

An illustration of three women walking away from the viewer, holding hands. The woman on the left is wearing a light pink top and dark pants. The woman in the middle is wearing a light pink top and light-colored pants. The woman on the right is wearing a light yellow top and dark pants. The background is a warm, orange and yellow gradient with abstract shapes.

Experiences of Minority Ethnic Women Defendants in English Criminal Courts

June 2024

Jenny Johnstone, Yulia Chistyakova and Bankole Cole

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Contents

●●●	Acknowledgements	4
●●●	Foreword	5
●●●	Executive Summary	6
●●●	Key Findings	8
●●●	1. Context and Rationale	12
●●●	2. Aims	13
●●●	3. Literature review	14
	a. Theorising minority ethnic women in the criminal justice system	14
	b. Experiences of minority ethnic women in the CJS	15
	c. The experiences of 'hidden' ethnic groups within the CJS	15
	d. Minority ethnic women experiences of court proceedings	16
	e. Barriers to 'effective participation'	16
	f. The plea	16
	g. Judicial decisions on remand and bail	17
	h. Legal representation of minority ethnic women in court	18
	i. Sentencing decisions	19
	j. Judiciary	19
	k. Crown Prosecution Service	20
	l. Probation	20
	m. Summary	21
●●●	4. Research Design and Methodology	21
●●●	5. Experiences of Minority Ethnic Women in Criminal Courts	29
	a. Interviews with Minority Ethnic Women on their Experiences of courts	29
	b. CPS officers on Prosecuting Minority Ethnic Women	38
	c. Probation officers	47
	d. A view of a Legal Adviser and their Experiences of Minority Ethnic Women in Court	54
●●●	6. Observations of Court Hearings	57
●●●	7. Key findings	72
●●●	8. Recommendations	78
●●●	References	80
●●●	Appendix 1 (research instruments)	82



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Disclaimer:

This report contains the views of individuals and agencies engaged with by members of the research team. Responsibility for any errors lies with the authors.

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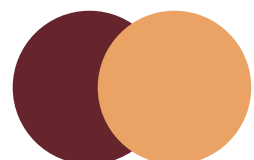
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Foreword

I welcome this robust contribution to the evidence base around the disproportionately poor outcomes Black, Asian, and minoritised women experience when they come into contact with the criminal justice system. This report affirms what women have been saying, and what we at Agenda Alliance have been evidencing too, for years. But these women have been telling us this story for too long: what's required now is action.

The women spoken to for this report share feeling misunderstood, judged, unheard and excluded from court proceedings, and we know that this is reflected for Black, Asian, and minoritised women at all stages of the criminal justice system. Our 'Double Disadvantage' report in 2017 explored the experiences of women who encounter both gender inequality and racism in the criminal justice system, and these findings fed into the Lammy Review. Five years on, we released 'Tackling Double Disadvantage' in 2022, alongside Hibiscus, Muslim Women in Prison, the Zahid Mubarek Trust, Criminal Justice Alliance, and Women in Prison. This was a 10-point action plan calling for urgent change – change which this report shows has sadly not materialised.

Women experiencing multiple unmet needs tell us that the intersections between their experiences, and the ways in which certain disadvantages can compound one another, are routinely overlooked by public services across the board. This report shines a light on the specific ways one of those systems – the courts – make gender and ethnicity invisible, meaning women's specific needs and the root causes of their criminalisation go unrecognised. It shows us that the absolute basics – such as providing interpreters and multi-lingual resources – are still somehow being missed. The persistent barriers to building a proper picture of this issue, with researchers unable to access necessary information, and data on ethnicity held in inconsistent ways, are faced by practitioners across the sector and must be dismantled once and for all. We wholeheartedly support the recommendations in this report regarding increased training for criminal justice professionals, for factors related to gender and ethnicity to be fully considered when developing pre-sentence reports, and for women to be given representation they need to understand the legal process.

The lukewarm response is reflective of an issue with gender- and culturally- responsive support all the way to the top. There is a lack of political will to truly listen to the experiences of Black, Asian and minoritised women, and make the changes needed to tackle the racial discrimination they face when they are criminalised. The voluntary sector holds so much of the knowledge and expertise needed to tackle this problem – but instead they are delivering contracts on a shoestring and treated as providers rather than valued expert partners by policymakers. I want to acknowledge the members of Agenda's Alliance, such as Anawim, who are referenced in this report and offer the trauma-, gender-, and culturally- responsive support required to support women during and after their contact with the criminal justice system. They provide a crucial, life-affirming, space for these women's voices to be centred and heard.

I very much hope to see this work read, referenced, and championed widely by decision-makers. Charities have told them many times what needs to be done. We now want to work with them to deliver it.

Indy Cross
Chief Executive
Agenda Alliance

Executive Summary

Despite the Public Equality Duty and legislation affecting how public bodies work, minority ethnic women still feel vulnerable in the criminal justice system (CJS). There is still a feeling that the individual life experiences of ethnic minority women are not taken into consideration in the decisions taken at all stages of the criminal justice system.

For the purposes of the court proceedings, this is significant on two levels 1) in not having a voice in the proceedings themselves and 2) by the judiciary, when sentencing, through not considering the content of the Pre-Sentence Reports (PSRs). There are mixed experiences of interactions with legal professionals, from those that are seen to be just doing their job (prosecutors), to defence lawyers, some of whom are fully engaged and those that they see as not helpful and actually damaging to their case by just going through the motions rather than engaging fully in representing their client. Experiences of our minority ethnic women participants within the court room (whether Magistrates or Crown Court) are seen as being unfair, that they are effectively ignored, unsure about what is going on and when it comes to sentence, not reflective of their individual circumstances. Some of this relates to the language barrier and understanding the court process. This is supported by our observations in which minority ethnic women were observed as being passive and silent rather than being participative in the process and their case. Interpreters were seen as being available in London but not so in the regional courts. In addition, the language abilities of interpreters might not cover all needs. The onset of the pandemic and move to online court hearings was seen by legal advisers as potentially having a positive effect in interpreters being accessible online.

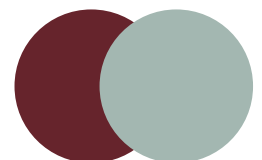
The PSRs are seen as pivotal in providing a true picture of the individual defendant in order to provide an appropriate sentence, which recognises their circumstances. However, as has been identified by a recent pilot evaluation of PSRs (Ministry of Justice, 2023) and the use of an alternative model, there has been a decline in the request of PSRs by the judiciary. This takes away a fundamental mechanism by which individual circumstances can be taken into account when sentencing. We would agree with the authors of the pilot evaluation that minority ethnic women are a group that needs to be recognised as a group of concern. Challenges faced when preparing Pre-Sentence Reports for minority ethnic female defendants include the need to build rapport and gain trust, getting the ethnicity across without disadvantaging the defendant, and having more time to consider someone's circumstances, issues around gender, around race, around culture, customs, language. The criminal justice professionals we interviewed felt that there were mechanisms already in place that they followed. This included the Equality Legislation, Codes of Practice (such as the Code for Crown Prosecutors), legislation on rules and procedures for the court and bespoke training along with requirements for continuing professional development. They felt that they applied this fairly across all cases and would take an individual approach to all cases, hoping that they would intervene if they felt the regulations and codes were not being applied equitably. However, the prosecutors and probation officers said that gender and race will not be considered in every case; they may be considered only when they are seen as relevant to the charge; for example, in hate crime cases or where the defendants are victims of domestic violence, modern slavery, exploitation, trafficking or forced into committing a crime, for example, county lines.

'Race' or ethnicity did not feature much in the observed court proceedings. There was one case where the CPS asked the judge to require a black British woman of dual nationality to submit her Nigerian passport as part of her bail conditions on the grounds that she might flee the country on her Nigerian passport. However, there were a few instances when some defendants lacked knowledge of British law and had to be corrected by the court legal advisers. So, ethnicity did play some part in the experiences of these defendants in court. Generally, 'race' was not discussed in court and none of the PSR reports presented in court referred to the ethnicity of the defendant.

In the majority of the cases we observed, gender was invisible in the proceedings. Gender featured in terms of the courts' lack of understanding of reasons behind women's offending and some decisions were based on stereotypical views on why women commit crimes. For example, a court asked for psychiatric reports in the case of a woman in court for simply constantly harassing her neighbour, supporting previous research on women offenders being seen by courts as 'mad'. In traffic cases, where defendants presented disruptions to caring responsibilities as evidence of "exceptional hardship if disqualified" they were routinely dismissed by the courts. Whereas it is possible that men carers might be treated in the same manner, but as women are more likely to be carers than men, they are more likely to be affected by the courts' unwillingness to recognise disruption to caring responsibilities as evidence of exceptional hardship. For example, a defendant who was sole carer for her mother who has Parkinson's disease, and she was also a single parent who cared for her two young children was banned for 6 months. However, in a few cases, the courts appeared to be willing to show leniency that favoured the defendants on the assumption that as women they must be the main carers in a family. For example, in a case where a Chinese woman was in court because she lives with her husband and co-defendant in a house where drug dealing was taking place, (joint enterprise) and the couple have four children, the mood in court was along the lines of should the female defendant be found to be involved in the charges, the defence lawyers would be presenting to the court as mitigation, the need for her to remain with her four young children whilst her husband is imprisoned.

The research itself was affected by the pandemic which made it difficult to observe cases in court. In some cases, we attempted to observe online via the Cloud Video Platform (CVP). This was difficult as the video and audio facilities in some courts are not adequate for observing proceedings outside the courtroom. Cameras are often focused on the bench, which made it difficult to observe the behaviour and actions of defendants and the audio feed is often poor. This raises concerns for researchers conducting research in this area.

The research also highlighted concerns about the quality of data collected on race and ethnicity throughout the criminal justice agencies and availability of such data. The Ministry of Justice was not able to provide us with ethnically coded court lists and the court lists provided on-line by HMCTS do not contain the ethnicity or gender of defendants. This made it difficult to identify minority ethnic defendants to study, especially those with English-sounding names. We had to continually review and assess how the research was conducted including getting access to participants as well as identifying appropriate cases to observe.



Key Findings

What the women who took part in this research highlighted:

Our minority ethnic women defendants felt that they were not heard in court and were excluded from the proceedings. They spoke of feeling being caged, constantly judged, and misunderstood. They felt that the courtroom process, lawyers, and judges discourage the defendant from speaking and they were not given a chance to tell their stories and explain the context and circumstances of the offence.

Our participants spoke of feeling 'rushed into', or 'pushed', or pressured to make a decision on plea. They were dissatisfied with legal representation saying that the lawyers 'did not care'.

Our participants felt that they were not supported during trial with the 'system' disregarding any mental health concerns and/or histories of domestic violence and abuse. Some women who needed help for example, to deal with mental health or drug addiction wanted to be imprisoned where they knew that they could get help because help was not available to them on the outside and during their trials.

Some felt that ethnicity has had an effect on how they were treated and felt that racist assumptions were made about them. Some felt that gender has had an effect on how they were treated; that traditional gender stereotypes played a role; for some the effects of ethnicity and gender were combined (for example, stereotypical views of Asian women from Birmingham).

Probation Interviews

There are no definite requirements on what the 'background' information should be contained in the PSR, and Probation Service guidance does not specifically require that PSRs contain information relating to how the race/ethnicity and gender of the defendant might have affected offending or impact on re-offending.

Challenges faced when preparing Pre-Sentence Reports for minority ethnic female defendants include the need to build rapport and gain trust, getting the ethnicity across without disadvantaging the defendant, and having more time to consider someone's circumstances, issues around gender, around race, around culture, customs, language.

The 'speedy justice' approach does not allow time, resources, and access to specialist agencies to consider circumstances and produce PSRs in most cases except in cases of violent and sexual offences. Only three PSRs were produced during this study, and they were all oral.

Crown Prosecution Service

Generally speaking, gender and ethnicity are not taken into account in decisions to prosecute and appropriate charges. Instead, these decisions are made based on whether the case passes the two stage tests required by the Code for Crown Prosecutors namely looking at evidential base and then looking if there is public interest.

Challenges prosecuting a minority ethnic woman include language barriers and lack of accredited interpreters; religious or cultural factors making the defendant reluctant to provide all of the information; mental health issues and learning difficulties; the defendant not disclosing that they have been victims of violence or trafficking; difficulty for the defendant accessing legal representation; poor relationship with the police; and prosecutors not having full information about what happened when the defendant was arrested and charged.

For low level offences, it would be helpful for a minority ethnic woman, even if not at risk of custody, to have an advocate to represent her.

Legal Advisers

The court needs to look at individual needs and circumstances of the defendant and be alert to conscious and unconscious bias. If the defendant is not provided with the mechanisms to understand and present their case well then it could act as a disadvantage.

The language barrier may be an issue; interpreters are mainly based in London.

Observations

Lack of interpreters a key problem with foreign national and non-English speaking British defendants.

In two cases, minority ethnic women found their solicitors unhelpful and felt that their needs were ignored and that racial assumptions played a role in how the lawyers interacted with the defendant.

Recommendations

These are the recommendations that we have identified from the findings flowing from the interviews and observations.

Pre-Sentence Report

Provide time pre court and in court, with sufficient funding, to have a full written PSR in all cases taking into consideration the defendant's background and circumstances fully (for example, cultural and religious differences, experiences of racism, bullying or harassment, mental health, hardship, caring responsibilities, language barriers). Gender and ethnicity to be part of the report, to have a section to include these.

Criminal Justice Professionals Training

Whilst we recognise that training is provided by the Magistrates Association, Judicial College and HMCTS with a commitment to regular continuing professional development and are aware that there are various initiatives that integrate those with lived experience of the system into the training of criminal justice professionals, we felt that minority ethnic women with lived experiences of the CJS are not adequately represented in these training initiatives.

To incorporate a better understanding of intersectionality, incorporating this into training to recognise how ethnic minority women's experiences can be compounded by other characteristics.

In court

Provide information to women in different formats and languages about what to expect in court.

Interpreters

Ensure accessibility of accredited interpreters for foreign national and non-English speaking British defendants for courts outside London.

Legal representation

To ensure that all minority ethnic women defendants are effectively represented even in low level offences and to ensure the defendant fully understands and has sufficient time to consider the implications of pleading guilty/not guilty before deciding on how to plead, and not to feel 'rushed' into it.

Conducting research in the courts/access for researchers

To get a good understanding of this area researchers need access to criminal justice/court data and agencies, to ensure that there is consistency across agencies holding information relating to race/ethnicity to assist research in this area to be conducted.





Chapter 1

Context and Rationale

The Prison Reform Trust's recent Briefing: Counted Out (2017) acknowledged the lack of qualitative or quantitative research into the experiences of women from minority ethnic groups in the criminal justice system. This resonates with the Lammy Report (2017). David Lammy has identified several data gaps in the Magistrates' Court decisions including pleas and remand decisions, and recommended more detailed examination of magistrates' verdicts, with a particular focus on those affecting minority ethnic women (Lammy, 2017, p.33). Multiple sources have identified disparities in the treatment and decision making in courts for minority ethnic women, but the reasons for these disparities and disproportional outcomes are not well known and understood (Agenda, 2017; Prison Reform Trust, 2017). We need to understand better how minority ethnic women are remanded, convicted and sentenced. Although the Ministry of Justice (MoJ) has been proactive in recent years in funding studies on the operation of the CJS, the main bulk of their work has been on the experiences of offenders post-sentence. However, the MoJ does recognise the need for more studies on courts.

Our research expands the scope of knowledge by focusing on courts and including the experiences of Minority Ethnic women for example, Chinese, Travellers, African, African-Caribbean, Mixed Heritage, South Asian and Foreign National women. Men are often seen as the norm against which women's criminal justice needs are compared (Fawcett Society, 2004). Studies on minority ethnic women's experience of the CJS have shown that they are more disadvantaged compared to white women and that much of this disadvantage results from the lack of understanding and appreciation of their life experiences, their reasons for offending and their needs. The courtroom is a key part of the system where this lack of understanding is likely to translate into poorer outcomes for minority women, yet it remains one of the least researched areas of minority ethnic women's experiences.

There is research evidence that criminal justice professionals in the UK do not have adequate training in race issues (see Cole and Mclean, 2019); and this has promoted inequalities for minority ethnic women in terms of the support that they get from these professionals (for example, probation) during trial and in the quality of the documentation presented in support of their cases.

Through this research we hope that the groups that will benefit will include Minority Ethnic women, Court officials (legal professions and judiciary), Women's Organisations, Human Rights groups, NGOs, and charities that have been supporting women through advocacy, legal advice, welfare provisions and research.

This research fits our funders priorities. Barrow Cadbury Trust have funded significant research on minority ethnic women's (Muslim Women) experiences of the CJS (for example, Arooj, 2018). The emphasis has been on their experiences prior to trial and post-trial in prison and not on criminal proceedings. Understanding the experiences of minority ethnic women in criminal proceedings was identified as a gap in knowledge by David Lammy in his report.

The Pilgrim Trust's Early Intervention/Early Action work focuses on the provision of early intervention in the operation of the judicial process to ensure that fair and equitable justice is delivered to minority ethnic women generally and especially those that are yet to be fully recognised as vulnerable individuals in court, for example, foreign nationals. The project also relates to the Ministry of Justice's particular research interests and priorities which relate to access to justice, providing a transparent and efficient court system, reducing rates of reoffending, and improving life chances.

Chapter 2

Aims

The overall aim of this research is to consider to what extent criminal justice is equally applied to minority ethnic women during the court process, to develop a better understanding of any disparities in the court process and decision making and develop recommendations that would inform and empower them and protect their human rights during criminal proceedings in the Crown or Magistrates courts. This is likely to have a wider impact on considerations of fairness when dealing with other defendants.

► **The objectives of the study are to:**

- Examine how justice is delivered to minority ethnic women defendants in court proceedings.
- Identify when it might have been delivered less fairly.
- Analyse the reasons why.

This study focused on the critical decision-making points in the court process where research has shown that defendants with least knowledge and experience of the CJS particularly socially and economically disadvantaged and vulnerable minority women are most likely to experience unfair outcomes, namely: the plea, legal representation, remand decisions, the preparation and presentation of pre-sentence reports and the use of judicial sentencing options. Decisions taken at court, if 'unfair', can have significant consequences for women post-sentence and these consequences can often be more severe for minority ethnic women.

Gender and racial inequalities have been identified by several studies on the experiences of women in the CJS, including the courts. The experiences of minority ethnic women of the CJS somehow mirror their disadvantaged and misunderstood positions in society. Gender and racial inequalities can also result from a perception that 'all women are the same.' This study sought to dispel the myth that gender can be an 'advantage' in the courts and instead explore how being a woman and an ethnic minority can lead to further disadvantage.

The study sought to enable criminal justice agencies to appreciate and improve their understanding of the particular needs that different minority ethnic women have and, therefore, be fairer in their application of justice at these critical decision-making points during court proceedings.

Chapter 3:

Literature review

The review looks at literature on women/ minority ethnic women experiences of the criminal justice system generally before looking at their experiences of courts more specifically. Both academic literature and governmental and non-governmental research reports are considered. The findings presented here helped to inform our research, interview questions and analysis of findings.

Theorising minority ethnic women in the criminal justice system

It has long been recognised in feminist literature that the treatment and experiences of women in the criminal justice system have been shaped by patriarchal gender assumptions about women as 'wives', 'mothers' and 'daughters', essentially understanding offending women as 'mad, bad or sad' (Gelsthorpe, 2005; 2010). It is also recognised that these experiences are significantly different depending on class or ethnic background of a woman. For example, white middle- or upper-class women are likely to be treated more leniently compared to Black and poor women (van Wormer and Bartollas 2022, p.5). This has resulted in harsher punishment and increasing incarceration of disadvantaged ethnic minority women (van Wormer and Bartollas 2022, p.6). Early childhood, adolescent, and adult experiences of Black women in prison reveal processes of victimization, labelling, and criminalization (Arnold, 1990, p.163).

Critical race scholars and third wave feminists emphasise the role of intersectionality meaning the compounding, synergetic and interlocking effects of multiple inequalities and sites of oppression, including race, ethnicity, class, gender, gender identity, sexuality, and age, marginalising and disadvantaging women in the criminal justice system as well as exposing them to additional risks (van Wormer and Bartollas, 2022, p.8; Lowery, 2019; Love et al., 2017 and Refugee Council, 2009 cited in Lovatt et al, 2020, p.3; Chon, 2003 and Ikemoto, 2003 cited in Marquez, 2004, p.323). Crenshaw (1989, p.140) argues that to understand the patterns of subordination and exclusion experienced by black women and find solutions one must recognise that these women do not experience race and gender as discrete categories; instead, black women's experiences are intersectional. Stereotypes about black women influence 'whether black women's stories are likely to be believed. Historically, a black woman's word was not taken as truth [...] Thus, judges were known to instruct juries to take a black woman's word with a grain of salt' (Crenshaw, 1992, pp.412-13). These stereotypes are deeply rooted within the colonial histories and legacies of colonialism as evident in the treatment and experiences of poor black women in the criminal justice system making these women uniquely vulnerable (Agozino, 1994; 1997).

While the intersectional nature of minority ethnic women experiences and their position in the criminal justice system is acknowledged in academic literature, its implications, and the resulting disadvantages these women experience, are not well understood (Chigwada-Bailey, 2002; Kelly, 2013; Smee, 2013). Despite the recent attention to the gendered position of non-white minority ethnic groups, feminist literature continues to favour an 'all-inclusive approach to gender analysis' (Kalunta-Crumpton, 2001, p.118).

Phillips and Bowling (2003, p.270) propose the formulation of minority perspectives in criminology and argue for a 'more multidimensional approach to understanding minorities' experience of victimization, offending, criminal justice processing...'. They argue that racisms play an important role in a historically contextualised analysis of minority experiences of victimisation and offending.

Experiences of minority ethnic women in the CJS

A number of recent studies suggest that black and minority ethnic women are over-represented in the criminal justice system (Prison Reform Trust, 2022; Scotti, 2020; Schiffer, 2014) and experience disproportionality and discrimination in their encounters with the criminal justice system, including higher arrest rates (Lammy Review, 2017, p.5; Schiffer, 2014), disproportionate rates of prosecution (Schiffer, 2014), a higher likelihood of being tried at a Crown Court once charged with an offence (Lammy Review, 2017, p.12), a higher likelihood of being convicted when tried at Magistrates' Court (Lammy Review, 2017, p.32), and a higher likelihood of receiving a prison sentence (Smee, 2013, pp.24-5; Chigwada-Bailey, 2002, pp.86-7). For example, according to the UK government 2022 data, black women were twice as likely to be arrested as white women – there were 6 arrests for every 1,000 black women, and 3 arrests for every 1,000 white women (Ministry of Justice (2023) Arrest Facts and Figures). According to Agenda, '18% of female prisoners are BAME, compared to 14% of the general population. Within this, some groups of women are particularly overrepresented, most notably Black, or Black British women who make up 8.8% of female prisoners, compared to 3.3% of the general population [...] black women are about 25% more likely than white women to be sentenced to custody at crown court.' (Agenda, 2017, p.4). According to Lammy Review (2017, p.13), among those CPS charged, 100 White women proceeded at Crown Court compared with 163 Black women and 208 Asian women'.

It has been argued that minority ethnic women are routinely subjected to negative racial stereotyping, stigma and prejudice; unfair treatment by the police; racial and religious discrimination, marginalisation and isolation in prison; unfair treatment from both staff and other prisoners; lack of institutional and informal support in the CJS; cultural differences, language barriers and lack of employment skills (The Lammy Review, 2017; Chigwada-Bailey, 2002; 2005; Agenda, 2017; Prison Reform Trust, 2017; Bowling and Phillips, 2007; Corston, 2007; Lovatt et al, 2020; MoJ, 2016).

The experiences of 'hidden' ethnic groups within the CJS

The use of broad categories such as BAME (Black, Asian, and Minority Ethnic), Black or Asian to refer to minority ethnic groups might mean that the real nuances and specific forms of victimisation experiences by groups within these broad categories remain unknown (Garland and Chakraborti, 2006; Chakraborti and Garland, 2004). The experiences of deprivation, oppression, harassment, and discrimination differ between different ethnic, cultural, and religious subgroups and groups with mixed background. In relation to women, their experiences are not uniform and differ between women of different faiths and cultures (Ministry of Justice 2020d, p.12). In this sense, Muslim women and Asian women for example face a distinct set of challenges, including stigma and taboo, once in custody (The Lammy Review, 2017, p.58; Prison Reform Trust, 2017, p. 10). Open Society Foundations (2005, p.332) points out the specificities of experiences of different ethnic and religious subgroups within the broad category of Asian women, arguing that 'the needs of South Asian Muslim women may be different from the needs of Asian Sikh and Hindu women – and actually more similar to English, Bosnian or Arab Muslim women'. However, these unique experiences and needs remain often hidden and continue to be overlooked by policy makers and agencies (Wood, 2014; Gelsthorpe (2013). The idea of integration of victimised minority groups overlooks and fails to recognise cultural diversity and unique intersectional identities of minority ethnic women (Kalunta-Crumpton, 2001; Smee, 2013, pp.16-32).

While the need to recognise cultural diversity is acknowledged in a general sense, there is currently lack of evidence in this area. The researchers attempting to explore these specific experiences tend to encounter great difficulties in finding data on specific minorities; no data exist at this level of disaggregation, and it would be difficult to obtain the data that would be statistically valid.

Minority ethnic women and their experiences of court proceedings:

Several common issues have been identified in research on minority ethnic women's experiences of courts. These include perceptions that women's voices are not heard; the feeling of being invisible in court; their circumstances and issues are not taken into account (in particular, their mental health and childcare or care responsibilities, experiences of abuse and violence); confusion as to what is going on; concerns about discrimination, hostility, racial and gender bias and prejudice amongst judges, attorneys, jurors, solicitors and in sentencing; inability to get bail; dissatisfaction with sentencing; and language being a barrier to participation (Agenda, 2017; Hyman, 2014; Lawrence and Williams, 2006, Lovatt et al., 2020; Chigwada-Bailey, 2002).

Minority ethnic women's experiences of court proceedings may be affected by under-representation of minority ethnic individuals within the criminal justice system. In 2020/21 19.7% of CPS staff were from racially minoritised groups. 15% of barristers, 18% of solicitors and 14% of Chartered Legal Executives were from Black, Asian and minority ethnic backgrounds as reported on 1 April 2021. Recommendation rates for judicial appointments for Asian candidates were an estimated 36% lower than for White candidates and for Black candidates they were an estimated 73% lower than for White candidates. In 2019 16.2% Probation staff were from an ethnic minority background (Criminal Justice Alliance, 2023, p.19). A recent report found 'deeply concerning evidence of toxic and racially discriminatory workplace cultures across our criminal justice system' (Criminal Justice Alliance, 2023, p.7).

Barriers to "effective participation"

Research conducted in 1970s described the criminal justice process as 'liberal bureaucratic' in form and concluded that it constrained defendants' capacity to exercise their legal rights (Bottoms and McClean, 1976 cited in Jacobson et al, 2015, p.5). Carlen observed 'mechanisms of repressive social control' in Magistrates' courts, hidden behind a rhetoric of justice (Carlen, 1976, p 128).

