

# **'A lack of cultural understanding and sometimes interest': Towards half a century of anti-racist policy, practice and strategy within probation**

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## **Abstract**

In 2021, HM Inspectorate of Probation published a long awaited and highly critical report – Race equality in probation: the experience of black, Asian and minority ethnic probation service users and staff. The inspection upon which it was based was conducted in the Autumn of 2020 and was therefore set against the background of the death of George Floyd in the United States, and the rise of the Black Lives Matter movement worldwide. The Black Lives Matter (BLM) movement laid down a challenge on many levels, stating that black, Asian and minority ethnic people must be accepted and respected as equal citizens and nowhere is this more urgently needed than within the operation of the criminal justice system. However, its follow up report (HM Inspectorate of Probation 2023) reported being disappointed in the lack

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of progress made by the Probation Service in addressing the issues raised in its earlier report. The article seeks to move beyond the conclusions and recommendations of the Inspection report using the lens of Critical Race Theory to engage in a discussion of systemic racism in society. To do this we have used three levels of analysis – *macro*, *meso* and *micro* – to situate contemporary probation within the wider structures of a post-colonial society.

## Keywords

(anti) racism, probation, rehabilitation, desistance, othering

## Introduction

September 2023 saw the publication of a Thematic Inspection by HM Inspectorate of Probation (HMIP, 2023a) which followed up the progress made in probation since their 2021 long awaited and highly critical report – *Race equality in probation: the experience of black, Asian and minority ethnic probation service users and staff* (2021a). This follow-up Inspection tellingly commented – ‘We found that implementation and delivery of services were better; however, not enough people on probation had an effective, trusting relationship with their probation practitioner ... Levels of engagement and the delivery of services were worse than for white individuals, as judged by data from our adult inspection programme. We found few examples of effective practice in working with minority ethnic individuals’ (2023:9). This, in our view, reflects a depressing failure to respond to the original overdue and deeply critical Inspection that could reasonably have been expected to resonate within probation at all levels at a time when racial equality and problems within the criminal justice system had gained a degree of public traction. As the *Foreword to the original Inspection* itself reflects, it was conducted in the Autumn of 2020 and was therefore set against ‘the background of the death of George Floyd in the United States, the rise of the Black Lives Matter movement worldwide and the Covid-19 pandemic from March’ (2021a: 4).

Evidence abounds of the pernicious impact of criminal justice policies, procedures and practices delivered through a complex system of decision-making that disproportionately criminalises certain individuals and communities. There has been a plethora of reports – both local and national, research based and official – that point to the extent of racism in the wider criminal justice system and other social welfare agencies as being effectively institutional in nature. In terms of the recent past, all of these can be bookended by the inquiry into the murder in 1993 of Stephen Lawrence (MacPherson, 1999) and most recently, the report by Louise Casey into the standards of behaviour and internal culture of the Metropolitan Police Service (Casey, 2023). The ramifications of Casey’s Review reverberate throughout the whole of the criminal justice system, nationally and locally. As the Lammy Review (2017) demonstrated, the levels of disproportionality continue at every stage within the criminal justice system and analysis and research continues to demonstrate the unequal treatment of black Asian and minority ethnic men and women<sup>1</sup>

by all parts of the criminal justice system (Carr, 2022; INQUEST, 2022; PRT, 2017; Working Chance, 2021) and the continuing failure by government to respond to known problems (see PRT, 2023; Roberts and Bild, 2021). Our focus of concern in this article, however, is on the role of the Probation Service in England and Wales and specifically on the findings of the report by HM Inspectorate of Probation – *Race Equality in Probation* – (HMIP, 2021a).

The evidence about the inequalities and inequities in the operation of probation within a tainted criminal justice system are clear but it is our contention that the analysis of racism offered by *Race Equality in Probation* is disappointing and self-limiting, offering an analysis that fails to fully engage with the wider conceptualisations of the problem. Indeed, evidence from other sources not focussed on problems of institutional racism further support the analysis that poor practice is not just a problem for individuals from black, Asian and minority ethnic communities alone. Research undertaken by Revolving Doors – *What next for Probation* (2022), for example, highlighted that recipients of rehabilitative interventions from all backgrounds were experiencing worrying quality of supervision in terms of the time, interest and attention given to their difficulties and situations. In this respect, we explore why racial inequality within the delivery of probation services continues to exist and seemingly be worse than in the recent past - when ostensibly, society has moved on in its attitudes to race and difference. We will consider how developments including the marketisation of probation, specifically the disastrous and discredited *Transforming Rehabilitation* strategy of successive Conservative administrations (Ministry of Justice, 2013a, 2013b, 2013c) along with increased centralised control have both sidelined discussions of racial inequalities in probation practice and created a practice and management environment which is not conducive to individually focused anti-oppressive rehabilitative endeavour.

