

Joint Committee on Human Rights inquiry on Black people, racism and human rights

Submission from CRAE and Just for Kids Law

18 September 2020

About Just for Kids Law and the Children's Rights Alliance for England

Just for Kids Law is a UK charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

The Children's Rights Alliance for England (CRAE) merged into JFKL in 2015. CRAE was established in 1991 when the UK ratified the UN Convention on the Rights of the Child (CRC) and works with 150 organisations and individual members, to promote children's rights and push for full implementation of the CRC in England.

This submission is informed by our work monitoring implementation of the CRC in England, as well as our direct advocacy and legal case work with children and young people. We share your concerns about racial inequalities in the protection of human rights and therefore very much welcome this inquiry and look forward to further engagement as the inquiry continues.

Ongoing discrimination of Black children and young people

In its 2016 Concluding Observations, the UN Committee on the Rights of the Child (the UN Committee) recommended that the Government: *'strengthen awareness-raising and other preventive activities against discrimination and stigmatisation'* and made a number of other specific recommendations to address discrimination faced by BAME children which impeded the realisation of their rights.¹ The UK will next be examined by the UN Committee in 2022 and we expect to see significant progress on previous recommendations.

Following her visit to the UK in 2018, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance also highlighted a number of issues specifically related to the racial discrimination of children, many of which are highlighted in this submission. While she welcomed the Government's Race Disparity Audit, she stressed that action must be taken to address the disparities revealed through a cross-government strategy. To date no progress has been made on this recommendation.

In addition, a wealth of other reviews and reports have highlighted how racism impedes Black children and young people having their rights fully realised and made numerous recommendations for change. While we welcome the Government's commitment to a Race Inequality Commission, it is crucial that its' focus is on ensuring urgent concrete action is taken to address the widespread racial inequality that exists for children and young people today. If not, it will be yet another wasted opportunity to ensure that Black children and young people have their rights fully realised.

Policing and criminal justice

Key messages



- 1. Black children and young people are disproportionately represented at all stages of the criminal justice system.**
- 2. Black children and young people are also more likely to experience stop and search police use of force and be held overnight in police cells.**
- 3. Despite numerous reports and recommendations highlighting this racial discrimination little action has been taken by government.**

In 2016, the UN Committee made a number of recommendations for the UK to address the issue of racial disproportionality in policing and criminal justice from discriminatory use of stop and search to the disproportionate number of BAME children in prison. The Lammy Review² also shone a clear light on racial inequalities in the protection of human rights of Black children and young people across the youth justice system. It is overwhelmingly clear that the disproportionate number of Black children arrested, prosecuted and remanded or sentenced to custody is a problem which is getting worse. Urgent Government intervention, that goes beyond mere rhetoric and acknowledgement, is required to eradicate existing inequalities. While the Lammy Review points out a number of policy avenues and practical steps to address these issues, little has been done in terms of implementation. Below we highlight some key child rights issues in relation to racial inequalities in the protection of the human rights of these children.

Disproportionate representation of Black children and young people throughout the youth justice system

It is clear from the *Youth Justice Statistics 2018/2019 in England and Wales*³ published by the Youth Justice Board and Ministry of Justice on 30 January 2020 that, across multiple indicators, 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. This is despite only making up approximately 4% of the 10-17 year-old general population. For instance, in the year ending March 2019:

- Black children were over four times more likely than White children to be arrested
- Arrests of Black children accounted for 16% (around 8,400) in the latest year, double the proportion of ten years ago.
- While the proportions of youth cautions issued over the course of the decade has decreased for all ethnic groups, Black children represent an increasing proportion of the total (from 7% to 11% over the last decade).
- The proportion of Black children given a caution or sentence is almost three times higher than the proportion of Black children in the 10-17 population.
- While the number of First Time Entrants (FTEs) to the Youth Justice System from a Black background has decreased in the last decade, the proportion they comprise of all FTEs has doubled, from 8% to 16%. FTEs from a White ethnic background has fallen at the fastest rate, by 88% over the last ten years, resulting in the proportion they comprise of all FTEs reducing from 85% to 75%.
- The proportion of proven offences with a gravity score in the higher band (of five to eight), was greater for Black children (23%, with other ethnic groups ranging from 11% to 22%). Conversely, the proportion of proven offences with a gravity score in the lower band (of one to four), was lower for Black children (77%, with other ethnic groups ranging from 78% to 89%).
- Of all sentencing occasions for indictable offences, the proportion involving White children has decreased from 74% to 65% over the last five years. Conversely, the proportion of sentencing occasions involving Black children for indictable offences increased from 14% to 20% over the same period. The proportions for other groups have remained broadly stable.
- Around one third (34%) of all remand episodes involved Black, Asian or Minority Ethnic (BAME) children, and this figure rises to 48% for remands to youth detention accommodation.