More recent research on court users' participation in court proceedings, while not specifically focusing on minority ethnic women, found multiple barriers to effective participation. These included the complexity of the law and the language of the courtroom, the silencing of court users, the social, cultural, and educational disparities between court practitioners and court users; and the court process as marginalising and disempowering (Jacobson 2020; Hunter 2020; Jacobson and Cooper, 2020; Robson, 2020; Jacobson et al, 2015; Owusu-Bempah, 2018; 2020; Fairclough, 2018; Carlen, 1976). The defendant is treated as an object on which the criminal law is imposed (Owusu-Bempah, 2018; 2020; Fairclough, 2018; McBarnet, 1981). Owusu-Bempah (2020) identifies such barriers as formality and professionalisation of the criminal process, the dock (the architecture and design of many court buildings and courtrooms), and special measures.

It is not surprising that in such environment defendants frequently remain silent and passive in the courtroom and feel excluded and confused (Jacobson et al, 2015, p.202). There was some evidence that the defendants were discouraged from speaking in court (Agozino, 1994, p.306; Jacobson, 2020; Hunter, 2020; Jacobson and Cooper, 2020; Robson, 2020). The ability of the defendant to understand and communicate in criminal proceeding is not considered a priority (Owusu-Bempah, 2020). Minority ethnic groups may be more vulnerable in this context and have worse experiences of exclusion and alienation, discouraging their participation (Owusu-Bempah, 2020). Language barriers and a shortage of translators for women who do not speak English as a first language is a significant barrier leading to confusion during court proceedings; furthermore, receiving court papers they could not read was problematic for some women (Agenda, 2017, p.7).

The plea

Some studies show that minority ethnic defendants are consistently more likely to plead not guilty than White defendants and then change their plea to guilty later in the process. This means that, if found guilty, they are likely to face more punitive sentences (Lammy, 2017; Prison Reform Trust, 2017; Thomas, 2017; MoJ, 2016). Black, Asian, Mixed Heritage and Chinese and other ethnic minority women were all more likely than White women to enter not guilty pleas at Crown Court, with Asian women more than one and a half times more likely to do so (Lammy Review, 2017, p.26; Prison Reform Trust, 2017, p. 10). Other scholars agree that the social factors of patriarchy, racism, and the family structure create a high hurdle of marginalization for Black females to overcome when entering the legal system (Arnold, 1990; Salisbury & Van Voorhis, 2009).

However, Thomas (2017) found that even though minority ethnic defendants are disproportionately charged with offences tried in the Crown Court and minority ethnic defendants plead not guilty to these charges consistently more often than White defendants and are therefore over-represented amongst defendants facing a jury verdict; however, minority ethnic defendants are not disproportionately convicted by juries in England and Wales argues Thomas.

Judicial decisions on remand and bail

Some studies found significant differences between black and white women in terms of proportions remanded in custody. One study found that Black women are 29% more likely than white women to be remanded in custody at the Crown Court (Prison Reform Trust, 2017, p. 10). These defendants are 84% more likely than white women to be remanded in custody, despite no significant difference in conviction rates. [...] Black women are nearly six times as likely as white women to be arrested for fraud, and three times as likely as white women to be remanded in custody at the Crown Court for fraud offences, despite, again, similar conviction rates. (Prison Reform Trust, 2017, p.19)

There appears to be a general assumption that ethnic minority women will 'disappear into their own subculture' which it will then be difficult for the police to penetrate (Chigwada-Bailey, 2002, p.88). Some black women defendants in criminal cases are at a particular disadvantage because they do not reside in this country and therefore have difficulty getting bail, the authorities fearing that they may fail to surrender at the end of the bail period (Chigwada-Bailey, 2002, p.89). Robson's (2020, p.33) study of bail decision making for foreign national women in criminal courts in England and Wales found that being a foreigner is a ground for suspicion in bail cases, 'used as a proxy to assess lack of community ties and the risk of absconding overseas. As a result, foreign national women are subject to more stringent suitability requirements and punitive responses'. A similar conclusion about migrant/foreign national women who are often denied bail is made by Hales and Gelsthorpe (2012).

The women who had been remanded into custody found the process confusing and said that they did not have the process or reasons clearly explained to them (Agenda, 2017, p.9).

The remand status can also indirectly affect whether or not the defendant is given a custodial sentence. Phillips and Bowling (2003, p.279) argue that the most significant example of indirect discrimination is 'the effect of remand status on subsequent sentencing decisions' as those remanded are more likely to be sentenced to custody; minorities are more likely to be remanded because of social inequalities resulting from 'racially discriminatory social practices'.

Legal representation of minority ethnic women in court

Often, minority ethnic women feel that they cannot trust solicitors, that solicitors are not helpful, and that they are not getting good legal advice or are experiencing difficulties finding a lawyer who could represent them well (Chigwada-Bailey, 2002). These processes are often tainted by institutional discrimination; black women often mistrust criminal justice agencies. Some black defendants believe that the lawyer of the same ethnic background would understand them and their case better (Chigwada-Bailey, 2002). Another issue noted by Chigwada-Bailey (2002) is access to a duty solicitor who may not be immediately available to them, or concern that they could not trust the duty solicitors appointed to defend them and sometimes felt that the solicitors were working against them; therefore, some preferred to represent themselves. The women in the study also felt that they had been treated unfairly by the courts and that the 'longer sentences' they received were due partly to the legal advice they were given (Chigwada-Bailey, 2002, pp.94-5). In the 2020 study by the View Magazine (Lovatt et al, 2020), some minority ethnic women were satisfied with their defence, but there were many who felt that the defence was not helpful, did not understand their issues, jeopardised their case, did not understand and did not care about them.

The quality of legal representation may be undermined by several factors. In a 2020 study of bail decision making for foreign national women in criminal courts in England and Wales, Robson (2020) reported multiple issues affecting legal representation in bail hearings, such as language and financial barriers, poor quality of service delivered by duty solicitors due to resource constraints, overwork and time pressure from the court, meaning lawyers only had 10 minutes with the defendant prior to hearings, and the environment not conducive to defendants' disclosure of histories of abuse or vulnerabilities. As a result, the lawyers were unable to do their best to prepare cases for bail.

Sentencing Decisions

It has been argued that discretion in sentencing can potentially lead to discrimination on racial or gender grounds (Hood, 1992; Hedderman and Gelsthorpe, 1997).

Some studies on the impact of women's race and ethnicity on sentencing decisions suggest that minority ethnic women are more likely to be given a custodial sentence (for example, Corston, 2007, p.27). Prison Reform Trust (2017, p. 3) found that the disadvantages women face with the criminal justice system are greater for minority ethnic women, resulting in a greater likelihood of imprisonment for first offences and non-violent offences. They also found that Black women are 25% more likely than white women to receive a custodial sentence (Prison Reform Trust, 2017, p. 10). Similarly, an American study has found that 'race operates through direct and indirect pathways to cause more punitive sentencing outcomes for Black female defendants compared to White female defendants' (Kramer and Wang, 2019). Analysis of the US data on the prison population shows that 'women of colour are overrepresented in the prison and jail system' with black women being the most impacted (Alfred and Chlup, 2009, p.241). They are disproportionately low income, undereducated, unskilled, without stable employment, survivors of sexual and physical abuse, suffer from substance abuse and other physical and mental problems; many are young mothers (Alfred and Chlup, 2009, p.242). Kimberlé Crenshaw (2016) argues that Black girls and women in the US continue to face disproportionate punishment as compared to their White counterparts.

These findings are echoed by evidence from Britain that the percentage of minority ethnic women prisoners is higher than their proportion in the general population, with Black or Black British women being particularly overrepresented. (Agenda, 2017, p.4; Ministry of Justice 2020c, p.40; Centre for Justice Innovation, 2017, p. iii; Joseph, 2006). Of all females sentenced in 2019, Black female offenders had the highest custody rate at 23%. The custody rate ranged between 20% and 23% across all female ethnic groups. (Ministry of Justice, 2020c, p.40).

Chigwada-Bailey (2002 pp.82; 86-7) argues that with Black women racial stereotyping and cultural assumptions about their behaviour lead to courts using their sentencing powers 'to the maximum'. Furthermore, socio-economic disadvantage (unemployment, no permanent address, no family or other community ties) can be a further aggravating factor in sentencing decisions and in borderline cases 'may be the critical factor whether someone is sent to prison' (Chigwada-Bailey, 2002, p.87). In interviews, Black women said they were dissatisfied with sentencing decisions, found them disproportionate and unfair, too harsh (Chigwada-Bailey, 2002). She also found that in case of foreign women, home or family circumstances are not always taken into consideration in a pre-sentence report, resulting in a higher number of black women in prison.

The Corston Report (2007, p.28) highlighted increasing rates of imprisonment at the time of publication among Chinese women, indicating that not only Black women but other ethnic minority women may be subject to disproportionate imprisonment.

The Judiciary

A recent study by researchers from the University of Manchester (Monteith at al, 2022) found evidence of systematic racial bias and discrimination by judges, most often directed towards Asian and Black people. They also suggest that there is bias targeting specifically Black women. The researchers quote one of the survey respondents recalling racist comments made by a judge about 'Jamaican women having multiple children with different men' (Monteith at al, 2022, p.35). They conclude that their findings amount to 'evidence of institutional racism in the justice system presided over by judges' (p.6).

It has been argued that judges need to understand the culture of individuals that come before them (Sharma, 2015); that their decisions are often influenced unconsciously by perceptions, attitudes, and stereotypes that produce discriminatory behaviour (Irwin and Real, 2016; Hyman, 2014).

The Crown Prosecution Service

In 2021 the Crown Prosecution Service commissioned research on the outcomes of CPS charging decisions for evidence of disparity. The research found disproportionality relating to ethnicity in the outcomes of the CPS charging decisions. White British suspects had the lowest charge rate compared to all other ethnicities with 69.9% of cases resulting in a charge. By contrast Mixed Heritage suspects had a charge rate of between 77.3% and 81.3% (CPS, 2023). Previous studies which have looked at the same issue are Mhlanga (1999) and the Gus John Partnership (2003). Mhlanga (2000) and Barclay and Mhlanga (2000) found that cases where defendants are from black or ethnic minority backgrounds were disproportionately discontinued by the CPS and dismissed in court, suggesting that these cases were disproportionately evidentially weak. The research by Gus John Partnership was an independent study commissioned by the CPS and it identified some disproportionalities in the charging process in relation to ethnicity. They found that 'half of all men and two-thirds of all white and African-Caribbean women received a dishonesty charge; and a grievous bodily harm charge was twice as common among white male suspects as among African Caribbean suspects. [...] there was a greater tendency towards no further action on evidential and public interest grounds in relation to African Caribbean suspects than those from other ethnic groups' (Gus John Partnership, 2003, cited in Taylor, 2009, pp.73-4). HMCPSI in their thematic inspections in 2002 and 2004 found that the police were inappropriately overcharging minority ethnic suspects and the CPS 'correcting' for this, to some extent. They found that 'In approximately 120 cases where overcharging of minority ethnic defendants occurred, [...] the CPS rectified the position at initial review in 61.8% of cases in 2002, and this had improved further to 68% in 2004' (HMCPSI 2002; 2004 cited in Taylor, 2009, p. 74).

Some academic commentators argued that to secure charges, the police interpret and may manipulate facts leading to 'overcharging' and the CPS and the police prosecuting evidentially weak cases where 'public interest' appears to trump the 'evidential test' (Sanders and Young, 2012). It follows that even though, formally, the CPS is independent from the police, they depend on evidence constructed and provided by the police, which undermines their independence and ability to make well-informed and adequate judgements about evidence and public interest. The failure to eliminate the overcharging bias created by the police can be understood as the CPS being discriminatory against minority ethnic defendants when weak cases against them go to trial (Denman, 2001, p.107).

It is also worth mentioning here research on the criminalisation of women in the context of joint enterprise offences and the role of CPS in this process. Clarke and Chadwick argue that there is a 'clear possibility of wrongful convictions for women in cases where Joint Enterprise (JE) is used' (Clarke and Chadwick, 2020, p.33), calling for an independent review of Crown Prosecution Service (CPS) decision making in cases involving female defendants in multi-offender trials.

Probation

Gelsthorpe (2005, p.107) notes that there is no information on the intersection of race and gender in sentencing studies and she notes that 'we basically do not know which BME women get probation or why'. 'Early research indicates that minority female offenders less likely than their white counterparts to be made subject of Community Rehabilitation Order (until 2000 known as a probation order) (Chigwada-Bailey 2003)'. cited in Gelsthorpe, 2005, p.108). Historically since at least 1980s notes Gelsthorpe, racism as a context in which offending took place was denied by the Probation service and the Pre-Sentence reports were culturally euro centric. Chigwada-Bailey's (2002) study reported some BME women feeling that probation officers were patronising and did not understand them. In general, there was a sense that women were neglected by the Probation Service and did not have the same access to community sentences as men. Pre-sentence reports did not consider gender-related issues. Gelsthorpe (2005, p.112-13) concludes that 'BME women have largely been ignored in the probation context and more information is needed on their cultural and social distinctness, their personal and social histories, and their motivations for and pathways into crime'.

Similar findings were reported in a recent study that found ethnic minority offenders feeling their probation officers did not want to listen to their experiences of racism and being misunderstood. Specifically on women, this study reported that all Black women who were interviewed for the study preferred to be supervised by a non-white probation officer (Ball et al., 2022, p.13). A Black woman commented that Black women are stereotyped as being aggressive. Another woman commented that she did not feel comfortable talking to her probation officer about race as the officer was white. Generally, the women felt more comfortable speaking with a probation officer of the same ethnicity (HMIP, 2021).

On PSRs, previous studies suggested that these reports often disadvantage women from minority ethnic backgrounds because of misunderstanding or stereotyping and because the impact of racism on their offending is often not explored in these reports (Cole & McLean, 2019; Cole, 2008; Vanstone, 2006, Hudson & Bramhall, 2005, Calverley et al, 2004; Denney, 1992; Green, 1989; Voakes & Fowler, 1989).



Summary

Overall, the literature review shows that minority ethnic women defendants continue to experience unfair, disproportionate, racist, and discriminatory treatment in the criminal justice system including the criminal courts. However, it is also clear that we do not know enough about the specific nature of their experiences and victimisation within the system generally and even less in the courts. Some studies have focused on ethnic minority women in general and others have looked at Black women, foreign national women, or Muslim women, whilst the experiences of other minority ethnic groups such as Chinese women have been generally ignored. Most of the studies cited in this review provide a partial understanding of BAME women's experiences of courts. Apart from Agenda's 2017 study, there have not been other recent qualitative studies in the UK of ethnic minority women experiences of criminal courts. Most of the studies on BAME women's experiences of criminal justice have focused on their experiences pre-trial and post-sentence, for example in prisons. This study begins to fill this gap by looking at a cross section of ethnic minority women defendants in England, focusing specifically on their experiences of courts and drawing from in-depth interviews with women, observations of court hearings and interviews with court officials. We hope that this study helps shed more light into how these women experience court proceedings and where they experience injustice and discrimination the most.

Chapter 4

Research Design and Methodology

This research was conducted as an ethnographic pilot study to critically examine the experiences of minority ethnic female defendants appearing in English courts and the professionals who work in these courts.

► **The research adopted a mixed methods approach consisting of the following:**

- A critical review of existing literature on gender and ethnicity in the criminal justice system, with specific focus on the courts.
- A critical analysis of court experiences through in-depth interviews with a sample of minority ethnic women who have previously been in court as defendants.
- A critical analysis of the opinions of court officials on 'race' and gender issues in the court process and their personal experiences where defendants in court have been minority ethnic women. This was done through interviews with probation officers (court report writers), crown prosecutors, and a court legal adviser; and
- A critical analysis of data obtained from observations of court trials where the defendants were females from minority ethnic backgrounds.

The main purpose of the research was to identify where, in the court process, justice might have been 'poorly delivered' to minority ethnic women and the extent to which gender and ethnicity might have played a part in the court experiences of these women. The investigation also included: an analysis of the support given to these women to enable them to participate more fully in their trials, the extent to which gender and 'race' issues are addressed by court officials in their roles as crown prosecutors, probation officers and court legal advisers; the challenges faced by these court professionals where defendants before the courts were females from minority ethnic backgrounds, their views on the current approaches and suggestions for changes, if any.

Research questions:

► **The research is underpinned by the following research questions:**

- How do minority ethnic female defendants perceive their experiences of court trials and court professionals?
- How do court professionals perceive their roles where defendants are minority ethnic women?
- What are the issues of race and gender in court trials?
- Are criminal trials fair to minority ethnic women?
- What are the challenges where minority ethnic women are defendants in criminal courts?

Ethical approvals

Ethical approval for the research was granted by Newcastle University after successfully complying with the university's ethical guidelines. Ethical approval was also obtained from the Crown Prosecution Service (CPS) Strategy and Policy Directorate that enabled the researchers to interview Crown Prosecutors in the North-East and West Midlands. In addition, an NRC application was completed and approved. This allowed for interviews to take place with probation officers in one probation region. The researchers chose NPS West Midlands for these interviews. Applications to the Judicial Office and the Criminal Bar Association for ethical approval and permission to interview judges, magistrates and criminal defence lawyers failed. An ethical approval process was not required to interview Justices Legal advisers and court associates. A request e-mail soliciting for participants was sent to the Justices' Legal Advisers' team in Newcastle-upon-Tyne which yielded interview with one Legal Adviser in the area. All known ethical rules and GDPR (General Data Protection Regulation) guidelines were complied with throughout the research.

Research Access

In order to carry out this research in the Crown Court and Magistrates' courts, access was required to offender datasets and courtroom lists to enable the researchers identify defendants and cases to observe in the courts. Access to professionals for interviews was secured after permission was granted by the relevant professional ethics approval bodies as described above. Finally, access was required in order to conduct in-depth interviews with minority ethnic women who have had experiences of court trials as defendants. In this regard, the researchers thought that it would be unethical to attempt to interview female defendants immediately after the 'traumatic' experience of a court trial. Instead, an alternative was considered to interview minority ethnic women who have had experiences of court trials during their journeys through the criminal justice system but are back in the community. In this regard some women's organisations were contacted. Anawim, a Centre for Women located in Birmingham offered to help support the project by linking the researchers with women that they look after who are ex-offenders willing to share their experiences of courts with the researchers. For this support, the researchers are extremely grateful.

Access to offender data and courtroom lists:

In order to have the right type of defendants and cases to observe in court, the researchers needed access to datasets or daily court listings that clearly identified minority ethnic women on trial for criminal charges at the Crown Court and magistrates' courts in the jurisdictions selected for the research namely the North-East, North-West and the Midlands. Thus, it was essential that the available datasets or listings include both the ethnicity and gender of defendants. The researchers' first move was to approach the Ministry of Justice (MoJ)/Her Majesty's Court and Tribunal Service (HMCTS) with a request for their assistance in acquiring ethically coded and gendered court data/listings only for the areas where the research is to be conducted. Accordingly, the researchers completed the MoJ's Application form for secure access to data and forwarded it to the MoJ Data Access Panel for review. However, the MoJ was not able to assist the researchers in their request as HMCTS does not collect ethnicity data as a matter of course; therefore, the MoJ could not guarantee that the information necessary to identify our defendants is available. According to the Panel "Age and gender data are personal data, and ethnicity is special category personal data – so it has greater legal protections". The Panel did not consider that releasing this data in order to enable observation of specific cases was proportionate (as required by the Data Protection Act 2018). The Panel noted the evident benefit of research of this nature, and the importance of understanding the experiences of minority ethnic women defendants. The Panel also agreed that there is public benefit in research of this kind and that it addresses a gap in the evidence base. However, the Panel decided that the potential benefit of the project did not outweigh the risk to individual defendants' personal data where HMCTS is to provide ethnicity data additional to the data provided in public court listings. The Panel then suggested an alternative approach which would not require a Panel decision namely that the researchers attend a random sample of Magistrates' and Crown Court hearings using publicly available court listings provided by HMCTS to identify minority ethnic female defendants' cases to observe, until they had built up a sample pool of the right size.

The researchers had no other option but to adopt the approach suggested by the MoJ, which past research experiences have shown can be tedious and time-consuming. The researchers chose CourtServe which is the main publicly available daily court listings published by HMCTS. But CourtServe listings do not include the gender and ethnicities of defendants. Moreover, the court lists on CourtServe were not always the same as those on the court room doors on the days of trial. When asked why court lists on-line were different to those posted on courtroom doors, HMCTS staff said that it was because some courts do not update their lists on time. In addition, some cases were tried in courtrooms different to those under which they were listed on CourtServe, leading to a few opportunities being missed.

Further attempts were made to obtain court lists with gender and ethnicities of defendants by approaching individual courts' listing departments. In this regard, the researchers contacted court listing offices with names of defendants whose cases they would like to observe and asked whether they were minority ethnic women or not, before attending the courts. This approach produced very few opportunities. A Crown Court listing office that initially promised to provide the ethnicities and gender of defendants later replied saying: "Unfortunately, we do not have anything on our system that would enable us to find out this information in a timely manner. It would involve a member of staff going into each case individually and hoping that the required information would be there – and this is something we just do not have the resource to do".

As a result, the researchers had to settle for guessing the gender and ethnicity of defendants listed on CourtServe, targeting names that sounded 'female' and are either familiar minority ethnic names (for example, South Asian, Chinese, or African names) or foreign. In some cases when the researchers were unsure whether a foreign sounding first name on CourtServe was female or not, they used Google search engine to search for its origin and whether the name was a boy or girl name. The result was a high number of 'false positives' whereby defendants who we thought were women, judging by the results of our Google names search, turned out to be men. Although we had some successes with south Asian names (for example, common female Muslim names), identifying African-Caribbean women who, usually, bear English-sounding names, was difficult. As a result, no African-Caribbean women was included in the sample of cases observed in courts. In addition, our original research proposal included Gypsy Roma Traveller (GRT) defendants, but because these defendants could not be identified on the court lists or visually in court, they were not included in the final sample of observed cases. Except in the cases where the defendants specifically stated their ethnicities when asked during trial, in the majority of cases, defendants' ethnicities were derived from the researchers' own personal knowledge of the ethnicities to which their names are commonly associated. In other words, the ethnicities of the defendants in the observed cases were, generally, not self-defined but defined by the researchers. The ethnic categories used in the study were: Black African, Indian, Pakistani, Bangladeshi, Mixed Heritage, Chinese, Foreign national women (for example, Polish, Slovakian) and Others (unknown).

The Research Methods:

1. Critical review of literature

This consisted mainly of review of academic literature on the experiences of women in the criminal justice system generally and of minority ethnic women in particular. Literature was also reviewed on the experiences and treatment of women in court with particular preference for sources where the focus was on non-white/minority ethnic women's experiences. The review included research-based academic sources that focused specifically on the court process, defendant's participation, legal representation, the plea, interaction with court professionals, and sentencing decisions. In addition, research reports and policy documents written by government departments, non-governmental agencies, and charities on minority ethnic women experiences of the criminal justice system generally and the courts specifically, were reviewed.

For the review, the following search engines: ProQuest, Westlaw, Heinonline, JSTOR and the Lexis-Nexis Newspaper database were consulted, using time filters 2000-2020/2021 and keywords such as:

Minority Ethnic Women in the Criminal Justice System; Barriers to Defendant Participation in Criminal Proceedings; racism in the courts; Effective Participation; Vulnerable Defendants; Procedural justice; Criminal procedure; fair trial; Sentencing; Adversarial proceedings; Female offenders; gender disparities in sentencing; Woman-Centred Services in the criminal justice system; Discrimination of women in the CJS; Women in the criminal justice system; Judicial Attitude; Judicial decision-making ; Sentencing Women; Adversarial Justice; Race and the Criminal Process; Intersectionality; Race and justice; Feminist Criminology; Unfair Treatment in the Courtroom; Administration of Justice; Racial bias and the English criminal trial; Ethnic minorities in the criminal courts; Black women's experiences of the criminal justice system; Systemic Racism; Racial Justice.

The aim of the review was to identify the extent to which 'race' and gender have affected the treatment of minority ethnic women in the courtroom. However, there is, generally, limited research in this area; most studies on minority ethnic women have focused, generally, on their experiences of the criminal justice system usually at the pre-trial stage (during arrest and detention in police custody) or post-sentence, for example, in prisons.

2. In-depth semi-structured interviews with minority ethnic women who have had experiences of the court process as defendants.

As mentioned above, in-depth interviews with minority ethnic women who have had experiences of courts as criminal defendants were secured through the assistance of Anawim. Potential participants were contacted by Anawim. No pressures were put on the women to participate. Only women that expressed their willingness to be interviewed were put in contact with the researchers.

All participants were sent information sheets on the research and had to complete and sign a consent form before their interviews (See Appendix 1). The interviews were semi-structured, and they were conducted online via zoom and Microsoft Teams. The interviews were recorded with the permission of the interviewees and transcribed. Seven women were interviewed in this manner.

3. In-depth interviews with court officials and criminal justice professionals

These included interviews with samples of probation officers and Crown Prosecutors and one Justices Legal Adviser. The interviews with professionals were also semi-structured. All the court professionals interviewed were sent information sheets on the research and they completed and signed a consent form before their interviews began. Interviews were on-line via zoom and Microsoft Teams although one probation officer opted to provide their answers in writing. In this case, information sheets were sent to the probation officer with the questions and the consent form was completed and sent back to the researchers before the written answers were accepted. All on-line interviews with professionals were also recorded. A total of five Crown prosecutors were interviewed in the North-East and West Midlands, three probation officers were interviewed in the West Midlands and one legal adviser in the North East. All persons interviewed on-line were given the option of turning off their cameras during on-line recording. COVID-19 influenced our interviews with professionals as some regional offices rejected our request to interview staff due to the backlog of cases being dealt with because of the pandemic.

The original proposal for this research included interviews with Judges and Magistrates. An application was made to the Judicial Office requesting for judicial involvement in the research in terms of permission to interview any three crown court judges or recorders, or magistrates in any of the areas of the study. The researchers were aware of the existence in England and Wales of Diversity and Community Relations Judges (DCRJ) - a group of judges and recorders who undertake a huge amount of community engagement in a voluntary capacity. Although this network of judges was set up originally to work with black and minority ethnic communities, their work has expanded to include all communities including under-represented groups. The researchers thought that there would be additional value to the research if one of the judges to be interviewed was a DCRJ. Accordingly, the researchers wrote to the Secretary to the DCRJs to explain the research and their preference to interview DCRJs. As all applications for judicial involvement in research must go through the Judicial Office, our application to the Judicial Office included our preference for DCRJs. After several months of waiting, our application to interview the judiciary (including DCRJs) was denied by the Judicial Office on the grounds that "the questions posed would ask the judges to comment on matters of government policy and / or violate the principle of judicial independence."

As the Judicial Office deals only with serving members of the Judiciary, the researchers thought, after consultation with the research Steering Group, that attempts could be made to interview retired judges and magistrates instead. The DCRJ Office was again contacted with a new request to put the researchers in touch with retired DCRJs. The DCRJ Office replied that they do not deal with retired judges. Moreover, contacting retired judges will require that data protection rules are complied with. Thus, our sample of professionals does not include members of the Judiciary. Similarly, attempts to secure interviews with criminal barristers through application to the Criminal Bar Association for access did not yield any positive result.

