

Jenny Rathbone MS  
Chair,  
Equality and Social Justice Committee

21 October 2022

Dear Jenny

### Correspondence from the Wales Governance Centre

I am writing regarding a letter we have received from Dr Robert Jones from the Wales Governance Centre proposing an inquiry into racial disproportionality within the criminal justice system.

As you will be aware our remits overlap, with ours focusing predominantly on scrutinising the constitutional aspects of the justice system and the operation of Welsh Tribunals.

Our [annual report](#) published last week recognises that there are significant challenges facing the operation of the justice system, which deserve detailed analysis and scrutiny. We acknowledge that the inquiry proposed by Dr Jones identifies important issues that need to be investigated.

Regrettably, our substantial legislative workload, which is likely to increase in the next year as result of the UK Government's Bill to remove or reform the majority of retained EU law by the end of 2023, means we are limited in our ability to undertake such inquiries at the current time. Our justice work at the moment focuses on holding to account the Welsh and UK governments on specific issues within our remit. We are also conscious that issues related to racial disproportionality fit within the equality remit of the ESJ Committee.

I am therefore drawing this letter to your attention should this be a matter you wish to pursue in accordance with your Committee's remit.

Yours sincerely,

*Huw Irranca-Davies*

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Chair

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28 July 2022

Annwyl Mr Irranca-Davies,

The Wales Governance Centre at Cardiff University has been researching the topic of criminal justice in Wales for almost a decade. This research has helped to uncover a range of issues including those relating to sentencing and imprisonment, alternative criminal justice models, the legal economy, and the 'jagged edge' of justice in Wales. Over the past four years our work has also identified clear evidence of racial disproportionality within the Welsh criminal justice system. While it is true that Ministers and Members of the Senedd have referred to our findings on racial disproportionality, there has been no substantial scrutiny of those findings to date.

The purpose of this letter is to express my view that the Legislation, Justice and Constitution Committee should carry out an inquiry into racial disproportionality within the criminal justice system in Wales. To further underline the case for an in-depth inquiry I have provided a brief summary of some of the key areas of concern that I feel are worthy of further consideration. The points below include previously unpublished data.

### **Policing**

- Home Office data show that there is a disproportionate use of stop and search on Black, Asian and Minority Ethnic (BAME) communities in Wales. In 2020/21, there were 23 stop and searches per 1,000 BAME people in Wales, compared with 8 searches per 1,000 White people. There were 56 stop and searches per 1,000 Black (or Black British) people in Wales in 2020/21, 18 per 1,000 for Mixed groups and 16 per 1,000 individuals from an Asian background.

- Data on the number of times police tactics were used show that individuals from a BAME background were overrepresented in police use of force statistics in 2020/21. While the 2011 Census found that 4.4 per cent of the Welsh population belonged to a BAME ethnic group, 9.8 per cent of all incidents of police restraint were against individuals from a BAME ethnic background in 2020/21.
- Individuals belonging to a BAME ethnic group in Wales were also overrepresented within police use of 'Less lethal weapons' in 2020/21. 6.6 per cent of all incidents where a Conducted Energy Device (i.e. a TASER) was used by Welsh forces was against someone from a BAME background in 2020/21.<sup>1</sup>
- 6.2 per cent all arrests made by Welsh police forces in 2020/21 were individuals from a BAME background. Despite comprising 0.6 per cent of the general population, 2.6 per cent of all those arrested in 2020/21 belonged to a Black ethnic group.

### **Courts and Sentencing**

- The Lammy Review in 2017 found that individuals from a BAME background were less likely to enter guilty pleas due to a lack of trust in the criminal justice system. Disaggregated data obtained from the Ministry of Justice show that a slightly higher proportion of White defendants (82.5 per cent) pleaded guilty at the Crown Court in 2019 compared to individuals from a BAME (80.9 per cent) background.
- Although the number of children first entering the criminal justice system has fallen in Wales, the rate has declined unevenly across different ethnic groups since 2010. While the number of White children first entering the criminal justice system in Wales fell by 87 per cent, the number of Asian children declined by 69 per cent and those from Black backgrounds fell by 59 per cent.
- Individuals from a Black (76 per cent), Asian (75 per cent) and Mixed (70 per cent) ethnic group recorded a higher custody rate at the Crown Court in Wales than White (64 per cent) defendants in 2019.

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<sup>1</sup> This total includes all incidents including where a CED device is drawn, aimed, arced, red-dot, drive-stun, fired and angle drive-stun.

- Those from BAME backgrounds are also more likely to receive longer custodial sentences than those belonging to a White ethnic group. Between 2013 and 2020, the average custodial sentence length in Wales was higher for Black (26.7 months), Asian (26.4 months) and Mixed (26.4 months) offenders sentenced in Wales than for those from White (16.7 months) ethnic groups.

### **The Prison and Probation Population**

- Since 2017, the number of BAME prisoners from Wales (based on home address prior to entering custody) has marginally increased (1 per cent) while the overall Welsh prison population has fallen by 7 per cent.
- In 2021, there were 79 Black people from Wales in prison for every 10,000 of the population. This rate compared to just 14 White people per 10,000 of the population. There were 21 Asian people in prison per 10,000 and 44 people from a Mixed background per 10,000 in prison in 2021.
- Individuals from Black and Mixed ethnic groups are over-represented amongst the probation population in Wales. For every 10,000 Black people living in Wales 129 were under probation supervision in 2021. This compared to a rate of 45 per 10,000 for individuals from a White background, 40 for Asian and 85 for those from a Mixed ethnic group.
- The Ministry of Justice's most recent *Ethnicity and the Criminal Justice System* report found that Black prisoners are consistently more likely to serve a higher proportion of their determinate sentences in prison than any other ethnic group. Disaggregated data show that between 2015 and 2018, Mixed prisoners from Wales (63 per cent) served a higher proportion of their determinate sentences in prison followed by Black (61 per cent), White (57 per cent) and Asian (57 per cent) prisoners.

While criminal justice is reserved to the UK Government, the Welsh Government has a clear set of responsibilities for promoting equality and tackling all forms of discrimination in Wales. The overlap and intersection between the reserved and devolved areas means that this topic has yet to receive any kind of serious analysis or scrutiny. The lack of publicly available Welsh-only criminal justice data has only added to the problem of effective oversight. The Ministry of Justice's own *Ethnicity and the Criminal Justice System* report, for example, fails to provide a disaggregated picture for Wales and

England, while the Lammy review in 2017 also focussed exclusively upon trends in 'England and Wales'.

As it currently stands, there is no clear or authoritative understanding of how different communities across Wales experience and interact with the criminal justice system. It is also unknown what steps could and should to be taken by the Welsh Government to promote fairness and tackle discrimination within the criminal justice system. I believe that the points outlined above underscore just how important an inquiry into racial disproportionality within the Welsh criminal justice system is at this time.

I would like to take this opportunity to thank you for your time in considering this letter. If you wish to discuss this subject further or require any additional information please do not hesitate to contact me.

Yours sincerely,

Dr Robert Jones