

Our Interest in this matter

1. EQUAL National Independent Advisory Group (NIAG) works collaboratively to improve outcomes for black, Asian and minority ethnic and Muslims in the criminal justice system (CJS). Our priority areas are prisons and probation, policing and BAME young people and the youth justice system. As an NIAG that focuses specifically on outcomes for BAME communities in the CJS this response to the Joint Committee on Human Rights call for evidence will focus solely on racial disparities in criminal justice.

Our concerns

2. The Police, Crime, Sentencing and Courts (PCSC) bill has raised two main concerns for EQUAL both of which directly impact on article 14 of The Human Rights Act 1998, right to protection against discrimination resulting from the bills engagement with the Article 5, right to liberty. EQUAL have been working with a coalition of criminal justice sector voluntary organisations to address the disproportionate impacts of the sentencing proposals. Our specific concerns regarding individual clauses can be found in [here](#), however this short paper will focus on wider equalities issues highlighted by the bill.

Public Sector Equality Duty

3. Under the Equality Act 2010 the Public Sector Equality Duty (PSED) requires the government to have *due regard* to the need to eliminate discrimination, harassment, and victimisation and advance equality of opportunity. However, we do not believe this duty has been met as the information the government have provided to demonstrate their compliance with the PSED in relation to the PCSC bill; an [overarching Equality Statement](#) and [other specific sentencing proposal assessments](#), have failed to eliminate discrimination.
4. The government have conceded in their overarching equality statement that many of the proposals set out in the bill **will** indirectly discriminate against black, Asian and minority ethnic groups whilst making no effort to mitigate the risks.
5. In a paper by the government Equalities Office having due regard under the PSED means that “*consideration of equality issues must influence the decisions reached by public bodies... in how they develop, evaluate and review policy*”. Having due regard to the need to advance equality of opportunity is described as “*considering the need to remove or minimise disadvantages suffered by people due to their protected characteristic*”. It goes on to say that “*the equality duty is not a matter of box ticking; it must be exercised in substance with rigour and with an open mind in such a way that it influences the final decision.*”¹

¹ Equality Act 2010: Public Sector Equality Duty, *what do I need to know? A quick start guide for public sector organisations* - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85041/equality-duty.pdf

6. The governments equality statements set out ample evidence to suggest that the proposals will increase racial disparities, including highlighting the impact on ethnic minorities who are already overrepresented in both the youth and adult estate, the disproportionate number of ethnic black males sentenced for weapons/drug offences and that in some cases black and Asian men are more likely to be sentenced to custody or given a longer custodial sentence than their white counterparts; yet despite this, there is no mitigation provided. We do not believe the government have had due regard in considering equality issues when developing the legislation and have failed to minimise the disadvantages to those with the protected characteristic of race.

Justified discrimination

7. The government argues that the proposals set out in the PCSC bill, although indirectly discriminatory, are justified on the basis that the proposals are “a *proportionate means of achieving a legitimate aim*” which in this case is increasing public safety.
8. Despite much of the case law defining ‘proportionate means of achieving a legitimate aim’ being rooted in employment tribunals or housing law matters the premise remains the same. The test to be applied when attempting to justify a condition as a *proportionate means* is an objective one, the case of ***Hampson v Department of Education and Science [1989] IRLR 69, [1990] ICR 511*** emphasised that the respondent must do more than show that they consider their reasons adequate.² Additionally, the Supreme Court case of ***Akerman-Livingstone v Aster Communities Ltd [2015]*** set out a four-stage structured approach to the application of ‘objective justification’:
 - i) Firstly, whether the aim in taking the steps complained are sufficiently important to justify the less favourable treatment or disadvantage suffered.
 - ii) Secondly where there is any rational connection between the aim and the disadvantage suffered
 - iii) Whether the means chosen are no more than necessary to accomplish the objective
 - iv) And lastly, where the steps complained of strike a fair balance between the need to accomplish the aim and the detriment suffered.³
9. The government have provided no evidence to suggest that the measures proposed will in fact achieve the aim of increasing public safety, justifying its interference with the Article 5, right to liberty under the Human Rights Act 1998; in fact, there is much evidence to the contrary. The government’s own research

accessed 12 May 2021

² Justified? – The breadth and limitations of the equality act, justification defence and how to win the argument, Guildhall Chambers - [Justified_DG.pdf \(guildhallchambers.co.uk\)](#) accessed 13 May 2021

³ Objective Justification (Discrimination Defence?), Paidra Dube - [Objective Justification \(Discrimination Defence?\) | DavidsonMorris](#) accessed 13 May 2021

found, longer custodial sentences have an adverse impact on an individual's mental health, sense of hope and attitude which may have a negative effect on their rehabilitation and resettlement.⁴ Moreover, the government have conceded that there is no evidence that increasing the length of time in custody and reducing time on licence in the community will in fact act as a deterrent. Instead, the government have attempted to justify longer times in prison by arguing that whilst in custody the individual is prevented from committing crime, which is arguably a short-term approach in direct contrast with the rehabilitative principles that underpin our criminal justice system.

10. The government have also asserted the argument that longer custodial sentences and increased police powers, despite indirectly discriminating against ethnic minorities are a direct response to calls from the public to 'crackdown on crime' but have failed yet again to provide any evidence to support this notion. Research varies on public opinion in regards of sentencing, and we are not aware of any police forces calling for these additional powers. We do not believe the bill is reflective of public opinion; particularly when considering the lack of consultation both with ethnic minority communities and the wider public. The lack of consultation with ethnic minority communities will likely impact on trust and confidence in those communities and may have adverse effects, driving further feelings of mistrust which may deter victims and witnesses from coming forward in criminal cases.

Conclusion

11. The proposals set out in the PCSC bill are discriminatory and are likely to increase racial disparities, in particular, amongst black and Asian communities. The risks presented by the proposals have not been mitigated there has been no evidence provided that the proposals will do that which the government argues; increase public safety. In contrast, much of the evidence provided by the government in their own equality statements support the idea that the bills interference with Article 5 and its engagement with Article 14 remain unjustified. The equalities issues raised by this legislation have not been managed, nor consulted on despite there being alternative means to achieving the same aims. Arguments for more punitive measures with indirectly discriminatory consequences for ethnic minorities on the grounds of increasing public safety are clearly outweighed by the implications for minority communities and the interference with their human rights.

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⁴ Experiencing long term imprisonment from young adulthood: identity, adaptation and penal legitimacy, HM Prison & Probation Service - [Experiencing long term imprisonment from young adulthood: identity, adaptation and penal legitimacy \(publishing.service.gov.uk\)](#) accessed 13 May 2021