

House of Commons

House of Lords

Joint Committee on Human Rights

Black people, racism and human rights

Eleventh Report of Session 2019–21

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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Summary

In response to the awful killing of George Floyd in the US, Black Lives Matter protests in the UK have highlighted once again the racism and inequality that exists here. Racial inequalities in the protection of human rights raised by the Black Lives Matter movement led this Committee to commission polling which found that over three quarters of Black people in the UK do not believe their human rights are equally protected compared to white people.

Whilst the issues of racial inequality have been the subject of repeated reviews, the lack of progress in implementing the findings of those reviews has become a source of intense frustration and concern. Where actions have been taken, they have often been superficial and not had lasting effect. Our aim for this inquiry emphatically was not to embark on a new round of fact-finding in areas where the facts are already well established and

considered recommendations have been made. Instead we call for action to implement these recommendations and look to how best to overcome the seeming inability for Government to act. To that end, we call on the Government to set out a comprehensive cross Government race equality strategy. This must have at its heart improved data collection on racial inequality. Our report focuses on four issues where inequality in the protection of human rights is of particular concern: (i) health, (ii) criminal justice, (iii) nationality and immigration and (iv) democracy.

Over 60% of Black people in the UK do not believe their health is as equally protected by the NHS compared to white people. The death rate for Black women in childbirth is five times higher than for white women. The NHS acknowledge and regret this disparity but have no target to end it. This must be rectified. The impact on the Black community of Covid-19

has been disproportionately severe. Any lessons learned review or public inquiry into the Government's response to Covid-19 must prioritise consideration of this unequal impact.

85% of black people are not confident that they would be treated the same as a white person by the police. The police should carry out their own polling on this issue and set a target for reducing this startling lack of trust. The Lammy Review was commissioned in 2016 to address the issue of over-representation of Black people in the Criminal Justice System. Four years on, the recommendations of this review must be taken forward as a matter of priority. Likewise, recommendations from the Angiolini review of deaths in custody which reference institutional racism, race or discrimination must be acted upon as a matter of urgency.

The Windrush scandal revealed that hundreds of Commonwealth citizens, many of whom were Black people from the 'Windrush'

generation or their children, had been wrongly detained, deported and denied legal rights.

We expect the Government to fulfil its promise to implement the recommendations from the Windrush Lessons Learned Review, in full, as a matter of urgency. In particular, the Home Office needs to embed the culture change needed to ensure that people are treated with humanity. We are hugely disappointed by the delays in making payments under the Windrush Compensation Scheme. Those affected must receive the compensation that they are entitled to without further delay.

It is of serious concern to us that 25% of Black voters in Great Britain are not registered to vote compared to a 17% average across the population. We urge the Government to consult on the introduction of automatic voter registration with the aim of reducing this disparity.

The failings of successive governments to act in response to the successive reports and reviews shows that something is wrong with the architecture which is supposed to protect human rights and promote racial equality.

We find that the Equality and Human Rights Commission (EHRC) has been unable to adequately provide leadership and gain trust in tackling racial inequality in the protection and promotion of human rights. For the EHRC to be, and be seen to be, effective Black people must be represented at the top level of the organisation, including as commissioners. The Commission needs adequate resources. And its enforcement powers must be strengthened to enable it to undertake investigations where it is suspected that an organisation has breached the Human Rights Act 1998 and provide legal assistance to individuals in Human Rights Act cases.

Even if the EHRC's capacity to promote and protect Black people's human rights is enhanced as we recommend, there would still be the need for a high profile, organisation at national level whose priority it is to champion and press for progress on race equality. This capacity has not existed since the Commission for Racial Equality was folded into the EHRC. The re-creation of a body along the lines of the CRE must now take place, along with a network of bodies at local level to fulfil a role similar to that previously performed by the race equality councils.

The Government should consider whether changes are required to equality legislation to make it more effective as a tool to enforce Black people's human rights.

1 Introduction

Context

1. On 25 May 2020 George Floyd died in Minneapolis, USA. A police officer had knelt on his neck for almost nine minutes. The officer is currently awaiting trial for murder; other officers present are also facing charges. The event sparked a wave of protests across the US that spread globally. In the UK protesters took to the streets in solidarity with protesters in the US. While many of these protests were not organised by any one group, they are associated with the Black Lives Matter (BLM) movement. BLM is an anti-racist and human rights movement that originated in the US in 2013 from a hashtag, #BlackLivesMatter. The hashtag was circulated following the acquittal of a neighbourhood watch coordinator who shot an unarmed Black teenager, Trayvon Martin in

Florida, USA. The movement gained momentum in the wake of continuous Black deaths, often as a result of further police shootings in the USA.

2. In the UK protesters and campaigners have highlighted their own experiences of racial violence and discrimination. They have drawn attention to events such as the Windrush scandal, the report by Public Health England that found that death rates from Covid-19 were highest among people in Black, Asian and minority ethnic groups, and the disproportionate rates of Black people being stopped and searched by the police. Campaigners have also focused on the teaching of the UK's colonial past in schools and universities and the appropriateness of statues, monuments and use of names associated with slave owners or those involved in atrocities against and oppression of other races and cultures.

3. On 15 June, in response to the Black Lives Matter protests the Prime Minister Boris

Johnson announced that the Government would set up a Commission to look at racial inequality. Writing in the Telegraph to announce the Commission, the Prime Minister said:

“It is no use just saying that we have made huge progress in tackling racism. There is much more that we need to do; and we will. It is time for a cross-governmental commission to look at all aspects of inequality—in employment, in health outcomes, in academic and all other walks of life. We need to tackle the substance of the problem, not the symbols. We need to address the present, not attempt to re-write the past [...]”

Our inquiry

4. It was against the backdrop of the Black Lives Matter protests and the Government’s announcement of the Commission on Race and Ethnic Disparities that we launched this inquiry.

In doing so our aim emphatically was not to embark on a new round of fact-finding in areas where the facts are already well established and considered recommendations have been made. The exception to this, was in relation to in a small number of areas that we felt had not been sufficiently examined before. For example, we took oral evidence on the issue of maternal deaths among Black women which has recently risen to prominence in media and Parliament, following the publication of new statistics and an e-petition which received over 180,000 signatures.

5. Our recommendations focus on what needs to happen now to drive forward the implementation of recommendations from existing reports to deliver lasting change and protect Black people's human rights. While Black people's human rights are at risk across a wide range of issues, in the inquiry we have

focused on concerns in four key areas: the criminal justice system, immigration, health, and democracy.

6. In response to our call for evidence we were very grateful to have received 24 written submissions. We also held three oral evidence sessions between July and September 2020. At the first of these we heard from prominent Black expert witnesses who have authored, advised or been closely involved in very significant reports that have highlighted the impact of racism on the protection of Black people's human rights. At the second session we heard from Professor Jacqueline Dunkley-Bent, the Chief Midwifery Officer about the high rates of mortality among Black women during pregnancy and birth and from the Equality and Human Rights Commission about their role in protecting Black people's human rights. In our final session we heard from representatives from ClearView Research who presented to us the findings from the research we commissioned them to

undertake into Black people's perceptions of how their human rights are protected (outlined in Chapter 2). We are also very grateful to Kenny Imafidon, co-founder and Managing Director of ClearView Research, who acted as a Specialist Adviser to the Committee on this inquiry, in a personal capacity.

Scope and language

7. This inquiry is focused on Black people in the context of the Black Lives Matter movement. It concentrates on those from three broad ethnicity groups, Black African, Black Caribbean and Black other, including mixed-Black. We fully acknowledge that Asians and other ethnic minority groups also experience the effects of racism in relation to protection of their human rights. For example, in relation to policing many of the issues young Black people face are also experienced by young, Asian people. By focusing here on the particular experiences of

Black people we do not seek to diminish the experiences of those from other ethnic minority groups in any way.

8. Some of the sources referred to in this report have looked more broadly at the experiences of those from ethnic minorities, so a range of terms are used. These include, BAME, BME and people of colour. We note that these are contested terms and many individuals will not describe themselves using these terms, even though they are applied to them.

9. In this inquiry we have not examined in any detail the prejudicial attitudes that are the root causes of racism and failings to protect Black people's human rights. However, we note here that efforts to change attitudes and address racism, especially through education and initiatives such as Black History Month, are vital to achieving lasting change and urge that greater resource is dedicated to them.

Human rights and the rule of law

10. The issues discussed in this report engage fundamental rights enshrined in the European Convention on Human Rights (ECHR) including:

- the right to liberty (Article 5 ECHR), which protects people from unlawful detention;
- the right to a family life (Article 8 ECHR);
- the right to a fair trial (Article 6 ECHR); and
- the right to life (Article 2 ECHR).

11. The right to non-discrimination (Article 14 ECHR) means that these rights must all be enjoyed equally, without discrimination including on the grounds of race. Article 14 is not a 'free-standing' right which means that to rely on it a claimant must show that discrimination has led to a failure to protect one or more of the other rights in the Act.

12. The UN Convention on the Elimination of all forms of Racial Discrimination (CERD) prohibits all forms of racial discrimination—defined as any

difference in treatment which impairs the equal enjoyment of human rights. It requires States to take action to eliminate racial discrimination in their institutions—this is relevant to the current debate where questions have been arising in relation to institutional racism or institutional ignorance about race and history. Although it does not apply when distinguishing on grounds of nationality (i.e. in relation to immigration matters).

13. The Equality Act 2010 prohibits both direct discrimination (s. 13 Equality Act 2010) and indirect discrimination (s. 19 Equality Act 2010) on the grounds of race. The public sector equality duty (s. 149 Equality Act 2010) requires public bodies to identify and eliminate unlawful discrimination, advance equality of opportunity and foster good relations between groups.

14. Finally, it must be borne in mind that as a bedrock for the application of human rights, the rule of law and, in particular, the requirement

that there be just laws that are applied equally, is also relevant. In some of the issues examined in this report, such as the over-policing of Black communities, the unequal application of the law is at the heart of the problem and it is this that is preventing human rights from being protected equally.

2 Perceptions of human rights in the Black community

15. We were clear at the outset that a primary interest in undertaking this inquiry was to better understand how Black people felt their human rights were protected in comparison to white people. To help achieve this, we commissioned ClearView Research, a Black-led research organisation, to carry out qualitative and quantitative research into Black people's views on whether their human rights are equally protected in the UK.