We are conscious that the Black Lives Matter (BLM) movement has thrown down the challenge to societies to ‘invest in the future of Black lives through policy change, investment in our communities, and a commitment to arts and culture’ and to go further to envision a future where the required investment in black communities comes from full divestment from police, prisons and all punishment paradigms (Black Lives Matter, 2023). Furthermore, Critical Race theory (CRT) in offering a comprehensive analytical and narrative approach that sees racism as endemic and race inequality embedded within the systems and structures of society (Gillborn, 2018; Rollock and Gillborn, 2011) also reminds us that social and criminal justice policy can not only discriminate against certain groups but does simultaneously reinforce the privilege and power that white society holds. This resonates with Warr’s recent analysis (2023) of how black prisoners experience the *white space* of the prison environment in which Blackness itself is seen as an intrusion. He argues that the various myths associated with *Blackness* and Black criminality become part of a negative association to risk assessment and rehabilitation: “We see here a rehabilitative colour line that it is difficult for Black prisoners to cross due to their entanglement of their blackness with risk (dangerousness) and being perceived through a lens of whiteness when it comes to assessments of their rehabilitation” (2023: 1092). Furthermore, drawing on the work of Paul Gilroy, he argues that

negative ideations of blackness go beyond the realm of criminal justice “and are profoundly encoded into our atrophic- colonial, ethnocentric habitus” (2023: 1092). In the prison setting then, notions of rehabilitation are stacked against black men in ways that are not true for white prisoners “the consequences of that, for these prisoners of colour, serving sentences where they are dependent on professional assessments of others in order to progress could mean spending unnecessary years in prison” (2023: 1104).

Warr’s work reminds us of the complexity of the context (current and historical, political and ideological, individual and structural) within which rehabilitation work is undertaken and whilst the application of the level of analysis offered by CRT goes beyond what the article can tackle, we are clear that racism on a *macro*, *meso* and *micro* level are the everyday experiences of black, Asian and minority ethnic communities, service users and staff and that this has both a *class* and *capital* context that privileges white society. It is also salient to acknowledge the political and economic climate of the country and how that frames racism, *others* black, Asian and ethnic minority communities and racializes their experience. Thus, it is only by acknowledging these experiences and ensuring the voice of black, Asian and ethnic minority people are heard, that any possibility of incremental change can and will take place (Delgado and Stefancic, 2023).

## How did we get here – probation and anti-racism

*Race Equality in Probation* provides both a *deeply worrying* and an *equally disappointing analysis* of the state of anti-racist practice and policy within the Probation Service. It outlines a sad tale of inadequate initial and in-service training and whilst most staff received supervision, the majority (some 60%) said they did not receive effective case-focused supervision that enhances and sustains the quality of work with service users from black, Asian and ethnic minority communities. For some, this was not on their regular supervision agenda and many indicated that other priorities, such as performance and the management of risk, took precedence (2021a: 22). The report quotes what is described as a typical response from one member of staff – ‘Never had a discussion of the cultural needs of service users in supervision. The focus is on process and task oriented, risk and updating systems’ (2021a: 22). Many staff reported lacking confidence in discussing culture or experience of discrimination and related social deprivation. In its follow up the inspectorate found only a ‘minimal’ improvement in terms of the extent to which issues of ethnicity, culture, faith and experience of discrimination was taken into account by those probation practitioners inspected (2023: 9). The Inspection findings within *Race Equality in Probation* and its subsequent follow-up then, have encouraged if not required us as former probation and youth justice practitioners to reflect on the nature of probation and what has happened to its traditional commitment to anti-discriminatory practice and its innovative and committed if patchy actions taken forward from the late 1970s and early 1980s.

As Mike Nellis notes, the development of the Probation Service in the twentieth century has been ‘hedged by the unconscious constraints of white British – even

imperial – identity’ (2007:51). However, driven on by the inner-city disturbances in the early 1980s, the Probation Service was one of the first criminal justice agencies to focus on anti-discriminatory policy and practice albeit largely driven by ‘the energy, commitment and enthusiasm of a few staff or a charismatic figure’ (Vanstone, 2006) rather than a coordinated national approach across probation areas. Given the initial impetus following the 1981 disturbances in Liverpool, Manchester, Brixton, Birmingham and elsewhere and the publication of the Scarman Report in 1981 (and on Merseyside, the Gifford Review, 1989), it could be argued that probation was at the forefront of understanding the problem of racial inequality in terms of its implications for policy and practice. It was certainly out in front compared to the criminal court system, local police forces and Her Majesty’s Prison Service. The inquiry into *race relations* in Liverpool chaired by Lord Gifford QC (Gifford et al., 1989) not only had the existence of discrimination within the criminal justice system within its term of reference but also ‘*the deeper causes, including general social conditions, relating to the deprivation and racist treatment of Liverpool 8 people*’ (1989: 5). This report named the exclusion of black, Asian and ethnic minority communities from mainstream socio-economic, political and cultural participation in the region of Merseyside and the Probation Service was not exempted from such criticism (Ben-Tovim, 1997; Ben-Tovim et al. 1998). As a result, probation areas (particularly within the larger Metropolitan areas including Merseyside which had experienced the ‘riots’ of 1981 and 1985, committed themselves to the task of developing anti-racist practice, often with the clear and unequivocal support of their chief officers (see Kett et al., 1992: xiii). The response from Merseyside Probation (and indeed the wider Local Authority in Liverpool), was to acknowledge that institutional racism scarred the locality and to begin to engage in a comprehensive strategy to employ women and men from the local black, Asian and minority ethnic communities as probation officers, social workers and council workers (Ben-Tovim, 1997). Indeed, this was a local example of a wider, macro acknowledgement of the *endemic racism* that excluded and dehumanised minoritized communities across England and Wales (CCETSW, 1991). This strategy enabled probation workers (often who were Black), to engage with voluntary agencies who then and now work with the excluded, criminalised and *othered* in their communities and who understand the structural impact of racism in everyday lives. This becomes critical for probation services to influence their statutory partners within local criminal justice systems and work in partnership to build resources and capacity across the black and minority ethnic voluntary and community sector and their local communities. The investment in such resources and services can then reap dividends in reducing the *push-in* effect and unnecessary criminalisation of local communities as well as building/brokering local resources (social and economic capital) that will support individual desistance journeys away from criminal activity.