4. Observation of court cases

The aim of the court observations was to assess how minority ethnic female defendants are treated during court trial; focusing on the critical points in the court process where research has shown that defendants are mostly vulnerable in court namely (a) when taking the plea, and (b) during trial in term of their participation or engagement with the court process especially when they are not legally represented and, where legally represented, the quality of the defence. In addition, the court observations aimed to assess the performance of the CPS and probation staff in court. In the case of Probation Officers, the researchers were interested in whether Pre-Sentence Reports (PSRs) were presented and how they were used by the courts in sentencing. Finally, when court decisions are made, for example with regard to bail or remand and sentencing, the researchers were interested in assessing whether the ethnicity and gender of the defendants affected judicial decision-making in any particular manner.



Approaches to observation

The court observations took the form of a covert, semi-structured non-participant observation. The study is covert only in the sense that in the majority of cases the research participants (minority ethnic female defendants) did not know who the researcher was or that there was even a researcher in the courtroom at all. This has the advantage of participants not being swayed by the known presence of a researcher or able to change their behaviour because they know they are being studied. However, the judges, magistrates, justices legal advisers/court associates and ushers in the courts visited were aware of the researcher's presence and informed of the nature and aims of the research. On a few occasions magistrates alerted the court to the presence of a researcher in courtroom but these revelations didn't affect the observation process in any significant manner.

The study is a non-participant observation in the sense that the researchers did not participate or integrate themselves into the events that they were studying. The study is semi-structured in the sense that whilst an observation schedule was used to capture a list of demographic and trial data that the researchers were interested in, for example, ethnicity, date of birth, court type, offence type, the plea, legal representation, support offered, type of PSR (Pre-Sentence Report) (if any) and sentence, the format of the observation was, in the main, unstructured whereby the researcher sat in the courtroom, freely noting down whatever they saw but focusing on the behaviour of court officials and judiciary; the interaction between defendants and court officials, how the defendants were treated generally and their participation during the trials.. Observation field notes were made, which included not only accounts of court activities but also what was said and to whom. On a few occasions, attempts were made to observe interactions between defendants and court officials before and after the trials. Observations also included court proceedings that took place via video links.

No assumptions were made in terms of what the defendants aren't doing or are supposed to be doing, although the researchers have background knowledge of what to expect at a court trial. The aim was to attempt to capture the most accurate and authentic accounts of the court process, the experiences of the minority ethnic female defendants on trial and the professionals who work within the courts. This means that the researchers did everything possible to avoid influencing the process or the behaviour of anyone in the courts.

Research ethics

The researchers are aware of the ethical difficulties that are associated with participant observation studies. The defendants in this study did not give informed consent to their trials being observed and they did not have the option not to participate. This is consistent with the observation of events that are open to the public and court trials are public events. However, the researchers complied with research ethics by protecting the privacy of the defendants and maintaining anonymity and confidentiality in the recording and use of observation data.

The case details from the template were anonymised and transferred to an excel file where the data was sorted into charts and tables. The field notes were also inserted into the excel sheet and were later translated into themes, informed by the literature.

Impact of HMCTS Modernisation, COVID-19 and SJP (Single Justice Procedure)

As part of their modernisation agenda and in order to respond to the unique challenges of the COVID-19 pandemic, HMCTS have introduced digital options for users, and new technology to facilitate alternative ways of working, including the provision of online services, remote hearing capabilities and paperless systems aimed at reducing the need for people to attend courts in person and still be able to follow their cases online.

Defendants have always had the option to choose to attend a court hearing in person. A Single Justice Procedure (SJP) now exists in English Magistrates courts that enables magistrates to deal with minor offences in a way that is quicker, more straightforward, and more efficient, while still being fair, transparent, and rigorous. This includes magistrates dealing with more minor offences without the defendant or prosecutor needing to attend court. This applies where the defendant intends to plead guilty or where the facts of the case are not in dispute. The services provided include an online plea option for defendants.

SJP cases are usually dealt with by a single magistrate on the basis of the papers alone without either party having to attend court for a hearing. It was discovered during this research that all SJP cases (not requiring defendant attendance) are listed in CourtServe under courtroom 75 or 76. All the courts in the study areas had a Courtroom 75 or 76. The researchers found that a substantial number of cases are listed under Courtroom 75/76 or that certain days were specifically for such cases.

Statistics published in February 2022 showed that 96.51% of cases in magistrates courts were resolved without a defendant needing to go to court. The figures also showed that 50% of defendants who pleaded guilty or not guilty chose the online plea option.

The researchers observed that SJP cases in magistrates' courts were generally higher than those where defendants had to attend court and that many minority ethnic defendants, including women, were listed under Courtroom 75 or 76. This greatly reduced the number of cases that the researchers could potentially observe in magistrates' courts. Minority ethnic women were also sparsely represented in Crown Court listings which included, like in the magistrates' courts, mainly male defendants. Where female names appeared on Crown Court listings, they were mainly with English-sounding names. The low representation of minority ethnic women at Crown Court hearings may be due to several factors including the fact that crimes committed by women are generally less serious than those committed by men.

Sampling

The research adopted a purposive, voluntary and convenience sampling technique.

The court observations were conducted in courts located in the counties where the researchers lived or have easy access to, namely: the West Midlands, the North-West and North-East of England. Within these areas, the researchers attended court proceedings at the Crown and Magistrate courts in Sheffield, Newcastle-upon-Tyne, Preston, Birmingham, Manchester, Liverpool, Lincoln, and Nottingham. Cases for observation were selected according to what was available on the day according to the lists provided on CourtServe and the researchers assumption that the names on the lists are of females belonging to minority ethnic groups. As mentioned above, on a number of occasions, the defendants turned out to be men or did not appear on the lists on courtroom doors. After 17 months of almost daily scrutiny of court lists and attendance at court sittings, the researchers were able to complete observations in a total of 25 cases.

Interviews with court officials and criminal justice professionals were conducted only with agency staff who volunteered to participate in the research, in some cases, with the encouragement and support of senior staff. Similarly, in-depth interviews with women who have had experiences of the courts were conducted with those who, due to encouragement by Anawim, expressed a willingness to be interviewed. In-depth interviews were conducted with seven women who have had experiences of courts, and nine professionals including 5 Crown Prosecutors, 3 Probation officers (court writers), and one Justices Legal Adviser.

Analysis of Data:

The method used to analyse all the data obtained through the literature review, in-depth interviews and court observations was reflexive thematic analysis. The themes used in the analyses included:

- Defendants' participation or non-participation during trials.
- Evidence of understanding of court process
- Positive or negative experiences of court trials.
- How race and gender issues are dealt with in professional practice.
- Race and gender issues in court trials.
- Professional challenges when dealing with minority ethnic female defendants.
- Relationship between defendants and court officials during trial, including the judiciary, CPS, probation officers and defence lawyers.
- Perceptions of a fair or unfair trial.
- Perceptions of racist or sexist treatment by court professionals.
- Perceptions of racist or sexist treatment in court by the judiciary.
- Support to defendants to enable participation.
- Professional input during trial for example, presentation and use of PSRs.

All data and field notes were anonymised before they were used in the report.



Research Philosophy

Ontology: a constructivist ontology was followed in this research, starting with the premise that the court processes and meanings are actively co-constructed by participants.

Epistemology: the research was an attempt to gain some insight into minority ethnic women's experiences of court proceedings, via interviews and observations, as well as a review of previous literature. We have gathered and tried to understand defendants' and court professionals' understandings of court proceedings and experiences through interviews. We have also tried to gain an understanding of these experiences via observations of court proceedings. The process of data collection involved de-briefings in research meetings where the researchers discussed their findings and reflected upon their understanding of the data and coherence and consistency of the findings. The researchers also discussed their progress and findings in Steering Group meetings as a further way to check for the validity of the data. In a nutshell, the research was a qualitative, interpretivist and reflective piece of research that involved an interpretation of participants' meanings and interactions via interviews and observations.

Limitations of study

This study lacks generalisability because it involved relatively small sample groups. In addition, being unable to interview Judges, Magistrates and criminal defence lawyers meant that their perspectives on the issues are absent in the study. The non-existence of ethnically coded and gendered court lists meant that the researchers were unable to identify cases of minority ethnic female defendants who had English-sounding names. Mainly African-Caribbean women were affected, and none was represented in the study. Finally, it would have been valuable to the research if data obtained included those from interviews with defendants immediately after their court appearances but compliance with ethical principles made this impossible.

Chapter 5

Experiences of Minority Ethnic Women in Criminal Courts

5a.

Interviews with minority ethnic women on their experiences of courts

This chapter focuses on the results of the in-depth interviews with the seven women from Anawim who volunteered to take part in the study. The interviews focus on their experiences of the criminal justice system generally and of criminal courts in particular. The interviews revealed that their experiences of sexism, racism, misogyny, cultural stereotyping, being misunderstood, ignored, not believed, and not being given adequate support were similar at all the stages of the criminal justice system and post-sentence, that the court is just one part of it all, although it has its own peculiar issues.

On legal representation, plea decisions and participation

Previous research has found that minority ethnic women defendants often distrust their solicitor, finding their advice inadequate and not helpful (Chigwada-Bailey, 2002); women report feeling 'invisible' to their solicitors (Lovatt et al, 2020, p.42). These findings are supported by this research. The women reported feeling that they did not participate actively in the plea decision. Their responses included: feeling "pushed into it" (W3); "it was a little bit rushed" (W2); feeling that their legal representation did not explain what was going on (W7) or "did not care" (W6).

The majority of the participants pleaded 'guilty' on the advice of their lawyers (W1, 2, 3, 5, 6, 7). W2 initially pleaded 'not guilty' because she felt she "didn't do anything on purpose; there was no intention in there, there was no planning or anything like that. I just went along with whatever I was hearing in my head" (W2). However, on the advice of her lawyer she changed her plea from 'not guilty' to 'guilty'.

On her plea decision, W1 commented: "I didn't want to go to trial, I was advised to plead guilty which now I regret". She added: "these charges which don't look good on my record are on there for life and as plain as it seems on paper it wasn't as simple as that" (W1). She said that if the circumstances 'were there again', she would plead 'not guilty'.

W1 commented at length on being very unhappy with her legal representation and the advice given and that at some point, she wanted to change her solicitor:

“To be honest my solicitor was judgemental. I did want to change [him] at one point, but legal aid had already gone through. So, when I was explaining to him what happened, the way he was speaking to me and questioning me wasn’t like he was working in my favour to begin with. And, obviously, if he’s representing me, I should have confidence in him to get the best for me and I don’t feel like he was doing the best for me, and I think it was the easiest than going through trial. And if they get legal aid, I find that they don’t seem to want to put the work in as much.... You don’t expect them to guide you the wrong way. All I wanted was to get my point across but always advised not to”. (W1).

W6 added her own experience:

“I do find as well that they don’t really care. We know it’s legal aid. I find that they just want to definitely just get you in and out, because a lot of the things that I went to court ended up going to court, for even though they didn’t end up in prison sentence. I should never have [had] them on my record, because they should have made me [fight] it, because there was always mitigation. Do you know what I mean?” (W6).

W7 reported having had to ‘sack’ her duty solicitor and find her own solicitor. She explained why the second solicitor was much better:

“At least, he listened to me, ...and I could see that he was going about fighting my case. There’s a lot of difference to the other one, ‘coz when the other one came to see me in prison he just came in his swanky expensive suit and he was like, you know, he was just like you know, with his gold watch and just there, like not even bother. Just relax back sitting there like you know, making as though [he was] not interested.” (W7)

W1 and W5 commented that solicitors are generally unaware of the impact of domestic violence on women; that they need training in domestic violence awareness so that they can understand the stigma around domestic violence and be able to pick up on the signs.

On Pre-Sentence Reports

The literature indicates that women defendants are often unaware of their PSR or if they had been given one (Agenda, 2017, p.6). In relation to foreign women, ‘foreign [Black] women often may not benefit from having a pre-sentence report (PSR) that may serve to mitigate their sentence. Their home or family circumstances are thus not always taken into account’ resulting in disproportionate number of black women in prison (Chigwada-Bailey, 2002, pp.86-7).

In this study, opinions on the PSRs were divided. While some women said that their PSR was considered by the judge, and they were able to contribute to the document (W1; W3); others have said that the PSR was prepared but not taken into account (W2; W6). As W2 puts it:

“[The judge] literally had already made his decision without even seeing my pre-sentence report, which was heart-breaking because he didn’t get to see my side of the story, or what type of person I was, what kind of illnesses I’ve had in the past or [that I] was going through trauma service. I was really hard done because, if he [had] got to know my mental illness, my anxieties, my personal life, the trauma that I was going through [and] the abuse I was going through; but I think from the [onset] , he’d already made his mind up; and even through the trial still offered support he just wasn’t having any of it” (W2).

Participants felt that the PSRs should be more individualized and recognise that everyone’s situation is different. Those that had positive experiences related them to their experiences with their probation officer, who ‘actually listened’ to what they were saying. So, generally, their experience of the PSR was good but they felt let down by the Judges who did not take them into account.

On Crown Prosecutors

Little is known currently about the impact of prosecution on the experiences of minority ethnic women in court. Recent CPS (2023) research found disproportionality relating to ethnicity in the outcomes of the CPS charging decisions but did not provide data specifically on women. As with other aspects of court process, there appears to be lack of recognition and acknowledgement by prosecution of the specific circumstances of the minority ethnic defendants in this study. There is little consideration of whether the defendants understood the prosecution side of the process. (See Owusu-Bempah, 2020).

Some of the participants in this study felt that the prosecutors **“are just there to get a conviction”** (W3, W6, W7). W1 commented: **“They’re there to do their job... they just want to do their job. I don’t have any negative views towards them because I feel like what they’re doing is what they’re there to do”** (W1).

One participant referred to it as a **‘production line’** (W7) for the prosecutors, and felt that a lot of times **‘they say things that are not true’** (W3), to the extent that one participant had felt the need to stand up and say something when she shouldn’t, stating that:

“I have two people standing or just sitting there lying about you and you want to defend yourself...” (W3)

On Judges, Magistrates and Juries

Previous studies indicate that minority defendants perceive judges, attorneys, and jurors to be prejudiced (Hyman, 2014). Women defendants feel that judges and magistrates are racist (Chigwada-Bailey 2002, pp.94-97); prejudiced, dismissive of their circumstances (Agenda, 2017, p.6); hostile (Lovatt et al, 2020), or use their case to set an example with women’s sentences in order to deter people (Agenda, 2017, p.6). Black women are constructed by judges as **‘drug carriers’** (Lawrence and Williams, 2006, p.297); judges and magistrates react negatively to women whose dress or hair are unconventional. This also applies to women whose sexuality or racial origins appear to challenge the court (Chigwada-Bailey, 2002). Concerns were raised about the workings of trial by jury. The women who had been tried by jury raised concerns about the gender, ethnic and age make-up of their juries, and in particular concerns that they were dominated by older, white males. (Agenda, 2017, p.6). Scholars have argued that judicial decision-making is influenced by unconscious biases - perceptions, attitudes, stereotypes that produce discriminatory behaviour (Irwin and Real, 2016; Hyman, 2014).

From a different perspective, Jacobson and Cooper argue that judges and magistrates, among other practitioners in the courtroom, try to do their best to help court users, but **“the court process [...] was marginalising and disempowering”** (Jacobson and Cooper, 2020).

Many of these findings were echoed in our interviews. Our participants felt that the judges and magistrates did not care; that they had no idea of the culture and abuse history of the defendant (W2); that magistrates were lay people so **‘this is not the magistrates’ job’** (W3); **‘juries were all school leavers, teenagers, already made their mind up; judge did not care’** (W7), and that **‘magistrates more lenient, judges horrible’** (W6).

The most common comments were around the indifference to their circumstances and the lack of care displayed by the judges and magistrates. W2 commented:

“The [judge] just like I said, he just reached out to me as soon as he saw me. He didn’t want to see me, to want to know me and he turned around and he said when he was sentencing me, he turned around and said, ‘I do not care if you have a mental health issue or if you don’t have a man, I’m going to... the sentence I’m giving you.’ He told me he did not care what I was going to be at the end of my [time in prison] Okay, sadly, somebody died but what about the person in front of you, you’re pushing that person into a hole, what are they going to do next? you know I am suicidal ... I just want to say that if I die, I’m going to write down the fact that the judge didn’t care, just like I felt as though the doctors didn’t care, the mental health didn’t care, nobody cared when I started saying things to them this really was going on” (W2).

W2 continued:

"Like I said, the judge had no idea of what culture [is]; he had no idea of the abuse I've been through for the last five years; he saw the crime being committed, and he saw the people that were involved and had their side of the story ... And anybody would say well yeah I've been through so much ... Look what's happened to them, the trauma that this woman's put ... she needs to be sentenced okay that's fair but listen to the other side of the story, you can't clap with one hand, you know, you have to have two hands to clap but he just did it with the one hand in my story; well, that's not fair ... Yeah, you have to have two sides of the story, you have to, even if that person is in prison, you know, they should have their story put forward through the solicitors, through the barristers and have the judge and the jury and everybody else to see really what that person was going through at the time of committing this crime, what's the reasons behind it and what can we do to prevent this from happening again ... What can we do?" (W2).

On magistrates, there were concerns around whether they have the required knowledge and skills to make decisions in court. W3 commented: *"the magistrates, this is not their job; they have jobs, like they are teachers, doctors"* (W3). But W6 found that *"Magistrates are a lot more lenient. My judge, [he] was horrible. ...I just knew he was going to slam me from the start"* (W6)

"At the end of the day everyone's got a story. No people are just born [bad]. There's always something that just happened to them that [led to it]...." (W6).

Another comment was on the Jury. According to one participant, *"they looked really young, so, not sure of their experience and knowledge but also, they were all white"* (W7)

On Sentences

Previous research has shown that minority ethnic women are more likely to receive a prison sentence and generally more punitive sentences than other offenders (Smee, 2013, pp.24-5; Chigwada-Bailey, 2002, pp.86-7; Battle, 2016, p.128; Lammy, 2017; Prison Reform Trust, 2017; Thomas, 2017; MoJ, 2016). Phillips and Bowling (2003) argue that minorities are more likely to be remanded because of social inequalities resulting from *'racially discriminatory social practices'*, and those remanded more likely to then be sentenced to custody (Phillips and Bowling 2003, p.279). Chigwada-Bailey (2002) notes that *'when the defendant is black, offences are more likely to be described to courts in such a way that they come into a more serious category. [...] So black on white crime is likely to be sentenced more severely than either white on black or black on black crime, again suggesting that race is a factor in criminal justice decision-making including sentencing'* (Chigwada-Bailey, 2002, p.87). Unsurprisingly, minority ethnic women defendants often perceive sentences they are given as unfair and too harsh (Chigwada-Bailey, 2002; Agenda, 2017; Lovatt et al, 2020).

In our interviews, the women commented that *"the sentence was too long"* (W2); that it was *"longer compared to others"* (W7); that the *"sentence was not fair"* (W1; W3; W7). and in one case, *"the sentence was fair, but I feel like the life licence was very unfair; it was unnecessary because I felt as if he's making me an example of"* (W2)

W2 commented on her sentence:

"They gave me 14 years. [He] gave me [two] lots of seven running concurrently. Also, he gave me a life licence, which I found was really unacceptable because of what I've been through and what I was going through at the time. And it really [made] me actually quite suicidal. I couldn't get it out of my head that I had 14 years to do. [It] wasn't clarified for me and explained to me that you're just going to be doing seven years [instead of] 14 years... and then an officer came, and she explained to me the process [that] it's just seven years. [My lawyers] appealed but I haven't had a year taken off. I don't quite understand that, because I've already [done] almost [a] year anyway, by the time ... [They took] consideration of the year, seven years they gave me and then it came down to six. The sentence was fair, but I feel like the life licence was very unfair; it was unnecessary because I felt as if he's making me an example of" (W2)

There was a general feeling among the participants of a lack of consistency in sentencing and, more importantly, that personal circumstances were not considered. This runs parallel to the comments made regarding PSRs being produced by probation officers that were ignored by the courts. There seems to be a feeling that their sentences were unfair because PSRs were not taken into consideration in sentencing.

W2 likened the experience to that of:

“sentencing somebody who you don’t even know, when you’ve not read anything about them, about their past life, about that trauma relationship” (W2).

On Court experiences

This study supports findings from previous research that found women feeling that their voices were not heard in court; confused as to what was going on, had concerns about racial and gender bias in jury decisions, amongst judges and in sentencing; and language difficulties as a key barrier to their participation (Agenda, 2017; Lovatt et al, 2020; Chigwada-Bailey, 2002; Hyman, 2014). Previous literature also comments on invisibility to the court (The Lovatt et al, 2020; Chigwada-Bailey, 2002); discriminatory practices and criminalising discourses in the courtrooms (Lawrence and Williams, 2006).

The participants in this study also found being in court nerve wracking and alienating. They did not know what was going on and did not understand the process. They spoke about the conversations that constantly went on between the Bench and the Clerks which did not include them, and which made them to feel even more isolated. They felt like they were not given any chance to challenge or question what was being said about them. This was exacerbated by the women’s perception that their lawyers were not on their side because they did not challenge what was going on. The comments included:

“I’m sweating boxes ... [it’s] like being caged... it was horrible. the system is just really unfair, I felt let down at every point. I don’t have any one on my side...I just feel like they already made the decision before even speaking to me” (W1).

“Every time I can physically move, I just felt like every [move] that I was making was being recorded or was being judged ... my opinion did not count” (W2).

“And the talk that goes on between the bench, it’s awful; you can’t hear anything they’re saying, they’re whispering to each other ... it just makes you feel very nervous like, once again, like you have no control over and the clerks yeah they are very loud, they say what they think[they] have decided what to do with me.. I don’t even know, I [just] sit down yeah and the people decide what to do with [me]” (W3)

“Horrendous.... the judge has already made up his mind, the solicitor did not want to hear what I was saying.” (W7)

“I felt let down at every point - I didn’t have anyone on my side. I just feel like they already made the decision before even speaking to me, not given a chance to explain” (W5).

All the participants spoke of being misunderstood in court. Their comments included:

“I was misunderstood.... My opinions do not [count]. ... I committed the crime, you know, I deserve to be punished, but I also deserve to [be understood] but I never got that... [Every time] that the judge turned around and said ‘Oh, she has no remorse’ because there was nothing there like with my face features because I was so scared [that] if I made one false move [he] will take that as something... [But] I was really, really sorry how I have affected so many different people because of my actions, but I was genuinely sorry, like, I have to [live with] this [for] the rest of my life and only I know what I’m going through” (W2).

“I thought I was [being] punished for being a victim already - a victim being victimized by the system or not standing up to my music, you know what I mean yeah?” (W1)

“I feel completely misunderstood ... I just feel like they already made the decision before even speaking to me. It just didn’t seem like even when certain things were said [like] I said there was a knife and then he proceeded to tell me to be quiet ...there was never any chance to explain what I’m going through.” (W5)

“Yeah misunderstood 100% simply they see me as an Asian female in Birmingham. She probably knows everything; she’s had a major part in this and she’s just covering up for her co-defendant.” (W7).

Participation in the courtroom

Previous research has identified multiple barriers to effective participation in court (Owusu-Bempah, 2018; 2020; Fairclough, 2018; Jacobson 2020; Hunter 2020; Jacobson and Cooper, 2020; Jacobson et al, 2015). Several studies have shown that defendants are routinely silenced in court (see for example, Carlen, 1974, 1976; McBarnet, 1981). Agozino (1997) argued that black female defendants are typically discouraged from speaking in court.

Our participants commented that they were “not allowed to talk” (W3); “not able to talk” (W2), “felt excluded” (W3). As W6 puts it “you just drag on. There’s no [one] you can call in case you [are] feeling suicidal. There’s nothing like that”.

W3 commented further:

“When you are me, especially at magistrates, you can’t talk. like things have been said about you from the prosecution and you want [your lawyer] to defend you but you’re not allowed to talk. You don’t really have chance to speak to anybody, [all the] talking goes on, without you.... it would be good if the judge could talk directly to [you]” (W3).

Similarly, W6 added:

“The Judge was directly in front of me, but there was never.... No, I think he might have told us to be quiet at one point, because something was said [that] was just ridiculous, and then he just told us to be quiet. But I definitely think people should be given the chance to speak, even if it’s not going to trial. You know what I mean? No one can represent yourself better than yourself. You were there. You know what happened. Do you know what I mean? And I think you should definitely [be asked] Is there anything you want to say? Well, yeah, actually, I’d like to say this before you take my life away from me...” (W6).

W7 said that her experience in court was overwhelming, and that it felt like watching a TV programme:

“It’s just kind of what I’ve probably heard a little bit of watching like The Bill or, you know, TV programmes... Just like you know, simple things like that, but nothing was explained to me.... So, you just go with the flow you know” (W7).

Support received; support needed.

Previous literature has commented on the lack of institutional and informal support for minority ethnic women in the criminal justice system (The Lammy Review, 2017; Chigwada-Bailey, 2002; 2005; Agenda, 2017; Prison Reform Trust, 2017; Bowling and Phillips, 2007; Corston, 2007; Lovatt et al, 2020; MoJ, 2016). There is lack of consideration for mental health and abuse (Agenda, 2017, p.10). Judges, lawyers, and other court professionals do not understand the culture of individuals, their personal circumstances, and issues (Lovatt et al, 2020; Chigwada-Bailey, 2002).

Similarly, in our interviews, the majority of the women felt that they received no support at all during their trial (W1; W2; W5; W6; W7). Most of the comments focused on the disregard for their mental health and histories of domestic violence and abuse. Some had experienced traumatic childhood and domestic abuse circumstances leading to mental health issues that were never taken into consideration during trial. W1 commented: “**[The system] just focus on that you’re a criminal not why you did it nor the reasons behind it**” (W1).

W1 and W5 commented on the need for mental health assessment:

“Obviously the mental health thing, I think people need to be assessed properly before they’re even allowed to make decisions about trials or anything like that” (W1); “the mental health thing [...] people need to be assessed properly” (W5).

W6 also commented on the lack of mental health support for women, and she considered it a problem for the criminal justice system, including the police. She explained her experience thus:

“I had mental health that was never looked at. There was never any support from police or anybody, to recognize that I had...I’ve got personality disorder, I now know, but I’ve had that from a kid, from trauma that I’ve been through. But there was never anyone that was just like. ‘Oh, let’s get some help or let’s get someone to come and see’ ... It’s just ‘You’ve done this now; you must be a criminal’ [It] is just [what] to do with you’... Do you know what I mean? So, nobody really listening... [or] understanding the signs as well and then just looking at actually [whether I] need any support. I need it. And [my] kids, that’s why they got adopted, because no one would have them. They just had me. It was just always me. But then I had obviously my partner... he was horrible, and he added a lot of pressure to it. But he was always ... he was just... he wouldn’t leave me alone. He was abusive, back [then]” (W6).

W2 felt that if mental health support had been in place for her, including from the police before she committed her crime, the crime never would have happened:

“Nobody cared; every single door was getting closed before I committed a crime, every door, the police, the doctors, everybody was closing the door, nobody was helping me ... I know for a fact that [if] that hospital had the right medication and [I] got the right support from the police.... [that would have] stopped the process beforehand. My family had already made it very clear to the GP really clear to the mental health people that something’s going to happen. Look, we were trying to get support and they didn’t... even the police didn’t help me; they just sent me home [...] I just wish that [I had received] more support from like mental health or the GP prior to why we did what [we did]. I was so confused and so unwell.....I’m not blaming illness [for] my actions and what I did, but it was all of a build-up of physical, [and] mental abuse [by] an ex-partner and it went on for 12 years and, sadly, at the end of all of that, with the build-up I ended up committing my crime” (W2).