Methodology

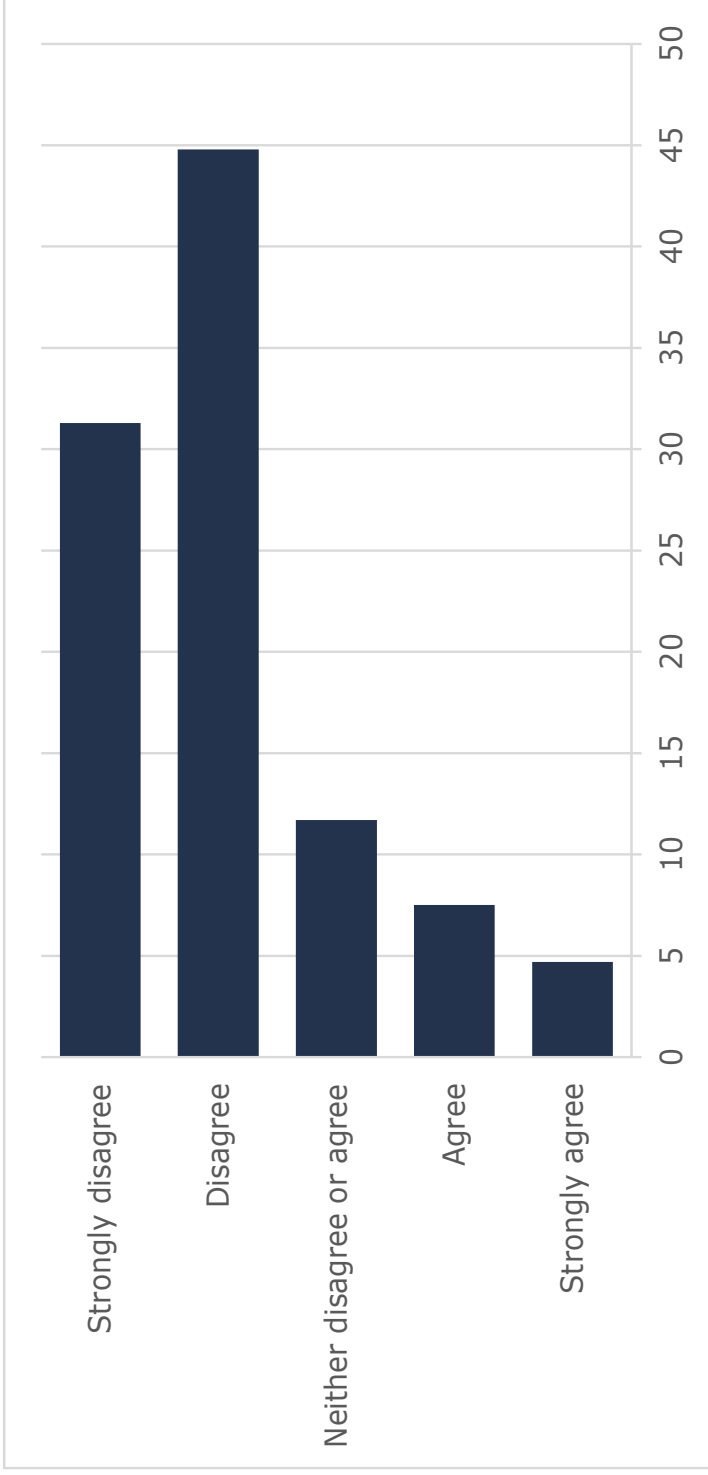
16. ClearView Research is an audience insight and strategy agency which specialises in working with diverse groups; in particular, young people, minority ethnic groups, people with specific protected characteristics, and vulnerable communities on research and evaluation projects.

17. ClearView took an approach which involved conducting focus groups and interviews as well as a polling exercise. The focus groups were conducted first and feedback from them were used to help frame the polling questions.

Key findings

18. The headline finding from the polling was that the majority (over 75%) of Black people in the UK do not believe their human rights are equally protected compared to white people. (see figure 1.). Some of the reasons for this were explored in more depth in the interviews and reasons such as unequal treatment in education, employment and crime were raised.

Figure 1: “As a black person, I believe that my human rights are equally protected compared to white people in the UK”, percentage



Source: CVR Insights, The Black Community and Human Rights, September 2020

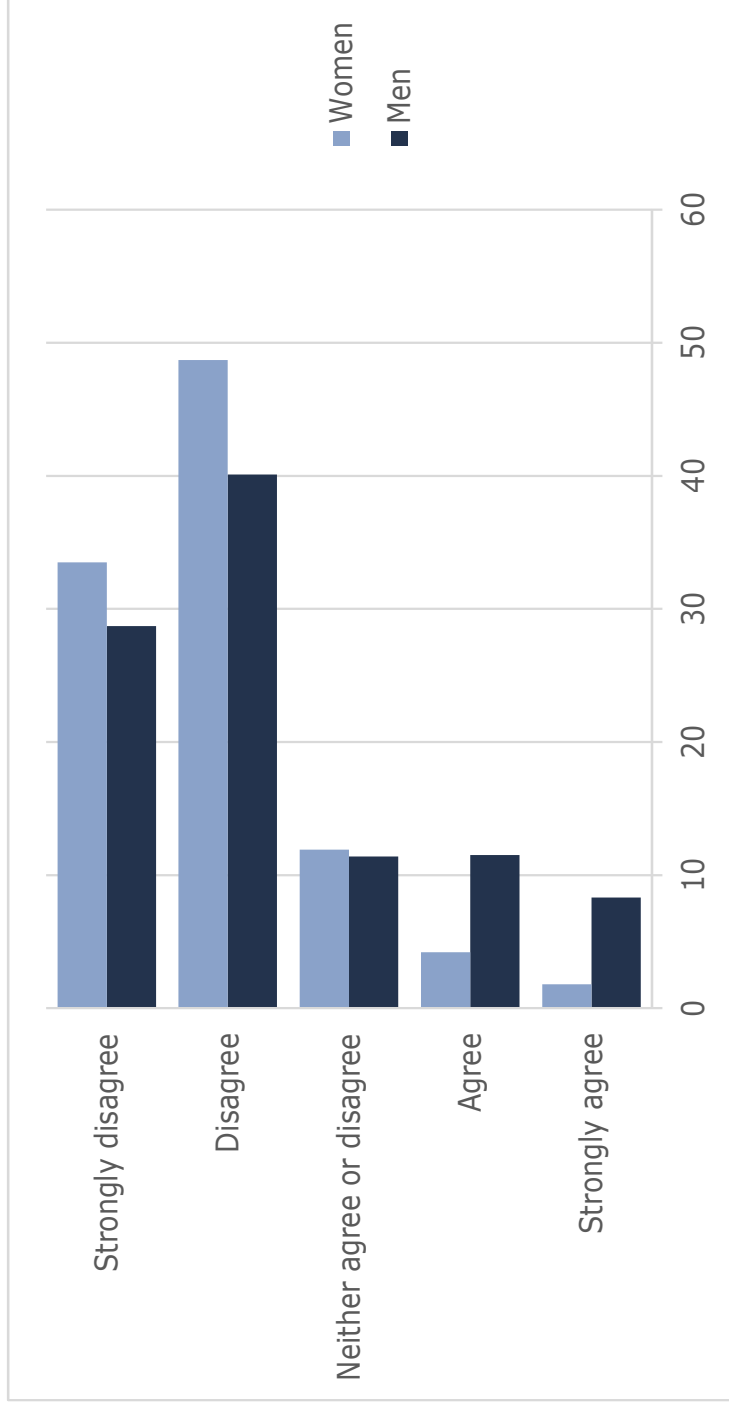
19. Speaking about this finding when he came to present the research findings to us, Kenny Imafidon, Co-Founder and Managing Director of ClearView Research told us that when answering this question about whether Black people’s human rights are equally protected when compared with white people, respondents tended to link the term “human rights” to specific rights such as “my right to an education”, “my right to life”, “my right to a fair trial”. Asked by Dean Russell MP whether respondents’ answer to this question was based on personal experiences, Burphy Zumu, Director and Senior Research Executive at ClearView, told us that:

“From [the interviews] we got a sense that, for some people, it was direct experiences of their life that made them feel that way. For others, it was the stories they heard from others in the community—from their close friends, their families. That gave them a feel [that their human rights are not equally

protected compared to white people], which was also supported by their knowledge of certain research that exists.”

20. While the majority of both men and women do not believe their human rights are equally protected compared to white people in the UK this is felt far more strongly by women. Over 82% of women disagreed that their human rights are equally protected, compared with 69% of men. This differential between men and women’s views was evident in relation to all the issues covered in the polling; also arising in the context of views about the police and the NHS. Women felt that their rights were less protected in all domains.

Figure 2: “As a black person, I believe my rights are equally protected compared to white people”, percentage by gender



Source: CVR Insights, The Black Community and Human Rights, September 2020

21. Other key findings from the polling were:
- Over 60% of Black people in the UK do not believe their health is as equally protected by the NHS compared to white people. Women (78%) are substantially more likely than men (47%) to not believe that their health is equally protected by the NHS compared to white people.
 - The vast majority (85%) of Black people in the UK are not confident that they would be treated the same as a white person by the police. Black women (91%) are more likely than Black men (77%) not to feel they would be treated the same as a white person by the police.
 - When asked what actions they think could have a positive impact on how the human rights of Black people are protected, the top three actions selected by Black people were:

- i) More Black leaders in decision-making roles;
- ii) More equal education [opportunities] for Black people; and
- iii) People from outside of the Black community challenging unacceptable violations of Black people's human rights.

Box 1: Suggestions made by poll respondents about actions that could be taken to improve Black people's human rights

Better anti-racism laws and better record keeping of racists incidents including more investigations into, and the charging of, those guilty of racist offences.

More positive Black role models in different spheres (i.e. in education, the police force, the media etc.).

Better education in school and workplaces about human rights, Black history, and on equality and diversity.

More Black communities supporting each other.

Reparations given.

Purposeful reform and review of the criminal justice system.

Black focused initiatives by Government & the NHS including mental health support (especially for Black women).

Source: CVR Insights, The Black Community and Human Rights, September 2020

22. The findings from the research are very much in line with other recent surveys on related issues, although these were not focused on human rights. For example, in August 2020, the charity, Hope not Hate, published “Minority Communities in the Time of Covid and Protest: A Study of BAME Opinion.” A key finding from this work is that 72% of respondents agree that Black and Asian people face discrimination in their everyday lives.

23. The majority (over 75%) of Black people in the UK do not believe their human rights are equally protected compared to white people. This is a damning indictment of our society and must be addressed as a matter of the highest political priority. To this end, the Equality and Human Rights Commission must undertake to run an annual opinion survey on whether Black people feel their human rights are equally protected, so that issues can be identified, and progress checked.

24. The clear message from these research findings also needs to be heeded by those of us in Parliament. We, both in this Committee, and more widely across both Houses need to keep these issues high on our agendas and not only focus on them when they come to the fore in the wake of events such as the murder of Stephen Lawrence or the Windrush scandal.

25. This Committee undertakes to focus ever greater efforts on ensuring that we hear routinely from a diverse range of witnesses. These efforts will include a focus on ensuring that we hear directly from Black, Asian and minority ethnic people about their experiences in relation to human rights.

26. Parliamentary select committees should reflect on how they ensure issues of race and racism are tackled through their work and have a regular focus on race equality through their inquiry work.