The response of probation was not one of piecemeal, post-modern individualism that focused on *culture and colourfulness*. Rather, there was an acknowledgement that the spaces that black, Asian and minority ethnic communities were excluded from were everywhere, except of course, in the coercive, restrictive and controlling

elements of the criminal justice system and the Probation Service. In other words, that too often, individuals from these communities were disproportionately represented in the criminal justice system and regularly on the receiving end of punitive and/or *whiteness* services from probation (Denney, 1992, 1997). Yet, to address this structural racism, anti-racist practice was developed and promoted within probation that acknowledged the institutional nature of this discrimination and argued that probation should provide a strategic socio-economic response, that not only addressed individual offending behaviour but the trauma, the circumstances and the institutional exclusion that led individuals being pulled into the criminal justice system (CCETSW, 1991; Denney, 1992; Kett et al. 1992).

It was also during this period that the use of the term *Black* emerged as a political description reflecting an analysis that skin colour was the most important determinant of discriminatory experiences within the criminal justice system. At this time, the education and training of probation officers had converged with that of social workers, and both retained the Central Council for Education and Training of Social Work (CCETSW) as their regulating and training body. The values of both professions/occupations promoted a commitment to developing inclusive approaches to criminal justice supervision that acknowledged that structural determinants of class, gender and of course, race were relevant to service users' experiences and difficulties. Importantly, there was an adoption of anti-racist training, education and practice by social work and probation (CCETSW, 1991). Alongside this Napo (National Association of Probation Officers) was also active in promoting anti-racist practice and the formation of the Association of Black Probation Officers (ABPO) in 1982 represented a further catalyst for change (Goodman, 2023: 6). The fact that probation staff and probation leadership saw themselves working within the framework of social work values and ethics which emphasised respect for all people without discrimination, encouraged the integration and normalisation of anti-racist approaches to its work – usually encapsulated in the phrase – *anti-racist practice is good practice*. It was, we would argue, generally understood that *equality* was a value which could only be aspired to by treating people *differently* according to their individual needs. In other words, *equitable* treatment was the key – a position now recognised within the provisions of the Equality Act 2010. However, it was only after the publication of the Stephen Lawrence inquiry (Macpherson, 1999) and the debate around the concept and definition of *institutional racism* posited by MacPherson himself, that the Police and other criminal justice agencies were compelled to look at how they were operating.

Whilst we would not attempt to claim such anti-racism initiatives as part of a *golden age of probation* (Collett, 2014; Statham, 2014), the Service's identification with social work values gave probation the impetus to be at the forefront of this challenge and local probation areas took often difficult and painful steps in not simply identifying what constituted anti-racist practice but in redressing the historically poor employment rates within probation for individuals from minority ethnic communities. This extended to looking to engage more fully with local communities. Whilst in some senses, it could be argued that the passivity of social work values and the

focus on the individual were part of the problem, they nevertheless provided a justification for some managers and leaders to take on local opposition to anti-racist developments. Inevitably, development was piecemeal at best and tokenistic at worst. To some extent then, probation's reputation as a criminal justice agency supportive of anti-racism is also reflected in its success in increasing staff recruitment amongst black and minority ethnic staff compared to both the prison and police services (Bhui, 2004; Home Office, 2005). The proportion of minority ethnic staff in the National Probation Service recently stood at 13.7 per cent in 2019 (HM Prisons and Probation Service 2020), which is close to Her Majesty's Prison and Probation Service target of 14 per cent and slightly below the minority ethnic working age population of the UK in the 2011 census. However, the overall proportion of minority ethnic staff in the National Probation Service does not necessarily reflect the diversity in communities at a local level and there is a particular shortage of minority ethnic men. (HMIP, 2021a: 9).

Despite its record of championing anti-discriminatory practice (Carr, 2017), it is also fair to say that the development of practice in respect of black, Asian and minority ethnic service users has historically been 'uneven and patchy for some time' (Calverley et al. 2004: 6) and it has struggled to turn commitment into effective action. The patchy nature of progress has to be seen, we would argue, within the wider context of how developments in the role, structure and performance imperatives of the Service within an overall ideologically driven approach to the public sector have taken their toll on traditional patterns of probation service delivery and community engagement. In recent years these have been significantly and deleteriously impacted additionally by the *Transforming Rehabilitation* reforms, introduced in 2013 which further side-lined action to deal with racial disparities in probation practice. The reforms split probation delivery between the 21 Community Rehabilitation Companies (CRCs) with responsibility for those individuals assessed as being low and medium risk of reoffending, with the National Probation Service retaining responsibilities for those deemed to be high-risk. The 'bifurcated' nature of the organisational restructuring of probation around risk levels (Burke and Collett, 2016) doubly disadvantaged black Asian and minority ethnic individuals under probation supervision. On the one hand, the focus of the newly formed National Probation Service on working with high-risk individuals further embedded *technicism* into contemporary probation work. For example, the pre-eminence given to public protection work based upon the utilisation of technical risk assessment tools into probation service delivery, it has been claimed, discriminate against black, Asian and minority ethnic individuals (Bhui, 1999; Silver and Miller, 2002). Warr (2023: 2) describes a 'rehabilitative colour line' that makes it difficult for many black, Asian and minority ethnic individuals to cross because of the 'entanglement of their Blackness with risk (dangerousness) and being perceived through the lens of whiteness when it comes to assessments of their rehabilitation'. In a similar view, Ugwudike (2020) has argued that that assessment tools tend to over-predict the recidivism rates of black, Asian and minority ethnic people and given their vulnerability to discrimination, their socio-structural disadvantages can be used to justify excessive penal intervention which clearly has

implications for their rights, civil liberties and ultimately justice. Secondly, the emphasis on performance targets in the commissioning of rehabilitative services that dominated service delivery within the CRCs also proved problematic for black, Asian and minority ethnic individuals subject to probation supervision, which we will discuss later in this article.

