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Race in Prisons

Equality in the Prison Service — a lot done, a lot still to do

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History of race equality in the Prison Service

In March 2000, Zahid Mubarek — a young Asian teenager — was murdered by his white racist cellmate, Robert Stewart, at Feltham Young Offender Institution. Zahid’s murder was brutal. The 19 year-old was beaten unconscious with a table leg while he slept. He died a few days later. Robert Stewart was later sentenced to life imprisonment for the murder. At the conclusion of the internal Prison Service investigation, Martin Narey, the then Director General, stated that the problems of the Prison Service went beyond institutional racism to ‘pockets of malicious and blatant racism’.

Almost a decade before Zahid’s murder, the Prison Service had begun taking steps to improve the way it managed race equality. A Race Relations Manual was published in 1991¹ and ethnic monitoring of prisoners introduced. Until the mid-1990s, the Prison Service was the only criminal justice agency providing detailed ethnic breakdowns. However, it was Zahid’s tragic murder that marked a watershed in the history of tackling race issues in the Prison Service. Zahid’s murder, along with negative reports on a number of prisons and a successful tribunal case brought by a Black prison officer against HMP Brixton, led to a formal investigation by the Commission for Racial Equality (CRE).

The CRE’s investigation focused on three prisons — Brixton, Feltham and Parc. They made several findings of unlawful racial discrimination and identified 14 failure areas². Criticism focused less on policy and more on practices in establishments and, in particular, on the use of discretion by staff which often impacted negatively on BME prisoners. This was compounded by the long-standing difficulties in recruiting BME staff — in December 2000, only 3.5 per cent of staff were BME, compared to a BME prisoner population of approximately 18 per cent.

The CRE could have taken further legal action but, instead, the Prison Service agreed to implement an action plan aimed at putting right what was wrong³. The Service embarked upon an ambitious programme of work. A Race Equality Action Group was created at Headquarters; a national Race Equality Action Plan was developed; and a Programme Management Board, led by a Director, put in place to oversee its delivery. Progress was also regularly reported to a Ministerial Scrutiny Panel, chaired by the Prisons Minister and CRE Commissioner.

In 2005, the Chief Inspector of Prisons’ thematic review of race was published⁴. It painted a worrying picture of ‘parallel worlds’ — White managers and staff thought that prisons operated in a broadly fair way but BME staff and prisoners were less positive. BME prisoners consistently had the most negative perceptions of all. At the same time, the House of Lords ruled that there had to be an independent inquiry into Zahid’s murder. In 2006, Mr Justice Keith published his findings⁵. He spoke of ‘a culture within the Prison Service...to treat race relations as divorced from the basic operational requirements of prison work.’ He made a total of 88 recommendations for improvement, including ten relating specifically to race and diversity. The Inspectorate’s areas for development and the recommendations of the Inquiry were incorporated into the national action plan, which grew to include over 100 actions.

The end of the five year agreement with the CRE (now Equality and Human Rights Commission (EHRC)) provided a good opportunity to look back at what had been achieved and a review was commissioned to assess progress made⁶. The methodology adopted was a first for the Prison Service. Premised on the principles of openness and transparency, the views of external stakeholders took centre stage. Some of the Service’s harshest critics visited establishments to report on progress and highlight where more work was needed. An Independent Advisory Group was set up to provide further scrutiny and advice. Co-

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1. Prison Service (1991) *Race Relations Manual*.
 2. Commission for Racial Equality (2003) *The Murder of Zahid Mubarek: A Formal Investigation by the Commission for Racial Equality into HM Prison Service of England and Wales. Part 1*. Commission for Racial Equality (2003) *Racial Equality in Prisons: A Formal Investigation by the Commission for Racial Equality into HM Prison Service of England and Wales. Part 2*.
 3. Commission for Racial Equality and HM Prison Service (2003). *Implementing Race Equality in Prisons: A Shared Agenda for Change*.
 4. HM Inspectorate of Prisons (2005) *Parallel Worlds: A Thematic Review of Race Issues in the Prison Service*.
 5. Keith, Justice (2006) *Report of the Zahid Mubarek Inquiry, Volumes 1 and 2*.
 6. National Offender Management Service (2008) *Race Review 2008. Implementing Race Equality in Prisons – Five Years On*.

Chaired by Lord Rosser, a former non-executive member of the National Offender Management Service Management Board, and Farida Anderson, Chief Executive of Partners of Prisoners, the group comprised 20 individuals from a wide range of organisations, including the EHRC lead Commissioner. The review process was hailed as a model of good practice by EHRC who described it as ‘honest and rigorous’.

The findings of the Race Review: A lot done but a lot still to do

There can be no doubt that a lot has been done. There’s a general consensus that blatant forms of racism have been largely eradicated.

Systems and processes have been put in place that were absent at the time of the CRE investigation. At a national level, a policy on race equality was developed⁷, with an accompanying Standard used to audit delivery. A programme of impact assessments was introduced with all new and revised national policies being subject to race equality impact assessment prior to issue. A national Race Advisory Group was created to act as a critical friend, supporting and challenging the Service’s work.