Similarly, W5 said that she had a history of domestic abuse that was disregarded by the court:

“I was [in] an abusive relationship; I was black and blue ...and to be honest that was never taken to any consideration” (W5).

W3 who was dependent on drugs said that she wanted to go to prison in order to get the support she needed:

“My lifestyle is my defence. I was in a very bad way, so this was a time that I wanted to go to prison because I need to know who I could go to for help. Do crime and then go to prison and get support I needed there..... And it’s true because it went like I’m drug free and I’m a completely different person, but I don’t think I would have got that support, and so I went to jail” (W3).

This view was echoed by W2 who described how she had to reach out to get support while in prison and how this helped her to develop confidence and independence to survive on her own.

W3 said that although she received support in prison, Anawim also played a big part in her recovery. All the participants acknowledged the value of voluntary sector organisations in providing support to women caught up in the criminal justice system, referring specifically to the support that they have received from Anawim that has enabled them to re-shape their lives. In this regard, W2 talked about the importance of specialist agency support to always be available for women from diverse cultural backgrounds with complex support needs:

“Because, culturally, we have to live two lives because it’s the Western side of life [and] the cultural side of life and you get confused at times. To try to balance that out it’s very, very difficult in itself, but when you come to places like this, [Anawim] you get that support. You get that understanding of outreach.... [it’s] awesome... trying to help you build your life back up.... they’re just holding your hand; you can do this and ... the most important thing is it’s your personal choice yeah... Those women that came [from prison], majority of them were there because of a man. I was there because of [a] man...where’s their support, you know, when they leave? I was one of thousands and millions that got the support and I won the lottery by coming here, you know, I was very, very, very lucky, what about all of them [other women who didn’t get support]? now on the street....they deserve a second chance...second, third [or] fourth but there’s nothing there in place; absolutely nothing ... for drugs and alcohol and rehabilitation, [to] get them back with their children and give them all that support” (W2).

W2 also emphasised the importance of the support being tailored to specific cultural and religious backgrounds and needs:

“Every culture should have a support network as soon as [she] walks through the door. So that they’re not walking in like heading for the death..... you know... And that support should be there for them, and they should get support with the mental health, with education, with medication, with their religious beliefs” (W2).

W7 thought that there need to be support agencies for women to assist them during the court process: *“agencies that support women, [...] talk to women and have women talking to them from agencies that can support them [...] can then basically stand there taking notes and then speak on her behalf and explain everything” (W7).*

W1 also thought that there needs to be someone to speak to when you have just received your sentence:

“[...] There should definitely be someone that we should be able to speak to [as] women especially as you’ve just been given four years, and you know you’re not going to see your family” (W1).

Finally, W7 commented on the need to have someone to explain to the defendant what to expect and what is going to happen in court:

“Yeah, obviously there should have [been] someone to actually kind of explain the process to me like before I was actually in court, you know, knowing I’ve never been in a situation like that before..... [I] assumed that the solicitor will do everything, but I think there should be somebody in the courts that’s like you know... even like training solicitors that are learning and stuff so where they can actually come and speak to people and say, ‘look do you know what’s gonna happen? Do you know what’s happening today? Or do you know the process? and you know and even like say before the actual whole court case when you’re first kind of arrested and then you’re taken to court [...] Before you go in front of the judge, I mean they should have had people in place, someone and a female or someone there.... who’s already been through the system [and] could kind of give you little breakdown or what’s gonna happen, at least to put my mind at ease a little bit” (W7).

Barriers after release from Prison

Minority ethnic women face the same barriers in accessing services to help them alter their lives and in resettlement on release from prison as white women, but they are further disadvantaged by racial discrimination, stigma, isolation, cultural differences, language barriers and lack of employment skills. A report from charity Working Chance found that ‘women of colour with criminal records face tougher challenges in securing jobs, progressing in their careers, and getting their lives back on track than white women in a similar position’. They found that Black women are facing the greatest hurdles after release from prison (Robins, 2021). In another study carried out on the needs of women from minority ethnic groups leaving HMP Holloway in 2013, supported by St Mungo’s, most of the women had at least three support needs recorded by their workers. Almost all the women (94%) had support needs relating to housing (43%), drugs (31%), and education and employment (29%). There were more women in some form of temporary accommodation than there had been prior to entering custody (Prison Reform Trust, 2017, p.30).

The Corston Report has argued that **“more effort is needed to promote diversity in criminal justice agencies and to reach BME and other minority groups of women”** (Corston, 2007, p.27).

Gender or Ethnicity?

The literature indicates that the effects of race on the court process and sentencing is not always obvious. Kramer and Wang (2019) argue that 'Race operates through direct and indirect pathways to cause more punitive sentencing outcomes for Black female defendants compared to White female defendants' (Kramer and Wang, 2019, abstract). These outcomes are perceived by the defendants feeling that their ethnicity has had an effect on their sentence (Agenda, 2017, p.11).

Some of our participants felt that their ethnicity affected their experience in court (W2; W3; W6; W7). W2 commented: *"because of my ethnicity, because I was Pakistani [he] just wanted to make an example of me"* (W2). W7 also felt that court officials made racist assumptions about minority ethnic people:

"I just think that the courts, especially Birmingham magistrates and Crown, they see a lot of Asian people coming through the court... Offences are related around drug offenses, so they just assumed that every male or female that's gonna come through there that are black or Asian. ... They've done it. That's it. They're guilty of the crime" (W7)

However, when asked which factor explained their experiences most, gender or ethnicity, the responses included:

"Probably both, but a lot of the woman.... A woman, they expect you to be cooking cleaning, give [birth] to kids; I think you get a sentence extra [for your] offences because they teach you a lesson yeah?...: I was just gonna say I've had it mentioned in court I should not be doing this, how [I] am meant to be a mother. But that shouldn't affect what I get. It is about the crime yeah?" (W3)

"It's both ... when it comes to authority, it definitely is... It's like, I said. I've been beaten up as a female by [police] officers calling me a black bitch and all these things. And then, when we got to the police station, I'm ready to fight [them] myself, to be honest, because I'm really heated... ' You know that you've been saying all this to me. on the way here?' ... and then they just beat me up.... being a woman, just because I'm a woman I shouldn't be treated harsher" (W6)

"Most definitely both. Simply, they see me as an Asian female in Birmingham. She probably knows everything; she's had a major part in this and she's just covering up for her co-defendant" (W7)

"[On] the whole I'd say there's probably more female thing" (W1)

Studies have shown that the treatment of women in the criminal justice system is affected by patriarchal gender stereotypes (Gelsthorpe, 2004; 2010); that minority ethnic women defendants are concerned about the gender makeup of their juries (Agenda, 2017, p.6) and that gender bias and hostility affect their sentence (Agenda, 2017, p.11; The View Magazine, 2020; Chigwada-Bailey, 2002). However, critical race theorists remind us that gender is not experienced as a discrete category (Crenshaw 1992, p.412-13); the intersection of race, class and gender relations makes these women uniquely vulnerable (Agozino, 1994; 2018). The Prison Reform Trust (2017) has argued that 'the disadvantages all women face with the criminal justice system [...] are compounded for Black, Asian and minority ethnic women. (Prison Reform Trust, 2017, p. 3).

Chapter 5(b):

CPS Officers on Prosecuting Minority Ethnic Women

The Crown Prosecution Service (CPS) prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales. According to the CPS website (CPS, 2022) the CPS performs the following duties:

- decides which cases should be prosecuted;
- determines the appropriate charges in more serious or complex cases, and advises the police during the early stages of investigations;
- prepares cases and presents them at court; and
- provides information, assistance and support to victims and prosecution witnesses.

Crown prosecutors work with the police on these decisions and may ask the police for more evidence if needed, while the suspect will sometimes be released on bail. In less serious cases, which account for around two thirds of all criminal offences, the police make the decision about whether a suspect can be charged with an offence (CPS, 2023). In more serious cases, the charging decision is made by the CPS. In these cases, the police will conduct an investigation and send a file to the CPS only when they think the case against the suspect is strong enough; that it has the potential to pass the CPS charging test. The Crown Prosecution Service takes the decision to charge the suspect in the vast majority of cases which are sent to them by the police. Between July and September 2022, they charged the suspect in 79.4% of cases which were sent to them (CPS, 2023).

Previous research suggested that there is a disproportionality in relation to ethnicity in the outcomes of CPS charging decisions (see Mhlanga, 2000; Barclay and Mhlanga, 2000; Taylor, 2009; Denman, 2001; CPS, 2023). It was therefore crucial to understand the views of crown prosecutors on prosecuting cases where the defendants are minority ethnic women. Five crown prosecutors were interviewed for this study. They were asked questions about the extent to which factors of ethnicity, race, and gender affect CPS decision-making, particularly when the defendant is a minority ethnic woman. Questions were asked on how these factors impact on decisions to prosecute, decisions on appropriate charges, and out of court disposals. Questions were also asked about whether the impact of sentences on defendants could be recognised as a 'public interest' criterion and the challenges that Crown Prosecutors face when charging minority ethnic women. In addition, the participants were asked to recall cases that they have been involved with or aware of where the gender and ethnicity of the defendants were issues and what happened in those cases. Finally, the participants were asked about their thoughts on what could be done to ensure that minority ethnic women are able to participate effectively in their trials and also have a clearer understanding of CPS role and decisions, and the court process.

Characteristics of the participants

Three out of the five crown prosecutors interviewed dealt with cases in crown courts only, and the remaining two predominantly in magistrate courts. The participants' ages ranged between 25 and 54 ('25 plus', 37, 40, 48 and 54). All five participants were women. Two of the prosecutors identified themselves as white British, one of Pakistani origin, one Indian and one Black British (Caribbean). Years of experience in the profession ranged between 'almost 20 years' to 'one year experience plus two years as a paralegal' for the youngest of the participants.

The Equality Act 2010, decision to prosecute, gender, race/ethnicity, or nationality.

The first question asked was: "The CPS is bound by the duties set out in the Equality Act 2010 to eliminate discrimination and promote equality across all protected characteristic groups (age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation). How does this work in practice when deciding which cases should be prosecuted, especially in relation to gender, race ethnicity and/or nationality? In other words, when you are thinking about, deciding which cases should be prosecuted, is there anything that you take into consideration when you're dealing with cases involving women from minority ethnic backgrounds?"

In answering this question, all the participants stated the primacy of the Code for Crown Prosecutors in the decisions of the CPS to prosecute. The Code states that when deciding whether to prosecute a criminal case, Crown Prosecutors “must follow the Code for Crown Prosecutors. This means that to charge someone with a criminal offence, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction, and that prosecuting is in the public interest” (CPS, 2022).

As CPS1 puts it:

“The two stage tests, obviously; we’re looking at the evidential side of things first of all, and then we look, to see whether [there is] public interest... [with regard to] the public interest, considering the interests of the victims, the seriousness of the offence, and whether a prosecution is needed in that particular case.”

Similarly, CPS2 said that CPS policy is to follow a two-stage testing: the evidential stage and then the public interest stage. In terms of the protected characteristics, she said ‘age’ stands out “because we’ve got different policies for youth”. However, with regard to ‘race’ and gender:

“I [would] say you don’t always. You often don’t know the ethnicity of the person unless it’s obvious, and even then, you’d be making an assumption. So, our policies and the way we are taught to deal with cases are very much in a two-stage testing. You approach the evidence first. And then you approach the public interest. You try to be as objective and fair as you can and at the end of the day you can only prosecute a case if there is sufficient evidence anyway, regardless of any other factors and then you go on to consider the public interest.” (CPS2)

CPS3 added:

“[...] I don’t generally like to look at, you know, the gender or whatever ... to apply fairness to a case, you have to look at all people equally [...] So generally speaking, we wouldn’t take into account, you know, specifics.”

CPS4 also said that ethnicity does not really matter when applying the Code because:

“Everybody is treated the same, doesn’t matter who, what age or anything, it all comes down to whether it passes the code really... that’s the policy for you. And there’s never been an issue in terms of this. If it’s somebody of an Asian origin or anything like that, it’s always the code.”

According to CPS5:

“Sometimes we won’t have any information on someone’s ethnicity or race, just because it’s not relevant to the charge or relevant to the complainant describing it. Even when we do have that information, from my experience, it doesn’t make a difference when we’re deciding to charge.”

However, the participants mentioned that in certain circumstances, gender and ethnicity could be factors taken into consideration when making decisions to prosecute. Hate crime was cited by all of them as one of these circumstances where it might be considered necessary to prosecute on the grounds of the ‘race’ or gender of the victim.

According to CPS1:

“So, your disability your race, your religion, sexual orientation, transgender identity [are relevant] in terms of looking at [the case] from a victim’s [perspective]”

CPS5 added:

“If for instance we’re considering hate crime then obviously it is quite relevant because we’re then looking at if someone’s race played a part in the offence”.

In CPS3’s view, in cases of hate crimes it could also be about whether the defendant’s background, for example, the fact that they were subjected to racist bullying or harassment led them to commit an offence:

[..] “Or if they are making remarks about somebody’s sexuality... So, it does then become important in those cases, and it’s important for the police then to investigate. For example, they’ve been subjected to some sort of harassment, bullying because of their background or their ethnicity or disability and then they’ve reacted in a certain way and committed an offence. So, you take that all into account when you’re making a decision. So yes, in certain cases, you would take it into account.” (CPS 3)



CPS2 added that 'race' and gender can also be relevant in cases where the defendant is a victim of modern slavery or human trafficking.

Thus, 'race' or gender can surface in terms of the vulnerability of the defendant or type of victim. In such cases, 'race' and gender will be public interest criteria. According to CPS2 the public interest criterion has recently become more of a priority and can be considered at an earlier stage:

"It used to be you had to literally go through the hoops of checking all of the evidence first before you even then went on to consider whether it was right to prosecute that person. Now you can bring it in at an earlier stage. if you have got someone who is obviously vulnerable and it's obvious, whatever the evidence, it's not a particularly serious offence, and you know they've got significant problems, you could." (CPS2)

Deciding appropriate charges: gender and ethnicity

Participants were then asked whether in the light of research findings that have shown that the reasons for offending by women generally and minority ethnic women in particular are different from those of men, gender and ethnicity should be given some consideration when deciding the appropriate charges for minority ethnic women.

Some of the participants agreed that women's offending and minority ethnic women in particular, could be triggered by particular social and personal factors. According to CPS3:

"I've got cases with domestic violence in the background. So, they've reacted towards partners in a certain way...And cases where mental health features a lot as well; for people in that category, they do fit in with the studies that have come out... You'd recognise all that, but you'd go back to the criteria that you've got to go through anyway."

She cited an example of a fraud case where the defendant had stolen money from an employer:

"She's female, but she's still stolen thousands of thousands of pounds...And, yes, we'll take into account her family background, any reason, the debts, and everything. But then again, if it was a male, I would take account of his family background and so really there wasn't anything particular about her apart from the fact that she was a female. She was in a position of responsibility within the company, trusted. Had she been a male and trusted, it would have been the same. So, I just couldn't see how I've treated her any differently really because in those particular circumstances, there wasn't anything special about her" (CPS3)

CPS4 also thought that gendered reasons for offending should not be considered when deciding on charges; appropriate charges will only depend on the application of the Code. She said:

"I don't think so. It all comes back to the Code for Crown Prosecutors, and it is trying to be fair and impartial [...] because they're women, is that what you trying to ask? It wouldn't sit right with the Equalities Act either, would you say?"

CPS5 expressed a slightly different view. She thought that gender and ethnicity might be considered but only to the extent that it meant a different lived experience that played a role in behaviour:

"Yes, to some degree, because we've had different lived experiences which can influence our views and then behaviour... I can't think of a case example where I felt, looking at the charging and how we dealt with it, it was entirely relevant to consider that you're a black woman and you're an Asian woman; that's never going to be fair when we're applying our code. We are also definitely going to consider what could play a factor as to how your behaviour may have presented itself... and also consider, sometimes, witness statements, how somebody else may have perceived your behaviour; often from how a witness described an incident, you can sometimes pick up if there's some kind of prejudice...which [can be] helpful."

CPS1 also felt that gender and ethnicity might be considered when deciding on appropriate charges where the defendant is suspected to have been recruited into gang related offences (for example, county lines offending):

“Recently there’s been quite a big shift in relation to gang related crimes, how in gang related cases, women and girls have been forced [or] groomed into committing those kinds of crimes. [...] [Some] suspects [are] particularly vulnerable; have they been forced into committing these crimes? ...So, when we’re dealing with those sorts of specific types of cases, what the lawyers are doing is looking, sort of, beyond just the criminality of that individual.”

CPS2 emphasised the ongoing duty of crown prosecutors to review every case. This means that if something comes to light that they were not aware of, or they have some concerns about a case and want more information, and it might be ethnicity they want to know more about, they would try to obtain more information by talking to the police, the defendant’s legal representatives, or social workers.

CPS2 also noted that sometimes crown prosecutors do not have all the information they need to decide on appropriate charges because of advice given to the defendant to not respond in interview:

“You then haven’t got a crystal ball; that’s why it’s really important that we do have that flexibility to review, and it isn’t a question of saying, well, we got the decision wrong. It might just be that something comes to light later on that we couldn’t possibly have foreseen. Or we might have foreseen but couldn’t take into account because it wasn’t before us... we have to approach each case fairly. Our primary concern is selecting the right charges for each case. It doesn’t mean necessarily prosecuting the most serious offenses, and it doesn’t always mean prosecuting. You might divert somebody.”

Lesser charges, cautions and out of court disposals: gender, ethnicity and class

Participants were asked: “Under what circumstances would the CPS recommend an out-of-court disposal (OCD) or select a lesser charge? Considering the fact that the reasons for offending might be different between men and women, can gender or ethnicity be a factor for consideration in OCD decisions?”

All the participants said that the seriousness, extent, or severity of the offence is the most important factor in whether an OCD can be recommended; it is very unlikely that an OCD will be offered in cases involving “rape, serious sexual offences or violent offences” (CPS4)

When deciding on OCDs, crown prosecutors must consider whether it is in public interest to recommend one. Both CPS1 and CPS5 said that OCDs are more likely to be considered for young people in cases of less serious offences, to try to divert them from prosecution, especially where they are first time offenders.

According to CPS1:

“Especially in relation [to] young offenders we know from involvement with our youth offending teams that if we divert them out, they actually get on the intervention much quicker.”

However, according to CPS5, OCD will not be offered for knife crime “because we’re trying to stamp out knife crime, so it is not likely that we’ll recommend out of court disposal if you’re carrying a machete” (CPS5).

CPS2 said that it is important to look into the background of the defendant when recommending a lesser sentence or OCD. In this context, various factors may be considered. CPS2 and CPS3 said that previous convictions are very important in these considerations. A defendant with a previous conviction is less likely to be considered for an OCD or lesser sentence. However, OCD may be offered if the defendant was a victim of domestic violence or trafficking. But “you wouldn’t make a decision based purely on ethnicity, [although] you are aware of the fact that certain ethnic groups may have pressures than others;” (CPS2).

For an OCD to be offered, the defendant must fully admit the offence. CPS5 mentioned the fact that minority ethnic defendants are less likely to admit to an offence which makes them less likely to be eligible for an OCD.

CPS5 recalled that even where all criteria have been fulfilled and the CPS recommends an OOC, it does not automatically mean that it will be offered to the defendant:

“At the stage of arriving in court, it [is] not solely in our hands, the court can refuse it, which they have done on multiple occasions, because from their perspective, they fear as you’ve taken the entire matter to court [it is] now too late for you to revert back to not getting a conviction”.

The impact of a sentence on a convicted offender

The researchers wanted to know whether the impact of a sentence on a convicted offender should be a public interest criterion. This question is asked in the light of research findings that have highlighted the disproportionate negative impact that sentencing could have on minority ethnic women; for example, the ostracization of South-Asian (Muslim) women returning to their communities after the completion of a prison sentence. (See the Corston Report, 2007; Prison Reform Trust, 2017; Agenda, 2017; Chigwada-Bailey, 2002).

Three of the participants (CPS2, 3, 5) said that this is a matter for the judge/court, not prosecution and that courts have sentencing guidelines that are used to make such decisions. All the participants maintained that the roles of prosecution are to present their cases fairly and make sure that the courts have all the relevant information needed to help them make their decisions. Attempts are made to provide the courts with all they should know about the defendant that could/would affect sentence; including any history of mental health problems or if someone has been trafficked (CPS2) or there is any evidence of exploitation (CPS1).

CPS3 cited an example of where the impact that a punishment might have on an offender could be highlighted in a victim’s impact statement. She said:

“for example, if it was a lady from ethnic minority and she’s offended in a particular way but sentence is going to have an impact on her, then you can have victim impact statements from family members who want the court to be lenient towards her [...] I have several cases where family members have written letters to the judge to say, you know, can you be lenient because this was, you know, out of character for this person. She had this and that stress and the impact that custody will have on [her]. And so, we don’t hide that; we are very transparent. We actually give the court any information that will help in that regard.”

In addition, the participants noted the fact that impact of punishment on the defendant would be highlighted in probation reports (PSRs) anyway. (CPS4, CPS5).

Challenges faced by CPS when suspects/defendants are minority ethnic women

All participants identified language barriers as a challenge both for the defendants and court officials. Not speaking fluent English makes it difficult for non-English speaking minority ethnic women defendants to participate fully in court proceedings, understand the charges, the process and decisions that are being made. Sometimes no arrangements are made for an interpreter or made at the last minute. CPS1 commented:

“[...] I think it starts right back at the police station when they’re being interviewed. You know [they] should have an interpreter present for when that suspect was being interviewed. Have the police arranged for [an] interpreter? And we often see, as you know, it’s sometimes a little bit of a sort of last minute scramble for an interpreter [to] be present for the first hearing; especially if it’s an overnight remand case; if they’re to appear before the court on perhaps Saturday morning, it can often be quite difficult to ensure that the police have actually made [arrangements for an interpreter] and she’s going to turn up. [Otherwise] we then have to use the telephone service in court, which is less than ideal, and obviously if it’s a significantly serious offense, then, you know, it can be quite difficult..... to really make sure that they actually understand when someone’s just shouting over the loudspeaker. And so, I think that that’s probably one of the main frustrations in terms of them being able to participate.”

CPS1 said that language barriers can be a difficulty for the prosecution and defence as well, as they need to be able to communicate with the defendant and *“to actually review the material with them. Without the real assistance of an interpreter; that could create some problems”* (CPS1). But, according to CPS2, unfortunately *“you get a lot of defence solicitors who will say, ‘Oh my client understands, they understand anything’. I’m not sure they do.”*

Sometimes an interpreter has not been properly vetted or accredited, according to CPS4:

“[...] we’ve had incidents, haven’t we, where people have been instructed to interpret, but they’re not accredited or vetted properly. It is about making sure we have the right people for the right language [and] making sure what they’re interpreting is correct.”

Absence of legal representation can also be a problem especially when the defendant has language issues as discussing the case, serving paperwork, and providing access to information become difficult:

“If you’ve got somebody who’s got issues in terms of language and background, and then they haven’t got legal representation, how are we going to discuss the matter and serve our paperwork [...] And also access to videos and things... that makes it very difficult. So, it’s in our interest as well as theirs to make sure that they are properly legally represented, that their representative has all the information [...]” (CPS3).

CPS5 remembered a case where they had to translate papers they were sending out into the defendant’s language:

“I’ve dealt with a situation where [there was] language barrier and what we did. I remember reading it with management. It was basically, transcribing, you know, to their language and that’s how we sent out the papers.”

CPS1 added:

“[...] I do know that legal advisers often appear to be frustrated in court when we’re dealing with an interpreter case, especially on a Saturday, it always seems to be a Saturday when it’s a problem. I think that’s probably the biggest frustration; just making sure that the people [are] there at the right times. I’ve seen first-hand myself, you know, when the interpreter hasn’t turned up, and we had to arrange another day because it’s just absolutely impossible to get anything done.”

Thus, making sure that interpreters are always available when needed was considered by the participants to be essential in the courts to ensure that black, Asian and minority ethnic women understand the charges made against them, effectively participate, and have a clear understanding of the court process and the decisions made.

According to CPS2, in Crown courts, experienced district judges usually can see and tell if the defendant does not understand and cannot participate in the hearing. In Magistrates courts this is not always the case:

“[...] In the Magistrates Court it would probably be down to the prosecutors [to] say I don’t think this person understands, whereas in a Crown Court or in front of a District Judge, the judge would probably take the initiative.” (CPS2).

The second challenge is when the defendant, for cultural or religious or other reasons, is not willing *“to provide all of the information which perhaps potentially assists their case.”* (CPS1). Sometimes information about the defendant having been trafficked, or having been a victim of violence or exploitation, is not disclosed by the defendant to the prosecution. However, under the new director’s guidance on charging, version 6 (2020),

“solicitors are encouraged to make disclosures outside the interview and to try and liaise with either the police investigator or prosecutor before charge. So, that is a way that they can raise issues outside of the formal interview process, which I think is quite a good thing.” (CPS2).

CPS2 also mentioned her concerns when the defendant is accompanied by someone to the court who may be their abuser.

“[...] somebody is perhaps exploited or trafficked; they are charged with [a] crime but they turn up with their abuser or you think they may be their abuser and you wonder.”

CPS5 noted that because the relationship between the police and minority ethnic suspects are not always good, *“so, the challenge often is what’s happened behind the scenes in terms of how they were arrested and then charged.”* (CPS5)

Finally, another factor mentioned by CPS3 was the importance for the CPS to get the full information from the police to be able to disclose it to the defence so they can help the defendant as well as the victim. According to CPS3:

“with regard to mental health backgrounds, I always ask the police if there is that sort of background to get the information so we can disclose it to defence so they can get expert reports done, you know, to help the person really. It’s. I mean, really, with our job, I always see as we’re sort of in the middle between the police and the defence, there to help both sides to make sure that we get a good result for the victim, but also to make sure it’s a fair result for the defender as well.”

However, CPS3 said that in some specific cases the police are not always willing to provide all the information needed unless prompted by the CPS. But, because *“They don’t want an appeal later on, on that basis, so, they will help, and they will get that information for you.”*

Previous experiences of cases where defendants were minority ethnic women.

Participants were asked to think about specific cases, (obviously without breaching any confidentiality) and state whether from their own point of view and experience, there were particular issues because the defendant was a minority ethnic woman.

Examples cited by CPS2 included organised crime cases where it was important to understand the female defendant’s involvement and role. CPS2 mentioned drugs cases, organised handbag thefts, conspiracies, and county lines. However, the defendants CPS2 have dealt with in such cases were minority ethnic boys, not women.

CPS3’s examples relate to joint enterprise cases where minority ethnic women were found guilty of offences that they did not directly commit themselves. Previous research has suggested that there is a possibility of wrongful convictions for women in joint enterprise cases (see, for example, Clarke and Chadwick, 2020, p.33). CPS3 reflected on her experience of joint enterprise also in drug dealing cases where the male dealer has used the female partner’s house to hide drugs. She commented that in such cases the CPS would consider if the male and female are in a relationship, and this would have an impact on the decisions the CPS makes:

“[...] if we did have a joint enterprise, we would take into account the fact that they are in a relationship and any pressure that [was] applied from the [male] partner to [the female] to overlook [...] for example, if they’ve got drugs in the house. Where both the male and the female have been brought in as a charging decision you would take into account the relationship and the background, previous convictions [and] any intel that you have on them when you’re making your decision.” (CPS3).