27. The Houses of Parliament should use best endeavours to facilitate the recruitment of Black and minority ethnic staff into senior roles and report annually on progress.

3 Failures to secure Black people's human rights

Overarching issue: lack of implementation of report recommendations

28. A succession of reports in recent years, have investigated, and found, structural racial inequalities in state institutions and processes, from the Home Office to the Youth Justice System. These include:

- Windrush Lessons Learned Review (2020): independent review conducted by Wendy Williams, into the events leading up to the Windrush scandal;
- Race Disparity Audit (2017): announced by Theresa May in 2016, the Audit aimed to shine a light on how people of different ethnicities are treated across public services by publishing data held by the Government;

- The Lammy Review (2017): Government-backed review into the treatment of Black, Asian and minority ethnic (BAME) individuals in the criminal justice system in England and Wales;
- The McGregor-Smith Review (2017): conducted by Baroness McGregor-Smith into issues affecting Black, Asian and minority ethnic groups in the workplace in the UK;
- The Angiolini Review (2017): into death and serious incidents in police custody, which made a number of recommendations specifically referencing institutional racism, race or discrimination; and
- The Macpherson Report (1999): report from the inquiry set up in the immediate aftermath of the murder of Stephen Lawrence, it found the Metropolitan Police was “institutionally racist”.

29. This Committee and other parliamentary committees have also conducted inquiries and made recommendations which have included consideration of Black people's human rights. Some examples of these include:

- The Joint Committee on Human Rights: The Right to Privacy and the Digital Revolution (Published November 2019);
- The Joint Committee on Human Rights: Windrush generation detention, (published June 2018);
- The Joint Committee on Human Rights: Mental health and deaths in prison (interim report published May 2017);
- Home Affairs Committee, Police diversity (published May 2016);
- Home Affairs Committee, The Macpherson Report—Ten Years On (published July 2009);

- Justice Committee, Prison Governance (published October 2019);
- Justice Committee, Prison population 2022: planning for the future (published April 2019); and
- Women and Equalities Committee, Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission (published July 2019).

30. Too often recommendations made in these reports have not been implemented and where actions have been taken, they have been superficial and not had lasting effect. Baroness Lawrence summed up the frustration felt by many when she told us:

“We have had so many reports, and every time we have a report, they go back to the beginning again and keep repeating the same thing. I am not sure how many more lessons the Government need to learn. It is not

just the Government of today but the Government of the Labour Party. How many more lessons do we all need to learn? The lessons are there already for us to implement. Until we start doing that, we will keep coming back in a year or two years repeating the same thing over and over again.”

31. A related problem is that the same issues arise time and time again in different contexts, but lessons are not learned and applied consistently across the board. For example, the lack of representation of Black people at senior levels of organisations is an issue raised consistently in reviews relating to race equality. It crosses all sectors; the judiciary, the police, the civil service, and Parliament, to name but a few. In addition to better implementation of these recommendations, a more strategic and joined-up approach is needed to ensure progress can be driven forward across the board rather than in pockets.

32. The failure to act in response to reports and inquiries erodes the trust of Black people in the state and further compounds the impact of discrimination and denial of human rights. Rt Hon David Lammy MP told us that he felt the result of this would be increasing anger and frustration among the Black community.

“What happens is what we see on the streets of the United States. They take the law into their own hands. People get very angry and frustrated. I fear and worry for the future if we do not get to a place where we are not just kicking these issues into the long grass but are actually comprehensively implementing reviews that have been recommended after long and careful deliberation.”

33. So, why has more progress not been made in recent years? Listening to the evidence from our witnesses who had either authored or been instrumental in instigating reports on race

inequality over many years, it is hard to escape the conclusion that what has been lacking is the sustained political will over successive governments to prioritise implementation of recommendations. At best this can be viewed as negligent, at worst there is a sense that these reviews, which are undertaken by excellent people in good faith, are used by governments as a way of avoiding taking action to redress legitimate grievances.

34. Linked to the lack of political focus is the lack of a clear cross-Government strategy on race equality, under which recommendations can be taken forward. In his evidence to us Lord Woolley expressed his belief that a window of opportunity now exists in which real progress can be made, he told us “out of all this awfulness there is a hint of optimism if we grasp it.” This hope will only be realised with clear and unambiguous political focus and a coherent, cross-Government race equality strategy, with clear timelines and targets.

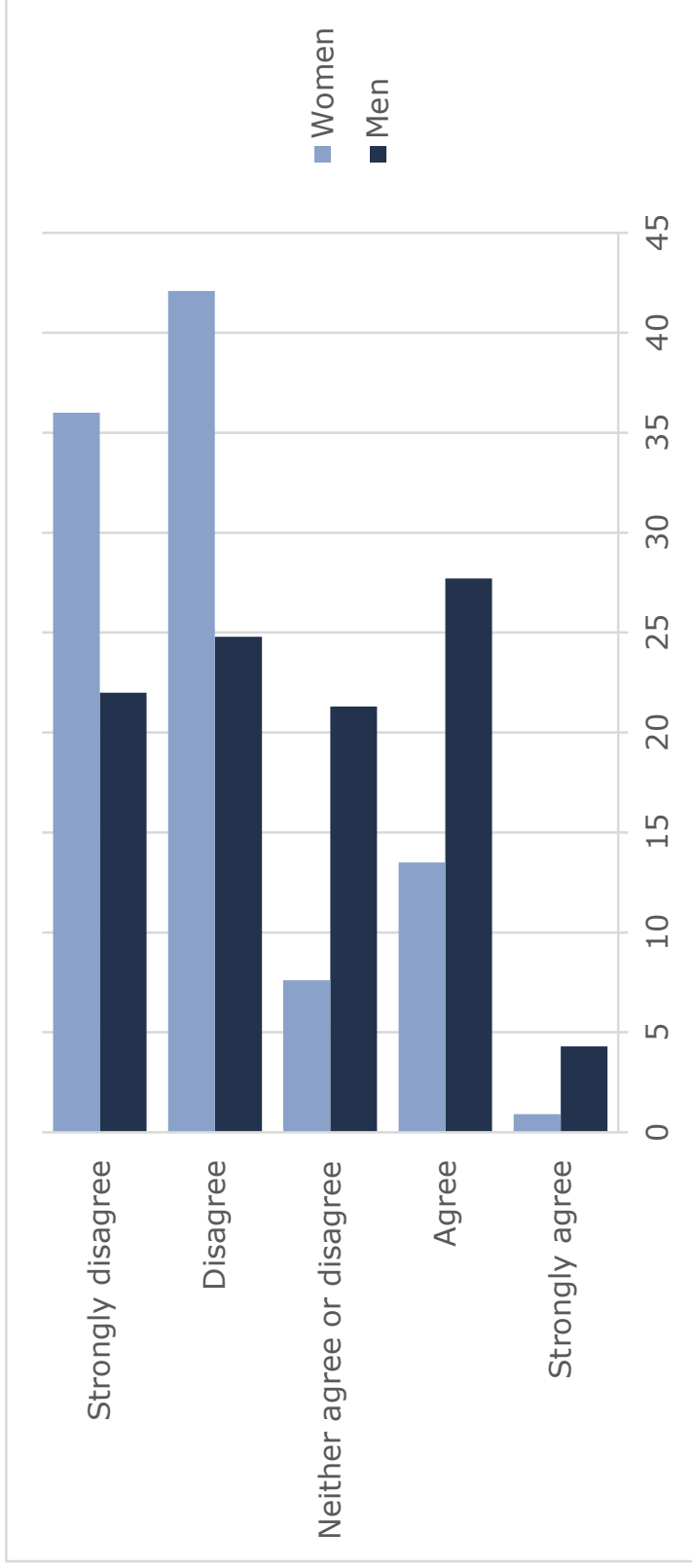
35. Commissioning reports and failing to implement them intensifies disaffection and lack of confidence in the Government on race issues. Government must implement the findings of previous reports that have been commissioned.

36. The Government has established the Commission on Race and Ethnic Disparities which is expected to report before the end of 2020. Previous inquiries and work of the Race Disparity Unit have identified the problems and pointed to solutions; the focus of this new Commission must therefore not be further fact-finding but on taking action to reduce inequalities and secure Black people's human rights. This should take the form of a comprehensive cross Government race equality strategy.

Health

37. The research conducted by ClearView found that the majority, over 60%, of Black people in the UK, do not believe their health is as equally protected by the NHS compared to white people.

Figure 3: “As a black person, I believe my health is as equally protected by the NHS as compared to a white person”, percentage by gender



Source: CVR Insights, The Black Community and Human Rights, September 2020

38. Black women (78%) are more likely than Black men (47%) to not believe that their health is equally protected by the NHS compared to white people. This finding was also reflected in the interviews. Celine Henry, Research Executive at ClearView Research told us: “The men we interviewed described their fair experiences with the NHS, whereas most women expressed concerns about poor experiences, often because they were in caregiving roles.” We agree that it is likely that the disparity in men and women’s perception of whether the NHS treats Black people equally to white people is likely, at least in part, to be due to women’s engagement with the NHS through giving birth and also caring for children and older people in the family.

39. We note the significant numbers of Black people in mental health detention in the UK. In 2016/17, known rates of Mental Health Act 1983 detention in the Black or Black British group were over four times, and rates of Community

Treatment Order use were almost nine times, those of the white group. We are concerned at potential disparities that have led to these statistics and are aware that this is a major issue.

Maternal mortality

40. Deaths in childbirth in the UK have fallen since 2010, despite risk factors such as age and comorbidities in mothers increasing. Maternal mortality occurs in fewer than 1 in 10,000 pregnancies. However, there are significant variations in these statistics based on race. Seven in 100,000 white women die in childbirth, 13 in 100,000 Asian women, 23 in 100,000 mixed ethnicity women, and 38 in 100,000 Black women. The death rate for Black women in childbirth is therefore five times higher than for white women and it is increasing year on year.

41. The reasons for this disparity are not fully understood, a range of causes including socio-

economic and physiological factors may be at play. Professor Jacqueline Dunkley-Bent, the Chief Midwifery Officer told us:

“I am still not confident that we know why there is an inequality in health outcomes between a black woman and a white woman. We have plausible explanations and the evidence on comorbidities is compelling, but there is something more.”

42. An article in the British Medical Journal argued that institutional racism is a factor. It quoted Dr Christine Ekechi, a consultant obstetrician and gynaecologist at Imperial College London: “People think of racism in an overt, aggressive way. But that’s not always what it is. It’s about biased assumptions—and we doctors have the same biases as anyone else,” In the same article, Professor Gurch Randhawa argues that one of the main problems is the lack of inclusion of Black, Asian

and minority ethnic people in research: “unless all ethnic communities are included in research, the medical profession will never be able to develop culturally competent diagnostic tests and services—and therefore can’t deliver true equity in healthcare.”

