criminal Justice Board for Wales’ decision to publish its own strategy can be viewed as a credible and worthwhile attempt by criminal justice agencies in Wales to attend to the (often overlooked) distinct Welsh policy landscape, it is unclear why there is a need for two separate (but overlapping) strategies seemingly committed to the same aim. This uncertainty is compounded further by the fact that the Welsh Government’s strategy vows to work alongside ‘partners’ in the Criminal Justice Board for Wales (Welsh Government, 2022:113), while the Criminal Justice Board for Wales’ (2022: 10) plan supports the development of a ‘one public service’ approach alongside the Welsh Government. The existence of two duplicate ‘Anti-racism/Anti-racist’ strategies has the potential to add unnecessary complication to a problem area already characterised by enormous complexity. The publication of two strategies also stands as a clear example of the complications surrounding ‘joined-up’ policy solutions ‘when neither level of government has control over all of the policy levers necessary to effect change’ (Jones and Wyn Jones, 2022: 9).
- 2.6 Notwithstanding the efforts being made by Welsh Government officials and ‘partners’ in the criminal justice system in Wales, the constitutional arrangements underpinning the Welsh criminal justice system pose an undeniable and considerable threat to the ambitious vision set out in the *Anti-racist Action Plan*.

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