- Over the last ten years the proportion of children from a White background remanded in youth custody has seen a general downward trend, falling from 62% to 43%, the lowest level in the last ten years. Yet, the proportion of children from a Black ethnic background has seen an overall increase, accounting for a third (33%) of children remanded in youth custody in the latest year.
- 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. For the January 2019 snapshot, Black, Asian and Minority Ethnic (BAME) children made up the majority (51%) of the youth custody population for the first time since the data series began in 2008.

Stop and search

Stop and search has been identified by children we have spoken to as a major concern and its misuse has been harmful to the trust and confidence of some young people in the police. Children and particularly BAME children are disproportionately stopped and searched. Between October 2017 and September 2018, the largest proportion stopped of all age groups (42,424) were 15-19 year olds.⁴ Between 2009/10 and 2018/19 Black people had the highest stop and search rates in every police force area for which there was data.⁵

Overnight detention in police custody

In 2019, BAME children accounted for two thirds (67%) of the 7,038 children detained overnight by the MPS. Black children accounted for 44% of all children detained overnight by the MPS.⁶ Police custody is not an appropriate place for children to be detained but thousands of children are detained in police cells overnight each year. Responses to our FOI requests from 33 forces revealed that in 2016 at least 22,408 children were detained overnight in England; nationally more than a third (36%) of children detained overnight in police cells were from BAME backgrounds. Contributing to these high numbers is the failure to transfer children from police custody to local authority accommodation after they have been charged, despite the legal requirements under section 38(6) of the Police and Criminal Evidence Act. In 2017 the Home Office published a concordat setting out the key actions that government, police and local authorities must take to tackle this problem,⁷ but there is still much to be done to ensure the ambitions of the protocol are realised.

Use of force and restraint

Between April 2018 and March 2019, Taser was used on children in England and Wales 1,700 times.⁸ Between January and October 2019, there were already 1,009 uses of Taser on children by the Metropolitan Police Service (MPS). Of those, nearly 74% was on BAME children.⁹ Across the whole of 2017 and 2018, BAME children accounted for 34% of spit-hood use nationally and 72% of MPS use.¹⁰ Children have told us about the experience of being arrested and have reported that force was often used unnecessarily even when they had been cooperating with the police. Using force or violence against children, especially those who are vulnerable, can result in long-term damage to their mental health as well as causing physical harm and distress.¹¹

Use of isolation in prison

The use of isolation of children in prison is still common, despite calls by the UN Committee for a prohibition on the use of solitary confinement, echoing calls by the UN Special Rapporteur on Torture. In 2015 the Children's Commissioner for England found that the use of isolation is common for children in custody, and that one in three detained children will experience it at some point. Those who might be considered particularly vulnerable are more likely to be isolated, with research finding that children with a recorded disability are two thirds more likely to experience isolation and BAME children are subject to isolation at three times the rate of their White peers.¹² More up to date, official figures on the use of isolation disaggregated by protected characteristics are not publicly available, raising key

questions around oversight and accountability. A survey by Her Majesty's Inspectorate of Prisons found that in 2016/17 a third of boys in YOIs (33%) said they had spent a night in the segregation unit and boys who had been to segregation were significantly more likely than others to be from a BAME background (58% compared with 43%).¹³

The impact of the coronavirus pandemic on BAME communities

Since the UK government-imposed lockdown measures in England on 26 March 2020, BAME children and young people have been further disproportionately impacted by the effect of the virus. For example:

- Young black men were stopped and searched by police more than 20,000 times in London during the coronavirus lockdown – the equivalent more than a quarter of all Black 15- to 24-year-olds in the capital. More than 80% of the 21,950 searches between March and May resulted in No Further Action.¹⁴
- Analysis by Liberty Investigates and the Guardian shows that BAME people received as many as 2,218 of the 13,445 fixed-penalty notices (FPNs) under distancing regulations recorded from 27 March to 11 May, while white people were given about 7,865.¹⁵
- BAME people in England were 54% more likely to be fined than white people, with around 2,218 fines being meted out to BAME people and 7,865 to white people.¹⁶
- BAME people account for 15.5% of the population in England, according to 2016 population figures. BAME people received at least 22% of the coronavirus lockdown fines, according to NPCC data, which was most recently updated on 15 May.¹⁷
- Met Police data shows BAME people almost 50 per cent more likely to be arrested for breaching coronavirus laws. Between March 27 and May 14, 414 BAME people were taken into custody in London, compared to 284 white people.¹⁸

These figures point to the significant levels of disproportionality within the criminal justice system. Further, BAME children and young people have been at a heightened risk of contracting the coronavirus through arrest and detention.

Recommendations

- **The disproportionate targeting of Black children and young people by the police and youth justice system must be tackled with urgency. The Government should implement the recommendations of the Lammy Review and commission Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services to carry out a thematic review of the police treatment of Black children and young people.**
- **All institutional settings (whether run by the State or private organisations) should be open and transparent about the disproportionate outcomes for Black children and young people and urgently seek to address this.**
- **The government must collect data on Black children and young people coming into contact with the police and criminal justice system, which must be fully disaggregated by gender, ethnicity and age.**

School exclusions and racial discrimination

Key messages

- 1. Black children are more likely to be excluded from school, denying them their right to education.**
- 2. Victims of race discrimination in schools are systematically denied access to justice.**

3. School exclusion can lead to, or be caused by, criminal exploitation meaning more Black children are being swept into the youth justice system as a result.

Black children are more likely to be excluded from school

The right to education is guaranteed by Article 2 of Protocol 1 to the European Convention on Human Rights. By virtue of Article 14 this right must be realised without discrimination on the basis of a person's ethnicity. Article 28 of the CRC provides for the same right.

We find it deeply concerning that children from a Black Caribbean background are around three times more likely to be excluded from school over White British children, despite a clear recommendation from the UN Committee to address this issue in 2016. It is very disappointing that the Timpson Review into school exclusions in 2019 did not substantively explore this issue, even though the review itself resulted from figures revealed by the Government's Race Disparity Audit. It made three relevant recommendations, but they were not substantial or exclusive to the issue of tackling race disparity. For example, recommendation 19 simply recommends that local trends are tracked so that local authorities can "take steps" to ensure all vulnerable people are supported. It is impossible to quantify the impact of this recommendation and local authorities have no statutory power to influence the administration of school exclusions and limited influence to realise anti-racist policy in schools.

The ethnic makeup of staff and, in particular, heads and senior management in London schools, an area with a very high Black population fails to reflect the students and families they are working with.¹⁹ The Timpson Review highlighted the need for better representation in senior staff, the statistics show that, fundamentally, more needs to be done to dramatically improve diversity throughout the teaching profession.²⁰ Young people tell us that this underrepresentation means that staff are less likely to understand the experience of people of their ethnic background in the education system and may be more likely to perpetuate the causes of systemic racial disadvantage that contribute to this disproportionality in exclusions. The Timpson review did make some recommendations on this topic, urging central government to extend funding for a program to improve representation in senior management but they did not go far enough.²¹

Victims of race discrimination in schools are systematically denied access to justice

It is therefore particularly concerning that young people who wish to challenge their exclusion on the basis of race discrimination, or ask a judge to review any complaint of race discrimination against a school, will find it very difficult indeed to access justice. This is because discrimination cases for any characteristic other than disability are heard by the County Court rather than the First Tier Tribunal (FTT). Unlike the FTT, at the County Court there is a court fee to start a case, the Court is not set up to accommodate litigants in person and families could be liable for the other side's costs if they lose. This results in very few such cases being brought.

Links between criminal exploitation and school exclusion

There is a clear and widely acknowledged link between exclusions and young people becoming involved in violent crime as either victim or perpetrator.²² The National Crime Agency lists risk factors to child criminal exploitation and lists placement in a pupil referral unit (PRU) as one such indicator.²³

Children in PRUs are typically supervised for fewer hours per week than those in mainstream education. Some disappear from the education system altogether and do not attend alternative provision. We see families opt not to send children to a PRU for fear of the impact, even where there is no other placement on the table. Children have reported to us that a process of institutionalisation

occurs in PRUs, with exposure to violence, drugs and gang associations that had not been present in mainstream school.