43. Even though a significant disparity in death rates between Black and white women has been visible in the data contained in surveillance reports on maternal mortality going back to at least 2013, scant attention appears to have been paid to the issue in policy terms until very recently. In 2019 MBRRACE-UK, a research partnership attached to National Perinatal Epidemiology Unit at the University of Oxford, published its annual “Saving Lives, Improving Mothers’ Care” report which set out lessons learned to inform maternity care from the surveillance data on maternal deaths and morbidity collected in the period 2015–17. Despite the stark finding from this data that Black women are five times more likely to die

in than white women the report contains no recommendation specifically aimed at reducing that disparity, although it does commit to further research on its causation. The 2018 report noted the issue but merely concluded “[a]ction is needed to address these disparities.”

44. The NHS’s Maternity Transformation Programme, “Better Births” which began in 2016 made no specific commitments in relation to women from Black, Asian and ethnic minority backgrounds. Not until the NHS Long Term plan was published in January 2019, was a commitment made to ensuring that by 2024, three-quarters of pregnant women from Black, Asian and minority ethnic minorities will receive care from the same midwife before, during and after they give birth. This pledge was repeated in the review of the *Better Births* programme, published in March 2020. It was the only specific recommendation relating to Black, Asian and minority ethnic women. When we questioned Professor Jacqueline Dunkley-Bent about

this, she stressed that the NHS Long Term plan works on “the principle of proportionate universalism, providing care at a level of scale and intensity that is equal to the level of disadvantage.” So, while elements such as “continuity of care” are a universal offer, “black, Asian and minority ethnic women will benefit where they are considered to be more likely at risk.”

45. The death rate for Black women in childbirth is five times higher than for white women. The NHS acknowledge and regret this disparity but have no target to end it. The Government must introduce a target to end the disparity in maternal mortality between Black women and white women.

Maternal mortality among Black women and Covid-19

46. Black pregnant women are eight times more likely to be admitted to hospital with Covid-19, while Asian women are four times

as likely. In September 2020, MMBRACE published 'Learning from SARS-CoV-2-related and associated maternal deaths in the UK.' This report reviewed the deaths of ten women who died with SARS-CoV-2 between 01/03/2020 and 31/05/2020. Eight of the women died from SARS-CoV-2, all of whom were in the third trimester of pregnancy at the time of disease onset. Seven of these women (88%) were from Black, Asian and minority ethnic groups.

47. To address the disproportionate impact of Covid-19 on outcomes for Black, Asian and minority ethnic women, Professor Jacqueline Dunkley-Bent has set out a four-point plan to provide additional support for pregnant Black, Asian and minority ethnic (BAME) women during the Covid-19 pandemic. The four elements of the plan, launched in June 2020, are:

- Increasing support of at-risk pregnant women. For example, making sure clinicians have a lower threshold to review, admit and consider multidisciplinary escalation in women from a BAME background.
- Reaching out and reassuring pregnant BAME women with tailored communications.
- Ensuring hospitals discuss vitamins, supplements and nutrition in pregnancy with all women. Women low in vitamin D may be more vulnerable to coronavirus

so women with darker skin or those who always cover their skin when outside may be at particular risk of vitamin D insufficiency and should consider taking a daily supplement of vitamin D all year.

- Ensuring all providers record on maternity information systems the ethnicity of every woman, as well as other risk factors, such as living in a deprived area (postcode), co-morbidities, BMI and being aged 35 years or over, to identify those most at risk of poor outcomes.

48. The impact of Covid-19 has only served to sharpen pre-existing inequalities for pregnant Black women. The Chief Midwifery Officer has formulated a four-point action plan to better support these women during the Covid-19 pandemic, which is very welcome. These actions must be implemented as a matter of urgency.

Covid-19

49. The impact of Covid-19 on the Black community has been disproportionately severe. According to research by Public Health England the highest rates of Covid-19 per 100,000 population were in people of Black ethnic groups (486 in females and 649 in males) and the lowest were in people of white ethnic groups (220 in females and 224 in males). After accounting for the effect of sex, age, deprivation and region, people of Black Caribbean and other Black ethnicity had between 10 and 50% higher risk of death when compared to white British people. A survey carried out by the Runnymede Trust, published in June, found that 19% of people from Black African and Black Caribbean backgrounds know someone who has died of the virus.

50. Reflecting on these facts and the reasons behind them, Lord Woolley told us:

“When we look in this Human Rights Committee at the right to life, we have to pay particular focus to Covid-19 because our system, which still has deep-seated inequalities, has caused, I would say by default, many people to put their lives in danger. Many have died.”

51. The reasons for the disproportionate impact of Covid-19 on Black people are not yet fully understood; a range of factors need to be considered including socio-economic inequalities and the prevalence of underlying health conditions among some ethnic groups. Runnymede Trust’s survey suggested that “one of the main reasons BME groups are more at risk of dying of Covid-19 compared to white groups is that they have been over-exposed to the coronavirus.” They explained some of the reasons for this as follows:

“BME groups are more exposed because they are more likely to be working outside of their home, more likely to have jobs on the front line [...] and less likely to be protected with adequate PPE, whilst more likely to be living in multi-generational housing and have much lower levels of pre-existing savings to buffet the economic impact of Covid-19.”

52. The lessons learned review proposed in our recent report on the human rights impact of Covid-19 measures, and any subsequent public inquiry must prioritise consideration of why Black people have experienced higher mortality from the virus. For example, it should examine decisions taken about the allocation of PPE when it became known that those from Black, Asian and minority ethnic backgrounds were more

at risk from the virus and look at how the employment and housing situations of Black people have made them more vulnerable.

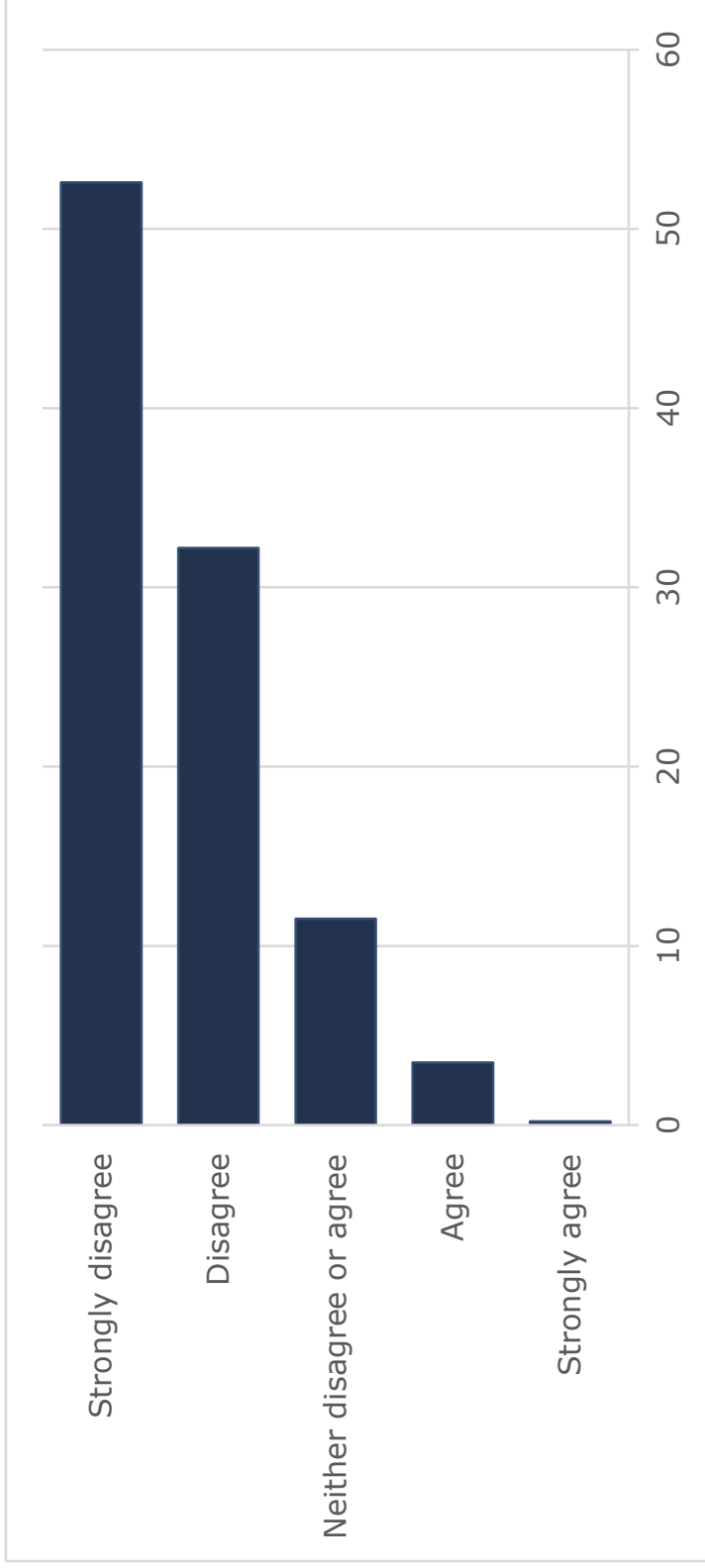
Criminal Justice System (CJS)

53. Our polling found that the vast majority of Black people in the UK are not confident that they would be treated the same as a white person by the police. Of all the issues covered in the polling, this was the one that there was greatest consensus about, with 85% of Black people not being confident that they would be treated the same as a white person by the police. This is in comparison to 76% of Black people who do not believe that their human rights are equally protected to white people and 64% of Black people who do not believe their health is as equally protected by the NHS compared to white people. Burphy Zumu told us he thought that the sentiment being strongly expressed by this finding is that Black people

believe that there is a there is a very real prospect of them being treated unfairly by the police because of their race:

“Our polling is not saying that 85% of people say that their experience of the police has been 100% negative because of their race; we are saying that they feel that there might be mistreatment because of their race.”