Another area mentioned by CPS3 was mental health. She recalled several cases involving minority ethnic women where the defendants had mental health issues:

“I have got several cases that are involving women, from ethnic minority backgrounds. [...] For example, [the defendant] has mental health issues and she was in a hospital where she attacked another patientthat person died subsequently. So, it’s a serious case, but her mental health issues are very important and do impact the way the case is proceeding through the courts.”

In another case, the defendant’s PTSD (Post Traumatic Stress Disorder) was taken into account by the court:

“[...] she drove her car at a person at her ex-partner’s. That case went to trial on that one and she raised PTSD ... because she has been a victim of violence from that person before. And the jury did take that into account. So, they convicted her not of attempted murder [but] of section 18, because they took into account the background that she gave” (CPS3).

CPS5 recalled a case where a minority ethnic woman’s ‘lived experience’ was considered as a public interest criterion against prosecution. The defendant, a Black woman, was charged with obstructing a PC in the course of their duties and driving without insurance:

“[...] a Black female in the middle of the night was driving. The police conducted a random check on the vehicle realized it had no insurance and pulled her over. She was communicating with the officer [but] refused to roll down her window, like right to the bottom. So, he was explaining, that he was reporting her for no insurance, and she was like, OK, and he said, you know, at this point, I need you to roll down your window, I need to take some details and I need to do this...She was engaging enough, but probably not enough... she wouldn’t look at the officer and she was like, ‘OK, well, you’ve got my licence plate, you can just send it to me.’ And he was like, no, and I need to search the vehicle, like he wanted to conduct checks and felt that he had a reasonable ground. It should have been an open and shut case... but she wouldn’t comply. And he broke her window; smashed the window and dragged her out of the vehicle and she was arrested. That formed the ‘obstructing a PC’... She was explaining in police interview that she didn’t feel safe. She was sitting in her vehicle by herself, and she was not comfortable at all. ... she also [said] that there are videos on social media of people impersonating officers ... clearly, she didn’t have a great relationship with the police. So, when the charges came to court, and she was relaying all of this information. I made the decision in that case to drop the obstructing a police officer, on the basis that it was not in the public interest and also, I considered the evidential test. There is a very, very, low threshold for obstructing a PC... I looked at what will be used ... smashing her car window, dragging her out and her spending the night in a police cell for [] no insurance, which is a non-imprisonable offence [...] So, I proceeded on the no insurance only; in that case, I did feel that her lived experience, not having a great relationship with the police.... the stuff we see in the media [...] and the fact that she was a black woman did need to be taken into account when looking at that case.”

Other Issues

Is there anything else that you think would make the experience of black, Asian and minority women much better in court?

CPS2 thought that it is important for defendants to be more open and disclose information as this might help their case.

“I just wish you could tell them to be as open as possible, because normally it’s the best thing.” (CPS2)

CPS2 also felt that it is important for defendants to become more aware of who CPS are, as often they are not and there are many misconceptions around this leading to lack of trust:

Interviewer: “The trust is really difficult, isn’t it?”

CPS2: “Yeah. And I don’t know how we get round that because we are obviously an organization slightly [different] from the police, so, I don’t know how many people are even aware of this [...] Sometimes I’ve heard people just saying kind of who are you? And then you have to explain. But I do [hope] they recognize that we are separate from the police.”

CPS3 emphasised again the importance of impartiality, fairness and everyone being treated equally regardless of their ethnicity:

“I do think it’s important to be fair when we’re applying the evidential tests. ...whether you’re white or you’re Asian or you’re from another country... it has to be fair. My idea of fairness is to treat everyone the same really, as much as possible.”

Moreover, CPS3 thinks that age is a more important factor:

“If they’re young age, it doesn’t matter what background, but if they’re a young age and they’re offender, you take that into consideration to see whether you can divert them from the criminal justice system, or if they’re very elderly. But as to whether the person is of one ethnic group or another, I think it’s not as high up as the others. That’s what I think anyway.”

CPS5 suggested that in low level offences even when there is no risk of custody it is still important for a minority ethnic woman defendant to have an advocate to provide advice and guidance:

“So, often we have Black and Asian women coming into court for low level offences without an advocate. I think it still would be specifically helpful to them, to have an advocate even when they’re not at risk of custody. An example that comes to mind - an Asian woman...at war... a neighbour dispute, and she had assaulted a neighbour, but when she came into court there was like, no real understanding as to [the fact] that they are involved in criminal proceedings, [that] it is not civil. It’s almost like it would have been helpful even to adjourn. She didn’t want to speak to you. You can’t force someone to speak to a representative... when there’s a huge lack of understanding, it doesn’t help with progressing the case through court because they’re not really looking at the evidence... It was just ...what they did to me and ...that wasn’t helpful. [] It would have been helpful to have had a representative in court...”

In addition, CPS5 felt that having more minority ethnic women working in the criminal justice system would also be helpful:

“[...] I guess my final point is that we need more black and Asian women in the criminal justice system to help close the barrier”.

The comment echoes the recent report by the Criminal Justice Alliance showing low representation of minoritised groups in the criminal justice system and a racially discriminatory culture within the system (Criminal Justice Alliance, 2023).

CPS scrutiny panels

Do you have a race scrutiny panel?

CPS2 said that various scrutiny panels exist within the CPS and there is a CPS lawyer who is involved in these:

“[...] We have a lawyer who [...] I think, loosely, may be described as community engagement, but she participates in all these scrutiny panels whether it’s a hate crime or all sorts. [Racist] crime, transphobic crime [...] I know we do have scrutiny panels.”

CPS1 commented that while not personally involved she was aware of such panels taking place locally that discuss hate crime and violence against women. These panels have been found helpful in scrutinising CPS decision making and providing feedback:

“Yeah, and so I think we [do]. Hate crime and violence against women and girls includes the local scrutiny panels and the community conversations [...] it’s part of those forums; we do hear back from the communities which includes the minority ethnic communities as well, enabling them to be participating in scrutinising our decision-making. [...] I know that they’ve been useful, and they have provided both positive and negative feedback in terms of how we approach certain types of cases, and it gives us those opportunities to learn and identify any training needs.”

Chapter 5 (c):

Probation Officers

Introduction

Probation is the UK criminal justice agency responsible for providing information to the courts about an offender, including the circumstances under which their offences were committed, so that the court can pass sentences that are fair and equitable in terms of the penalty fitting the crime, meeting the future needs of the offender, for example, in terms of rehabilitation; preventing reoffending and protecting the public from future offending or harm by the offender. This role involves a detailed assessment of the offence and offender presented to the court in the form of a pre-sentence report (PSR) (formerly known as the Social Enquiry Report).

A PSR is an objective expert assessment of the nature and causes of an offender's offending behaviour, the risk they pose and to whom, as well as an independent recommendation to the court of sentencing options.

A PSR is usually prepared by qualified probation officers (POs) or probation service officers (PSOs) after interviews had taken place between the officers and accused persons. Interviews can take place pre-trial or before a sentence is passed. A probation officer may offer to prepare a PSR for a court in any particular case but, generally, a PSR is usually requested for by the court (i.e., a magistrate or judge) or the defence lawyer where the defendant is intending to or has pleaded guilty to all charges and there is a need for a full professional assessment of the offence and offender before sentence is passed. A PSR may also be requested for after an offender who had pleaded not guilty is eventually found guilty and an assessment is considered appropriate before sentence. PSRs may be requested for in any case at the discretion of the court but it is usually the case that PSRs are asked for where a court is considering a community or custodial sentence for the offender.

A PSR typically consists of:

- a summary of the facts of the case
- an expert risk and needs assessment about the individual circumstances of the offender and the offence(s) committed
- an analysis of the sentencing options, with an independent sentence proposal
- additional information not presented to the court such as information about the offender and their view of the offence(s) which is obtained by interviewing the offender or through the liaison with other agencies (Ministry of Justice, 2020a).

Thus, by attempting to provide a greater understanding of the background and the context of the offending behaviour, rather than just the details of the offence, the PSR can be a crucial resource in court sentencing. However, the Judiciary will usually seek to form an independent view of the case which may not include reference to any comments or sentence recommendations in a PSR.

Probation Officers in this study

The probation officers (POs) interviewed for this pilot were fully trained officers who have been in the probation service for between 15 and 22 years. All the officers have had substantial experiences of writing PSRs, but they said that they have completed PSRs for very few minority ethnic female defendants (between 1-2) during all their years in the service. This could be a reflection of the demography of offending in the UK and the location of the officers themselves. Women commit far less crimes requiring community penalties or imprisonment compared with men and they are therefore less likely to require a PSR.

The probation officers were questioned on their experiences when they wrote PSRs for women generally and minority ethnic women in particular; what they would consider important in terms of 'race' and gender to include in a PSR written for a minority ethnic defendant; their perceptions of how the court have reacted to PSRs written for minority ethnic women, the level of training that they have had that has helped them in writing PSRs specifically for minority ethnic women, the challenges or problems encountered when they had minority ethnic female defendants as clients, their views on current practice and recommendations for changes, if any.

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This research is conducted against the background of previous research findings that have claimed that PSRs written for defendants from minority ethnic backgrounds, including women, were often written to the disadvantage of these offenders because they are generally misunderstood or stereotyped and the impact of racism/racial discrimination on their offending is often ignored in these reports (Cole & McLean, 2019; Cole, 2008; Vanstone, 2006, Hudson & Bramhall, 2005, Calverley et al, 2004; Denney, 1992; Green, 1989; Voakes & Fowler, 1989).

On the need for gender and 'race' issues to be mentioned in PSRs

All three POs believe that gender issues should be mentioned in PSRs because the reasons behind women's offending are different compared with those of men. According to PO2:

"For females, mental health or substance misuse play a huge role...the more serious the offence the more trauma has been experienced by the person, often as a result of abandonment as a child, sexual abuse, domestic violence and often combined with a lack of trauma informed support which has often led to self-medicating with alcohol, drugs and forming inappropriate relationships".

PO3 added:

"And when you start adding your intersectional factors around race, religion, culture, things like that it's even worse... especially if you are not a British citizen." (PO3)

PO3 also said that many female offenders are themselves victims of crime and this ought to be highlighted in a PSR, where applicable. She cited the case of a foreign national woman in court for running a brothel who, herself, was a victim of human trafficking and modern slavery.

However, all three POs said they would mention gender issues in a PSR "only where it is relevant" As PO3 puts it "You don't have to give the courts things that they don't need to know" (PO3). All three POs agreed that a court would expect to find in a PSR that is written for a female defendant that is either pregnant or have children, some analysis of the risks and the arrangements that have been made for safeguarding the children, especially if she is likely to be sent to prison for the offence. In addition, PO2 said that she will highlight 'gender issues'

"where she [the defendant] is in a relationship and her offending behaviour is influenced by her partner, for example, offending to feed her partner's drug habit, this will have to be mentioned in a PSR and proposals will have to be made for her to be referred to appropriate services."

On 'race', all three POs believe that explanations of how the ethnicity of the defendant might have facilitated offending could be provided in a PSR but also only where it is relevant. PO2 said that she always reserve a section in her reports for the person's experience of racial discrimination. "Most often there has been some experience somewhere and it is important to highlight this" (PO2). PO 1 thinks that experience of racism can be traumatic, and it can impact on offending both for women and men (see Calverley et al, 2004, Cole, 2008). For PO3, 'race' will be relevant where the offence was as a result of a response by the defendant to a racially motivated action from someone else.

According to PO1, 'race' is important because even where a minority ethnic defendant is British born, they may still identify with the culture of their ethnicity; therefore, it is "very important where they've come from because it explains that person":

"So, when I'm trying to do a report, I'm trying to build a picture of this person for the sentencer, relevant information obviously because you could write a book on somebody ... I think ethnicity is very important in that because of culture, you know... and also what have they experienced to get where they have? ... I don't make it obvious such as 'you are an Asian lady, I need to ask you about this', but I still incorporate it in the report, but I am alert in my head that there are also other issues that I need to be looking out for." (PO1)

PO3 felt that it is important to consider race issues in reports on minority women because:

“When you are looking certainly at minority women, aspects of their lives tend to get missed out; things are not put into a context, their circumstances are not put into a context; a lot of the inequalities that they may have suffered is not put into a context. It is important that the court hears these things; ... and when you are talking around black women, that is something that doesn’t really happen.... With all kinds of stereotyping that goes on in court, the racism, the discrimination that we know happens [race] is always going to be a factor in my view. We know as a fact that minority women do get a rawer deal; standing there as a black woman, the chances are that she’s going to get a rawer deal, which is all the more important why she needs to be going in there with a decent assessment...without a pre-sentence report, the court can be given a very skewed picture; especially when you are dealing with minority women because they are treated a lot more harshly, they are more likely to be remanded, they are more likely to be given longer sentences, they are more likely to be arrested in the first place, they are more likely to be denied bail, all of these things are the reality. Without a pre-sentence report these things are exacerbated” (PO3)

In addition, PO3 considered that ‘race’ is important in a PSR when discussing the impact that a sentence might have on the offender:

“The courts are not thinking of the impact of the sentence on women, that’s what happens with a lot of [women] from Asian communities. You are stained for life. They don’t care what you went to prison for. All they care about is that you went to prison. If you expect people to be reintegrated back into society and you send them into prison, you’ve got to think about when they go back into that community; they are stigmatised and rejected... more likely to re-offend; more likely to end up in poverty, it’s not going to help their rehabilitation; you may have damaged that person’s life for ever... It’s about racism in the system, isn’t it? that’s why and also the fact that there is a lot of stereotyping, that feeds into it as well. There are so many levels that gets ignored; all the more reason why you need some kind of document where you can make an informed assessment ... Without that the courts are just arbitrarily sending women to prison when they don’t need to.” (PO3)

Although official guidelines and policy on PSRs state that PSRs should aim to provide the court with a greater understanding of the background of the offender and the context of the offending behaviour, there are no definite requirements on what the ‘background’ information should be. It is only required that a PSR should contain adequate amount of information about the offender and his or her personal circumstances in order for the courts to craft and impose appropriate and effective sentences. In addition, Probation Service guidance does not specifically require that PSRs contain information relating to how the race/ethnicity and gender of the defendant might have affected offending or impact on re-offending. Probation Service guidance simply states that the purpose of a PSR is ‘to facilitate the administration of justice, to reduce an offender’s likelihood of re-offending and to protect the public and/or victim(s) from further harm’ (HMPPS (His Majesty’s Prison and Probation Service) 2021, para. 1.5).

Two POs admitted that they have been reluctant in the past to express ‘race’ issues in their reports. According to PO 1 ‘race’ is not often taken seriously in court. She said that she wouldn’t normally mention how the traumatic effects of the experience of racism might have led to offending because it is not seen as traumatic by the courts: As she puts it:

“If I was to put that in there as experience of trauma, I would be worried of the magistrate or judge saying, ‘come on, that’s being used, it’s the race card’. I wouldn’t want to put it in there” (PO1)

According to PO2: *“Cultural sensitivity can often be difficult to express in a report as you do not want to place the person at risk of further discrimination by the Courts which have been institutionally racist against minority ethnic individuals. Therefore, I am very careful about how I put forward my information in terms of race” (PO2)*

The recent HMIP Inspection Report ‘Race Equality in Probation’ (HMIP 2021) found that the quality of PSRs prepared in cases of Black, Asian, and Minority Ethnic service users was ‘insufficient in too many cases’ and that not enough attention was paid to diversity. Of 51 reports inspected, the quality of only 58% was judged to be sufficient. Inspectors concluded that ‘Poorer quality reports that fail to consider all relevant factors run the risk of service users receiving more punitive sentences’ (HMIP 2021, p. 29). The same report also observed considerable variance between different geographical areas in the proportion of ethnic minority service users who had been sentenced without the benefit of a PSR. (cf Robinson, 2022, p. 2)

Knowledge or training on the needs of minority ethnic women in PSRs

When asked whether Probation Officers are trained well enough to be able to identify appropriate 'race' and gender issues and present these in PSRs for minority ethnic women, the answers were mixed.

According to PO1:

"Yes and no. I would say [yes] because we get the training, but it's like - people can empathise. Empathy is different to understanding and you can only [empathise] when you've experienced something yourself. Do you agree? That's where my 'no' came in; my colleagues have had the same training that I have had; you can give a certain amount of understanding or training or whatever, but it can be alien can't it?" (PO1)

PO2 felt that there is a lot of on-going work on diversity training in the probation service:

"We complete diversity training quite often which has over the past two years been over [Microsoft] Teams which is always really good at understanding how individuals from different backgrounds would view things or present in different manners. Also, how an individual's experiences would shape their thoughts, feelings, and behaviour. I feel we do get a lot of input in terms of diversity, but I think it's always good to have more information. I would love more people to talk about their own experiences especially from a GRT background as this is an area where I am very much lacking. [Also] cases are audited often, and this has been based on minority ethnic groups and gender for two years now - this has shown a proven increase in the standards of the reports in addressing these issues which is fantastic. Where officers are unsure there are always others to ask for help or advice. I help my colleagues all the time and the gatekeeping tool that we use is useful for opening up a dialogue between officers" (PO2).

In terms of herself, however, PO2 said that her own knowledge has come mainly "from knowing women and working with women of different cultures both professionally and personally."

PO1 thinks that training on 'race' has to be delivered by non-white people and also that "the people delivering need to present as being open" because....

"We have a culture of people who are afraid to ask questions because they are afraid to and that needs to be addressed first.... I think the training needs to start there to make the people in the room go 'ah', and when they've gone 'ah', you can then talk to them about ethnicity and the difference because they are then open for it to go in, rather than them feeling that they are being attacked, they are being told that you don't know what to do, you don't know what it's like with these Asian or Chinese or ethnic people because that's not what we're trying to do but training can end up feeling like - you are telling me... [then] you are defensive, you are not taking in what's been said...The training has to [address] why people feel as though it's not okay to ask questions" (PO1).

In addition, PO1 thinks that:

"the training needs to be criminal justice-wide, it's not just the pre-sentence report writers, it has to be the readers, the ones who are receiving - it should be open to criminal justice solicitors, it should be open to crown prosecutors, it should be criminal justice-wide because you can have a really, really good pre-sentence report but the person reading that report [takes] the word 'annoyed' differently to what I perceive; so, what I'm trying to say is we all perceive words differently and so they could read the pre-sentence report and perceive it totally differently, they might say this person is using - I hate using this [term] - the race card. when that person is just trying to say, look this is how it started. So, I think [training] needs to be wider" (PO1)

When asked to comment on the allegations in the literature that PSRs are often presented to the disadvantage of women generally and minority ethnic women in particular, all POs couldn't provide definitive answers due to their general lack of sufficient experience in writing court reports for minority ethnic women. However, PO2 thought that this allegation might have been true in the past but "things have changed over the last few years". Speaking specifically about her court team, PO2 said:

"I know colleagues are working hard to address the issues of minority ethnic females in reports. I can see this is happening more and more and we are always gatekeeping each other's reports with ethnicity, gender and discrimination being a vital area that we do check for".

Problems or challenges faced when preparing Pre-Sentence Reports for minority ethnic female defendants

On this topic, the three POs replied thus:

“In my own experience I have interviewed minority ethnic females who have presented with huge barriers that are always down to a deep mistrust for the whole CJS of which we are seen as a part of. As such I make every effort to build a rapport, to find some commonality so that we can work through this and gain trust. This is indeed a skill that has taken time to perfect, and I feel being a female myself has been invaluable in this. I feel that not everyone has possibly taken the time ... and may perhaps have written minority ethnic females off as obstructive and uncooperative without taking the time to try to understand the reasons behind this. I personally feel that more female (mainly minority ethnic groups) report writers are needed in Court Teams so that women can be interviewed by women. As a woman myself, I would feel uncomfortable talking about my experience of trauma to a man who may not understand what I have been through, or who may make me feel that what I am feeling is trivial. Can I state that this is a general statement and not at all directed at my male colleagues who I can truly say are fantastic at what they do and always asking questions or for advice when it comes to minority ethnic female reports?” (PO2).

“The challenge is to get the ethnicity across without disadvantaging them - that is the challenge, and this is what I was saying to you about this lady. The challenge of getting across where someone might think she is shouting at them or being aggressive towards them, she’s not, she has come from, you know, her background - that way of speaking is the norm but getting those things across is a challenge. I suppose people think that racism doesn’t exist anymore because you don’t hear about it, but it does.” (PO1)

“The challenge more these days is just having the time to be able to do what you need to do. These days, everything is just rushed; defendants generally are short-changed; you don’t have time to talk to other professionals; there is no time for all that now; you are just doing everything on the hoof. If you are dealing with black women or other minority women where their access to agencies is usually very limited or non-existent, that is an issue which the court would need to know about because if they are not getting help in certain areas that they need that may well have fed into the offence- occurring. If you are not able to put those facts to the court, the court is not going to know that and they would just look at everything very black and white; it would just be about they have committed this offence, this is the sentencing guidelines for this offence, this is what we are giving that person, there is no room for any kind of nuance thinking or debate around it; and you have to do that otherwise you are not treating people fairly and equally... because, if you are not going to take the time to consider someone’s circumstances, issues around gender, around race, around culture, customs, language, then you are not treating people fairly. It’s always been an issue, continues to be an issue, unless things drastically change, it will just get worse” (PO3)

Views on current use of PSRs

The POs that wrote reports before the introduction of court teams felt that report writing then was more thorough than it is now. All three POs were united in their opinion that the current situation whereby Probation Officers are required to consider shorter or oral reports is affecting the quality of reports that are being written for women.

According to PO3:

“As a probation officer, that was taken out of your hands... you don’t write [full, standard] pre-sentence reports anymore because [the courts], they want everything done quickly ..which is why I had the problem when I was asking for a pre-sentence report for that woman because they just saw it as a hold up, that it’s going to have to go into the next day or the next week. But this is people’s lives we are talking about. It’s not just about them getting through a list. But that is how it is now. Really, unless it’s like a violent or sexual offence, even some of the low-level violence stuff doesn’t even get a report... it’s either oral or they might get one of what is called fast delivery reports which is what a court officer would do on the day and then something will get typed up but it’s very very thin. There is no time to consult with other agencies, there is no time to find out facts. You are literally on your feet; [Full, standard] Pre-sentence reports really, you are not just going to find much of them now” (PO3)

Official reports have shown that the increasing pressure on POs to be quicker and brief in their reports has led not only to the volume and quality of PSRs being decreased over recent years (HMIP, 2020; MoJ, 2020b), there has been a significant move, at least since 2008, away from standard to fast delivery reports (oral and written) with a general trend towards the oral format (Russel Webster, nd). The three PSRs presented in court during this research were all in the oral format (See chapter 5c)

Anything else?

PO1 asks why there isn't a section in the pre-sentence report on the ethnicity of the offender.

"In a pre-sentence report, like I said, you have the offence details and then the offence analysis and what they want to know in [terms of] where, what, when and how did he or she do it, did they plan, is there planning with the victims, was anyone else present, what's the motivation and triggers? And then you go onto patterns of offending and then you go on to accommodation and employment, physical and mental health, and experiences of trauma. Where in that section would you write about ethnicity? I don't know. Why can't we have a section that says 'is this person minority ethnic? yes/no' - 'yes' and then you write in that section, the relevant information. If it's no, then you don't write anything. Why can't we have something added where you can say, this person, all their family live in - and they have no support here, they came over... Do you see what I mean? It would help a lot of people if they had more knowledge and tried to understand the ethnicity side of things, but then I know it's resources...they'll say, we don't have the resources to do that" (PO1)

PO3 said:

"In all the years that I've worked in criminal justice, I haven't seen it getting better; if anything, it's gone backwards, and we know that when things are changed in that way and finances are cut, organisations are messed with, privatised and all the rest of it, it is those minority groups that suffer the most". (PO3)

"It helped the defendant in the past when the probation officer who wrote the court report also supervised the offender when they are sentenced, so, there was continuity going through; today, when they split it, someone would write the report and then the case will be allocated to you as the supervising officer but that first stage is missing; so, that person is coming to you and you didn't know ... sometimes, because of the way probation has been split up, sometimes there was a lag in getting information from courts; so, somebody could turn up and all you know about them is what they are telling you: you don't actually have any report, because things are fragmented by then and you are dealing with two different organisations; sometimes, there was a bit of a lapse between when you met the person and when you got any kind of court work ,sometimes, there wasn't even any kind of report done at all; it was something oral, sometimes it got written down and sometimes it didn't; sometimes you didn't even get anything written up from when they were in court ... that whole disconnect; it just didn't work. I felt it worked better before when you would do their PSR and then you would supervise because once they've been to court and they come back and they've been sentenced or even if they went to prison you were still their officer, you knew that person or had some knowledge of that person because you were the one that interviewed them. This new way, it just didn't work very well. Sometimes people would turn up at your door and you didn't even know that they were coming from court because there was a disconnect from the information coming through. Someone will turn up at the office saying that they have been sentenced and that was the first time you'd know anything about them. It just doesn't work. The whole process of getting rid of the PSR, I know it was just about saving time and money but it's people's lives and it does have an impact and it has more of an impact on minority groups. When you are already disadvantaged you don't need processes that's going to put you in more disadvantage and that's what it is. I don't see anything that convinces me that things are changing or going to change to any great degree (PO3)

Suggestion for change?

PO3 talked at length on this topic:

“The CJS needs investment; there needs to be a recognition that there are more things to consider; they need to take intersectionality a lot more seriously and understand that not everybody is the same ... the Bangkok rules, for example, states that you are supposed to take a woman’s background, her gender, her race, her ethnicity, religion, all of those things are supposed to be [considered] with regard to how they are dealt with within the system, and yet they don’t do it and the government, they come out with all these policies, female offenders strategy ... they don’t mean anything in reality. How it’s going to change is that what they should at least work with what they have in place ... and then listen to these women. There is an issue of black women getting heard which doesn’t happen, being taken seriously, not being stereotyped, and judged based on race, ethnicity, and nationality. Until they [recognise] these sorts of things, it’s not going to change” (PO3)

“What I would say courts need to do is to start allowing probation to have a bit more of a voice because a lot of the time they don’t. If we are saying this person needs a pre-sentence report and we need an adjournment to get a report [done] don’t just fob it off, recognise that as the people that work with people they need to take on board that we know what we are talking about ... whereas with them all they care about is getting through their list on the day ... maybe to just start listening to probation a bit more and taking us a bit more seriously. If we say a person needs a report, trust our judgement in that because we work with people and we know what we are talking about; whereas a lot of the time you just feel like you are just a poor relative that they have to tolerate. That’s how it’s always been - probation, the poor relative in the criminal justice system, everybody [else] gets more respect than we do. It’s the truth; it’s a fact. I’ve seen this in court; I’ve seen PSOs come back from court in tears because of how they’ve been treated in court by magistrates or clerks” (PO3)

At the time of this study, a Ministry of Justice pre-sentence report pilot scheme is currently taking place in 15 magistrates’ courts in response to the government’s new commitment in the Sentencing White Paper’s (MoJ, 2020a) to ensure that probation staff deliver high quality PSRs for more cases so that sentencers have the best information available to address rehabilitative needs; and to significantly increase the proportion of court disposals which benefit from a PSR. The pilot is being undertaken to build the evidence base on the impact that a PSR has on offender outcomes, sentencing behaviour and the efficient administration of justice. The PSR pilot will test new ways to identify offenders earlier in the criminal justice system who require a PSR to support their sentencing determination. It is stated as important that probation officers are permitted more time to prepare a quality PSR prior to sentencing hearings. Specifically, the pilot will work with local courts to target the delivery of fuller PSRs for cohorts of offenders identified with more complex needs. The cohorts of offenders that have been identified as the cohorts with complex needs that the PSR pilot will focus on are female offenders, young adult offenders (ages 18–25), and offenders on the cusp of custody (Gov.UK, 2021; MoJ, 2020a: sec 151 – 158)

Chapter 5 (d)

A view of a Legal Adviser and their experience of minority ethnic women in court.