As mentioned above, there is huge racial disproportionality in the criminal justice system. It should therefore be of concern that school exclusions impact the same groups disproportionately, and that through their link with serious youth violence and criminal exploitation, they appear to perpetuate this injustice.

In the criminal courts, if a child is referred through the National Referral Mechanism (NRM), and found to be the victim of childhood criminal exploitation (CCE), they may have a defence in law to the offences they are charged with. However, in education there is no equivalent. This means children can be excluded for behaviour directly resulting from their being exploited or trafficked. CCE can be hugely damaging for young people, and in some cases fatal.

Tackling this form of exploitation and helping victims of exploitation to stay in school and break the influence of their exploiters may be a key element of reducing disproportionality in exclusions, and in the youth justice system.

Recommendations

- **The Government should commit to the urgent implementation of a strategy, developed in consultation with relevant stakeholders and BAME children and young people to address and eliminate disproportionality on the basis of race in school exclusions.**
- **The Government should rename the FTT (SEND) to the FTT (Schools) and move all claims for discrimination in school into its jurisdiction.**
- **The Government should introduce new protections against exclusion for victims of criminal exploitation in their forthcoming revision of the statutory guidance on school exclusions.**

Case Studies

Jake*

Jake lived most of his life in London. When his mother moved from London to the Midlands Jake joined a local secondary school to take his GCSEs.

Jake did not enjoy the school. He comes from a Black Caribbean background and had been in a school with lots of children who share this ethnicity. In the new school, he felt like an outsider and grew concerned that his classmates were judging him for the colour of his skin. Indeed, he was the victim of a number of instances of racial abuse by classmates and he became disheartened.

Only a few months after joining the school, Jake began to go missing at the weekends. He would not tell anyone where he had been. After the second episode he attacked a student at school which appeared unprovoked. He offered no explanation for his behaviour despite the fact he had never been in serious trouble throughout his school career and had never been violent with anyone before. He was permanently excluded. Shortly after his exclusion he went missing again, this time during the week. He was found by police in London who came to suspect that he had fallen victim of trafficking and criminal exploitation.

Jake is now out of education. He has no educators keeping him occupied and supervised during the day. It has become much more difficult to keep him out of the hands of his exploiters. The family suspect that he was coaxed into attacking another student, given that this incident was unprovoked, out of character and came at a time when he was in the control of people using him to transport drugs. Whether that is proved or not, his exclusion was a gift to those people, and it resulted in part from the racism he experienced in school.

Ruby

Ruby is mixed race. She has afro hair. She complained to her school because she kept on being sent home because it was “too big” and did not comply with the school’s uniform policy. Ruby felt that the uniform policy did not allow for more typically Black hair. She attempted to make it compliant but found it difficult to tie her hair up given its volume. She felt aggrieved about the school attempting to “westernise” her hair. On one occasion a staff member even suggested she had it chemically relaxed.

After a long series of fixed term exclusions Ruby sought Just for Kids Law’s help. JfKL ran a complaint against the school but were unable to take the case to Court because of the prohibitive costs. Eventually, Ruby’s case was taken on by the Equality and Human Rights Commission who were able to fund the case and protect Ruby against adverse costs. They were successful and secured a settlement from the school. Ruby was lucky, if the EHRC had not been able to help she would have been denied justice on what was clearly a meritorious claim.

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¹ UN Committee on the Rights of the Child (2016) *Concluding Observations on the United Kingdom of Great Britain and Northern Ireland* <https://www.unicef.org.uk/babyfriendly/wp-content/uploads/sites/2/2016/08/UK-CRC-Concluding-observations-2016-2.pdf>

² David Lammy (2017), *The Lammy Review*, An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic (BAME) individuals in the Criminal Justice System (including children) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

³ Youth Justice Board and Ministry of Justice (2020) *Youth Justice Statistics: England and Wales 2018-2019*

⁴ Children's Rights Alliance for England, 2019, *State of Children's Rights 2018: Policing and Criminal Justice* http://www.crae.org.uk/media/127098/B8_CRAE_POLICINGCJ_2018_WEB.pdf

⁵ Ministry of Justice, 2020, *Stop and Search data* <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>