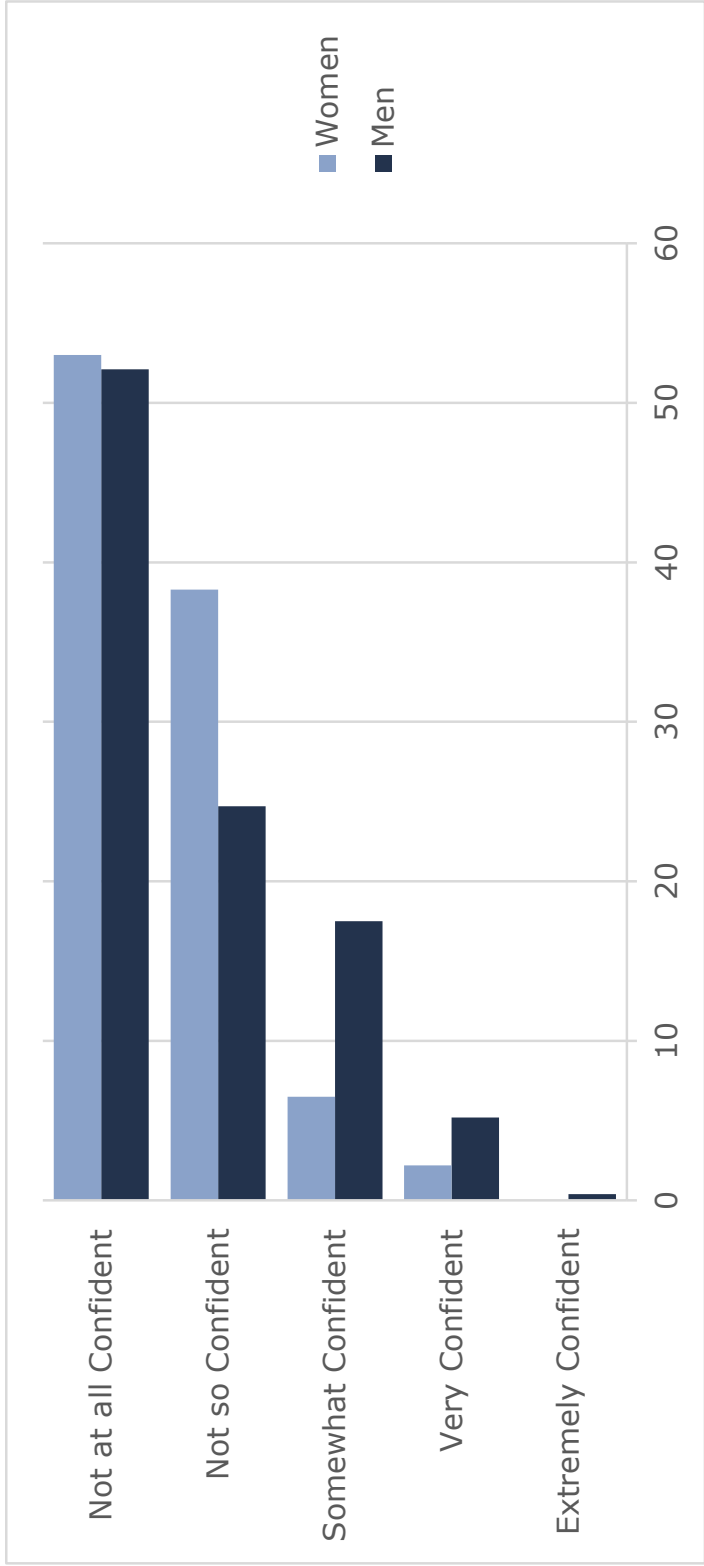
Figure 4: “As a black person, I would be treated the same as a white person by the police”, percentage



Source: CVR Insights, The Black Community and Human Rights, September 2020

54. Black women (in comparison to Black men) are less likely to believe they will be treated the same as white people by the police. Black women (91%) are more likely than Black men (77%) not to feel they would be treated the same as a white person by the police.

Figure 5: “As a black person, I would be treated the same as a white person by the police”, percentage by gender



Source: CVR Insights, The Black Community and Human Rights, September 2020

Over-representation of Black people in the Criminal Justice System

55. Black people are over-represented at every stage of the Criminal Justice System (CJS) as these statistics testify:

- In 2018/2019 Black people were 9.5 times more likely than White people to be stopped and searched by police in England and Wales;
- In 2018/2019 Black people in England and Wales were more than five times as likely to have force used against them by police as White people and were subject to the use of Tasers at almost eight times the rate of White people; and
- As of June 2020, 7.7% of the prison population were Black despite the comprising 3.4% of the population in England and Wales.

56. The problem of over-representation is especially acute in relation to Black children. Just for Kids Law/Children's Rights Alliance told us:

“[...] while the criminalisation of children of all ethnic groups has decreased in the last decade, the extent to which Black children and young people are disproportionately targeted by the youth justice system has increased.”

Figures from the Youth Justice Statistics 2018/2019 in England and Wales bear out this fact. Despite only making up 4% of the 10–17 year-old general population, Black children were:

- over four times more likely than white children to be arrested;
- almost three times more likely to be given a caution or sentence than white children;

- remanded in custody at a higher rate than white children, accounting for a third (33%) of children remanded in youth custody; and
- given custodial sentences at a higher rate than white children; the number of children in youth custody from a Black background has increased by 6% in the last year, and now accounts for 28% of the youth custody population.

57. The Lammy Review was commissioned by the Cameron Government in 2016 to address the issue of over-representation of Black people, in the CJS. The review made 35 recommendations based on three key principles:

- Fair treatment can be best achieved through open decision making that is exposed to external scrutiny.
- Trust in the CJS is essential. BAME communities currently have a lack of trust in the CJS which has various effects including on the number of BAME

defendants pleading not guilty, therefore forgoing the opportunity to reduce their sentences.

- The CJS must have a stronger analysis about where responsibility lies beyond its own boundaries. Statutory services are essential and irreplaceable, but they cannot do everything on their own.

58. How many of the review's 35 recommendations have been implemented to date, is a matter of some dispute. Speaking to us when he gave evidence in July 2020, Mr David Lammy MP told us:

“On my count, they have implemented six of the 35 recommendations I made, but I was very disappointed to hear the Prime Minister suggest that they had implemented 16, only to see that retracted by the Minister.”

59. What is clear, is that without comprehensive implementation of the review's recommendations

not only has progress not been made but the situation has worsened. Since publication of the report the proportion of young people from Black, Asian and minority ethnic backgrounds in young offender institutions has risen from 41% to 51%. Clinks, a national infrastructure charity for voluntary organisations working in criminal justice in England and Wales told us that “This highlights the need for bolder action and leadership to address the systemic racism within the CJS that leads to the racial disparities that are now well-documented.”

60. In some areas witnesses to this inquiry have set out the need for the Government to go beyond the report recommendations and in his evidence Mr David Lammy MP recognised the need for this greater ambition in order to maintain the trust of the community. One example of this is in relation to measures to divert children and young people from the CJS. The Lammy Review recommended the wider rollout of the deferred prosecution scheme

which allows suspects in cases of certain ‘low-level’ offences to defer their prosecution on condition that they take part in a rehabilitation programme, but Clinks in its evidence makes the case for diversionary pathways that are available *specifically* for young Black people in order to make a meaningful impact on overrepresentation.

61. *We call for the recommendations from the Lammy Review to be implemented as a matter of priority.*

Over-policing of the Black community

62. Over-policing of the Black community is another related and longstanding problem. In England and Wales between April 2018 and March 2019 there were four stop and searches for every 1,000 white person, compared with 38 for every 1,000 Black person. Stop and search powers can engage Article 8 ECHR (the right to respect for private and family life) as well as Article 5 ECHR (right to liberty and security). In

general, stop and search powers as currently formulated are capable of being compatible with the right to respect for private and family life (Article 8 ECHR), however, if they are used disproportionately against certain groups this could engage the right to non-discrimination (Article 14 ECHR) as read with Article 8 ECHR. If a stop and search goes beyond the normal cursory stop and search, it could meet the criteria for engaging Article 5 ECHR (right to liberty). Moreover, if a stop results in an arrest that will engage Article 5 ECHR. Whilst these powers can be used in a way that is compliant with one of the limbs of Article 5, if they are consistently being used in a way that impacts a particular community (in a way that is not justified or proportionate) then this could engage Article 14 as read with Article 5 ECHR.

63. At the heart of this issue is the stereotyping of Black people, especially Black men. In their evidence the United Friends and Families

Campaign, a group comprising the families and friends of those who have died in police, prison and psychiatric custody, told us:

“Black men are systematically labelled as dangerous, hostile and threatening, leading to the legitimisation of violence against them - violence which, for our loved ones, was lethal. Again and again, we have seen officers justify brutal unprovoked attacks on Black and Asian men with comments about how ‘threatened’ they feel, most recently in the Sheku Bayoh case. For the police, it seems, the mere claim that they ‘felt threatened’ is an instant get-out clause. It means they are allowed to kill us.”

This sentiment was also expressed in the interviews conducted by ClearView for this inquiry. Celine Henry told us that in discussions relating to policing:

“[...] people felt that oftentimes they are seen as less than because of stereotypes and maybe media perceptions and narratives, and even because of education and the criminal system.”

64. Our opening oral evidence session in this inquiry took place on 6 July 2020, two days previously it was widely reported in the media that the Black athlete Bianca Williams had been stopped by the Metropolitan Police as she drove with her partner to their west London home in their Mercedes. The couple were then handcuffed while their baby son was in the car. The incident has been referred to the Independent Office for Police Conduct which is now investigating claims that officers breached police standards of professional behaviour relating to use of force, duties and responsibilities, authority, respect and courtesy and whether the couple “were treated less favourably because of their race”. Asked

whether this kind of situation was evidence of racial profiling by the police, Baroness Lawrence told us:

“Definitely. They associate anybody driving a high-performance car such as a BMW, a Mercedes or whatever with people doing drugs. That goes back generations. That is what they do, and it continues to be the case. Nothing much has changed over the years. The police need to understand that there are young professionals who can afford to buy those cars, and why not? Why should they think, “Oh, I mustn’t buy this, because I might get stopped by the police”?”

Baroness Lawrence also told us of an occasion when she herself had been stopped by the police without a seemingly credible reason whilst she was driving, late at night in the mid-1990s.

That these things continue to happen over 25 years later is a sign that insufficient progress has been made.

65. So-called “pre-condition” searches, that is searches carried out under section 60 of the Criminal Justice and Public Order Act 1994 (as amended) which allow officers to search people without reasonable grounds are among the most controversial stop and search powers. In August 2014 the Home Office published guidance to police forces on the best use of stop and search (BUSS). This guidance was specifically designed to promote a more targeted approach to stop and search and reduce the use of section 60 searches. The guidance included requirements on race and diversity monitoring and to comply with it, forces were expected to ensure that the impact of the scheme, particularly as it relates to individuals from Black, Asian and minority ethnic groups or young people, is monitored. Since August 2019 it has no longer been Home Office policy

to encourage forces to comply with the BUSS guidance on the authorisation of pre-condition searches, although some forces are still following the guidance.

66. Regulations to control coronavirus outbreaks have granted the police increased powers to fine people for being outside of their homes, for meeting up with friends or family or for failing to wear a mask. Other powers under the Coronavirus Act 2020 allow the police to detain anyone who is potentially infectious. The use of this suite of new powers that are highly invasive into the private lives of individuals, have heightened the issue of over-policing still further. The number of Black people being stopped and searched by the police has increased dramatically, and disproportionately compared to white people, since the legislation came into force. The Metropolitan Police Service carried out just under 42,779 stop and searches during May 2020. 16,482 (39%) of the searches were carried out on Black males and 14,210 (33%)

on White males. These figures equate to a rate of 27.6 per 1,000 population for Black males compared to a rate of 5.9 per 1,000 population for White males. The National Police Chiefs Council (NPCC) conducted analysis of Fixed Penalty Notices (FPNs) issued by police under the Coronavirus (Covid-19) regulations between 27 March and 25 May. This showed that Black people were issued with an FPN at a rate 1.8 times higher than white people (this was the same for Asian people, and across all Black, Asian and minority ethnic groups the rate was 1.6 times higher).