In June 2021, it was announced that following sustained criticisms of the *Transforming Rehabilitation* reforms from a range of stakeholders, including the HM Inspectorate of Probation and the National Audit Office, the re-commissioning of CRC contracts would not be taking place as planned and that all probation service delivery and interventions would be brought back within the public sector. However, the *merging* of the NPS with CRCs has been far from straightforward. A series of HM inspections following unification have been highly critical of performance within probation areas. These have been compounded by high-profile cases of serious further offending of individuals (Damien Bendell and Jordon McSweeney) whilst under probation supervision (HMIP, 2023b, 2023c) that have engendered negative publicity and undermined public confidence in probation work. These developments must be seen within the context of a decade of underfunding and severe staff shortages that are compromising probation practitioners' ability to build effective working relationships with those under their supervision. A practical consequence of this, as a recent inspection of probation found, was that staff shortages meant that some newly qualified probation practitioners were being allocated cases that they had neither the skills nor necessary experience to handle (HM Inspectorate of Probation, 2020).

The findings in the *Race Equality in Probation* report do not, therefore, come as a shock to those working within probation and to those outside commentators and researchers. Indeed, the Executive Summary itself provides a helpful summary of prior concerns highlighted in the only two Inspection Reports conducted by HMIP post-Macpherson. The first – *Towards Race Equality* (HMIP, 2000), noted the poorer treatment received by black, Asian and minority ethnic individuals in terms of pre-sentence report quality and community risk assessments whilst work with racially motivated offenders was unfocussed – 'We concluded that there was a failure of probation leadership on racial equality driven by a naïve view that equality is simply "treating everyone alike"'. The follow-up report (HMIP, 2004) found that there was still 'a poorer quality of work done with ethnic minorities and an abiding sense of disadvantage among ethnic minority staff' (quoted in HMIP, 2021a:7). Despite these critical reports, no further Thematic Inspection Reports were conducted until the publication of the Lammy Review (2017) provided the necessary impetus for the recent Inspection and its 2021 Report. Probation did not escape criticism in the Lammy Review (2017) and in February 2020, the Ministry of Justice published *Tackling racial disparity in the criminal justice system: 2020 update* (MoJ, 2020) and Her Majesty's Prison & Probation Service (HMPPS) launched a Race Action Plan. Indeed, *Race Equality* critically comments on the central initiatives outlined in the Race Action Plan referenced above – 'Much of this work focuses on the needs and concerns of staff. It is less clear that there is a coordinated national strategy for improving probation service delivery to black, Asian and minority ethnic

service users' (HMIP, 2021a: 7–8). In response HMPPS has produced a further action plan whose targets include 'addressing disproportionality, outcomes of probation supervision, breach and recall, improving life chances for ethnic minorities and developing a race equality strategy for people on probation drawing on the evidence base' (Goodman, 2023: 13).

## **What's gone wrong? Race equality in probation**

Although *Race Equality in Probation* and its follow up do highlight examples of good practice, highly valued by the recipients, of sensitive and committed interventions often by white workers, the scale of the problems suggest that the frontline delivery of services is reflective of systemic failures at operational, management and strategic levels. The *Race Equality in Probation* Inspection report **and its follow up** identify a range of concerns including poor practice in the preparation of pre-sentence reports, a failure to publish relevant information, and a failure to commission specialist services and a general lack of confidence in engaging with individuals from Black, Asian and minority ethnic backgrounds. It is to these that we now turn our attention.

### *Poor practice in the preparation of pre-sentence reports*

As Cole and McClean (2020: 677) note, the journey to rehabilitation often starts with the analysis of the defendant's offending behaviour in pre-sentence reports and, upon sentence, in subsequent analysis of their risk and needs using probation's Offender Assessment System (OASys). In both of these significant processes of assessment, studies have shown that black, Asian and minority ethnic individuals have been disadvantaged. In some of the earliest research on court reports, Carrington and Denney (1981) found stereotypical attitudes among probation officers towards Rastafarians and Whitehouse (1983) identified negative attitudes to black defendants in social enquiry reports (today's pre-sentence reports). Green (1989) criticised the service for a 'colour-blind' approach that denied the reality of racism in the lives of black, Asian and minority ethnic individuals and Denney (1992) argued that court reports more often represented negative accounts of black than of white defendants. Hood (1992) found that black, Asian and minority ethnic defendants in Crown Courts were more likely than whites to be sentenced without reports. Studies have further shown that pre-sentence reports for black, Asian and minority ethnic defendants tend to be thinner and of lower quality indicating limited or inadequate understanding of black, Asian and minority ethnic offending and this has contributed to the disproportionate level of imprisonment imposed by the courts (Cole and McClean, 2020). Of the sample of 51 PSRs examined by the inspection team for the *Race Equality in Probation* report only 58 per cent were judged sufficient and in only four cases was there evidence that the advice to court considered the service user's diversity (HM Inspectorate of Probation 2021a: 29). This has coincided with a decrease in the use of PSRs in favour of oral reports under the guise of 'speedy justice' (Robinson, 2017). The follow up

inspection found that proportion of reports completed on minority ethnic people varied between probation areas although the lack of an agreed mechanism in the Equality Monitoring Tool to measure if ethnicity was a factor in any disproportionality in the relationship between recommendations in PSRs and sentencing outcomes (2023: 9).

