

Speech: Justice for All?

I want to thank the RSA for inviting me to speak. Under Matthew's incredible stewardship, the RSA has taken its rightful place as one of the very few leading organisations that are truly innovative and cutting edge in their thinking. This is a place where ideas are generated, nurtured and come to fruition. This is a place where debate leads to change for the greater good of society – and I know Matthew would have it no other way.

So it is with a great measure of hopefulness that I speak to you all today.

As some of you already know, when the Prime Minister asked me to conduct this review, I accepted with little hesitation.

I saw a rare chance to forge a cross-party consensus on an issue that is complex, contested and divisive. I saw an opportunity to hear voices from beyond Westminster and Whitehall, from judges to community groups; prison officers to offenders; and from the victims of crime themselves. And I also saw the prospect of working to improve outcomes – not just for BAME people but also those from working-class and low-income backgrounds.

From the start I have been keen to examine whether the system treats all people fairly. That has meant understanding if prisoners from particular backgrounds are more likely to get stuck in cycles of reoffending – and what can be done about it.

Remember. Half of all crime is committed by people who have already been through the criminal justice system – costing up to £13 billion per year.

I know that this is an emotive subject. It speaks to issues of personal and professional identity. It concerns the treatment of individuals and the legitimacy of important public institutions. I know that some minds are made up already – from those who believe the system is racist to others who see almost no problem at all.

But having listened carefully to these viewpoints over the last 18 months, I am hopeful that I can help to effect some of the changes that are needed to address racial disparity where it exists, and to restore the system's reputation.

There is a framework I have in mind for how I want to try to achieve this – and that's what I would like to share with you today.

It is the product of the intensive research I have conducted over the course of my Review – both in the UK and internationally, in those countries who also struggle with over-representation of BAME or indigenous people in their criminal justice systems.

It derives from having listened carefully to the views of those who represent each aspect of the system – and most importantly, to those on whom the system has the most direct impact. The offenders, the defendants, their families and

communities. And of course the victims of crimes themselves.

The issues and concerns each have raised have been broadly consistent, and this has helped me to identify three broad principles on which I believe the solutions can rest. It is these principles that make up my framework. They are fairness, trust and shared responsibility. I'll explain each of them in turn.

Fairness through open decision-making

In society, the poorest, the disadvantaged and those who need support often suffer the most. When few people care and there is no job or house to lose, a sense of hopelessness and powerlessness prevails. This can span generations and define entire communities.

It breeds disrespect for society and its rules, and distrust in its agencies and institutions. Without any real prospect of improvement in their situation, people's desperation can quickly turn to anger and criminality.

Whilst this is a familiar tale across the UK; I have also seen it be the case further afield in Europe and the US as well.

For some time the very fact of discrimination has been challenging to grip. There are those who would argue, on some reliable measures, that racism is on the wane – it has become less socially acceptable.

We know this because, for example, the British Social Attitudes Survey has been asking people the same question for over 30 years and the responses to it have changed.

That question is whether people would mind if a close relative married someone from a different ethnic group.

In 1983 over half said that they would mind either 'a little' or 'a lot' if a relative married someone from a West Indian or Asian background.

That figure has halved since then.

There are also those who argue that racism hasn't gone away, it has simply gone underground and become implicit or insidious. Consider for example when the word 'gang' is used and when the word 'group' used in the reporting of crimes. I suspect most people here know what image 'gang' is supposed to conjure up.

And then there is the school of academic thinking – 'unconscious bias'. This is an idea I sometimes think was designed to terrify Guardian readers. The suggestion is that people with no overt or conscious prejudices may still think and act in discriminatory ways.

This catch-all term, 'unconscious bias', has been a place-holder for many years; and yet the debate continues to rage in academia about the actual science behind this and the best ways of testing for it: it's fair to say that hasn't been settled yet.

My review though, is not about academic debate, it is about the treatment and outcomes for BAME offenders. We still can't seem to agree on the issue and its diagnosis. And the evidence is that, whatever people's diagnosis, the prescription doesn't change a great deal.

The best way to ensure fair treatment is to bring information and decision-making out into the open.

Let me give you three examples from the criminal justice system.

First, Northamptonshire Police and Stop and Search.

This is an area outside of the scope of my review but an initiative with lessons to learn from.