Given the CRE’s criticisms focused mainly on local practice, considerable attention was devoted to developing systems and structures that would enable effective management of race equality in establishments.

Race Equality Action Teams (REATs) were created in every establishment, including external members from partner organisations as well as prisoner representatives. The creation of the prisoner rep role was a significant development and has become central to communication with prisoners. A comprehensive training programme for REATs was rolled out with over 1700 REAT members being trained and the role of Race Equality Officer (REO) was created in each establishment. Two Key Performance Targets on race were introduced — an operational KPT focusing on service delivery and a staff KPT combining measures of BME staff in post, and in contact roles, with audit results. Establishments carried out local impact assessments on the ten key areas derived from the CRE failure areas, including adjudications, Incentive and Earned Privileges (IEP) and use of force. Over 1500 impact assessments were completed. SMART was developed — a range-setting tool enabling the monitoring of outcomes of key functions and processes by ethnic group. Data is aggregated on a quarterly basis

to produce a national picture of the effect of key policies. There is also an annual Staff Ethnicity Review — now Diversity Review — that publishes monitoring data for key employment functions. There were improvements to the handling of racist incident reporting forms; improved training for investigators was introduced; and mediation awareness training piloted. Specific improvements were made to food and the list of goods in the prison shops to ensure they met the diverse needs of prisoners. The CRE heavily criticised provision for Muslim prisoners. In response, it became mandatory to allow Muslim prisoners to attend Friday prayers and to perform ablutions before prayers. Recruitment and retention of BME staff improved. BME representation increased from 3.5 per cent in December 2000 to 6.2 per cent in April 2008, against a target of 6.3 per cent for 2007/08. All this amounted to an annual investment of nearly £9m — three times the £3m committed in 2001.

However, despite all these changes, the review concluded that the experience of BME prisoners and staff had improved but not been transformed. There remained evidence of differential treatment of BME prisoners. National monitoring data showed, and continues to show, significant differences between minority groups, as well as between the BME and White groups. Outcomes for Black prisoners, in

particular, are concerning and three figures are striking. At the time of the review, Black prisoners were 30 per cent more likely than White prisoners to be on the basic regime, 50 per cent more likely to be in the segregation unit for reasons of Good Order or Discipline and 60 per cent more likely to have force used against them. The latest data shows that this trend continues. In contrast, the adjudications process — a formal and structured way of responding to prisoner misconduct — does not show the same level of disproportion. This suggests that where issues are resolved less formally through day-to-day interactions and relationships, the result is disproportionate outcomes. Where discretion operates, this tends to result in more negative outcomes for BME prisoners. The perceptions of BME prisoners also remain more negative than those of White prisoners, with the most significant differences being in perceptions of their relationships with staff. A number of issues are also emerging in relation to the treatment and experience of Muslim prisoners, as highlighted in the recently published thematic report by the Prisons Inspectorate. This is a particularly sensitive area given the Service’s work on extremism and radicalisation.

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7. Prison Service Order 2800 Race Equality.

Although there has been a huge investment in the HR infrastructure, specific challenges also remain in relation to staff equality issues. For example, White staff are 50 per cent more likely to get an exceeded marking in their SPDRs than BME staff. White staff also tend to have higher pass rates in the recruitment process and in assessments for promotion.

What next?

It seems obvious that, if disproportionate outcomes for Black prisoners can be attributed to the use of discretion by staff, then this is where attention now needs to be directed. But tackling this is easier said than done. The use of discretion is a vital part of maintaining good order in prisons. It's not possible, or desirable, to simply formalise all processes and remove the element of officer discretion.

Given the problem is primarily located in the staff-prisoner interaction, interventions are being developed that aim to impact directly on these front-line interactions. A tool has been developed that will provide a model for interactions that allows staff and prisoners to use a pro-social communication method to share relevant information. This approach is borne out of growing evidence that structured communication tools have been highly successful in environments in which accurate information transmission across hierarchical divides is crucial. A series of checklists are also being developed which will help ensure that decision-making is accurate and consistent with best practice. Evidence suggests that using checklists to structure complex choices and processes can lead to significant improvements in performance. But to have an effect, tools alone are not sufficient. Strong, effective leadership is also vital. Governors and other leaders in establishments need to be making the business case for race equality, articulating the benefits of a consistent focus on fairness. They must ask difficult questions about what the SMART data is telling them and take swift and effective action where issues are identified.

Reducing disproportionality in outcomes for BME prisoners and staff is still high on, arguably at the top of, the list of must-dos. But, as prisons have had to manage an increase in numbers entering custody, combined with the impact of longer sentences, and budgets become

ever tighter, the diversity of the prisoner population has also become more complex. At the same time, legislation now places particular duties and responsibilities on the Service with regards to gender and disability, as well as age, sexual orientation and religion or belief. This means there are some fundamental and difficult questions that must now be addressed. Not only to ensure compliance with the law but also because it's the only way in which to run an effective service that achieves its aims of protecting the public and reducing reoffending. Get equalities right and you're more likely to enable prisoners upon release to live law-abiding lives. Treat them poorly, reinforce and confirm their feelings of grievance and discrimination, and you fail in your core purpose.