### *A failure to publish relevant information*

The *Race Equality in Probation* report highlights the key issue of the collection and use of information and outcomes to improve practice has been a longstanding and contentious matter within the criminal justice system over the years. Indeed, the original thematic review of race equality conducted by HM Inspectorate of Probation (2000) was according to Gelsthorpe and McIvor (2007:330) a 'wake-up call' for the Probation Service requiring it to develop more robust recording practices in order to deliver more responsive approaches to those black, Asian and minority ethnic individuals under its supervision. Originally introduced through the implementation of section 95 of the 1991 Criminal Justice Act (*facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground*), an abiding issue has been how to break down the aggregation of data to the local level and to supplement it by local collection to be useful in taking action (see Carr, 2017: 333–335). Taking this issue a stage further, Lammy (2017) was clear that if *disproportionality* could not be justified, then action must be taken to deal with outcomes. The *Race Equality* Thematic Inspection did not include white supervisees and so comparisons were made with the aggregate outcomes for all *local area service* HMIP inspections between 2018–2020 and with few exceptions the comparisons suggest poorer practice in relation to pre-sentence report preparation, assessment, planning, service implementation and delivery. Indeed, there appears to be instances where PSR authors were proposing custodial sentences for ethnic minority individuals which courts did not impose (2021:38) and significantly Lammy was particularly critical of the changes in PSR practice over the recent past (see Carr, 2017: 334–335). Within this context then of the national and local collection of data, the *Race Equality* report was clearly frustrated by the lack of use of comparative data to improve practice. There was, the Inspection reflected, a massive amount of information including Race & Ethnic Monitoring (R&EM) data but 'What is less clear is how this data is interpreted and used. Most managers identified this as an area of weakness. At a national level there is currently no published data on service user outcomes' (2021a: 26).

### *A failure to commission specialist services*

Despite one of the main rationales for the introduction of *Transforming Rehabilitation* being that the involvement of the private sector would bring more innovation into probation delivery, HM Inspectorate found that since the *Transforming Rehabilitation* reforms, the number of services for black, Asian and minority ethnic

service users had in fact decreased and there were fewer resources devoted to work on equality and diversity (HMIP, 2021a). Probation staff had fewer links with organisations in the community that could support individuals and the provision of culturally appropriate services were rarely commissioned. Only around a quarter of the people interviewed had received referrals or assistance in an area known to affect re-offending (such as accommodation, drug and alcohol and mental health), leaving a substantial three-quarters without this sort of support (HMIP, 2021a: 47). In its follow up inspection, it was found that probation practitioners knowledge of available services and resources in minority ethnic communities remained 'fragmented' (2023: 9). None of the those interviewed in the follow up inspection to Equality in Probation said that they had received any support in linking them to community resources regarding race, ethnicity or religion from probation (2023: 40). More generally, the *Race Equality in Probation* inspection found that there were few programmes to address racially motivated offending and ethnic minority staff were frequently expected to take on these cases without support or consultation and there were fewer resources devoted to work on equality and diversity within CRCs. The links with ethnic minority community organisations were poor and culturally appropriate services were rarely commissioned – indeed in 2001 there were just four intervention programmes specifically designed for black, Asian and minority ethnic individuals subject to community orders or post-release supervision but recently there were none (Williams and Durrance, 2017). Indeed, the Inspection highlighted one award winning programme for black service users in Liverpool, which provided mentoring by black staff and links to ethnic minority communities was actually decommissioned (2021a: 25). This withdrawal from local communities and even their representative organisations is not simply an issue of the capability to deliver anti-racist practice but also the possibility for reciprocal learning and understanding being diminished. In September 2022, a grants programme for services to minority ethnic people on probation was launched in each probation area, but as the Inspectors note in their follow up report, this has been significantly scaled back over the ensuing three years' (2023: 14). Moreover, no new training programmes on race and diversity have been commissioned centrally for probation staff (2023: 20).

### *A general lack of confidence in engaging with individuals from black, Asian, and minority ethnic backgrounds*

On several occasions, the *Race Equality in Probation* Report highlights service users referring to a *tick box approach* to both supervision and more specifically to the impact of racism and discrimination. In its follow up report, inspectors found only a 'minimal improvement' over the past two years in the extent to which issues of ethnicity, culture, faith and experiences of discrimination were taken into account in assessments of minority ethnic people on probation (2023: 9). Other inspections and research similarly report a concern for process, targets and risk assessment and management. This includes the HMIP's own Thematic Inspection published in 2021 - *The experience of black and mixed heritage boys in the youth justice*

system (2021b) as well as the *Revolving Door* research on the lived experience of individuals placed under probation supervision (Mullen et al., 2022). This tick box approach was also confirmed by service users in a separate report summarising service user perspectives (Tracey et al., 2021). *Race Equality in Probation* also paints a dispiriting picture of the experience of black, Asian and minority ethnic staff, who often report being marginalised and unsupported in the work they do – as one individual responded – ‘BAME (sic) staff do not have a voice. When issues are raised, we are made to feel like we are the problem. Why should we bother? Who’s listening to us?’ (2021a: 40). There appears to be a general lack of organisational understanding of the impact of not only being subject to racism but also bearing witness and being complicit to the racism suffered by service users within the criminal justice system and wider social and economic institutions (see Rashid, 2022). We would argue that the state of affairs outlined in this section, is not simply a reflection of the behaviours of individuals. What is clear is that men and women drawn from black, Asian and minority ethnic communities, already poor and socially marginalised in common with their poor white counterparts, have to face the added disadvantage of exclusion from specific community services that might make a difference to their future lives. Many desistance journeys require individuals to understand and make sense of their individual biographies and to create new narratives of personal, family and community success that allow them to become the people they want to be. Working with individuals on this basis, we would argue, makes probation work complex and time consuming.