Due to the difficulties encountered in arranging interviews with lawyers who have had the experience of defending minority ethnic women in criminal courts (see methods chapter) the researchers approached HMCTS and asked for permission to speak with Justices' clerks or Court Legal Advisers.

Court legal advisers are qualified lawyers who give advice on points of law, practice, and procedure to lay magistrates. In addition, court legal advisers: organise court hearings, make sure evidence is ready for court, make sure people in court understand what's happening and assist with the formulation and drafting of decisions, including sentencing decisions. Court legal advisers, by virtue of their role and duties are in a strategic position regarding the court process and invariably how defendants' experience court proceedings.

The researchers were successful in securing interview with a Court Legal Adviser based in the North-East of England.

In addition to general questions on his role and duties, the legal adviser was asked specific questions on what his experiences have been whenever the defendants in court were minority ethnic women. In addition, he was asked questions about:

his role in sentencing and whether gender and ethnicity are considered well enough in sentencing guidelines.

whether there is disparity in sentencing where female defendants are from minority ethnic backgrounds and the extent to which that might be due to aspects of sentencing guidelines.

PSRs: how often the courts receive them, in what forms and how they are used but more importantly whether they provide the courts with sufficient information about the character and circumstances of minority ethnic women to be able to make an informed sentencing decision.

what challenges that he has noticed that the court faces where a defendant is a woman from a minority ethnic background, and;

how he thinks the court process should be improved to cater for the needs of minority ethnic women in court as defendants, in particular, what could be done to ensure that minority ethnic women understand better the court proceedings and decisions made.

The legal adviser claimed not to have had much experience with minority ethnic women in court because **"they are very few and far between."** He found it hard to recollect ethnic minority women appearing as defendants, but they do appear as witnesses.

Like the Crown Prosecutors interviewed for this study, the Court Adviser stated that, **"A female from an ethnic minority background would be treated in exactly the same way as someone else."** He further went on to say that they will focus on individual need. The legal adviser stated that they are watching out for everyone, and he elaborated that they had a duty to give advice to magistrates and also make sure that the defendant understands what is going on.

"[The court] works on the basis that everybody comes into court not knowing what is going on ... Magistrates are as clear as they can be, but it doesn't guarantee that they will understand. We do a lot of work [training for magistrates] to make sure that they understand through HMCTS – local initiatives and national ... We strongly recommend a solicitor, especially for serious cases, but should be enabled for all cases. This is important as a low-level criminal case could give rise to a sentence or outcome that is very impactful on that individual; but don't know what happens between plea and advice stage ... my duty is to give advice to magistrates and make sure the defendant understands. If it doesn't sound like they are understanding, then I will ask."

David Lammy in his report had identified concern around jargon and language within the criminal justice process that had alienated female ethnic minority defendants from their own case. This led to concerns around effective participation due to a lack of understanding as to what was happening around them and what the outcomes could be. This was a finding in the Double Disadvantage report which stated that: *“language and lack of translators can be a significant barrier throughout a woman’s experience of the criminal justice system if they do not speak English fluently”*. Language barriers and a shortage of translators for women who do not speak English as a first language were raised as a significant problem throughout the criminal justice system. Women said that this led to confusion during court proceedings with examples of receiving court papers they could not read. This was coupled with the fact that there is a lack of available interpreters across some areas of the country with a tendency for them to be London centric, a point highlighted by our Legal Adviser. The Double Disadvantage Report and our own experiences of interviewing minority ethnic women saw that women felt the jargon-led approach and lack of interpreters to help tell their story led to a deep mistrust of the criminal justice system and the process.

“For many women, the feeling that they did not have their stories and circumstances considered during their trial and the fact that they were confused by the process and their options, underpins a sense of injustice and mistrust in the system.” (Double Disadvantage Report, 2017, p.6)

Although a point was made, by our Legal Adviser, that the impact of Covid and the use of technology during and post pandemic has meant that this could be one benefit in providing the opportunity for interpreters based in one part of the country (for example London) to be able to feed into court hearings in other parts of the country.

Another area that was identified was cross examination:

“If it’s a witness I am always alert to the defence pushing boundaries. Witnesses of domestic abuse – I am aware and alert to the defence overreaching. Prosecution can alert us to any issues. If a defendant, then defence can raise. The prosecution will be cross-examining but expect them to be duty bound. If something comes into the arena, I will be alert to it and review it. I will recognise if someone is a victim of something – [for example] domestic abuse.”

So, there is an expectation that those representing the state, CPS, are acting in accordance with the rules and procedures and will not be inequitable in their treatment of defendants. Legal professionals need to be alert to conscious and unconscious bias and step in where needed. The minority ethnic women interviewed for this study, whilst raising concerns about the CPS were conscious of their role and their concern was directed towards the luck of the draw with their own lawyers and the judiciary.

On sentencing and sentencing guidelines

The Legal Adviser maintained that all defendants are treated in the same way. As he puts it:

“Unless something specific is raised we go through the sentencing guidelines. Unless something is raised to make a reasonable adjustment then everyone is treated in exactly the same way. [However], there are differences in culture that we might need to be alert to but if we alter the way we do it, [it] would be based on individual need; so, we focus on individual need. [Overall] sentencing guidelines are very much applied the same regardless of gender.”

Thus, there was a concern that when it comes to sentencing, the courts would more likely focus on individual needs rather than a protected characteristic.

However, gender or ethnicity might be considered in sentencing if it gave rise to specific risk issues, for example, where the defendant is to be imprisoned and the courts alerts the prisons to the risk factors, for example, mental health, history of domestic violence or childcare.

On PSRs

In terms of sentencing and the PSR, if an offence is serious then aggravating and mitigating factors are considered. Decisions are then taken on the level of harm/culpability.

In terms of PSRs the reliance is on Probation and their own assessment tools. Probation will prepare reports and there is some flexibility with the sentencing guidelines. If they are departed from, reasons need to be given. There might be aggravating and mitigating factors that need to be taken into consideration, for example domestic abuse or childcare. There is a wide remit and it depends on level of harm/culpability, but good information is required to make a decision. This was also said to relate to the level of trust that defendants have, to feel able to provide criminal justice professionals with the information required.

“If it’s serious because of x, y and z then will get a pre-sentence report and rely on people to tell you and give information to make a decision on sentence.”

“So, in the court they will be mindful of the seriousness of the offence in sentencing and because of the seriousness it will be reflected in the sentencing. It comes down to the case being prosecuted well and also depends on how defendant presents and what they say. This is crucial as if the defendant is not provided with the mechanisms to understand and present their case then it could act as a disadvantage. The legal professionals therefore need to be “alert to conscious and unconscious bias.”

What could be done to ensure that minority ethnic women understand better the court proceedings and decisions made?

In answering this question, the Court Legal Adviser said that:

“there is a need to look at individual needs and circumstances and be alert to conscious and unconscious bias. [Also] it comes down to the case being prosecuted well [and] depends on how defendant presents and what they say. “

The last point is crucial as if the defendant is not provided with the mechanisms to understand and present their case well then it could act as a disadvantage.

The respondent is of the opinion that the courts are going through a major cultural shift and are at a different point of understanding; there is a need to be aware of different factors and impact.

So, there is an expectation that those representing the state, CPS, and court legal advisers act in accordance with the rules and procedures and will not be inequitable in their treatment of defendants. This is echoed by the female defendants interviewed for this study that the CPS are simply doing their job. Similarly, no specific comments were made about court legal advisers who many still perceive as court administrators. Most of the defendants were directed more to the luck of the draw with their own lawyer and the judiciary.

There is a feeling that the courts are going through a major cultural shift and are at a different point of understanding, so awareness is more heightened.

Training/updating knowledge

The Legal Adviser was keen to point out that Magistrates receive training and refresher training once every 3 years. Whilst the overarching principles of the Sentencing guidelines remain, there are updates that they are alerted to. Any changes are notified through the Magistrates Association. Legal Advisers are open to new perspectives and thinking. The Legal Adviser would encourage people to come to court and observe. There may be potential here for a form of Scrutiny Panel approach to observe cases in court focusing on the experience of minority ethnic women.

Chapter 6:

Observations of Court Hearings

This chapter consists of analyses of findings from the researchers' observation study at the courts. It includes accounts of the court hearings observed where the defendants were women from ethnic minority backgrounds and the facts obtained from the field notes that were made during the court visits. In total, 25 hearings were observed in Magistrates Courts and the Crown Court in the Midlands and the North-West of England.

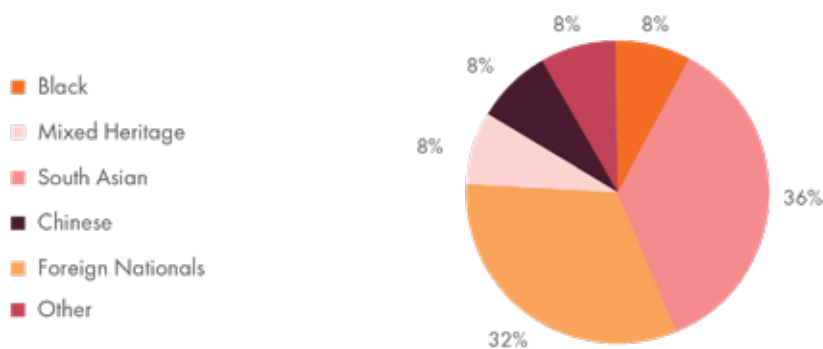
The chapter is in three parts. Part one provides some key descriptive statistics from the sample of cases observed including: ethnicities of defendants, age groups, appearance in court (on bail or police custody; from prison in person, or via video link), type of court (magistrates or crown), charges, plea (guilty, not guilty, not guilty but later changed to guilty or yet to plead), legal representation (yes or no), previous convictions (yes, no/unknown), pre-sentence report (PSR) requested by court (yes/no), type of PSR provided and sentences passed. Part two consists of analysis of observation field notes which focused on the nature of the interaction between the defendants and court officials during trial, the nature of the participation of the defendants, their treatment during trial and the additional support that they received whilst on trial. Part three focuses specifically on analysis of the gender and ethnicity issues that emerged from the observations and their implications for the delivery of justice to minority ethnic women in English courts.

Part one: Summary of sample's descriptive statistics

Ethnicities:

The largest proportion of the defendants observed in the courts were of South Asian heritage (36%), followed by foreign nationals which included those who identified themselves by their nationalities (for example, Slovakian, Croatian, Polish) and those who indicated that they couldn't speak fluent English. (32%). Black Africans, Chinese and Mixed heritage defendants were represented in equal proportions in our sample (8% each). The rest of the sample (8%) is the 'Other' category consisting of other British nationals with East European names (see Chart 1).

Chart 1 Ethnicity



Age Groups

The vast majority of the participants were below the age of 50. The largest group were women between 30-39 years old (36%), followed by 40–49-year-olds (32%) and 18–29-year-olds (20%). A small minority were in the 50–59-year-old bracket (8%), and in one case the participant’s age was unknown (4%), see Table 1.

Table 1 Participants’ Age Groups

Age	Number	Percentage
18 - 29+	5	20
30 - 39+	9	36
40 - 49+	8	32
50 - 59+	2	8
Unknown	1	4

Court Appearance

Most of the defendants in the sample were on police bail at the time of their appearance in court (64%). One defendant appeared in court from police custody; two defendants appeared in person from prison custody and another two appeared from prisons via a video link to the courts. Two defendants (8%) were on court bail at the time of their hearings and two defendants who had previously been tried but had their cases re-opened appeared in court from their homes (see Table 2).

Table 2 Appearance in Court

Type of appearance	Number	Percentage
On police bail	16	64
From police custody	1	4
On court bail	2	8
From prison (in person)	2	8
From prison (via Video link)	2	8
Case re-opened (defendants appeared from home)	2	8

Type of Court

The majority of the cases observed were tried in Magistrates courts (64%). 28% were Crown Court hearings without a Jury and the remaining 8% were Crown Court trials in front of Jurors (Jury Trials). All the cases observed in Magistrates courts were tried before lay magistrates. No case was observed in front of District Judges. (Table 3).

Table 3: Type of Court

Type of court	Number	Percentage
Crown Court	7	28
Crown Court: Jury Trials	2	8
Magistrates (Lay Magistrates)	16	64

Charges

In terms of the offences that the defendants were charged with, the largest proportion were in court for traffic offences (28%). This is likely due to the fact that the majority of observations took place in magistrates courts where a large proportion of cases tried is usually traffic offences. Pakistani women constituted the majority of defendants in our sample on traffic charges. The second most common charge was serious crimes, which included attempted murder, drug trafficking, supply of illicit prescription medication, money laundering firearms offences, and grievous bodily harm (24%). The ethnicities of these defendants were varied but most of them were of Polish origin. The third most common charge (20%) was the violation of section 444(1)(a) of the Education Act, 1996 (Failure to secure regular attendance at school of a registered pupil). Foreign national women were in the majority for this crime. The remaining charges were: breach of a curfew order, drunk and disorderly behaviour in a public place, fire safety management failure, harassment, violation of Council planning permission, and theft from shops (one case each). In one case, the charge was unknown (see Table 4)

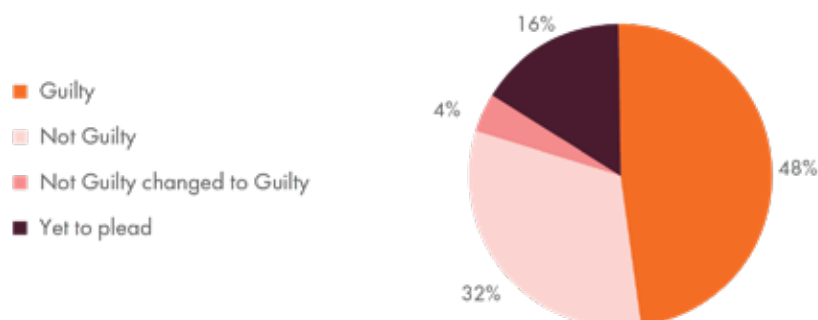
Table 4 Charges

Type of offence	Number	Percentage
Serious Crimes (Attempted murder, drug trafficking, supply of illicit prescription medication, money laundering, firearms offences, GBH)	6	24
In breach of curfew order	1	4
Drunk and disorderly behaviour in a public place	1	4
Fire safety management failure and arson incidents	1	4
Failure to secure regular attendance at school of a registered pupil. (s. 444(1)(a) Education Act, 1996)	5	20
Harassment	1	4
Violation of County planning permission	1	4
Theft from shops	1	4
Traffic offences	7	28
Unknown	1	4

Plea

Approximately half of the defendants observed pleaded 'guilty' (48%). Another 32% pleaded 'not guilty'. 16% were yet to plead, and in one case (4%) the defendant changed their plea from 'not guilty' to 'guilty' (see Chart 2). The majority of guilty pleas were in Magistrates courts consisting of 11 out of the 16 cases observed in these courts. Cases tried at the Crown court were mainly 'not guilty' pleas and 'yet to plead' consisting of eight out of the nine cases observed in this court. Three out of the four 'not guilty' pleas at the magistrates' courts were made by defendants on speeding charges. The fourth 'not guilty' plea was made by a Chinese woman in court for violating council housing planning permission and who said that she was going to conduct her trial herself. The only case where a defendant changed her plea was a case of failure to secure regular attendance at school of a registered pupil in which a Bangladeshi defendant initially pleaded 'not guilty' in a magistrates' court to all charges but changed her plea to 'guilty' after the charges were 'explained' to her by the court legal adviser.

Chart 2 Plea



Legal Representation

In terms of legal representation, just over half of the defendants had legal representation (52%), while the remaining 48% did not have legal representation (Table 5). All the nine defendants tried at the Crown Court were legally represented. All the 12 defendants not legally represented were tried at Magistrates courts. Only four out of the 16 defendants tried at magistrates' courts had lawyers. These included a shoplifting case where defendant appeared from prison custody, one case of failure to secure regular attendance at school of a registered pupil, a case of speeding where the defendant was pleading 'not guilty' and a case of failure to comply with a curfew order.

Table 5 Legal Representation

Legally represented	Number	Percentage
Yes	13	52
No	12	48

Previous Convictions

In 28% of the cases observed, the defendant had previous convictions. These cases included five defendants on speeding charges who already had nine points or more on their drivers' licences before their current offences, one defendant who had previous convictions for disorderly behaviour in a public place and another with a history of shop thefts. In the remaining 72%, the defendants either did not have a previous conviction, or no information on previous convictions was available (Table 6).

Table 6 Previous Convictions

Has previous convictions or not	Number	Percentage
Yes	7	28
No/unknown	18	72

Pre-sentence Reports

Only in three of the cases observed (12%) was a Pre-Sentence Report (PSR) requested for by the court: one at the Crown Court and two at the Magistrates courts. In one case (4%) no information was available on whether or not a PSR was requested. In the majority of cases (84%) a PSR was not requested (Table 7). However, it should be noted that 12 cases (48%) were uncompleted at the time of observation. As a result, the researchers are unable to say for certain whether or not PSRs were requested for before sentences were passed in those on-going cases. The only Crown court case where a PSR was requested was a harassment case where the defendant appeared from prison via video link. The remaining two requests for PSRs were made at Magistrates courts: one, in a case of theft from shops where the defendant had a history of shoplifting and appeared from prison via video link and the other in a case of failure to comply with a curfew order. In the Crown Court case where a PSR was requested, the probation officer was unable to provide one because the court was still awaiting a psychiatric report that was needed for the PSR. So, the case was adjourned to allow for the report to be completed. In the other two cases where PSRs were requested by Magistrates, the type of PSR presented in both cases was oral.

Table 7 PSR Requested by the Court

PSR requested or not	Number	Percentage
Yes	3	12
No	21	84
Unknown	1	4

Sentencing

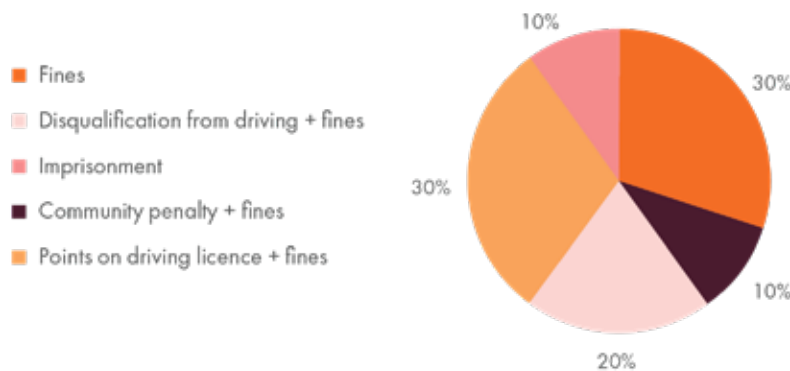
As hearings were attended at random, cases were observed at different stages of the process. Crown court cases were mostly on-going while the majority of cases in magistrates’ courts were summary cases completed on the same day. In 40% of the cases observed the defendant was found guilty and sentenced. In two cases, (8%) the defendants were remanded in prison custody. Two defendants (8%) were committed for trial at the Crown Court. These were defendants on speeding charges who elected trial at Crown court. In one case, the defendant denied driving the car and claimed not to have received the notice of impending prosecution. The second defendant’s decision was based on the fact that her claim of exceptional hardship if disqualified was rejected by the magistrates. In both cases, the magistrate warned the defendants of the likelihood of receiving higher fines if found guilty at the Crown Court and that penalty points may still be given. Ten cases (40%) were adjourned and in one case (4%) the charge was withdrawn (Table 8).

Table 8 Court Decisions

Court decision	Number	Percentage
Found guilty: sentenced	10	40
Remanded in prison custody	2	8
Committed for trial at Crown Court	2	8
Charge withdrawn	1	4
Case adjourned	10	40

In terms of sentencing, the most common sentence among those found guilty was the fine. The majority of fines were issued in traffic cases including fines in combination with penalty points on drivers’ licences (30%) and disqualification from driving plus fine (20%). Fines were also issued in three cases (30%) which included two cases of defendants in court for failure to secure regular attendance at school of a registered pupil, and a case of a defendant in court for disorderly behaviour in a public place. One defendant was sentenced to a community penalty plus fine (10%) and another was sent to prison for her offence. (10%)(see Chart 3).

Chart 3 Sentences



Part Two: Defendants' experiences of the court process

Defendants' Participation

A key aim of the observation study was to assess whether the defendants participated in their trials and the nature of that participation. Participation was defined in terms of defendants who were not only able to answer questions put to them by court officials but were also able to present their own cases in their own words or through an interpreter. Only in seven cases did defendants participate in the above manner at their trials. They included:

In **D1**, a Black African defendant (Dual Citizen: British and Nigerian) at the Crown Court wanted to change her solicitors. Speaking via a video link to the court, the defendant spoke directly to the judge. She explained to the court her reasons for ditching her current solicitors and her desire to employ a new team of solicitors. According to her, her current solicitors were not representing her interest and not giving her good advice. She proceeded to present some parts of her case to the court on her own before the judge decided to adjourn for a date when the new defence solicitors would be available in court.

In **D3**, a Polish defendant (foreign national) in court on a charge of driving a car without due care and attention presented her case on oath through a Polish interpreter. Defendant admitted that the accident was her fault; that it happened because it was raining. She said, "*I accept my guilt, I apologise, it will not happen again*". She was not disqualified from driving. Instead, she got six points on her drivers' licence plus reduced fines because she pleaded guilty.

In **D9**, a Black African (foreign national) contract nurse on speeding charges which included six speeding tickets over a period of one month, admitted that she committed the offences but spent quite some time explaining to the court why the offences were 'unavoidable': As a contract nurse, she travels to work wherever she was sent by her agency, usually at short notice and her contracts have involved travels, often during the night, to places that she didn't know quite well (places that she didn't know have speed cameras). Her English was poor, but she presented her case to the court as best she could. At some point, she broke down in tears. The presiding justice kept on saying "*we understand what you are saying*". She was disqualified for three months instead of the six months that is normally given. According to the magistrates, she had presented her case of 'exceptional hardship if disqualified' quite well (a single parent with two young children still attending school and also, a sole earner at risk of unemployment as her job requires that she is always available to travel to wherever she is asked to report for work). When the magistrates returned and gave a sentence of 3 months disqualification, the Court's Legal Adviser approached the bench and spoke to the magistrates, presumably about the sentence. The presiding justice shook his head and replied publicly: "*We have considered the evidence; we are using our discretion to impose a 3-month driving ban plus fines.*"

In **D10**, the defendant specifically stated her nationality to the court as 'Croatian'. She was on a speeding charge. She admitted to committing the offence which occurred on her way to work as a football coach to a local Croatian football team but that the offence was unintentional. She presented her case on oath quite well. However, her argument of exceptional hardship if disqualified was dismissed by the court because she said that her partner has a car and could drive. Defendant got six penalty points on her drivers' licence plus fines.

In **D19**, an Indian woman (British) pleaded not guilty to two charges of speeding and not responding to a notice of impending prosecution. She answered questions put to her by the court's legal adviser and Magistrates and did her best to argue that she did not respond to the notice because it was sent to her old address. She also said that she was not the driver of the car at the time that the offence was committed. The defendant insisted on pleading not guilty and elected trial at the Crown Court. The defendant's wish was granted only after she was warned by the presiding justice that if found guilty at the Crown Court, she might get a much higher sentence and may still get penalty points on her drivers' licence.

Similarly, in **D20**, a Pakistani woman (British) also on a speeding charge pleaded guilty to the charge:

Prosecutor presented the facts of the case to the court.

Defendant: *I do not know how this happened.*

The defendant said that her daughter was in the car at the time the alleged offence was committed and that whenever she is with her in the car "*she can get quite difficult sometimes*".

Defendant presented her mitigation to the court and then asked if the court could waive the three penalty points required by law.

The Court Legal Adviser told the defendant that the court has little discretion and "*for every speeding offence you get points.*"

The Clerk then explained to the defendant that with the penalty points that she was going to get for the current offence added to the points already on her licence, her total penalty points would still be between 7 and 9 points, not enough for a disqualification. In addition, the defendant was due to have 3 penalty points already on her licence spent by December which meant that by the end of the year she would have even fewer points on her licence. This raised the question of why the defendant was in court in the first place. The defendant said that she received a letter in the post which says she has to pay a fine and that she was surprised, so, she contacted the court. She must have opted for a court trial in the hope that the penalty points might not be given:

Magistrate (to defendant): *You could have avoided this situation.*

Sentence: *£80 fine plus prosecution costs, total £220 plus 4 points on drivers' licence.*

Finally, in **D21**, a Pakistani woman (British) charged with driving through a red traffic light and failing to attend a red-light offence course had pleaded not guilty and elected trial at the magistrates' court. The defendant participated fully in her trial. She answered all the questions that were put to her by the court's legal adviser and magistrates, and she also asked questions of her own.

On the charge of running a red light the defendant claimed that she had some problems with the car and her reason for not attending the red-light course was because she was on holiday at the time.

Crown Prosecutor (to magistrates): *It is up to you, your worships whether to accept this as special mitigating circumstances.*

The defendant was found guilty of 'running a red light' (driving through a red light) and her 'mitigation' for not attending the red-light offence course (being on holiday at the time) was not accepted by the court.

Magistrate: *There is relatively little we can do, the best we can do is £100 fine and 3 points on licence, bringing you up to 6 points in total. Will this cause you any difficulty?*

Defendant: *No.*

The defendant said that the sentence was unfair because she did not cancel the course. She asked if she could re-book for the course. Like D20, she also asked if the court could then waive the 3 penalty points, to which the presiding justice replied that the court has no discretion or power over the matter and that the defendant would need to deal with the matter outside of the court.

The legal adviser explained the payment options to the defendant. The defendant asked again if there was any other way to remove the 3 points.

Court Legal Adviser: *We do not have any discretion in the matter, you will need to pursue this issue outside court.*

Non-Participation

In the remaining 18 cases, the defendants could be said not to have participated in their trials. In 14 cases, the defendants sat silently in the dock while the court officials discussed their cases; they spoke only to confirm their names, dates of birth and addresses; said 'yes' or simply nodded to confirm that they understood the charge and then entered a plea. In two cases, the trials couldn't proceed because no interpreters could be found and in another case the trial was yet to start. Finally, in one case of failure to secure regular attendance at school of a registered pupil, a male defendant spoke on behalf of his female partner while the female co-defendant sat silently in the dock besides him. The remaining four non-participation cases took place at magistrates' court. At these trials defence lawyers spoke on behalf of the defendants who also sat quietly in the docks. The non-participation of defendants is explained in some cases by the nature of the trials, for example, where, a case management or case preparation was taking place, usually at the Crown court (for example, cases 7 and 25).