In Northamptonshire, any search grounds which are not clearly and immediately identifiable as reasonable, or which do not meet the Force guidance, are selected for presentation to a Reasonable Grounds Panel. This is chaired by a Police Officer, and made up of members of the public and one other Police Officer.

If the Panel decides that there were not reasonable grounds for the stop, the officer involved is informed of the decision and the reasoning behind it.

In the first instance, the Officer and supervisor are offered training and reminded of the guidance on Stop and Search.

If the officer is involved in a second case, both the Officer and supervisor receive mandatory one-to-one training. In the third case, the Officer and supervisor are suspended from conducting/supervising Stop and Search until a personalised development plan has been completed.

Second, the jury system.

Every so often the jury system comes under attack from those who say that it doesn't work, or that the public can't cope with detail or contain their own prejudices. But the news from my Review is that it is one of the parts of the criminal justice system that is working best.

A comprehensive study by Professor Cheryl Thomas indicated that, statistically, it makes no difference what the ethnicity of the defendant or the jury is.

Why is this? Because 12 people on a jury must justify their opinions to one another. Prejudice doesn't work in that context – you must go on the evidence or you will be out-voted. Openness breeds fairness.

Third, an example from the prison system.

The statistical analysis I commissioned for this Review found that adjudications – that is disciplinary measures against prisoners – are disproportionately brought against BAME prisoners.

Those decisions are taken by individual officers. But when the case is reviewed by a panel, adjudications are less likely to be upheld.

Once again, it's the open forum that seems to correct the problem.

Trust and outcomes

Alongside the need for fairness and transparency is the need for trust. When there is a lack of faith in the system that is supposed to look after you and enforce society's rules, there is also a lack of trust.

Over half of ethnic minorities born in this country, who took part in a survey, agreed with the statement that 'the Criminal Justice System discriminates against particular groups or individuals'.

Over half! That means they think the system is unfair – that it's stacked against them.

In the Netherlands, rigorous academic research on procedural justice has found – perhaps unsurprisingly – that people will be more likely to comply with the law when they feel treated in a just and decent way by law enforcers.

It also found that prisoners' perceptions of procedural justice influence their behaviour once released from custody. And those who felt they had been treated unjustly during imprisonment were more likely to re-offend, and be re-convicted.

A lack of trust affects the decisions that individuals themselves take when they come into contact with the system. One of the most striking findings in the Review so far is that defendants from ethnic minority backgrounds are more likely to plead 'not guilty' across almost every type of offence.

It starts with young men refusing to cooperate with the police and offering only 'no comment' in police stations. It is compounded by a lack of trust in the motives and competence of lawyers provided through legal aid. Legal advice is then refused or ignored by those who think their lawyer is simply part of 'the system'.

So defendants who had no realistic possibility of acquittal, and who subsequently and quite cheerfully admitted their crimes to me in prison, have spurned the chance to be diverted or for their sentence to be reduced – by up to a third, with an early guilty plea.

The result is wasted resources in the criminal justice system; more agony for victims as the case drags on; and many more years in prison for ethnic minority men and women than should have been the case.

Trust matters in other ways too. Society as a whole must have respect for the rule of law – it can't be seen to govern the actions of only the few. This requires the key institutions in the justice system to command not just legal power but also public legitimacy.

One of the surest ways to achieve this is also one of the dullest sounding....

As well as the lack of transparency, there is a significant paucity in the data available at various stages – from point of arrest through to release from custody and back into the community.

Data has a huge impact on an individual's ability to trust. Simply put, how best can we address weighty issues such as potential racial disparity if we don't know what its nature and scale is?

But let us look at what we do know.

According to the most recent census, just 3% of people in England & Wales are Black, and yet 12% of our prison population is Black.

Going further, 25% of our prison population, and over 40% of our youth prison population, come from ethnic minority backgrounds.

That compares to 14% of the overall population.

I don't believe all the causes of this lie in the criminal justice system, or that all the answers do either. But a deficit of trust set alongside that imbalance must be taken very seriously.

It is also the case that offenders from minority backgrounds are more likely to face prison sentences than white offenders for the same crimes.

In a recent analysis of indictable offences in the Crown Court, those self-reporting as Asian or Black were associated with a 50-55% increase in the odds of imprisonment, compared to those self-reporting as White.