The *Race Equality in Probation* inspection and other research supports the notion of *systemic* problems and *institutional* racism but the overall evidence points to even wider considerations and problems for which the Probation Service and its workers should not be held to account. However, it also concludes with the following:

We also heard of less overt acts of discrimination, which were harder to understand and identify. It emerged strongly in our fieldwork that subtle racism had been normalised to some extent and was seen to be ‘**just how it is.**’ We heard that there was a lack of cultural understanding (and sometimes interest) within probation services, and that probation staff showed some reluctance to broach conversations related to race and ethnicity. This reluctance mirrors what some probation staff said in our interviews with them.

(HMIP, 2021a: 51)

This shifts or certainly implies that the blame for poor practice should be laid at the door of individual practitioners and managers without acknowledging the disastrous impact of the ideological drive over some 20 years that has become increasingly concerned with *technocratic* approaches to individual supervision, the marketisation of services based on contracts and delivery targets, centralised control and the deskilling impact of mass supervision (Burke and Collett, 2020; Tidmarsh, 2020). It seems to us that whilst poor practice, even racist practice exists as the Inspection Report identifies it cannot simply be explained on such an

idiosyncratic level but is the inevitable consequence of a system that inhibits good practice with many individuals under supervision – black or white. The central limitation of the *Race Equality in Probation* inspection report then, is that it acknowledges racism in the everyday experience of black, Asian and minority ethnic communities, service users and staff, yet suggests the Probation Service responds in a way that are individualistic and fragmented. Rather than challenging government institutions to tackle the structural racism that communities experience, it suggests focusing on diversity, culture and ethnicity. This, we would contest, is the very anti-thesis of the challenge laid down by the Black communities who rioted against class and capital exploitation in Liverpool and elsewhere in 1981 and 1985 or the South Asian communities who threw down the gauntlet to the State in 2001 when they had had enough of the anti-Muslim/ Pakistani racism in Oldham, Rochdale Burnley and Bradford (Cantle, 2001) or as we have noted, more recently the *Black Lives Matter* uprisings in the United States, the United Kingdom and elsewhere. *BLM* is not only the culmination of uprisings against State and individual racism from the black, Asian and ethnic minority communities but one of many regular, depressing markers of black, Asian and minority ethnic communities, of necessity, rioting, and uprising against the state, institutional, and structural racism that excludes them from any meaningful participation in or access to socio-economic and political opportunity in society (Joseph-Salisbury et al., 2021).

## **The bigger picture, between the spaces and everyday racism**

In attempting to unpick what has happened to probation's traditional commitment to anti-discriminatory practice, in the following sections we will highlight how the critique needs to go far beyond individual practice to a compelling need to challenge institutions and organisations regarding policy and practice towards black, Asian, and minority ethnic communities.

### *Macro considerations*

At the core of our argument is the contention that it is central to an understanding of the supervision individuals experience at the hands of probation in England and Wales that consideration is given to their everyday and more general experiences of racism (Benson and Lewis, 2019). In particular, this must include the psycho-social trauma that racism has caused to generations of black, Asian and minority ethnic communities and individuals (Elias, 2023; Wainwright, 2021). This trauma has been endured during the centuries of slavery for communities of African and/ or Caribbean heritage, indentured labour for those of heritage from the Indian sub-continent and China and that of *Colonialism* which has been the umbrella that has legitimised and augmented all the racism that these communities have experienced (Turner, 2017). This psycho-social trauma has had an ongoing affect of facilitating racism to permeate and debilitate every aspect of black, Asian and minority ethnic lives today (Harries, 2014; Kundnani, 2007). This *post-*

*colonial* experience that Black and Asian people endure informs our understanding of their communities, their alternative worlds, where they have developed places and spaces to protect themselves and resist the racism that impacts their lives (Boland, 2010; Wainwright et al., 2019). These are places, these communities where being of African heritage, being Black, is experienced as an identity to celebrate; to be South Asian, Muslim, Sikh or Hindu informs a worldview that provides hope, not the desperation that racism can evoke (Boland, 2010; Wainwright et al., 2019).

The *post-colonial* experience for black, Asian and minority ethnic communities is a two-sided mirror that includes different generations of migrants looking back to where they came from, be that the Caribbean, Africa, Indian sub-continent and looking at the present and future (Gunaratnam, 2013). The past in terms of black, country and experiences of origin are often imagined as a place where they want to return to one day. The present and future is lived as a place of racism, where the spectre of post-colonialism, racism and *othering* is their everyday experience (Fanon, 1967; Gunaratnam, 2013). Thus, minoritized individuals venture out into the wider spaces of towns, cities or countryside where whiteness is normal, and not to be white becomes a threat, the *other* (Garland and Chakraborti, 2006; Zempi and Chakraborti, 2015). These are the places and often contested spaces, where racism in its fluid, multi-dimensional and structural forms impact negatively on the psycho-social and economic well-being of individuals' lives (Arday, 2022; Delgado and Stefancic, 2023; Fanon, 1967). It is, in these excluded places and contested spaces of whiteness, where the *othering* of black, Asian and minority ethnic people are experienced and create the psycho-social trauma for individual, families and communities of colour (Wainwright et al. 2020). As Parmar et al. contend an 'anti-racist future requires us to, at the very least, draw attention to these imperial durabilities' (2023: 824).