67. We note the “Police Plan of Action on Inclusion and Race Equality” which has been established by the National Police Chiefs’ Council and College of Policing in response to concerns about racial injustice in policing in the UK following the death of George Floyd. We welcome the commitment given by the organisations to ensure the plan is developed

and delivered through ongoing two-way engagement with Black people, and others with lived experience, inside and outside of policing.

68. The polling we commissioned revealed very low levels in trust in the police among the Black community. Some 85% of Black people do not believe that they would be treated the same as a white person by the police. The police must regularly poll Black people to find out their levels of confidence in the police to protect their human rights. They must publish the findings of this polling and use it to set a benchmark and a target to increase the confidence that Black people have in the police to protect their human rights. The police must also set a target to increase the number of Black police officers and publish the percentage of Black police officers in each force by seniority.

Deaths in custody

69. An obligation on the State to secure the right to life is imposed by Article 2 ECHR. It has two aspects: the substantive obligation, which includes the general obligation to take appropriate steps to safeguard the lives of those within the state's jurisdiction, and the prohibition of intentional deprivation of life by the State; and the procedural obligation to carry out an effective investigation into alleged breaches of the substantive obligation. There have been recent calls for better coordination to ensure that the correct processes are followed in cases requiring Article 2 ECHR investigations.

70. While the majority of those who have died in police custody in England and Wales over the past ten years have been white, Black people are disproportionately represented. Between 1 April 2019 and 31 March 2020 there were 18 deaths in or following police custody. Of those who died 14 people were white, and three

were Black, accounting for 17% of deaths.”

There is also evidence that the use of restraint is disproportionately involved in the deaths of people of Black, Asian and minority ethnicity in police custody. Casework carried out by the charity INQUEST shows that the proportion of deaths among people of Black, Asian and minority ethnicity in custody where restraint is a feature is over two times greater than it is in other deaths in custody, as is the proportion where use of force is a feature. In its submission to this inquiry the Independent Advisory Panel on Deaths in Custody told us:

“These trends raise serious questions about the influence of racism as a contributing factor to deaths, and have particular capacity to provoke understandable anger and distrust within black communities.”

71. Families and friends of Black people who have died in state detention have told us that the

lack of proper accountability for their loved ones deaths and transparency over the role that race and/or racism played in them is the key issue that needs addressing:

“When police officers kill our loved ones on the basis of a racist hunch, they need to be prosecuted, for murder, with the full force of the law. If that does not happen, no amount of Black faces in the police will help to ingratiate them into our communities.”

72. Bereaved families have told the charity, INQUEST that they felt:

“[...] disillusioned by the cyclical nature of reviews, reports and recommendations and the frustration that their experiences regrettably echoed those of families newly bereaved despite the years between them.”

73. The Angiolini Review into Deaths and Serious Incidents in Police Custody (2017)

was set up as a direct response to the deaths of Sean Rigg and Olaseni Lewis, two Black men who died after the use of restraint and the “appalling level of delays, obfuscations and institutional blunders that followed.” The review, carried out by Rt Hon Dame Elish Angiolini was not explicitly focused on race but it made a number of recommendations specifically referencing institutional racism, race or discrimination but the then Government did not respond to these in either its initial response or progress review in 2019. In the absence of greater action, Black people have continued to die at a disproportionate rate compared to white people. Between 2017 and 2019 in England and Wales there were a total of 39 custody related deaths. 17 of them involved the use of force and of these 17 deaths, 12 were of white people and 5 were of Black people - around 30% of the total.

74. Recommendations from the Angiolini Review referencing institutional racism, race or discrimination must be responded to and taken forward as a matter of urgency.

75. As we recently recommended in our report on the human rights implications of measures to tackle Covid-19, the Government should give serious thought to establishing a Commissioner or Office of Article 2 compliance, to ensure that the correct processes are followed in cases requiring Article 2 ECHR investigations, without relying on bereaved families for ensuring appropriate follow-up. Such a body should ensure that lessons are learned, and that best practice is disseminated to relevant bodies to prevent future unnecessary deaths.

Nationality and immigration

76. Evidence to this inquiry argued that the widely acknowledged systemic failings of the immigration system stem from institutional racism in the Home Office, and that this was embedded in nationality and immigration policy and practice.

77. The Windrush scandal arose in 2017 after it emerged that hundreds of Commonwealth citizens, many of whom were Black people from the 'Windrush' generation or their children, had been wrongly detained, deported and denied legal rights. In 2018 this Committee published a report on the unlawful detention and deportation of these people. The Report examined the cases of two members of the Windrush generation, who were detained wrongfully in breach of their right to liberty (Article 5 ECHR); Mr Anthony Bryan and Ms Paulette Wilson.

78. Wendy Williams, Her Majesty's Inspector of Constabulary, Her Majesty's Inspector of Fire

and Rescue Services, was asked to look into the events leading up to the scandal. In her report, published in March 2020, she stopped short of a definitive finding of institutional racism within the Home Office but noted that “these failings demonstrate an institutional ignorance and thoughtlessness towards the issue of race and the history of the Windrush generation within the department, which are consistent with some elements of the definition of institutional racism.” In its submission to this inquiry Amnesty International sets out how it believes that the role of racism in the scandal goes much deeper and can be traced back to the original changes to nationality and immigration laws from which the later denial of residency rights stemmed.

79. Summing up the recommendations made in her report Wendy Williams described the three key elements they contain:

“The first is that the Home Office has to acknowledge the wrong that has been

done. The second is that it should open itself up to wider external scrutiny. The third is that it has to change its culture to recognise that migration policy and wider Home Office policy has to be rooted in humanity and dignity, no matter what the objective.”

80. In relation to the need for culture change, evidence to this inquiry argues that the Windrush scandal and “hostile environment” policies pursued by the Home Office are the consequences of an institutional culture of distrust and indifference towards Black people. A group of organisations expert in immigration law told us in joint submission:

“From the outset, the policies were based on a level of distrust. Theresa May promised to “deport first and hear appeal later.” What ever happened to innocent until proven guilty? It seems as if this idea does not apply to people

who are not white. Such rhetoric exactly mirrors the suspicion that the police treat black people with and this is seen in the disproportionate stop and search statistics. The divisive immigration policies demonstrated that in the eyes of the law, black people were guilty until proven innocent.”

81. The Government has said that it accepts the Windrush Lessons Learned Review’s recommendations in full. Speaking in the House of Commons on 21 July 2020 the Home Secretary, Rt Hon Priti Patel MP, set out a comprehensive set of actions the Government plans to take to implement the recommendations including measures to reform the culture of the Home Office. These include a welcome commitment to inviting Wendy Williams to review progress made in 2021. However, we share the concerns of the group of people affected by the Windrush scandal who wrote to the Guardian on 14 October stating that the Home Office’s

“comprehensive improvement plan” published on 30 September is “long on regrets but short on specifics of how and when appropriate changes will be made.”

82. *We expect the Government to fulfil its promise to implement the recommendations from the Windrush Lessons Learned Review, in full, as a matter of urgency. Focus must be placed on securing the cultural changes needed to ensure that people are treated with humanity and not treated unfairly because of their race.*

The Windrush Compensation Scheme

83. This Committee was deeply saddened to hear of the recent death of Paulette Wilson, one of the two members of the Windrush generation who gave vital evidence to this Committee in 2018 when it inquired into the situation of those who were detained in the scandal. We were also angered to hear that by the time of her death she had still not received full compensation

under the Windrush compensation scheme. Home Office figures, released to the BBC under Freedom of Information laws, show that as at 30 August 2020 at least 9 people have died before they received any compensation and fewer than five people have been offered the top level of “Impact on Life” payment.”

84. Wendy Williams told us that the compensation scheme is not currently working and is the single issue that is raised the most with her when she does outreach work. The Home Office envisaged there would be 15,000 claimants as part of the scheme but as yet only a fraction of these have come forward to make a claim. Mr David Lammy MP described the situation as a “gross insult” and source of immense frustration among the Black community. In particular, he criticised the decision by the Government to set the threshold for evidential requirements for eligibility for compensation as “beyond reasonable doubt”.

85. *The Home Office urgently needs to rebuild trust with those communities affected by the Windrush scandal by fixing the compensation scheme, including by lowering the standard of proof for evidential requirements to “the balance of probabilities”; and ensuring that those affected receive the compensation that they are entitled to without further delay.*

Democracy

86. Article 3 of Protocol No. 1 to the ECHR gives us the right to participate in free and fair elections. Ensuring people can exercise this right on an equal basis and therefore participate in democracy is essential, in order to achieve greater equality in society. It is therefore of serious concern to us that 25% of Black voters in Great Britain are not registered to vote compared to a 17% average across the population.

87. When we asked Lord Woolley about the reasons for the persistent inequality in this area, he told us:

“Part of the problem is that we have hundreds of thousands of young people, particularly black and minority ethnic, who still see our institutions, particularly the police, as against us and not for us. They do not see the policies of central and local government working for us, so they say to me, “Why bother? Why engage in this rigged system?”

88. In this context we are concerned at the potentially racial discriminatory impact of the Government proposals to implement measures requiring voters to present an approved form of photographic ID at polling stations in UK parliamentary elections in Great Britain and local elections in England. According to the Electoral Commission approximately 3.5m electors (7.5% of the electorate) would have

none of the forms of photo ID highlighted. Runnymede Trust notes that BME people are likely to be disproportionately among them:

“The government’s own data shows that white people are most likely to hold one form of photo ID—76% hold a full driving licence. But 38% of Asian people, nearly a third of people of mixed ethnicity (31%), and more than half of Black people (48%) do not.”

89. As a means of increasing the number of Black people registered to vote Lord Woolley told us that he believed that automatic voter registration was a “no brainer”. Automatic voter registration could be introduced in the UK in a number of ways but broadly speaking would mean a shift from the current system which relies on individuals registering themselves ahead of the deadline for election day. Under automatic voter registration, individuals would be directly enrolled by public officials using

existing public data sources. In evidence to this inquiry the Electoral Commission said that research they had published in July 2019 found that such a shift would be “feasible from a technical and operational perspective and could be implemented without radically altering the structure of the electoral registration system in the UK”.

90. *The Government must consult on the implementation of automatic voter registration as a means of increasing democratic participation among Black people and other ethnic minorities and reducing the registration gap between Black and white people.*

4 Enforcement of Black people's human rights

The role of the Equality and Human Rights Commission

91. A question that has arisen in our inquiry is whose job is it to ensure that the recommendations that have been made in the numerous reports relating to racism and human rights are implemented? As Mr David Lammy MP explained:

“You have to have an enforcer. You can have all the data and recommendations you want, but if you have no oversight, no one to say, “Implement it”, no one to report what has been implemented and no one proximate to communities who feels that it is their thing to champion, you get into the mess we have now got into in Britain, where a Prime Minister gets away with yet another commission [...]”