But none of this is necessarily easy. The problems that require solutions are complex and challenging. For example, with an aging estate and inherent physical limitations, how do ensure disabled prisoners are able to access all aspects of the regime? How does a prisoner with severe learning disabilities take part in offending behaviour programmes when they can't engage with the material provided or delivery method? How do you improve the negative perceptions of Muslim prisoners who report feeling unable to attend Friday prayers for fear their names will be sent to the security services? In the hypermasculine environment of a male prison, how do you capture accurate monitoring data on sexual orientation? Where should a prisoner transitioning from male to female be located? A male prison? Female prison? These are tricky questions but not impossible to answer.

Just like the Prison Service in 2003, when responding to the CRE's investigation findings, the attention must be on putting appropriate systems and processes in place. Getting the basics right is vital. The NOMS Single Equality Scheme sets out what these basics are and what actions will be taken over the next few years. In the same way that the new Equality Act⁸ brings together and simplifies disparate equality legislation, a new policy framework is being developed that will specify the required outcomes for prisons across all equality strands. This will build on the lessons learned from race. The framework will ensure effective arrangements are in place in establishments for managing equality.

Getting robust data across all equality strands is also key. Without this, it's impossible to know whether

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8. Equality Act 2010 (http://www.opsi.gov.uk/acts/acts2010/pdf/ukpga_20100015_en.pdf)

services are being delivered fairly. Now that the new information system — Prison-NOMIS — has been rolled out across the public sector prisons we are better placed to collect more consistent information on other protected characteristics. A tool has already been rolled-out that allows establishments to see SMART-style analysis of outcomes by any protected characteristic over a limited period of time and a project initiated to capitalise on the roll-out of NOMIS, which will see SMART-style analysis being available on the NOMS Hub (the web-based corporate reporting service). SMART II will also be replaced with a tool that will complement the planned Hub reports and allow prisons to monitor outcomes by any protected characteristic on an ongoing basis. This data will be invaluable to the new impact assessment process which extends across all equalities issues. The streamlined process includes a prioritisation exercise which enables prisons to focus on those issues that matter to them most. A checklist-style electronic tool has been developed to help establishments work systematically through the process. Identifying and taking action to mitigate against adverse impact is a key way of ensuring services are delivered fairly.

An appropriate system to enable prisoners and staff to report hate-related incidents will also be implemented, building on the racist incidents reporting system. There are also plans to expand the role of prisoner race representative to cover all equalities issues.

There are also specific actions needed to begin to answer some of the questions posed above. Getting disability equality right is arguably one of the greatest challenges. Work in this area will focus on improving data quality; measuring and monitoring outcomes; providing guidance on reasonable adjustments; ensuring appropriately adapted interventions; and developing a directory of accessible services and facilities across the estate.

The Chief Inspector's thematic report on Muslim prisoners also presents the organisation with a significant challenge — how to improve the overwhelmingly negative perceptions of Muslim prisoners and prevent a 'security-led' approach to this group resulting from our work to combat violent extremism? Although many of the issues and concerns raised in the thematic are distinct in certain obvious respects, they are also of a piece with those facing other groups of prisoners who sometimes have aspects of their identity overlooked. The issues to be

tackled are almost identical in nature to the challenges that still remain on race equality — improving prisoner perceptions; ensuring the use of discretion is sensitised; developing more effective communication between prisoners and staff; and getting management of day to day operations and leadership, based on the values of fairness and decent treatment, right. Going forward, work must therefore be centred around achieving fair outcomes for all prisoners.

Work will also get underway to find a sensitive and appropriate method of collection of sexual orientation data. At the same time, a guide to assist in supporting and working with gay prisoners will be developed, drawing on existing good practice. Finally, a Prison Service Instruction on the management, treatment and care of transgender prisoners will be published. This will cover difficult issues such as searching, guidance on living in role, and appropriate location of transgender prisoners.

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Conclusion

Following evidence to the CRE in 2003 that promised procedural and cultural change, there can be no doubt that there have been significant procedural changes, even beyond those promised. The important and much-needed foundations have been laid and the future looks very positive. It won't always be easy and there's no guarantee that

mistakes will never be made but the Service is much better placed than ever before to make further progress. To tackle the remaining challenges, attention must turn to taking effective and consistent action in the operational line. Improvements in outcomes are unlikely to be achieved through a separate programme of activity which sits outside everyday interactions in establishments. As the then Director General, Phil Wheatley, said in his foreword to the Race Review — 'right relationships are the key to progress, and good prison officers, good managers, and good leaders are the means of achieving that'.

A twenty-first century Prison Service is one that recognises all aspects of an individual's identity and manages equalities like any other area of the business. Whether the motivation for doing equality work is legal compliance, saving money or fear of regulator intervention, it doesn't matter provided the focus remains on ensuring delivery of fair and decent treatment which is integral to our core business of protecting the public and reducing reoffending.