State agencies, be they health, social welfare, education or criminal justice, do not operate in a policy vacuum. Their policies and interventions, by definition, need to be cognisant of the political and socio-economic landscape in which they operate (Lammy, 2017; Marmot et al., 2021). This is very much the case when considering the Probation Service in England and Wales when providing a service to black, Asian and minority ethnic communities (Cox and Sacks-Jones, 2017; Lammy, 2017). Yet, there seems to be a paralysis in the progress made in the service that they provide to these communities. England and Wales has had a troubled relationship with its post-colonial citizens, of African, Caribbean and South Asian heritage (Winder, 2004) and in particular, it could be argued, the racism(s) that have persisted, yet changed with temporal and zonal spaces but remain as pernicious as ever, have had a damaging affect that have led to the trauma of generations of lives of Black communities, pre and post migration to England and Wales (Wainwright, 2021).

### *Meso considerations*

In considering the middle or the *meso* space, it is again useful to consider what can practicably be done now by probation to tackle the structural exclusion and post-

colonial *othering* that black, Asian and minority ethnic communities experience (Fox, 2013; Miller, 2021). Meso interventions also need to get to grips with the disproportionality agenda for black, Asian and minority ethnic service users. While undoubtedly, institutional racism does take place within the spaces of the organisation of probation, ultimately it is individuals that make the decisions, intervene in specific and discriminatory ways and provide a service that can be at best homogenous and lazy and at worst, contribute to the disproportionality in the different levels of intervention, thus anti-racist practice, must critically examine methods and interventions from first contact with the Police Service to ensure that diversion at every opportunity prevents further engagement in the criminal justice system and (in collaboration with Black and Asian voluntary sector partners) honestly and effectively address individual behaviour whatever the level of seriousness of offending. We have already outlined some serious criticisms of contemporary probation practice and one significant priority must be to improve the utility of PSRs which should be key documents in the sentencing process – they provide a realistic opportunity to convey to sentencers, the structural impact of exclusion and be in a position to propose positive alternatives to custody that supports the desistance journeys of individuals. Such work needs to provide wider access to key community resources, with the support and engagement from black, Asian and minority ethnic communities and the voluntary and community sector, particularly in relation to health, housing, employment and training. Probation policies and the interventions deployed by individual workers need to incorporate an appreciation of the impact of the (generational) trauma that racism has on black, Asian and minority ethnic service users lives and to work with their offending behaviour within this context (Dixson, 2018). Furthermore, an understanding of the trauma that black, Asian and minority ethnic communities and service users experience also requires an appreciation of the systemic pressure of racism in their everyday lives.

### *Micro considerations*

Micro interventions should also focus on the systemic pressures of racism. In these spaces, while not a complete panacea for good practice, studies have suggested that Black and Asian men and women as probation workers are able to understand and empathise with the trauma of racism that individuals experience (Dixson, 2018; Wainwright and Ridley, 2012; Wainwright and Larkins, 2020; Wainwright et al., 2020) Yet, good anti-racist practice is not the sole preserve of Black and Asian probation staff. On the contrary, other studies suggest that it is the commitment, authenticity and integrity of probation and youth workers that black, Asian and minority ethnic service users respect, value and respond to (HMIP, 2021b). This can be re-enforced in good supervisory practice between with team managers and their staff.

Furthermore, and in common with the *meso* and arguably the *macro* levels, white communities and their members face similar if not identical problems of discrimination, displacement and socio-economic marginalisation. All that underpins good anti-racist practice in fact should underpin all probation practice. This is not a

new notion and, as we have noted, was championed in the 1980s as *anti-discriminatory practice is good practice* and ultimately its articulation is in an approach to working with individuals in trouble that locates the person fully within their biographical, personal, social, economic and historical contexts. It requires the creation of 'relational spaces' (Burrell and Petrillo 2023), professional curiosity and a political awareness of institutional discrimination rather than focussing on personal pathology. Probation workers experience first-hand and on a daily basis the impact of structural disadvantage faced by those they come into contact with in their work. Unless probation listens to, and subsequently advocates for those whose daily existence is framed by discrimination, marginalisation and harsh and often unjust government policies then it becomes all too easy to drift into sterile and ultimately futile debates that fuel expectations of what probation can realistically achieve – and ignites the 'blame culture' that masks structural failings behind individual actions. We accept that this can seem challenging for probation as an agent of the state, but it is nevertheless essential for effective and humane probation practice not just for black, Asian and minority ethnic communities but for all those individuals caught up in the criminal justice system. Policies and practice based simply on notions of diversity, culture and individualised unconscious bias training just cannot be enough without addressing systemic and structural racism in the everyday lives of service users. Probation practice must communicate in its policies and practices that anti-racism matters, Black communities and service users' matter, that Black Lives Matter.