92. It might be reasonably argued that the Equality and Human Rights Commission (EHRC) as the body with statutory responsibility for protecting human rights, including for Black people, and reducing inequalities, including racial equality, should be taking a lead in this regard. It is clear that the EHRC does see itself as having such a role. Rebecca Hilsenrath, Chief Executive of the EHRC told us that “[w]e have played quite a vital role in scrutinising the Government’s implementation of those reviews”. Giving an example of this she went on to say “[w]hile it has not led to action, we were part of the HMPPS expert panel on challenging progress against the Lammy recommendations.” In a similar vein, David Isaac, the outgoing Chair of the EHRC, told us: “[in] 2017, we produced the most extensive review of the inequality of race outcomes, and suggested to government that there should be a coherent race strategy”. While these actions are commendable, they seem to position the EHRC as one among many actors

who make suggestions and recommendations to Government and seek to persuade it to act upon them rather than the leading champion of Black people's rights, demanding and enforcing change.

93. In terms of its ability to act as a vocal champion for the Black community, witnesses told us that the EHRC compares unfavourably with the Commission for Racial Equality (CRE) which it replaced when it was established in 2007. Mr David Lammy MP made these comments about the impact of this change:

“I want to say loudly that it has turned out to be a mistake to get rid of the Commission for Racial Equality. We now have the Equality and Human Rights Commission. Its budget and staff have been substantially cut, and there is a widespread view that, unfortunately, it has not been able to do what the old CRE was able to do in relation to race

and the grass-roots connections that the CRE had. We miss the architecture because we have lost it.”

This view was endorsed by Lord Woolley, who himself served for a term as an EHRC Commissioner between 2009 and 2012. He said of the Commission:

“It has been death by a thousand cuts, and it is a shadow of itself. It is almost frightened of its own shadow, frankly, and as a result there is little or no enforcement.”

94. In both oral and written evidence to this inquiry the EHRC was keen to highlight the positive work that it has undertaken in recent years to protect and promote Black people’s rights. Examples include:

- The 2018 “Is Britain Fairer?” Report, which provided a comprehensive evidence base for the deep-rooted race inequalities that persist across many areas of life;

- Use of its inquiry powers under section 16 of the Equality Act 2006 to inquire into racial harassment in publicly funded universities in England, Scotland and Wales;
- The 2017 publication of its ‘Roadmap to race equality’ which made specific recommendations across a wide range of areas and called for a comprehensive, coordinated and long-term government race equality strategy based on these. The Roadmap was a major contributing factor to the establishment of the Race Disparity Unit (RDU) in the Cabinet Office; and,
- Use of litigation and enforcement powers. Of the legal cases the Commission has closed over the last three years, almost one in five cases either wholly or partly addressed issues of race.

95. While we do not doubt that much of this work is excellent, it is clear from our evidence

that it is insufficiently visible to the Black community. One respondent to the ClearView polling suggested the need for “Some kind of commissioner who can step in and demand that institutions such as the police investigate injustices and punish people who do wrong.”

96. This Committee has long been concerned that the EHRC’s powers in relation to human rights are not fit for purpose. This undermines its ability to protect Black people’s rights more effectively. In its written submission the Commission summarised the current position and its impact:

“One key outstanding issue is that the Commission’s equality and human rights enforcement powers are asymmetrical. While we can provide legal assistance to individuals in Equality Act 2010 proceedings, we cannot do so in human rights cases unless the claimant is also complaining of a breach of the

Equality Act 2010. There have been several instances where we have been unable to provide financial support for a meritorious and potentially strategic case because of this limitation on the cases we can fund. Similarly, although we have the power to undertake an investigation where we suspect an organisation has committed an unlawful act under the Equality Act 2010, this power does not extend to human rights breaches. The lack of an investigation power limits the Commission's ability to tackle suspected breaches of human rights law.”

97. The Commission's limited budget is another constraint on its effectiveness. In 2006 the CRE had a budget of £90 million just for race issues; the EHRC currently has a budget of £17.1 million for all the work it is required to do across all the protected characteristics.

98. At the time of writing there are currently no commissioners on the EHRC board who are Black. David Isaac told us that he has made recommendations to the Secretary of State, who makes the appointments to the board, about the need for greater diversity amongst its members.

99. It was announced on 15 October 2020 that the preferred candidate for the next Chair of the Commission is Baroness Falkner of Margravine. This Committee, with the Women and Equalities Committee, will conduct a pre-appointment hearing to scrutinise her appointment in due course.

100. **There is a perception among the Black community that the replacement of the Commission for Racial Equality (CRE) with the Equality and Human Rights Commission (EHRC) has resulted in a weaker focus on race equality issues than was previously the case. There are currently no Black commissioners on the EHRC. This**

has left the Black community without a clear visible champion for their rights. At national level there is no organisation whose priority it is to champion race equality and lead the drive for progress.

101. *For the EHRC to be, and be seen to be, an effective enforcer of Black people's human rights:*

- i) *Black people must be represented at the top level of the organisation including as commissioners;*
- ii) *It must have adequate resources, to which end we urge the Government to consider restoring the Commission's budget to previous levels; and*
- iii) *Government must harmonise the Commission's human rights enforcement powers in line with its powers in relation to equality, so that it can undertake investigations where*

it is suspected that an organisation has breached the Human Rights Act and provide legal assistance to individuals in Human Rights Act cases.

102. ***Even if the EHRC's capacity to promote and protect Black people's human rights is improved as we recommend, we nevertheless believe that a need would remain for a high profile organisation at national level, whose priority is to focus on race equality and lead the drive for progress. The UK has lacked capacity in this area since the Commission for Racial Equality was folded into the EHRC. The re-creation of a body along these lines must be considered as a matter of urgency. Such a body should also provide infrastructure to drive forward change at local level, fulfilling a similar role to that previously performed***

by the race equality councils that were set up in partnership with the Commission for Racial Equality.

Equality law

103. Respondents to the survey conducted by ClearView, told us that one of the key actions that must be taken to improve the protection of the human rights of Black people is better enforcement of anti-racism legislation.

104. The Equality Act 2010 prohibits unlawful discrimination on the grounds of race and through the Public Sector Equality Duty (PSED) requires public bodies to proactively take steps to address racial inequalities. The PSED has the potential to drive real change in the protection of Black people's human rights because it requires public bodies to identify and eliminate unlawful discrimination, advance equality of opportunity and foster good relations between groups. However, currently, the duty is not always well implemented and therefore its potential is not

fully realised. Additionally, the “specific duties” under the PSED which set out the requirements on public bodies are relatively weak. As a result, the burden of enforcement lies with individuals who are relied upon to challenge discrimination when it occurs.

105. The Women and Equalities Committee examined how the PSED was working in its report “Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission” published in July 2019. It concluded that the specific duties should be more focussed and strategic and recommended that:

“The Cabinet Office work across Government to identify a small number of evidence-based issues of inequality or discrimination suitable for action either within a specific sector or cross-departmentally and that the Government introduce new specific duties under the

Equality Act 2010 to direct the relevant Department and public authorities to take action on these identified inequalities. These specific duties should be reviewed at least every three years in line with new data available from the EHRC's report *Is Britain Fairer?* and the Government's Race Disparity Audit, among other sources."

106. ***The Government should consider whether changes are required to equality legislation to make it more effective as a tool to enforce Black people's human rights. This should include consideration of whether more focused and strategic specific duties under the public sector equality duty (PSED) are needed, as has previously been recommended by the Women and Equalities Committee. We support this and also suggest that particular consideration is given to the inclusion of a requirement for public authorities to take action to address***

identified racial inequalities. The EHRC must take a more proactive approach to ensuring that public bodies comply with the requirements of the PSED.

Support for the Black-led voluntary sector

107. In the course of this inquiry concern was expressed by witnesses that despite the work of many excellent smaller organisations in the Black community there is a lack of high-profile, well resourced, Black-led organisations to maintain pressure for better protection of Black people's human rights. Mr David Lammy MP told us:

“It is also right to say that, despite the tremendous work of people such as Simon Woolley and organisations such as [Operation Black Vote] and the Runnymede Trust, they are charities staffed by about five or six people. It is tremendous work, but there is no organisation dedicated to race in this

country that has staffing of more than five or six people, one or two of whom at any one time will be interns. At any time, those organisations can be subject to an austerity environment or the coming recession and will lose funding and other things. There is no Stonewall or big charity with tens or hundreds of people dedicated to the issues. That is why Governments get away with failing to implement reviews.”

108. ***The Office for Civil Society must consider what can be done to support the further development of independent Black-led voluntary and community sector organisations.***

Data

109. In August 2016, Rt Hon Theresa May MP, then Prime Minister, announced the Race Disparity Audit which set out to examine how people of different ethnicities are treated across

public services by publishing data held by the Government. The results of the audit were published in October 2017 on a purpose-built government website which sets out the available data about ethnic disparities, including in education, employment, health, housing and the criminal justice system.

110. Access to comprehensive data disaggregated by ethnicity is essential if protection of Black people's human rights is to be monitored and enforced. Evidence to this inquiry has highlighted areas in which adequate data is not currently available to meet this aim:

- Traffic stops made by the police under section 163 of the Road Traffic Act 1988 are not routinely recorded, nor the ethnicity of the driver who is stopped. In its evidence Runnymede Trust called for this data to be collected.
- In its evidence the Independent Advisory Panel on Deaths in Custody calls for

all places of state detention to publish data about deaths that occur in custody aggregated according to race and ethnicity, as well as other protected characteristics.

- In response to the Covid-19 pandemic the Government created temporary release schemes with the intention of reducing the prison population to facilitate social distancing. Clinks, in its evidence to this inquiry, flagged a concern that a risk averse approach to releasing Black people could exclude them from release schemes and called for transparent data on the ethnicity of those released to be made available to allow scrutiny of whether release opportunities have been equitably applied.

111. While the work of the Race Disparity Audit was ground-breaking and very valuable in bringing together the available data, we are concerned that gaps in data collection and analysis remain and act as a barrier to the enforcement of Black people's human rights. *The race equality strategy we propose must have at its heart a cross-government commitment to improved data collection on racial inequality.*

Conclusions and recommendations

Perceptions of human rights in the Black community

1. *The majority (over 75%) of Black people in the UK do not believe their human rights are equally protected compared to white people. This is a damning indictment of our society and must be addressed as a matter of the highest political priority. To this end, the Equality and Human Rights Commission must undertake to run an annual opinion survey on whether Black people feel their human rights are equally protected, so that issues can be identified, and progress checked. (Paragraph 23)*
2. This Committee undertakes to focus ever greater efforts on ensuring that we hear routinely from a diverse range of witnesses. These efforts will include a focus on ensuring that we hear directly from Black,

Asian and minority ethnic people about their experiences in relation to human rights.