Assistance to defendants during trial

The only additional assistance provided to defendants by the courts to enable participation was the service of court language interpreters where the defendants had indicated that their English was not good enough for them to understand the proceedings. Foreign language interpreters were required in seven cases but could be provided only in four cases (three Polish and One Cantonese Chinese). The three cases where interpreters were needed but couldn't be found and had to be adjourned included the case of a Slovakian defendant who asked if her niece who accompanied her to court could act as interpreter, but her request was rejected by the court: another Chinese and a Polish defendant. In all the cases where the defendants were British nationals (84%), no language assistance was requested for by the defendants or their legal representation. No welfare agency staff or mental health specialists were present at any of the trials. Probation officers were present only in three cases.

All the seven defendants who participated in their trials had no legal representation and the trials (with the exception of **D1**) took place in magistrates' courts. In contrast, majority of defendants in the non-participation cases (12 out of 18 cases) were legally represented. It wasn't clear whether the pleas of the defendants were voluntary or based on the advice received from their solicitors. As no interaction took place between defendants and lawyers inside the courtroom, it can only be assumed that any discussion of plea, if any, might have taken place before trial.

The experiences of the defendants in this study echo the findings in previous court studies namely that the defendant's participation is generally limited in a process that is dominated by court officials and that assistance to participate are also limited or non-existent (Owusu-Bempah, 2018; 2020). However, the idea that defendants in magistrates' courts play a 'dummy role' in proceedings that are dominated mainly by interactions between court officials (cf. Carlen, 1974, 1976; Dell, 1971) is not fully supported in this study as the defendants most vocal during their trials were found mainly in magistrates courts.

Part Three: Gender and Race issues in the courts

This section contains examples of actions and incidents that occurred during the trials including behaviours or utterances by the judiciary or court officials and treatment received by defendants that the researchers thought were underlined by gender or racial assumptions or stereotypes. The in-depth interviews with minority ethnic women (see Chapter 5(a)) have revealed that the participants believed that their treatment in court (and the criminal justice system) was influenced by their 'race' and gender but more likely by the latter.

Gender Issues:

Needs of defendant ignored in sentencing.

D2: Defendant in court on 3 charges of shop theft that she committed whilst on licence. She has a long record of shop thefts. She was on remand and appeared from prison via video link. Defendant admitted to having a drugs misuse problem that accounted for her persistent shop lifting. According to the defence solicitor, the defendant had told him that she would like to stay in prison for some time because she found the prison beneficial in terms of the help that she was receiving for her drug addiction and, therefore, the defence solicitor was asking the court to award a 4-month prison sentence.

Court legal adviser (to magistrates) *"There are options in the sentencing guidelines that you could use. We can't just give her a prison sentence just because she wants one"*.

Magistrates asked Probation officer in court for comments. Probation officer gave a very short oral reply, simply that the defendant has a history of non-compliance with orders. The court didn't ask the reasons why.

During sentencing, the magistrates commented on the fact that the current offence was committed whilst the defendant was on licence. The magistrates also mentioned the fact that the defendant has a history of non-compliance with orders. However, the defence counsel's request for a 4-month sentence was dismissed by the court; instead, a sentence of 8 weeks in prison was imposed plus costs to be paid on release from prison. Magistrates did not give any reasons for the short prison sentence. This case supports the statements made by some of the women interviewed for this study (see chapter 5(a)) that the courts are not sympathetic or not interested where a female defendant has a mental health or drug problem that has led to her offending. Some of the women interviewed mentioned wanting to go into prison because they knew that they would get help inside for their addictions or mental health issues that they would not get on the outside. The defendant in this case, was of the opinion that a longer time in prison might be beneficial in terms of helping her to deal with her drugs misuse problem. However, the court was more interested in the circumstances under which the offences were committed (committed whilst on licence) and the defendants' record of non-compliance with previous orders. As there was no formal PSR produced, the question of whether or not a longer sentence might have been beneficial to the defendant's 'rehabilitation' was not raised in court.

Prosecutions for children's non-attendance at school

20% of cases observed (5 out of 25 cases – **D8**, **D13**, **D16**, **D17** and **D18**) involved women in court for failing to secure regular attendance of their children at school (s. 444(1)(a) Education Act, 1996). Three of the women were foreign nationals (two Polish and One Slovakian); the other two defendants were British - Bangladeshi and Pakistani. In four out of the five cases, the children in question apparently simply refused to attend school. In the case of **D8**, for example, three out of her five children refused to attend school and their reason was that they didn't like the school, so, they simply stayed at home. In all the cases (excluding **D17**) the defendants pleaded guilty to the charges.

In **D17**, the defendants (both parents) were in court for taking their child out of school to Bangladesh without permission. The defendants claimed that they informed the school of their intention to take the child to Bangladesh for a family funeral; that they attended a meeting at the school for this reason and also wrote an e-mail to the school confirming their intentions. But, when they didn't hear back from the school, they thought that they "have had an ok". According to the defendants, the school "didn't even come to knock at our door, even once". They said that they then had no option but to take the child with them to Bangladesh as they have nobody in the UK to look after her whilst they are in Bangladesh:

Court Legal Adviser: ***You didn't get a yes from the school, did you? You didn't get a letter indicating that they have given permission.***

Co-Defendant (Male): **No**

Court Legal Adviser: ***That is the issue. That means that you didn't have permission from the school to take your child out of school. You have admitted that you took the child out of school, so, you are guilty of the offence.***

Believing that it was the fault of the school for not getting back to them on time, the parents had earlier pleaded not guilty to the charge but then changed their plea to 'guilty' after much 'explanation' of the law from the CPS and the Court's legal adviser.

In all the three cases involving foreign national defendants, the women appeared in court alone whilst in the two cases involving British nationals, both parents (or carers) were in court. It wasn't clear whether the foreign national defendants were single parents, or that their partners, for whatever reasons, were simply absent in court.

This current study appears to support findings from a study by Epstein et al (2019) that found that twice as many mothers are prosecuted for their children's truancy than fathers. The official statistics on prosecutions for failing to ensure a child's regular attendance at school in England and Wales show that in 2017 women accounted for 71 per cent of these cases where the sex of the defendant was recorded. In South Wales and Gwent, the figure was 87 per cent of prosecutions against women. The study revealed that women are also significantly more likely than men to be found guilty once in court and that almost three-quarters of fines issued by courts for truancy offences in 2017 were issued to women, as were 84 per cent of community sentences, such as orders to do unpaid work. In addition, 80% of those who received suspended sentences of imprisonment were women and nine out of the 10 women sent to prison for the offence were women (Epstein, et al, 2019, p. 1). The study maintained that this gender gap could not be explained simply by the number of single mothers alone. It appeared that women are being unjustly targeted in child truancy cases (see also, Epstein et al, 2019; Kendal et al, 2004). Although the figures suggested that magistrates were discriminating against women, there was no conclusive evidence to support this assertion. Also, the study did not have enough minority ethnic women in their sample which made it impossible for them to come to any conclusions on grounds of race. However, they suggested that further work is required that specifically focuses on the experiences of Black and Minority Ethnic families. The authors concluded that until proved otherwise, it looks like the courts are holding women to an unfair degree of responsibility on a gender bias basis compared with men (for example, fathers) who also have parental responsibility.

This current study cannot make any significant conclusions because of its small sample. In addition, the study cannot make assumptions on grounds of 'race', although it notes the fact that the three foreign national women in court for this offence came to court alone. The researchers assumed that this situation might be cultural whereby in some societies children's issues are viewed as problems for mothers. In all five cases, assumptions about children being a mother's responsibility were evident.

Court ignored gender specific evidence of exceptional hardship if disqualified

In **D6** the defendant in a magistrates' court pleaded not guilty to a speeding charge on the grounds of exceptional hardship if disqualified. The defendant was sole carer for her mother who has Parkinson's disease, and she was also a single parent who cared for her two young children. She needed the car as she regularly drove to London. The court rejected her mitigation and proceeded to find her guilty.

A mitigation of 'exceptional hardship' is, in effect, pleading guilty to the offence and asking not to be punished. This is usually not an easy application to make. The case needs to be presented through evidence, to reflect the extreme level of inconvenience and suffering the driver would face, if disqualified. Common grounds of 'exceptional hardship' acceptable to the court include financial or emotional reasons such as having a loved one rely on you for care, needing to drive in order to fulfil your job role or to take care of your children. Not having access to your car means that you will struggle to care for vulnerable or elderly family members which may include not having easy access to hospitals in emergencies. In this case, the magistrates have rejected the defendant's plea of exceptional hardship on the grounds of her caring roles. As a result, she chose to appeal the sentence to the Crown Court. It wasn't clear what the options of the court could have been in this case, but, in the opinion of the researchers, this defendant was being unduly punished without any recognition for her caring role that the law stipulates could stand as acceptable evidence of exceptional hardship. Women are disproportionately burdened with the responsibilities of caring for the vulnerable members of their families, but this is sometimes ignored where sentence is to be passed that is likely to make it difficult for them to perform this role.

Assumptions about family roles and duties

D10 was another traffic case of speeding by a Croatian woman in court for possible disqualification. She pleaded exceptional hardship on the grounds that she needed the car to travel to work as a football coach and also to take her two children to school. In this case, the defendant claimed to have a male partner who has a car and could drive. As a result, the magistrates decided that her case of exceptional hardship was not proven. Defendant was told that since her partner has a car and could drive, he will have to take the younger child to school and the second child – a 14-year-old boy, "*could go to school on a bus*". The court had simply assumed that the defendant and this 'partner', who was not even in court, were a couple who live together and that the children belonged to both of them. More importantly, they assumed that it would simply be 'natural' for the defendant to depend on this partner to take her child to school and that the partner would be willing to do so.

Mental Health

It was only in one case that the mental health of the defendant was raised in court: In **D14**, a Pakistani woman, was charged with several counts of harassment towards another woman (sending abusive and threatening emails and making threatening remarks). She was remanded in custody even though she suffered from epilepsy which was easier to regulate and control in the community. At the hearing, it was reported that a PSR that has been requested by court could not be produced because probation was awaiting a psychiatric evaluation report that is needed for the PSR. It wasn't clear why a case of harassment would require a psychiatric report unless the mental health of the defendant has been raised by the defence as mitigation. Gelsthorpe (2004), notes how early psychological theories constructed women as normally passive and determined to be wives and mothers and therefore those who offend are seen as having a personality disorder; Pollack (2005) discusses the use of psychiatric labelling of women prisoners to regulate and control rather than empower them. In a study in magistrates courts, Pearson's (1976) argued that 'the fact that even fewer women commit crimes than men leads directly to the questioning of the "normality" of those who do' (Pearson, 1976, p.268). Pearson cited cases from his study that suggested that magistrates may refer defendants or ask for psychiatric reports on flimsy grounds. He cited, for example, the case of a young woman who had a record of repeated thefts and pleaded guilty to stealing a cheque book. When asked why she did it - a question not usually raised in theft cases - she replied, "Because I was broke". After some consultation, the magistrate ordered her to be remanded for psychiatric reports, "So we can find out why you keep committing these offences" (Pearson, 1976, p.271). Pearson concluded: "women are caught in a double bind whereby those who fully act out the conditioned female role of helplessness and dependence are clinically viewed as neurotic or psychotic, yet those who reject this also frighten society, are frequently ostracised, and may similarly be designated as sick. The evidence is that such labelling operates in magistrates' courts" (Pearson, 1976, p.273).

Joint Enterprise

In five of the cases observed during this study the defendants appeared at the Crown court, jointly charged with male co-defendants for serious crimes. These included: illegal drugs dealing (**D11**), attempted murder (**D15**, **D22**), trafficking in class A drugs and firearms offences (**D23**) and conspiracy to supply illicit prescription medication and money laundering. (**D25**). In three cases (**D15**, **D23** and **D25**) the cases were at preparation stages; thus, it was not possible to determine how the female co-defendants have been charged. In **D11** and **D22**, the roles of the female defendants in the alleged crimes were discussed. In the view of the researchers, these two cases were examples of joint enterprise cases.

Joint enterprise is a common law doctrine where an individual can be jointly convicted of the crime of another, if the court decides they foresaw that the other party was likely to commit that crime. It is a case of secondary liability where a person is deemed to have assisted or encouraged another to commit a crime.

A case of secondary liability could be brought by the CPS against someone:

- For being involved in a crime, even if there is no clear evidence that they were a principal or a secondary party.
- If we can prove they helped or encouraged another person to do the crime.
- If they were there when the crime was done but not involved in doing it, as long as they helped or encouraged someone in some way.
- If they agree to help another person do the crime.
- If they did not plan to be involved in a crime but join a group that they know is going to do a crime.
- When they know they will be part of a crime, even if they do not know exactly what the crime is.
- If they guessed or saw that the other person might do a crime and they helped or encouraged them in some way.
- If they know the other person has a weapon, they could use to harm someone, and they help or encourage that person.
- If they plan to attack one person but accidentally harm or murder someone else. But they will not be charged with helping or encouraging murder or manslaughter if the person doing the crime deliberately chooses to attack someone else.

(CPS, 2018, pp 8 – 10)

In **D11**, the defendant, a Chinese woman, was arrested during a police drugs 'operation' at a flat where she lived with her husband. The couple has four children. There were two other men arrested at the flat during the raid. The defendant and her husband appeared in court on bail while the other two defendants appeared from prison custody. It appeared as if the defendant was charged simply because she was in the house with her husband (co-defendant) when the raid took place, but there was no evidence that she helped or encouraged the crime in any way. The case was being made that the female defendant was not fully aware of what was going on. In court, she was asked questions which suggested that her trial was to determine her part in the crime. This was an odd case because had the CPS applied the Code correctly, this defendant should not have been charged.

In **D22**, the defendants, a Polish woman, appeared from prison custody. She was a co-accused on a charge of attempted murder. The co-accused was a man of Turkish origin. Defendants entered court separately and were accompanied each by two prison officers. The male co-defendant allegedly stabbed another person, a Polish man, and left him bleeding on a street pavement. The female defendant was said to be the male co-defendant's girlfriend. Apparently, the male defendant committed the crime because the victim made a derogatory and racist remark against the female defendant which relates to her being a Polish woman going out with a foreigner, which the victim, being Polish himself, said amounted to her being a prostitute worth only £20. CCTV evidence presented to the Jury showed the female defendant in the vicinity of the crime scene. She was heard uttering abusive words at the victim after which the male co-defendant ran up to the victim and stabbed him with a bladed weapon to the rear of his left-hand shoulder, in the chest and six more times to the head. The prosecution alleged that the female defendant had previous knowledge of the intentions of the male defendant and did encourage him to commit the crime. In addition, she, allegedly, prevented others from helping the victim whilst he was being assaulted and when one witness insisted on helping the victim as he lay bleeding on the street, he was punched on the face by the female defendant. She was also seen running away from the scene of crime, in the company of the male defendant. The defence's position was that the victim first attacked the male defendant with a sharp object and that there was a struggle between both men before the victim was stabbed. It is doubtful whether the racist and abusive words uttered against the female defendant would be considered vital in the defence as her case rests on proof of secondary liability.

Leniency After All?

In two cases it appeared as if the magistrates were visibly lenient in their sentencing, but it was not clear whether they would have done the same had the defendants been men.

The first case was that of the Polish single parent in court for breaching her curfew order for eight weeks (**D4**). This was the second time that the defendant had breached a curfew order. The prosecution was asking for a re-imposition or extension of the curfew order plus £65 prosecution costs. The defendant was legally represented. The reason given by the defence for the breach was that during the period in question the defendant had secured two jobs – one in a fish and chips shop and the other as a cleaner. The jobs involved working shifts, especially the cleaning job which involves working nights. As a result, the breach was unavoidable as the defendant struggled not to lose her jobs. The defence lawyer was asking the court to either extend the order or revoke it and instead impose a community order that would enable the defendant to keep her jobs. Magistrates asked probation officer in court if there was a PSR to present to the court. The probation officer gave an oral presentation. She said, briefly, that the defendant's record of compliance with orders has been generally good.

In sentencing the presiding justice (female) said: *“This is a second breach, but we have heard why this has happened, trying to keep two jobs which has made it difficult for you to comply with the order”*. Sentence: curfew order is revoked; to be replaced by 50 hours of unpaid work to be undertaken at times that do not interfere with defendant's jobs plus £60 costs. Also, the court ordered that the electronic tag on the defendant's ankle be removed on the day. It wasn't clear whether this decision was made because the defendant is a woman but certainly there was an indication that the magistrates were not willing to allow her punishment to interfere with her employment, perhaps, because she is also a single parent and sole earner.

The second case was that of the African contract nurse in court on six speeding charges that would have raised her penalty points to 27 including an automatic disqualification for six months (**D9**). In this case, the magistrates accepted the defendant's plea of exceptional circumstances if disqualified on the grounds that her contract work requires that she has a car to get to whenever and wherever she is needed. She also needs a car to take her two young children to school. In addition, unlike **D10** whose 'partner' has a car, **D9** is a single parent. In this case, the magistrates publicly announced in court, in spite of objections from their legal adviser, that they were using their discretion to impose a 3-month driving disqualification instead of the usual six. This was to enable her punishment to be spent earlier.

However, in **D11** where the defendant was in court with her husband and two other male co-defendants on drugs charges, the defence lawyer was contemplating that, should the female defendant be found to be involved in the charges, she (defence lawyer) would be presenting to the court as mitigation, the need for her to remain with the couple's four young children whilst her husband goes into prison. Although this case was in progress, the intention was already there to use the mothering role of the female defendant to argue for her not to be imprisoned even if found guilty. This suggestion was not being made for her co-defendant husband.

Previous research has shown that reference to mothering roles of women can sometimes result in the woman-defendant getting a softer sentence. Helena Kennedy (2018) argues that judges' decisions are affected by 'preconceived ideas about good women', if she is a good wife, mother, or daughter, with those breaking the gender norms considered as 'bad' women. She also argues that 'good mothers' get credit in courts, but a good mother is typically a middle-class woman. Kennedy argues that lawyers and experts often view women in court through a paternalist lens. She also notes the double discrimination experienced by minority ethnic women.

Race issues

'Race' or ethnicity would be deemed to be a significant issue where it can be shown either that it featured in the deliberations of the court, positively or negatively, or that the treatment of the defendant in court implies that it was underlined by racial or even racist connotations. 'Race' can also be implied where the actions of a defendant in court indicates that it is due to racial or cultural differences, for example, where the defendant showed a misunderstanding of the law or process that could be inferred from her ethnicity or nationality. Accordingly, it was only in very few of the cases observed that 'race' featured in the proceeding:

D1 was a woman of dual nationality (British and Nigerian) on a serious charge and on bail at the Crown Court. A condition of her bail was that she submits her British passport to the court. At this hearing, the CPS raised the issue that the defendant is yet to submit her British passport and that she also has a Nigerian passport and therefore likely to flee the country on her Nigerian passport. The CPS was asking the court to review the defendant's bail conditions to include submission of all passports in her possession.

This case echoes the findings of Chigwana-Bailey (2002) that there appears to be a general assumption that ethnic minority women will 'disappear into their own subculture' which will then be difficult for the police to penetrate (Chigwada-Bailey, 2002, p.88) also that Black women defendants who do not 'reside permanently' in Britain often have difficulty in getting bail, the courts fearing that they may fail to surrender at the end of the bail period. It also supports Robson (2020) and Hales and Gelsthorpe's (2012) conclusions that being a 'foreign national' woman in criminal courts in England is a ground for suspicion in bail cases; there is the underlying assumption that such women may flee the country or abscond overseas. As a result, 'foreign national' women are subject to more stringent bail requirements. In the above case, however, the Judge rejected the request of the CPS and left bail conditions as they were.

In addition, the defendant in **D1** was asking the court for permission to change her solicitors as her current solicitors were not helpful. They were advising her to plead guilty to avoid being deported to Nigeria in spite of the fact that she is also a British citizen. Previous research has shown that minority ethnic women often find their solicitors unhelpful, unsympathetic, and uncaring (Chigwada-Bailey, 2002; Lovatt et al, 2020; see also chapter 5(a) of this report) or feel they cannot trust them. Black women sometimes experience difficulties finding a lawyer who could represent them effectively and some want to change their solicitors because of the issues they experience, and these processes are shaped by institutional discrimination (Chigwada-Bailey, 2002)

In **D5** 'race' featured in terms of a Chinese defendant who claimed to have lived in the UK for more than 20 years arguing that the decision of the local Council to charge her to court for non-compliance with planning permission conditions was racist. In this case, the Council had given permission to the defendant to move a gate on her property to a newly approved position. However, the defendant had moved the gate to a different position to that agreed with the Council and this was causing movement obstruction to neighbours who reported her to the Council. The defendant's argument was that it was the architect that she employed to do the job that made the mistake; he should be the one charged to court not her. All attempts to explain to her that being the owner of the property makes her responsible, failed. She said that she had lived in London for several years and did not experience such behaviour from public bodies. Her claim that the Council's action was racist was ignored by the CPS. Although studies have shown the courts to be institutionally racist (see Lammy Review, 2017; Monteith et al, 2022), it is not uncommon that ignorance of the law or legal procedure can lead to defendants from minority ethnic backgrounds claiming that the UK justice system was biased towards them.

Finally, in a child truancy case (**D17**) where the defendants were in court to argue that they took steps to inform their child's school of their intention to take her to Bangladesh for a family funeral, they were reminded by the Court's legal adviser of the fact that they live in Britain and must, therefore obey British law:

Legal Adviser (to defendants): *This is the UK, and the child is schooling here, not Bangladesh, so you have to comply with UK law.*

Generally, 'race' is absent or even 'silent' in the operation of the criminal courts. Not only is ethnicity not provided in court lists, defendants also do not have to confirm their nationality or ethnicity in court unless they wish to do so. Moreover, in the absence of a PSR in almost all the cases observed it was difficult to ascertain the extent to which 'race' might have been used to explain the circumstances that led to the defendant's offending or their sentencing needs.

Other issues

1. The lack of use of PSRs suggests that individual circumstances are frequently disregarded or overlooked in sentencing.
2. Lack of interpreters was a key problem that have resulted in lengthy delays in cases involving foreign national women. This was the case where interpreters were needed for foreign languages that are not common in the UK, for example, Croatian and Slovakian.
3. In traffic violation cases the defendants did not seem to know/understand the law and how it applies to their case but did not seek legal advice before attending court (see cases **D20** and **D21**).

Chapter 7:

Key findings

The following provides key findings from the pilot research.

Probation interviews:

Probation officers (POs) recognise that gender of the defendant should be highlighted in PSRs but only where it is 'relevant' (for example where a female defendant is either pregnant or have children; is in a relationship and her offending behaviour is influenced by her partner). 'Race' is seen as relevant where the offence was a result of a response to a racially motivated action against the defendant).

There are no definite requirements on what 'background' information should be in a PSR, and Probation Service guidance does not specifically require that PSRs contain information relating to how the race/ethnicity and gender of the defendant might have affected offending or impact on re-offending.

POs are reluctant to express race issues in PSR reports because race is often not taken seriously by courts and mentioning race is seen as 'playing the race card'; POs may avoid putting this information in a PSR for fear of putting the defendant at risk of further racial discrimination.

Knowledge or training on the needs of minority ethnic women in PSRs could be improved to include more people taking about their own experiences and should be criminal justice wide, open to solicitors and prosecutors.

Challenges faced when preparing Pre-Sentence Reports for minority ethnic female defendants include the need to build rapport and gain trust, getting the ethnicity across without disadvantaging the defendant, and having more time to consider someone's circumstances, issues around gender, around race, around culture, customs, language.

Oral or shorter PSR reports has affected the volume and quality of PSRs; the reports are very brief and do not consider all the relevant information.

There is no section in PSR reports to consider whether the defendant is minority ethnic.

There is no longer continuity between the writing of the court report and supervision of the offender when they are sentenced; the PO designated to supervise a convicted offender sometimes does not get any information about the defendant from the courts.

The court doesn't have to request for a PSR and may not admit a PSR and therefore the defendant's circumstances are not taken into consideration. Without a PSR, a minority ethnic woman is more likely to be treated harshly. The 'speedy justice' approach has meant that PSRs are not produced in most cases except in cases of violent and sexual offences. Only three PSRs were produced during this study, and they were all oral.

Women interviews:

Our minority ethnic women defendants felt that they were not heard in court and were excluded from the proceedings. They spoke of feeling of being caged, constantly judged, and misunderstood. They felt that the courtroom process, lawyers, and judge(s) discourage the defendant from speaking and that they were not given a chance to tell their stories and explain the context and circumstances of the offence.

Our participants spoke of feeling 'rushed into', or 'pushed', or pressured to make a decision on plea resulting mainly in guilty pleas. They were dissatisfied with legal representation saying that their lawyers 'did not care'.

For some, a PSR was taken into account by the judge, for others it was not, even though a PSR was prepared and presented in court.

In the courtroom, our participants felt that Prosecutors are there just to do their job and 'get a conviction' whilst Judges and magistrates 'did not care'. There was a concern that the training of magistrates was not sufficient, and they were not representative of those they are sentencing.

When it came to sentencing our participants felt that their sentences were too long and/or unfair.

Our participants felt that they were not supported during trial with the 'system' disregarding any mental health concerns and/or histories of domestic violence and abuse. Some women who needed help for example, to deal with mental health or drug addiction wanted to be imprisoned where they know that they can get help because help/assistance is not available to them on the outside and during their trials.

Some felt that ethnicity has had an effect on how they were treated and felt that racist assumptions were made about them.

Some felt that gender has had an effect on how they were treated; felt that traditional gender stereotypes played a role; for some, the effects of ethnicity and gender were combined (for example, stereotypical views of Asian women who live in Birmingham).



Crown prosecutor's interviews:

Generally speaking, gender and ethnicity are not taken into account in decisions to charge and prosecute. Everyone is treated the same and all comes down to whether it passes the two stage tests required by the Code for Crown Prosecutors namely the evidential and public interest tests.

Sometimes prosecutors will not have any information about race or ethnicity because these are seen as not relevant to the charge.

Gender and race may be considered only when they are seen as relevant to the charge (hate crime, bullying or harassment, victims of modern slavery or trafficking, mental health and domestic violence, evidence of exploitation, if someone is suspected to have been forced into committing a crime, for example, county lines).

If there is clear evidence of exploitation, case would be stopped as it is not in public interest to prosecute. In cases of trafficking or modern slavery/exploitation, the defendant would be referred to the NRM (National Referral Mechanism).

Out of court disposals for minority ethnic women: charges reflect the seriousness of the offence and if the case is suitable for an out of court disposal; diversion is suitable for less serious offences and young offenders. Black [and] Asian men and women are more likely to have a distrust for the police and less likely to make an admission and then not be eligible for an out of court disposal.

An out of court disposal [is] likely if you're of a higher social class, or if you're in a profession.

Personal impact of the sentence on the offender would not be generally considered by the CPS. Probation is likely to highlight any personal impact of the sentence on minority ethnic women in their report. Victim impact statements from family members who want the court to be lenient towards the defendant would be considered.

On sentencing, prosecution advises on the guidelines and gives representation, but it is a matter for the court to decide.

Challenges prosecuting a minority ethnic woman: language barriers and lack of accredited interpreters; religious or cultural reasons why the defendant might not want to provide all of the information; mental health issues and learning difficulties; may not disclose that they've been victims of violence or trafficking; difficulty for the defendant accessing legal representation; relationship with the police and not having information about what happened when they were arrested and charged.

At magistrates, because of pressures and backlog of cases, defendants are not effectively participating in the proceedings and do not know what is happening.

For low level offences, it would be helpful for a minority ethnic woman, even if not at risk of custody, to have an advocate to represent her.

Legal adviser interviews:

A female from an ethnic minority would be treated in exactly the same way as someone else.