## **Conclusion: the marketisation of race in probation**

HMPPS is currently undertaking a Race Action programme that will run until March 2024 and has led to initial developments such as the launch of an online diversity and inclusion learning hub and the recruitment of 1500 'race allies' across the organisation to support diversity and inclusion. Whilst these initiatives are welcomed, they are very much in their early stages and have yet to be embedded into everyday probation practice. Of those probation practitioners interviewed for the follow inspection, less than half thought that probation managers were effective in promoting an inclusive culture in their areas (2023: 18). There are many sensible suggestions for change within *Race Equality in Probation*, for instance, employing more Black men, making more connections with Black, Asian and minority ethnic community-based organisations and tackling disproportionality (which in itself is a euphemism for institutional racism within the criminal justice system). An awareness of the trauma that black, Asian and minority ethnic families and service users' adverse childhood experiences is also a constructive suggestion for appropriate engagement on an individual level. However, concomitantly, there needs to be an understanding of the systemic pressures of racism that are key contributors to the trauma that black, Asian and minority ethnic communities, families and service users experience and how this contributes to being drawn into the criminal justice system. Presenting policy as a response that focuses on culture and diversity, compromises the structural experience of racism both within the criminal justice system

and wider society and homogenises such experiences with other discriminations. Despite undoubted improvements in some social attitudes over the past decades, the most comprehensive survey of race equality in the United Kingdom for more than a quarter of a century (Finney et al., 2023) produced by the Centre on the Dynamics of Ethnicity at Manchester University has recently reported that a significant minority still experience racism in both personal and institutional forms (employment, education, housing, workplace etc). As Halim Begum of the Runnymede Trust reflects on the findings 'Sadly few ethnic minority Britons will be surprised' (Butler, 2023). In sum, Black and Asian men and women and particularly those made vulnerable by their age experience, albeit in different and heterogenous ways, a world of systemic exclusion and racism. It is a world that structurally builds in whiteness as the norm and excludes people of black, Asian and minority ethnic heritage as participating as equals in society. This socio-economic exclusion in which systemic institutional racism reinforces class inequality are significant contributory factors in individuals being drawn into and then treated inequitably in the criminal justice system.

The interests of capital over the past two decades have created a slow burning policy direction that has brought the Probation Service to its knees. This has occurred because it championed a form of part privatisation, commodification, *technicalisation* and fragmentation of service delivery which served no public interest and both the design, delivery and now the aftermath of *Transforming Rehabilitation* has left probation with the fundamental challenge of whether it can deliver equitably within a multi-racial society. Wider societal level structural racism that assumes whiteness as normal and superior, requires organisational policy and practice at the very least that is avowedly anti-racist – inaction is not an option (Wainwright, 2009).

We have already indicated that an understanding of cultural identities and the creation of employment opportunities within probation are laudable and important aims but of themselves they become metaphorical shrugs of the shoulder to the challenge of institutional racism. Realistically, anti-racist policy and practice within probation cannot change the edifice of societal level racism but by reconsidering its past successes, albeit limited, it can begin to define and deliver practice relevant to the needs of individuals under supervision. By recapturing the spirit and intent of *anti-racist practice is good practice*, the combination of class and race can be better understood and acknowledged as significant determinants in the lives of those from the poorest and most marginalised communities – black and white. An individual does not arrive at the entrance to the probation office as a simply defined one dimensional offender – she or he comes with complex antecedents, experiences and biographies which need to be acknowledged, understood and worked with to assist the individual on a journey away from crime and to a better life for the individual and for communities.

Working to help individuals turn their lives around is both complex and time consuming requiring significant intellectual investment in understanding those things that shape individual experience whilst also understanding the most practical aspects of local life and the availability of resources beyond the criminal justice system.

McNeill (2019: 14) has argued that probation supervision should be underpinned by the principles of 'parsimony in its use, proportionality in its demands and productiveness in its design'. This is the very least that should be expected for criminal justice interventions into the lives of black, Asian and minority ethnic individuals, and by acknowledging that probation is part of the problem and by institutionally recognising the experiences of black, Asian and minority ethnic service users within a post post-colonial legacy that *othered*, excluded and criminalised, concrete anti racist strategies can be developed to shift the focus from the individual to an institutional response. First amongst the institutional responses, must be, in recognition of the complex and time-consuming nature of engagement with individuals, the resourcing of probation work that allows for truly meaningful professional engagement between service user and worker. Secondly, a full and comprehensive understanding of the wider determinants of offending behaviour (including institutional racism within our social structures) and the critically important contribution of community resources beyond the criminal justice system is required to support the rehabilitative endeavour. Currently, when probation workers operate within an internal world and a corresponding external environment stripped of the very time and resources required to deliver anti-racist practice, is it any surprise that *rehabilitation fatigue* sets in as a logical survival mechanism – box ticking and form filling in line with organisational targets becomes the easiest way to get through the day at work. What is required is an approach that is sensitive to the needs of local communities and democratically accountable to those same communities rather than the rigid, highly centralised *command and control* structures that are the hallmark of contemporary probation in England and Wales. Ultimately, a Probation Service that privileges cultural awareness, unconscious bias training and an appreciation of diversity and difference, will do little to address the systemic, institutionalised racism that is the central reason for disproportionality in the criminal justice system.

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1. We use the term 'Black and minority ethnic' throughout this article as this was the terminology utilised in the Race equality in Probation report produced by HM Inspectorate of Probation. However, we recognise the reductionist nature of

this term and its failure to fully acknowledge the intersectionality of discrimination. That 'Different ethnic groups have different needs and require different responses depending on their culture, language, heritage, religion, and social circumstances, and whether individuals have settled immigration status' is acknowledged in the follow up inspection report (2023: 4).

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