

RACE EQUALITY IN PROBATION SERVICES IN ENGLAND AND WALES: A PROCEDURAL JUSTICE PERSPECTIVE

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Abstract

Probation services in England and Wales supervise over 240,000 people sentenced by the courts or after they have left prison; around one in eight of these people are from a non-white ethnic minority (Ministry of Justice, 2022). Her Majesty's Inspectorate of Probation recently published their inspection report on the experiences of ethnic minority people on probation and staff. From fieldwork across five areas, the inspectors found significant problems in the quality of relationships between probation workers and ethnic minority people on probation, and reported significant gaps in the availability of services and interventions.

This article will review the policy landscape of probation provision for ethnic minorities, summarise the inspection findings and official data, and provide an analysis of the narrative data collected in the fieldwork with probation staff and people on probation. We will analyse the narratives of those involved in probation provision for ethnic minorities through the lens of procedural justice, which encompasses the elements of understanding the process taking place; having a voice in that process; feeling that you have been treated with respect; and having trust in the fairness of the process (Hunter et al., 2020).

Keywords

Race equality, probation, policy, procedural justice

Introduction

The Scarman Report (1981) into the Brixton riots, while rejecting both the notion that Britain was a racist society, and that the police in London were institutionally racist, nevertheless did identify serious police failings. Scarman reported that improvements were required in community liaison, gaining confidence and trust from ethnic minority communities, police officer training, and in the recruitment and representation of ethnic minorities as police officers (Law, 2015).

Decades on, the Lammy Review (2017) reported that the same failures of communication, trust, confidence and fairness still characterised the criminal justice system's treatment and contact with people from ethnic minorities. These issues of social relations are at the heart of procedural justice.

Procedural justice is an increasingly well-evidenced approach to public service delivery (see for example, Hough, 2021 for an overview of the evidence base). While a better approach to working with people in conflict with the law cannot address the broader and deeper systemic racism in society, procedural justice offers a valuable insight into how people from ethnic minorities are treated in the criminal justice system, and how practitioners, managers and leaders can begin to improve their services to often marginalised communities.

This article will present evidence from Her Majesty's Inspectorate of Probation's (HMIP) recent inspection of race equality in probation services using the lens of procedural justice to demonstrate the strengths and failures of current probation practice.

What is procedural justice, and what is the evidence it matters?

Nelson and Appel (2021, p.164) define procedural justice as 'unbiased, caring, respectful, and participative treatment by decision makers'. The theoretical assumption of procedural justice is that if people in contact with authority figures – such as, teachers, social workers, doctors, police, probation and prison officers – perceive that they have been treated according to fair and just processes, they are then more likely to positively engage and comply with such perceived legitimate authority. Such increased engagement and compliance can be achieved regardless of whether eventual decisions by those in authority are favourable or unfavourable to the service user.

Procedural justice theory emerged in studies of courts and tribunal processes from the 1970s onwards; subsequently, research focused more upon the application of the concepts in police contexts (Tyler, 2013). Researchers found that respondents in judicial proceedings were as concerned with the perceived fairness of what happened in court as with the favourability, or otherwise, of the proceedings for themselves. Acceptance of decisions by participants about themselves was as dependent upon their beliefs about the procedural fairness of the process than about the actual result of the process. This was true regardless of whether this was a formal court, an informal mediation process, or some other tribunal form of decision making. As Tyler (2013:21) puts it, '[a] fair process leads to an acceptable outcome.'

Similar positive findings have supported the application of procedural justice in prison and police settings. Ryan and Bergin (2021), in their evidence review of empirical studies in prisons, report that prison officers and regimes which utilise consistent, fair and respectful treatment in prisoner interactions are more likely to be perceived as legitimate by prisoners. Conversely, the evidence suggests that perceived lack of fairness and respect towards prisoners is associated with greater levels of conflict, grievance and misconduct.

Hough (2020), in a review of the international policing evidence, reports that procedurally just policing is the strongest predictor of public acceptance of police legitimacy in those countries with high quality studies, which we should note were conducted in mostly Western democracies.

However, and of concern, is the finding that recent migrants from visible ethnic minorities report being generally positive about the police and other institutions, this favourable impression fades over time and over generations (Hough, 2020). This deterioration in ratings of legitimacy does not occur in White migrants and their children, indicating that being a visible ethnic minority is the important variable in the measured loss of optimism in the police and other Western institutions.