Gender and ethnicity are considered in sentencing guidelines if there are risk issues.

PSR - if an offence is serious aggravating and mitigating factors are considered in the PSR and decisions depend on the level of harm/culpability.

The court need to look at individual needs and circumstances of the defendant and be alert to conscious and unconscious bias. If the defendant is not provided with the mechanisms to understand and present their case well then it could act as a disadvantage

The language barrier may be an issue; interpreters are mainly based in London.

Court observations

- In more than half of the cases the defendants appeared to be passive and silent during the hearing and only listened and responded when spoken to by the judge, clerk, or the prosecution, sometimes via an interpreter.
- The defendants appeared more proactive in driving offences where they thought they could persuade the court not to add penalty points to their license. The defendants do not seem to know/understand the law and how it applies to their case, but do not seek legal advice.
- In truancy cases where the defendant had an Eastern European background the assumptions about children being mother's responsibility possibly led to the mothers being charged with the offence while their male partners were absent.
- In two cases, minority ethnic women found their solicitors unhelpful and felt that their needs were ignored and that racial assumptions played a role in how the lawyers interacted with the defendant.
- Sentencing guidelines are often cited as what the court must follow regardless – therefore the court must ignore any individual circumstances or differences where the sentencing guidelines are inflexible/do not allow any discretion.
- Lack of interpreters a key problem with foreign national and non-English speaking British defendants.
- 'Race' or ethnicity did not feature much in the observed court proceedings. There was one case where the CPS asked the judge to require a black British woman of dual nationality to submit her Nigerian passport as part of her bail conditions on the grounds that she might flee the country on her Nigerian passport. However, there were a few instances when some defendants lacked knowledge of British law and had to be corrected by the court legal advisers. So, ethnicity did play some part in the experiences of these defendants in court. Generally, 'race' was not discussed in court and none of the PSR reports presented in court referred to the ethnicity of the defendant.
- In the majority of the cases we observed, gender was invisible in the proceedings. Gender featured in terms of the courts lack of understanding of reasons behind women's offending and some decisions were based on stereotypical views on why women commit crimes. For example, a court asked for psychiatric reports in the case of a women in court for simply constantly harassing her neighbour, supporting previous research on women offenders being seen by courts as 'mad'. On the other hand, in traffic cases, disruption to caring responsibilities presented as evidence of "exceptional hardship if disqualified" was routinely dismissed by the courts, thus ignoring gender implications of these decisions. It is possible that men carers would be treated the same, but as there are more women carers, they are more likely to be affected by courts' unwillingness to recognise their caring responsibilities. For example, a defendant who was sole carer for her mother who has Parkinson's disease, and she was also a single parent who cared for her two young children was banned for 6 months. However, in a few cases, the courts appeared to be willing to show leniency that favoured the defendant as a woman – in these cases the courts made gender assumptions about women as carers. For example, in a case where a Chinese woman was in court because she lives in the house where drug dealing was taking place, with her husband who was a co-defendant (joint enterprise) and the couple have four children, the mood in court was along the lines of should the female defendant be found to be involved in the charges, the defence lawyers would be presenting to the court as mitigation, the need for her to remain with her four young children whilst her husband is imprisoned.



Recommendations

These are the recommendations that we have identified from the findings flowing from the interviews and observations.

Pre-Sentence Reports

- Provide time in court and sufficient funding to have a full written PSR in all cases taking into consideration the defendant's background and circumstances fully (for example, cultural and religious differences, experiences of racism, bullying or harassment, mental health, hardship, caring responsibilities, language barriers etc). Gender and ethnicity to be part of the report, to have a section to include these.
- Ensure there is sufficient time to consult any relevant agencies where minority ethnic women are defendants for information to include in the PSR.
- Challenge the 'race card' stereotype which prevents the inclusion of relevant ethnicity information in the PSR.
- There needs to be some room in the sentencing guidelines to take into consideration race and gender specific circumstances of the defendant before appropriate sentence is applied.
- If Judge is not taking the PSR into consideration, then the Judge should explain the reasons why they are not referring to PSRs in sentencing.

Criminal Justice Professionals Training

Whilst we recognise that training is provided by the Magistrates Association, Judicial College and HMCTS with a commitment to regular continuing professional development (CPD) we felt that there was a gap and need for a more combined approach to training – bringing together criminal justice professionals and more importantly including those with lived experience of the criminal justice system – minority ethnic women.

- Training of judiciary should include a session led by probation officers to increase confidence of POs in raising race concerns in the PSR reports where relevant (note here the recommendations of the recent PSR Pilot evaluation – Ministry of Justice 2023).
- Include ethnic minority women with lived experiences of the criminal justice system in the EDI (Equality, Diversity, Inclusion) training for all criminal justice professionals.
- Training on race should be delivered by ethnic minority people and be open to questions and discussion.
- Training on the Equality Act to focus more on increasing awareness of how race or gender discrimination can happen due to stereotyping or unconscious bias; challenge the assumption that treating everyone equally and fairly means ignoring gender and ethnicity.
- Training for magistrates to include the importance of making sure the defendant can fully understand the proceedings and can effectively communicate and participate.
- To incorporate a better understanding of intersectionality, incorporating this into training to recognise how ethnic minority women's experiences can be compounded by other characteristics.

In court

- Provide information to women in different formats and languages about what to expect in court.

Interpreters

- Ensure accessibility of accredited interpreters for foreign national and non-English speaking British defendants for courts outside London.

Legal representation

- To ensure that all minority ethnic women defendants are effectively represented even in low level offences.
- To ensure the defendant fully understands and has sufficient time to consider the implications of pleading guilty/not guilty before deciding on how to plead, and not to feel 'rushed' into it.

Conducting research in the courts/access for researchers

- To get a good understanding of this area researchers need access to criminal justice/court data and agencies.
- Develop a more consistent approach across agencies to information gathering and ways in which data relating to race/ethnicity is held.

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Appendix 1



CONSENT FORM

MINORITY ETHNIC WOMEN EXPERIENCES IN CRIMINAL COURTS (PROFESSIONALS)

I am [say name] a researcher based at [say University]. We are working on a project looking at the experiences of minority ethnic women in English criminal courts. You should have received an information sheet which sets out the purpose of the research and what it involves. The interview is confidential and what you say will not be known by anyone in the criminal justice system or be ascribed to you at any time.

	Please initial the boxes below to confirm
I,(<i>put your name here</i>) have read and understood the information sheet on Minority Ethnic Women Experiences in Criminal Courts	
I have had the opportunity to think about the information and ask questions of the researchers and I am happy with the answers they gave me.	
I understand that participating in this research is voluntary and that I am free to withdraw my interview at any time before June 2023 by contacting the researchers at the address below.	
I give permission for the researchers to record the interview.	
I give permission for the researchers to use the information I provide during my interview within the aims and purpose of the research. I understand that my personal details will remain confidential, and I will not be identifiable within any of the findings.	

I consent to take part in this research:	
Name of participant [PLEASE PRINT] _____	
Signature	Date.....
Name of interviewer [PLEASE PRINT] _____	
Signature	
Date.....	

Contact

If you have any questions at any time, please contact:

Jenny Johnstone jenny.johnstone@newcastle.ac.uk, Bankole Cole B.Cole@shu.ac.uk, Yulia Chistyakova Y.Chistyakova@ljmu.ac.uk

c/o [] (add title and contact)



CONSENT FORM

Minority Ethnic Women’s Experiences in the Criminal Courts

I am [say name] a researcher based at [say University]. We are working on a project looking at the experiences of minority ethnic women in English criminal courts. You should have received an information sheet which sets out the purpose of the research and what it involves. The interview is confidential and what you say will not be known by anyone in the criminal justice system or be ascribed to you at any time.

	Please initial the boxes below to confirm
I,(put your name here) have read and understood the information sheet on minority ethnic women’s experiences in Criminal Courts	
I have had the opportunity to think about the information and ask questions of the researchers and I am happy with the answers they gave me.	
I understand that participating in this research is voluntary and that I am free to withdraw my interview at any time before November 2022 by contacting the researchers through Andrea Sterling.	
I give permission for the researchers to record the interview.	
I give permission for the researchers to use the information I provide during my interview within the aims and purpose of the research. I understand that my personal details will remain confidential, and I will not be identifiable within any of the findings.	

I consent to take part in this research:

Name of participant [PLEASE PRINT (optional)] _____

Signature (or mark)
Date.....

Name of interviewer [PLEASE PRINT] _____

Signature
Date.....

Contact

If you have any questions at any time, please contact:

Jenny Johnstone, Bankole Cole, Yulia Chistyakova



EXPERIENCES OF MINORITY ETHNIC WOMEN IN CRIMINAL COURTS

Information Sheet for Participants (professionals)

Invitation to share your experience of the criminal courts

We would like to invite you to participate in a project by sharing your experiences of the criminal courts. If you decide to participate the researcher will contact you to arrange a date and time to meet to undertake the interview. The researcher anticipates that the interview will last approx. 50 minutes. The interview can take place over Zoom or Teams.

Background to the Research

The research is a study looking at the experiences of minority ethnic women in English criminal courts. The study will identify stages where justice might have been 'poorly delivered' and critically assess the reasons why. Gender inequalities have been identified by several studies on the experiences of women in the CJS, including the courts.

What does the research involve?

The study will involve collecting data on court cases where defendants are minority ethnic women, conducting interviews with key decision-makers, including defence lawyers, CPS, probation officers, victim support, judges, and magistrates; and conducting interviews with women. We will aim to collect as much data as possible on the experiences of women defendants at the different stages of the process. The study will lead to a wider study tracking the journey of minority ethnic women through the criminal justice system. The questions asked will focus on your role and your perceptions of the experiences and how the system responds to the needs of minority ethnic women involved in proceedings in the criminal courts.

Researchers Experience and ethical approval

The researchers have considerable experience of this type of research and are undertaking the relevant ethical approval process through Newcastle University and the Ministry of Justice. The three universities involved in the research (Newcastle University, Sheffield Hallam University and Liverpool John Moores University) are well established academic institutions in the UK with exemplary track records in teaching and cutting-edge policy-focused research. Jenny Johnstone has much experience of conducting research in courts and conducting in-depth interviews with criminal justice professionals and offenders. Bankole Cole has extensive

experience of minority ethnic research within criminal justice, involving women offenders and criminal justice professionals. Yulia Chistyakova also has extensive experience of conducting research within the criminal justice sphere. The three investigators have recently completed a NOMS-approved study of minority ethnic and foreign national prisoners' experience of prison. All members of the research team have enjoyed excellent working relationships with a variety of criminal justice agencies such as the police, the prison service, courts, and probation in the past and have successfully completed a number of projects for government departments in several jurisdictions and for other key funders in the social sciences. The researchers will adhere to guidelines and protocols and have gone through the relevant ethical procedures and guidance through the University of Newcastle and the MOJ.

Consent and participant rights

You will be provided with a consent form which you will be required to sign. You can withdraw at any time without providing a reason. You can notify the researchers in writing. If you have taken part in an interview the researchers will remove all data relating to your interview unless the final report has been written and submitted.

Your name and any personal details will remain completely confidential.

Data storage and confidentiality

Any data we hold will be stored securely at Newcastle University, Sheffield Hallam University and Liverpool John Moores University, where only the researchers will be able to gain access to it.

We will adhere to the University Policy regarding storage and collection of data in accordance with data protection regulations. Newcastle University will be using information from you in order to undertake this research study and will act as the data controller for this study. Newcastle University is responsible for looking after the participants information. No-one will be identifiable from the research and all participants will be allocated a number. To safeguard participants rights the data surrounding locations will be allocated a fictional name. No specific details of cases will be used – court hearings, times, or dates.

We will use your name and contact details including telephone number and address to contact you about the research study. Individuals at Newcastle University may look at your research data to check the accuracy of the research study. The only individuals at Newcastle University who will have access to information that identifies you will be individuals who need to contact you to arrange the interviews or audit the data collection process.

The information provided by you may be shared with researchers running other research studies at Newcastle University and in other organisations - anonymously. These organisations may be universities. Your information will only be used by organisations and researchers to conduct research.

If you agree to a recording of the interview, we will also hold the transcription on file.



All data, including consent forms, will be stored on a portable hard drive, and stored in a locked filing cabinet accessible only by the researchers. The data will be encrypted, and password protected.

AND

This information will not identify you and will not be combined with other information in a way that could identify you. The information will only be used for the purpose research and cannot be used to contact you. It will not be used to make decisions about future services available to you.

The data will be kept for the purposes of writing up the report and up to 6 months post the submission of the final report. The data will then be confidentially destroyed using the official process and procedures within Newcastle University.

Legal obligation to disclose

All data will be confidential unless a legal obligation to disclose arises. This could be where there is potential for harm to be caused to another person or there is a safeguarding issue.

Withdrawing from the study

Participants can withdraw from the study at any time up until such time as the data analysis has been completed – June 2023.

Contacts

If you have any questions or concerns, then please contact:

Jenny Johnstone jenny.johnstone@newcastle.ac.uk, Bankole Cole B.Cole@shu.ac.uk, or Yulia Chistyakova Y.Chistyakova@ljmu.ac.uk

Should you have any complaints please contact Newcastle University's Data Protection Officer (Maureen Wilkinson, rec-man@ncl.ac.uk)

Thank you for thinking about taking part in this project and for taking the time to read this information sheet. If you decide to take part, you will be given a copy of this information sheet to keep. Please note that this information sheet can be made available in appropriate accessible formats.



EXPERIENCES OF MINORITY ETHNIC WOMEN IN CRIMINAL COURTS

Information Sheet for Participants**

Invitation to share you experience

We would like to invite you to participate in the project by sharing your experiences in the criminal justice system and the courts. If you decide to participate the researcher will contact, you to arrange a date and time to meet to undertake the interview. The researcher anticipates that the interview will last approx. 50 minutes. The location of the interview can be arranged at a time and place to suit you during the day. It can be conducted over the telephone if that is best for you or in a safe location.

Background to the Research

The research is a study looking at the experiences of minority ethnic women in English criminal courts. This research is concerned with the experiences of minority ethnic women in English criminal courts. The study hopes to look at how 'justice' is delivered and identify stages where justice might have been 'poorly delivered' and critically assess the reasons why. The study hopes to address the issue of 'unconscious' bias and discriminatory practices in the behaviour of professionals within the criminal justice system when sentencing various minority ethnic women, to enable them to appreciate and understand the different needs that different minority ethnic women have and, therefore, be fairer in their sentencing.

The interview will focus on seeking your experiences of the criminal court process.

What does the research involve?

The study will involve collecting data on court cases where defendants are minority ethnic women, conducting interviews with key decision-makers, including defence lawyers, CPS, probation officers, victim support, judges, and magistrates; and conducting interviews with women. We will aim to collect as much data as possible on the experiences of women-defendants at the different stages of the process. The study will lead to a wider study tracking the journey of minority ethnic women through the criminal justice system.

Researchers Experience and Ethical Approval



The researchers have considerable experience of this type of research and have ethical approval from the Newcastle University and the Ministry of Justice. The researchers will adhere to guidelines and protocols and have gone through the relevant ethical procedures and guidance through MOJ.

Consent and participant rights

You will be provided with a consent form which we will ask you to sign. You can withdraw at any time without providing a reason. You can notify the researchers in writing. If you have taken part in an interview the researchers will remove all data relating to your interview unless the final report has been written and submitted.

Your name and any personal details will remain completely confidential.

Data storage and confidentiality

Any data we hold will be stored securely at Newcastle University, Sheffield Hallam University and Liverpool John Moores University, where only the researchers will be able to gain access to it.

We will adhere to the University Policy regarding storage and collection of data in accordance with data protection regulations. Newcastle University will be using information from you in order to undertake this research study and will act as the data controller for this study. Newcastle University is responsible for looking after the participants information. No-one will be identifiable from the research and all participants will be allocated a number. To safeguard participants rights the data surrounding locations will be allocated a fictional name. No specific details of cases will be used – court hearings, times, or dates.

We will use your name and contact details including telephone number and address to contact you about the research study. Individuals at Newcastle University may look at your research data to check the accuracy of the research study. The only individuals at Newcastle University who will have access to information that identifies you will be individuals who need to contact you to arrange the interviews or audit the data collection process.

The information provided by you may be shared with researchers running other research studies at Newcastle University and in other organisations - anonymously. These organisations may be universities. Your information will only be used by organisations and researchers to conduct research.

If you agree to a recording of the interview, we will also hold the transcription on file.

All data, including consent forms, will be stored on a portable hard drive, and stored in a locked filing cabinet accessible only by the researchers. The data will be encrypted, and password protected.

AND

This information will not identify you and will not be combined with other information in a way that could identify you. The information will only be used for the purpose research and cannot be used to contact you. It will not be used to make decisions about future services available to you.

The data will be kept for the purposes of writing up the report and up to 6 months post the submission of the final report. The data will then be confidentially destroyed using the official process and procedures within Newcastle University.

Legal obligation to disclose

All data will be confidential unless a legal obligation to disclose arises. This could be where there is potential for harm to be caused to another person or there is a safeguarding issue.

Withdrawing from the study

Participants can withdraw from the study at any time up until such time as the data analysis has been completed - April 2023.

Contacts

If you have any questions or concerns, then please contact:

Jenny Johnstone jenny.johnstone@newcastle.ac.uk, Bankole Cole B.Cole@shu.ac.uk, or Yulia Chistyakova Y.Chistyakova@ljmu.ac.uk

Should you have any complaints please contact Newcastle University's Data Protection Officer (Maureen Wilkinson, rec-man@ncl.ac.uk)

Thank you for thinking about taking part in this project and for taking the time to read this information sheet. If you decide to take part, you will be given a copy of this information sheet to keep. Please note that this information sheet can be made available in appropriate accessible formats.



Interview with minority ethnic women

Introduction: Information about research and signing of consent form.

Thank you for agreeing to take part in this project. We will be asking you about your experiences in the criminal courts. We think it will take approximately 50 minutes.

The research is a study looking at the experiences of black and minority ethnic women in English criminal courts. The study hopes to look at how 'justice' is delivered and identify stages where justice might have been 'poorly delivered' and critically assess the reasons why.

The interview will focus on seeking your experiences of the criminal court process. We have a few questions. You can stop the interview at any time and you can pull out of the research at any time too. If you do not want to answer a question, then please just say and we will move onto the next question. If you need to take a break, then please just let Rebecca know and we can pause.

If after the interview you feel you wanted to say something else, then please let Rebecca know and we're very happy to include anything you might want to add or write down.

(It is your own personal experiences that we are interested in)

Age

Ethnicity

Research Case Code

Which courts did you have experience of? Magistrates Crown

Types of hearings: summary (Mags), triable either way (mag or Crown); indictable (Crown), plea hearing, committal hearing, went on trial, trial, committal for sentence, adjournment for a PSR, sentencing hearing.

Charges: (if multiple offences name all - if you wish to share) (joint enterprise). Were any of your offence's joint enterprise offences?

Pleas: (if multiple cases in all cases). Did you plead guilty or did your case go to trial? Did you discuss your plea with your lawyer? Do you feel that you participated effectively in the decision on plea?

Legal Representation (all cases) Yes No

PSR Report presented (all cases) Yes No

Facts of the case (case summary) (all cases) (if you want to share)

Sentences given (all cases)

In your own view, were these sentences fair and just? (explain, if unfair)

Summary of court experiences that you can remember

The accused’s assessment of her own participation in the courtroom (summary).

Types of support received by accused (including name of agencies).

What support do you think that you could or should have got but wasn’t given?

Do you think that your ethnicity affected your experience in court? (prompt – how) (should it? Why?)

Do you think being a woman affected your experience in court? (prompt – how) (should it? Why?)

Court decision/sentence (if you want to share):

Was a PSR prepared prior to sentence? Yes/No

If yes, did you have any discussions with your lawyer about your PSR? Did you have any discussions with Probation about your PSR? What was said in your PSR? (If you want to share). How did you feel about what was in your PSR? Did the judge consider what was said in the PSR?

What did you think about the Prosecutors (CPS) in the Court room?

What did you think about the defence lawyers in the Court room?

What did you think about the Judges/Magistrates (prompt - and Jury) in the Court room? Did you understand the process in Court? Did you understand who everyone was and their roles?

Do you feel that you were understood or misunderstood in court? Why?



Interviews with Crown Prosecutors (interview schedule)

1. Court: Magistrates Crown
2. Age (if want to share)
3. Ethnicity (if want to share)
4. Gender
5. Years of experience in the profession.....

When making decisions, prosecutors must be fair and objective. They must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity of the suspect, defendant, victim, or any witness influence their decisions (The Code for Crown Prosecutors, 2018 para 2.7)

6. The CPS is bound by the duties set out in the Equality Act 2010. How does this work in practice when deciding which cases should be prosecuted and the appropriate charges, especially in relation to gender, race ethnicity and/or nationality?
7. Studies have shown that the reasons for offending by women generally and minority ethnic women in particular are different from those of men (example, abuse and violence against women). Should gender and ethnicity be given some consideration when deciding the appropriate charges?
8. Under what circumstances would the CPS recommend an out-of-court disposal? (Can gender, ethnicity or social class be a factor for consideration in this decision?)
<https://www.cps.gov.uk/legal-guidance/minor-offences>. Under what circumstances would the CPS select a lesser charge or OOC?
9. Should the impact of a sentence on a defendant who has been found guilty or pleaded guilty be an important 'public interest' criterion? (i.e., impact of prison on women particularly minority ethnic women)
10. What challenges do you face where the suspect to be charged is a minority ethnic woman?
11. What could be done to ensure that minority ethnic women have a clearer understanding of the charges/decisions made in their cases?

12. Without breaching confidentiality are there any specific cases that spring to mind that have raised issues about the needs of minority ethnic women through the charging and prosecution process? (prompt: in relation to bail decisions, in relation to plea, effective participation in the process, or challenging a lenient sentence)

Bail

Plea

Effective participation in the court process

Challenging a lenient sentence

Any other?

13. Is there anything else that you think we should know about your experiences of minority ethnic women suspects and defendants?



Interviews with Legal Advisers/Court Associates (interview schedule)

Date of Interview...

Please state your ethnicity in your own words.....

At your discretion, please state your Gender

Years of experience as a Legal Adviser/Court Associate

Questions:

1. What is your role: legal adviser/court associate? Please state briefly what your role is in the court process and decision-making?
2. Do judges/magistrates ask you for advice on sentencing? In what circumstances?
3. Could you recall what your experiences in court have been whenever there has been women as defendants in court?
4. Could you recall what your experiences in court have been whenever you've had minority ethnic women as defendants in court?
5. From your perspective should the court, in sentencing, consider intersection of race and gender?
6. Is gender and ethnicity considered well enough in sentencing guidelines? Should they?
7. Do you perceive there to be disparity in sentencing where female defendants are from minority ethnic backgrounds? If yes (go to question 8 and if no, go to question 9)
8. Are there any aspects of sentencing guidelines that you consider might be contributing to disparities in sentencing? If yes, what safeguards could be put in place?
9. What are the challenges that you have noticed that the court faces where a defendant appearing in court is a woman from a minority ethnic background? (the taking of a plea; legal representation/type of defence; participation in court; pre-sentence reports etc.,)
10. Do you think that the court process should be improved to cater for the needs of minority ethnic women in court as defendants? If so, how?

11. Does the Court always receive PSRs; do the PSRs they receive provide them with sufficient information about the character and circumstances of an offender (when it is a minority ethnic woman) to be able to make an informed sentencing decision? Do they always use PSRs? Are they verbal or written reports or fast delivery PSRs? Is this important?

12. What could be done to ensure that minority ethnic women understand better the court proceedings and decisions made?



Interview with Probation Officers (interview schedule)

Information

Thank you for agreeing to take part in this project. We will be asking you about your experiences in the criminal courts. We think it will take approximately 50 minutes.

The research is a study looking at the experiences of black and minority ethnic women in English criminal courts. The study hopes to look at how 'justice' is delivered and identify stages where justice might have been 'poorly delivered' and critically assess the reasons why.

The interview will focus on seeking your experiences of the criminal court process and the part that you have played as a probation court report author. We have a few questions. You can stop the interview at any time, and you can pull out of the research at any time too. If you do not want to answer a question, then please just say and we will move onto the next question. If you need to take a break, then please just let us know and we can pause.

If after the interview you feel you wanted to say something else, then please let us know and we're very happy to include anything you might want to add or write down. A copy of the interview transcript will be sent to you for checking.

It is your own personal experiences and opinions that we are interested in, although you may provide us to any other information that you think might be useful to us in our research.

*** CONSENT FORM HERE? ***

Date of Interview

13. For how long have you been a probation officer?
14. For how long have you been a Probation Court Report Author?
15. Did you have special training in order to be a Court Report Author?
16. Could you tell us, briefly, what being a Probation Court Report Author involves?
17. How important is your pre-sentence report to the court?
18. What do you expect a report to achieve?
19. Who usually requests for a PSR? Judge/magistrate.... Deference lawyer.....
20. Does it matter who requests for a PSR? For example, why would a defence lawyer ask for a PSR?
21. It has been said that the reasons why women commit crimes are different to those of men? Do you believe this? How is the fact that a defendant is a woman important in your report?

- 22. On what grounds would you consider ethnicity as a factor in your report on a female defendant? How would you present ethnicity in your report?
- 23. Do you see female minority ethnic defendants as constituting one category of defendants or do you see them in terms of ethnic sub-categories for example, travelers, Indians, Chinese, African-Caribbean etc. (For example, does it matter where a female defendant is a GRT or Chinese?) (Shouldn't it?)
- 24. Do you have background knowledge or training on the specific needs of women from different ethnic sub-categories? If not, what value will such knowledge add to your report?
- 25. It has been alleged that PSRs have often been presented in court in a manner that has disadvantaged minority ethnic defendants generally and minority ethnic women in particular when it comes to sentencing.? For example, it has been said that women are sentenced more harshly compared with men and that minority ethnic women generally are sentenced even more harshly. The cause of this has been blamed, partly, on PSR reports by probation officers. What is your comment on this?
- 26. In your own opinion, are probation officers adequately trained in understanding the role that ethnicity and gender might have played in the offending behavior of minority ethnic women?
- 27. Is ethnicity and/or gender important in your recommendations on sentencing outcomes?
- 28. Can you recall a case where 'race'/ethnicity and gender occupied important positions in your report? What was the outcome of this case? Did your report make a difference? If so, how?
- 29. In your own opinion, should there be more recognition of ethnic sub-groups in probation assessments?
- 30. What are the common problems/issues that you face when preparing a Pre-Sentence Report for a female defendant of minority ethnic backgrounds?
- 31. Is there anything else you think we should know about ethnicity, gender and PSR assessments?

If probation officer was interviewed after a BME female defendant's case in which their PSR has been consulted before sentencing: Do you have any opinions about the case that you have just been part of?

Case details:

- 1. Court case code
- 2. Court: Magistrates Crown
- 3. Date
- 4. Age of defendant
- 5. Ethnicity of defendant

**Sheffield
Hallam
University**

Helena Kennedy
Centre for
International Justice



**Newcastle
University**



**LIVERPOOL
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**CENTRE FOR THE STUDY
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AND SOCIAL EXCLUSION**



Charity number: 1115476

**Pilgrim
Trust**

Charity number: 206602



Pilgrim Trust

Sheffield Hallam University

Helena Kennedy Centre for International Justice



Newcastle University



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