Shared Responsibility – the role of communities

Turning to the third principle of my framework, our criminal justice system is conceived as a series of processes, with little sense or understanding of how well they work together – or how they work for the communities they are supposed to serve.

A pronounced example can be found in youth courts – magistrates themselves are not empowered to problem- solve; nor can they hold to account the raft of frontline professionals that surround young people when things go wrong.

When schools exclude them, when there are no role models or mentors to then guide them, when work or training opportunities or constructive pursuits aren't available, children get into trouble.

The definition of 'community' is widening all the time as local courts are closed and boundaries stretched further. So they are a long way from knowing or even owning the problems that their children face.

Parents are not engaged. Parenting Orders exist by law, but are seldom used, let alone prosecuted. In the year ending March 2016 only 250 parents were issued with parenting orders by the courts, despite there being approximately

89,000 arrests of young people aged 10-17 and approximately 28,000 young people found guilty at courts in the same time-period.

Referral Orders have short-term impacts on children and don't treat the root cause of their offending – so before long they are brought before a magistrate again, this time for a more serious offence and now with a history of criminal behaviour building up on their CV.

The teachers, doctors, police men and women and community members, who should already be featuring in their young lives, need to be more actively involved when a child gets into trouble with the law.

If we don't encourage communities to represent the people who live in them, they can't foster social integration, trust, or a sense of belonging. Nor can they adopt the moral and spiritual values they need to embody and impart to their young.

New Zealand's Ran-ga-ta-hi courts offer much to aspire to. They have been designed to embrace not only the traditions of indigenous Maoris, but also their culture and approach towards raising children.

Elders and members of the community take an active part in hearings and in determining appropriate sentences for children who break the law.

The responsibility – and accountability if things go wrong – is shared with the community to which the child belongs, and to which he or she will return.

Its members are also involved in guiding and mentoring the child as well, not just whilst the sentence is served but also to support them in staying on the straight and narrow once it has been spent.

This is something we should learn from.

Closing

Nothing justifies criminal behaviour. People end up in prison when they make bad choices.

But we also have to grasp what it is that leads them to do so.

In 2001 the Cattle report warned of white and black communities living "parallel lives".

Today the same is true, but the polarisation is not between black and white; it is between those who have a stake in society and those who do not; those who can see a future through education or training and those who cannot; those who can imagine doing an honest job that affords them respect and decent pay and those who cannot; those who have a safe home to live in and those who do not.

Our justice system can't resolve all that on its own and we shouldn't imagine that it can.

But what it can do is eliminate its existing disparities.

Guided by the principles of the framework I have set out today, I want to see innovations brought into the system to help break the cycle of offending and reoffending. I also want to see us draw on the best of what we know works – from home and abroad.

In Birmingham, for example, a new idea called 'Operation Turning Point', is currently being evaluated by Cambridge University. This scheme trials a deferred prosecution approach, based on certain eligibility criteria, which allows individuals to opt for a diversion scheme before entering a plea.

If they successfully complete the scheme then the charges are dropped. If they don't the charges can still be brought against them.

The early findings from Operation Turning Point are promising. They show it can deliver reductions in harmful behaviour; far less serious re-offending; and victims of crime have indicated a higher rate of satisfaction with the outcomes for perpetrators than previously.

As well as innovating, we should get smarter about our existing approaches. Delivery partners in the system must be more co-ordinated, sharing intelligence across the different agencies—the local authority, the health authority, the police, social services, youth and probation services and others—intervening earlier in chaotic families, and supporting vulnerable people caught up in crime.

Recently published data on admissions to youth custody between April 2014 – March 2016 shows that a lower proportion of BAME children were reported as having a mental health condition, compared to white children.

The proportion of BAME children reported as having a learning difficulty or disability was also lower than the proportion of white children recorded with these needs.

But proportionately more BAME children were reported as being a 'high risk' to others than White children.

This is appalling evidence – especially for children. The system must do more to offer – fairly widely, and much sooner – the support that is needed to help turn broken lives around.

I recognise we've been living in times of austerity, but these services need to be protected to achieve better outcomes for people – and spare future victims of crime.

And so I conclude, having given you all an overview of some of the work that I have been doing, and on what basis I will be seeking to make recommendations in my final report.

The criminal justice system was originally conceived to ensure fair and equitable outcomes for all. Now, more than ever, it needs to happen – regardless of their background and ethnicity.