(Paragraph 25)

3. *Parliamentary select committees should reflect on how they ensure issues of race and racism are tackled through their work and have a regular focus on race equality through their inquiry work. (Paragraph 26)*
4. *The Houses of Parliament should use best endeavours to facilitate the recruitment of Black and minority ethnic staff into senior roles and report annually on progress. (Paragraph 27)*

Failures to secure Black people's human rights

5. *Commissioning reports and failing to implement them intensifies disaffection and lack of confidence in the Government on*

race issues. Government must implement the findings of previous reports that have been commissioned. (Paragraph 35)

6. *The Government has established the Commission on Race and Ethnic Disparities which is expected to report before the end of 2020. Previous inquiries and work of the Race Disparity Unit have identified the problems and pointed to solutions; the focus of this new Commission must therefore not be further fact-finding but on taking action to reduce inequalities and secure Black people's human rights. This should take the form of a comprehensive cross Government race equality strategy. (Paragraph 36)*
7. *The death rate for Black women in childbirth is five times higher than for white women. The NHS acknowledge and regret this disparity but have no target to end it. The Government must introduce a target to end*

the disparity in maternal mortality between Black women and white women. (Paragraph 45)

8. *The impact of Covid-19 has only served to sharpen pre-existing inequalities for pregnant Black women. The Chief Midwifery Officer has formulated a four-point action plan to better support these women during the Covid-19 pandemic, which is very welcome. These actions must be implemented as a matter of urgency. (Paragraph 48)*
9. *The lessons learned review proposed in our recent report on the human rights impact of Covid-19 measures, and any subsequent public inquiry must prioritise consideration of why Black people have experienced higher mortality from the virus. For example, it should examine decisions taken about the allocation of PPE when it became known that those from Black, Asian and minority ethnic backgrounds were more at risk from the virus*

and look at how the employment and housing situations of Black people have made them more vulnerable. (Paragraph 52)

10. *We call for the recommendations from the Lammy Review to be implemented as a matter of priority. (Paragraph 61)*

11. *The polling we commissioned revealed very low levels in trust in the police among the Black community. Some 85% of Black people do not believe that they would be treated the same as a white person by the police. The police must regularly poll Black people to find out their levels of confidence in the police to protect their human rights. They must publish the findings of this polling and use it to set a benchmark and a target to increase the confidence that Black people have in the police to protect their human rights. The police must also set a target to increase the number of Black police officers*

and publish the percentage of Black police officers in each force by seniority. (Paragraph 68)

12. *Recommendations from the Angiolini*

Review referencing institutional racism, race or discrimination must be responded to and taken forward as a matter of urgency. (Paragraph 74)

13. *As we recently recommended in our report on the human rights implications of measures to tackle Covid-19, the Government should give serious thought to establishing a Commissioner or Office of Article 2 compliance, to ensure that the correct processes are followed in cases requiring Article 2 ECHR investigations, without relying on bereaved families for ensuring appropriate follow-up. Such a body should ensure that lessons are learned, and that best practice is disseminated to relevant bodies to prevent future unnecessary deaths. (Paragraph 75)*

14. *We expect the Government to fulfil its promise to implement the recommendations from the Windrush Lessons Learned Review, in full, as a matter of urgency. Focus must be placed on securing the cultural changes needed to ensure that people are treated with humanity and not treated unfairly because of their race. (Paragraph 82)*
15. *The Home Office urgently needs to rebuild trust with those communities affected by the Windrush scandal by fixing the compensation scheme, including by lowering the standard of proof for evidential requirements to “the balance of probabilities”; and ensuring that those affected receive the compensation that they are entitled to without further delay. (Paragraph 85)*
16. *The Government must consult on the implementation of automatic voter registration as a means of increasing democratic participation among Black people*

and other ethnic minorities and reducing the registration gap between Black and white people. (Paragraph 90)

Enforcement of Black people's human rights

17. There is a perception among the Black community that the replacement of the Commission for Racial Equality (CRE) with the Equality and Human Rights Commission (EHRC) has resulted in a weaker focus on race equality issues than was previously the case. There are currently no Black commissioners on the EHRC. This has left the Black community without a clear visible champion for their rights. At national level there is no organisation whose priority it is to champion race equality and lead the drive for progress. (Paragraph 100)

18. *For the EHRC to be, and be seen to be, an effective enforcer of Black people's human rights:*

- i) *Black people must be represented at the top level of the organisation including as commissioners;*
- ii) *It must have adequate resources, to which end we urge the Government to consider restoring the Commission's budget to previous levels; and*
- iii) *Government must harmonise the Commission's human rights enforcement powers in line with its powers in relation to equality, so that it can undertake investigations where it is suspected that an organisation has breached the Human Rights Act and provide legal assistance to individuals in Human Rights Act cases. (Paragraph 101)*

19. Even if the EHRC's capacity to promote and protect Black people's human rights is improved as we recommend, we nevertheless believe that a need would remain for a high profile organisation at

national level, whose priority is to focus on race equality and lead the drive for progress. The UK has lacked capacity in this area since the Commission for Racial Equality was folded into the EHRC. The recreation of a body along these lines must be considered as a matter of urgency. Such a body should also provide infrastructure to drive forward change at local level, fulfilling a similar role to that previously performed by the race equality councils that were set up in partnership with the Commission for Racial Equality. (Paragraph 102)

20. The Government should consider whether changes are required to equality legislation to make it more effective as a tool to enforce Black people's human rights. This should include consideration of whether more focused and strategic specific duties under the public sector equality duty (PSED) are needed, as has previously been recommended by the Women and Equalities

Committee. We support this and also suggest that particular consideration is given to the inclusion of a requirement for public authorities to take action to address identified racial inequalities. The EHRC must take a more proactive approach to ensuring that public bodies comply with the requirements of the PSED. (Paragraph 106)

21. *The Office for Civil Society must consider what can be done to support the further development of independent Black-led voluntary and community sector organisations. (Paragraph 108)*

22. While the work of the Race Disparity Audit was ground-breaking and very valuable in bringing together the available data, we are concerned that gaps in data collection and analysis remain and act as a barrier to the enforcement of Black people's human rights. *The race equality strategy we propose*

must have at its heart a cross-government commitment to improved data collection on racial inequality. (Paragraph 111)

Formal minutes

Wednesday 4 November 2020

Virtual Meeting

Members present:

Ms Harriet Harman MP, in the Chair

Fiona Bruce MP Lord Brabazon

Ms Karen Buck MP Lord Dubs

Joanna Cherry MP Baroness Massey of

Dean Russell MP Darwen

Lord Singh of

Wimbledon

Lord Trimble

Draft Report (Black people, racism and human rights), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 111 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Eleventh Report of the Committee.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till 11 November at 2.30pm.]

Declaration of Interests

Lord Brabazon of Tara

- No relevant interests to declare

Lord Dubs

- No Interests declared

Baroness Ludford

- No Interests declared

Baroness Massey of Darwen

- No relevant interests to declare

Lord Singh of Wimbledon

- No Interests declared

Lord Trimble

- No Interests declared

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Monday 6 July 2020

Rt Hon David Lammy MP, Shadow Lord Chancellor and Secretary of State for Justice; **Wendy Williams**, HM Inspector of Constabulary and HM Inspector of Fire and Rescue Services; **Lord Woolley of Woodford**, director of Operation Black Vote; **Baroness Lawrence of Clarendon** Q1–10

Monday 20 July 2020

Professor Jacqueline Dunkley-Bent OBE, Chief Midwifery Officer, NHS England and NHS Improvement Q11–21

David Isaac, Chair, Equality and Human Rights Commission; **Rebecca Hilsenrath**, CEO, Equality and Human Rights Commission

Q22–28

Monday 7 September 2020

Kenny Imafidon, Managing Director and Co-Founder, ClearView Research;

Burphy Zumu, Director and Senior Research Executive, ClearView

Research; **Celine Henry**, Research Executive, ClearView Research; **Dr.**

Niamh McGarry, Research Director, ClearView Research

Q29

–44

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

RHR numbers are generated by the evidence processing system and so may not be complete.

- 1 Amnesty International UK (RHR0009)
- 2 Children's Rights Alliance for England/Just for Kids Law (RHR0022)
- 3 Clinks (RHR0008)
- 4 College of Policing and the National Police Chief's Council (RHR0025)
- 5 The Electoral Commission (RHR0015)
- 6 Equality and Human Rights Commission (RHR0023)
- 7 Independent Advisory Panel on Deaths in Custody (RHR0017)
- 8 INQUEST (RHR0024)
- 9 Jeetun, Mr Omraj (RHR0007)

- 10 National AIDS Trust (RHR0014)
- 11 Obaseki Solicitors Law Firm (Dr Alex Amicarelli, Solicitor) (RHR0018)
- 12 Obaseki Solicitors Law Firm (Faith Osifo, Reserach Assistant) (RHR0019)
- 13 Obaseki Solicitors Law Firm (Lanse Kendehe, Junior Legal Assistant) (RHR0020)
- 14 Obaseki Solicitors Law Firm (Michelle De Sousa, Junior Legal Assistant) (RHR0021)
- 15 of the public, Member (RHR0005)
- 16 Prisoner Learning Alliance (RHR0012)
- 17 public (RHR0003)
- 18 Royal College of Midwives (RHR0001)
- 19 Royal College of Midwives, and Royal College of Obstetricians and Gynaecologists (RHR0002)
- 20 Runnymede Trust (RHR0011)
- 21 THE THREAD POLICY RESEARCH CENTRE (RHR0013)

- 22 United Families & Friends Campaign
(RHR0010)
- 23 Viridi, Mr Gurpal (RHR0004)
- 24 White (RHR0016)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2019–21

First Report	Report Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019: Second Report	HC 149 HL 37
Second Report	Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report	HC 148 HL 41
Third Report	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing	HC 343 HL 59

Fourth Report	Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report	HC 256 HL 62
Fifth Report	Human Rights and the Government's response to COVID-19: The detention of young people who are autistic and/or have learning disabilities	HC 395 HL 72
Sixth Report	Human Rights and the Government's response to COVID-19: children whose mothers are in prison	HC 518 HL 90
Seventh Report	The Government's response to COVID-19: human rights implications	HC 265 HL 125
Eight Report	Legislative scrutiny: United Kingdom Internal Market Bill	HC 901 HL 9,999

Ninth Report	Legislative scrutiny: The Overseas Operations (Service Personnel and Veterans) Bill	HC 665 HL 155
Tenth Report	Legislative scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill	HC 847 HL 164
First Special Report	The Right to Privacy (Article 8) and the Digital Revolution: Government Response to the Committee's Third Report of Session 2019	HC 313