In the community corrections world, Blasko and Taxman (2021) found in their study of 480 people on probation in the USA that when community supervision was perceived as procedurally fair (as assessed by a validated measurement instrument), those individuals, and wider society, benefitted from reduced reoffending (as measured by self-report and police arrests) and greater compliance with probation conditions. Race, a White/Other binary variable, was a case control variable and is not reported as a statistically significant variable in the results.

The procedural justice elements of 'participation, neutrality, treatment with dignity and respect, and trust in authorities' (Tyler, 2013:23) are usefully summarised in the figure.1 below by HMIP(2021a).

Figure.1



Beetham (cited in Jackson, Bradford, Hough and Murray, 2013) defines legitimacy as the generally accepted right of organisations to exist, to determine courses of action, and to enforce their decisions. Legitimacy is granted by the populace to organisations which not only act fairly (that is, in a procedurally just manner), but also reflect the norms and values of the people with whom they interact and serve. Therefore, the legitimacy of criminal justice institutions depends not only from their application of procedural justice, but from a moral alignment with the people they work with, and with broader society.

While there is much to gain for both people in conflict with the law, and for criminal justice workers, from adopting procedural justice principles and practice, research evidence also indicates that some groups in society, especially visible ethnic minorities (Hough, 2020), are less likely to respond positively to a renewed focus upon procedural fairness. Adopting new initiatives in staff training, and organisational culture and practice, will not wipe away the long histories of socio-economic adversity, discrimination and injustice experienced by oppressed groups in society.

Researchers on procedural justice (Jackson et al., 2013; Hough, 2020) note the danger that policymakers and practitioners may seek to exploit the concept of procedural justice to gain

compliance to state power on a false prospectus. The perceived danger is that fairness and due process will be claimed, but not be delivered honestly, that citizens will be manipulated in order to secure public acceptance of power whilst in reality being denied a real voice, due process and fairness, and true respect in decision making. In a democracy, such instrumentalism runs the risk of discovery by opposition politicians, academic researchers, journalists, and - one would hope and expect – independent inspectorates. As such, the ‘dark side of procedural justice’ (MacCoun, 2005, p.201) would perhaps be an unwise strategy for any would-be Machiavellian law enforcer. Nevertheless, the danger merits research, investigative efforts and vigilance.

The issue of abuse of power and citizen manipulation raises the possibility that the application of procedural justice theory could only truly occur within western, educated, industrialised, rich and democratic societies with the associated institutions of the rule of law, a free press, academic freedom and, in the UK at least, civil service political neutrality. Many researchers note that much social scientific knowledge emerges from, and perhaps mainly applies, to the global minority of such Western democracies (Shulevitch, 2020). The insights of procedural justice may not travel well to the enormous diversity of global cultures, and the concepts may need adaptation and exploration with minority cultures living in Western democracies.

Race and probation in England and Wales

Canton and Dominey (2018) note that despite the probation service’s formal commitment to equality and social justice, and its many initiatives over the decades to realise these aims, it is still evident through research and inspection reports that outcomes for minoritised people are unfair. In addition, there is a lack of disaggregated data on key aspects of probation performance for many protected characteristics, including ethnic minorities, such as breach and recall to court, pre-sentence report recommendations and reasons for termination of supervision (Ministry of Justice, 2020). This obviates fully measuring the level of discrimination which has been discovered in research and inspection. Canton and Dominey (ibid) also note that even the concepts of diversity and discrimination appear less frequently in central government policy documents on probation in recent years.

This lack of focus by probation leaders and policymakers on how best to serve ethnic minority people on probation and tackle racial discrimination is a practical as well as an ethical failure. This is reflected in the general lack of evidence that has been commissioned on effective practice with ethnic minority people on probation. A rapid evidence assessment by Her Majesty’s Prison and Probation Service (HMPPS) (Shingler and Pope, 2018) reported that there remains insufficient evidence on how to improve outcomes for people from an ethnic minority background. However, the researchers indicated some promising approaches for increasing engagement with services through improving staff cultural competence and employing more ethnic minority staff.