⁶ Responses to FOI requests by Just for Kids Law. Overnight signifies that a detainee was held within Custody for four or more consecutive hours between 00:00 & 08:00. FOIA/MOPAC Ref Number 01/FOI/20/013397

⁷ Home Office (2017) *Concordat on children in custody* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655222/Concordat_on_Children_in_Custody_ISBN_Accessible.pdf

⁸ Home Office (2019) *Police use of force statistics, England and Wales: April 2018 to March 2019* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853204/police-use-of-force-apr2018-mar2019-hosb3319.pdf

⁹ Children's Rights Alliance for England, 2020, *Children's rights and policing: Tasers and children's rights* https://yjlc.uk/wp-content/uploads/2020/04/CRAE_POLICING-TASER-PRINT-1.pdf

¹⁰ Children's Rights Alliance for England, 2020, *Children's rights and policing: Spit-hoods and children's rights* https://yjlc.uk/wp-content/uploads/2020/04/CRAE_POLICING-SPITHOODS_PRINT.pdf

¹¹ See for example, Defence Scientific Advisory Council Sub-Committee on the Medical Implications of Less-Lethal Weapons (DOMILL) (2011, amended 2012) *Statement on the Medical Implications of Use of Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/443842/DOMILL14_2_0120127_TASER06.2.pdf

¹² Children's Commissioner for England (2015) *Unlocking potential: a study of the isolation of children in custody in England* <https://www.childrenscommissioner.gov.uk/report/unlocking-potential/>

¹³ Her Majesty's Inspectorate of Prisons (2017) *Children in custody 2016-17: an analysis of 12-18 year olds' perceptions of their experiences in STCs and YOIs* https://www.justiceinspectores.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/11/6.3903_HMIP_Children-in-Custody-2016-17_FINAL_WEB_221117.pdf

¹⁴ Guardian (8 July 2020) *Met carried out 22,000 searches on young black men during lockdown* <https://www.theguardian.com/law/2020/jul/08/one-in-10-of-londons-young-black-males-stopped-by-police-in-may>

¹⁵ Liberty Investigate (26 May 2020) *BAME People Disproportionately Targeted by Coronavirus Fines* <https://libertyinvestigates.org.uk/articles/bame-people-disproportionately-targeted-by-coronavirus-fines/>

¹⁶ Ibid

¹⁷ The Guardian (6 May 2020) *BAME people fined more than white population under coronavirus laws* <https://www.theguardian.com/world/2020/may/26/bame-people-fined-more-than-white-population-under-coronavirus-laws>

¹⁸ The Telegraph (3 June 2020) *Met Police data shows BAME people almost 50 per cent more likely to be arrested for breaching coronavirus laws* <https://www.telegraph.co.uk/news/2020/06/03/met-police-data-shows-bame-people-almost-50-per-cent-likely/>

¹⁹ Department of Education (2019) *Timpson Review of School Exclusion*. See Recommendation 4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf.

²⁰ Cabinet Office (2018) *Race Disparity Audit*. See paragraph 10.11: "The majority of teachers in England were White British, with fewer than 1 in 7 coming from an ethnic minority group, and 1 in 12 from a non-White ethnic minority group in 2016" https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686071/Revised_RD_A_report_March_2018.pdf.

²¹ Department of Education (2019) *Timpson Review of School Exclusion*. See Recommendation 4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf.

²² The Mayor and seven Police and Crime Commissioners has acknowledged this link and wrote to the Prime Minister to urge action on this issue in March 2019. Guardian (March 2019) *PM urged to fix school exclusion system to tackle knife crime* <https://www.theguardian.com/uk-news/2019/mar/07/pm-urged-to-fix-school-exclusion-system-to-tackle-knife-crime-sadiq-khan>. See also APPG on Knife Crime (October 2019) *Back to School*. <https://www.aep.org.uk/news/appg-knife-crime-report-on-link-between-school-exclusions-knife/>. See also Ofsted report (March 2019) *Safeguarding children and young people in education from knife crime* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785055/Knife_crime_safeguarding_children_and_young_people_110319.pdf

²³ NCA Intelligence assessment (2018) *County lines drug supply, vulnerability and harm*. See paragraph 30 <https://nationalcrimeagency.gov.uk/who-we-are/publications/257-county-lines-drug-supply-vulnerability-and-harm-2018/fil>