Williams and Durrance (2017) analyse the disconnect between the public acknowledgement of racial discrimination in the criminal justice system and the scarcity of probation interventions and services designed for ethnic minority people on probation. The psychosocial programmes which typify probation interventions tend to individualise and decontextualise crime. Such individual responsabilisation can stimulate stereotyping and

pathologising by professionals, and encourages ignoring how societal forces and the justice system itself criminalise minoritised people. Williams and Durrance (ibid) recall that there was a pilot programme in the early 2000s initiated by the then National Probation Directorate - the Black and Asian Pathfinder – which failed due to a lack of management drive and resources. This was the last large-scale specific intervention programme for ethnic minority people on probation in England and Wales.

Previous inspections of race equality

HMIP previously examined race equality in 2000 and 2004, driven at that time by the MacPherson Report (1999) into the botched police investigation of the murder of Stephen Lawrence by a gang of violent racists.

The inspectorate reported in the first inspection that ‘African/Caribbean’ (in the terminology of the day) people on probation received a poorer service than White people. Black people were less likely to receive a comprehensive pre-sentence report (PSR). The PSR is a key influence on sentencing, including the likelihood of a prison sentence (Morgan, 2006). Black people on probation were also less likely to benefit from sufficient multi-agency work, potentially making enforcement action more likely as early intervention and rehabilitative services were not made available to these people.

Many ethnic minority probation staff at that time felt isolated and poorly managed. There was insufficient ethnic monitoring of services and staff and a poor understanding of racism. White staff reported avoiding talking about race equality issues due to feeling apprehensive about being called racist. The inspectors concluded that there was a failure of probation leadership on racial equality, which was in part driven by a naïve view of equality of simply ‘treating everyone alike’.

The follow up report in 2004 found some progress in the diversity of representation on probation boards, and in official policy and guidance on diversity and equality. However, inspectors found that the casework undertaken with ethnic minorities was still of poorer quality. In addition, there was an abiding sense of disadvantage amongst ethnic minority staff, who were by that time well-represented in frontline delivery, but not in senior management. Staff were wary of reporting their concerns about discrimination and racism for fear of negative consequences to themselves and their careers.

The issue of race equality was recently raised across the world by the murder of George Floyd and the subsequent resurgence of the global Black Lives Matters movement, forcing the issue back up the agenda. HMIP subsequently undertook a new thematic inspection of race equality in probation services. We shall look now at how far matters have progressed in the probation world.

The race equality thematic – methodology and key findings

Inspection scope and methodology

The 2021 inspection was conducted before the recent unification of the private-sector led Community Rehabilitation Companies (CRCs) and the public sector National Probation

Service (NPS). The NPS managed high risk of serious harm cases and sexual offenders, and the CRCs managed most other people presenting a low or medium risk of serious harm. On 26 June 2021 the new Probation Service, a public sector service, took control of all supervision of people on probation (House of Commons Library, 2021).

The inspection focused upon the work with ethnic minority people on probation, whether on community orders or post-prison supervision, and the experiences of ethnic minority probation staff. The inspectorate followed the Office for National Statistics guidance in excluding White ethnic minorities from the scope of the inspection. A limitation of the inspection was there were insufficient resources to include matched samples of White people on probation or staff. As such, the inspection approach was a qualitative methodology aiming to capture lived experience.

Inspectors conducted 100 case assessments of ethnic minority people on probation in five English regions: 41 Asian people, 24 Black people, 17 mixed heritage people, and 8 'other' ethnicities. The areas selected were characterised by relatively large proportions of ethnic minority people on probation; the geographical units were the probation 'local delivery units' of Bradford and Calderdale, Hackney and Tower Hamlets, Bedfordshire, Birmingham, and Liverpool and Sefton. The 100 people on probation had been supervised between October 2019 and November 2020. In each area, 10 cases from CRCs and 10 from the NPS were selected from a long list of applicable cases provided by the probation services.

A 'case assessment' by HMIP inspectors involves a close reading of the case file on the nDelius probation case management system, including the assessments, sentence plans and interventions undertaken to ensure the sentence of the court or prison licence is fulfilled. There is also usually a follow-up interview with the probation officer handling the case, or with their line manager (normally a senior probation officer) if they are not available. This follow-up interview allows the interviewed officer to add contextual information to the information and reports held in the case management system, which may change the judgements made by the inspector.

Inspectors make a series of structured judgements about each aspect of the case according to the ASPIRE (assessment, planning, interventions, review, evaluation) case management model (HMIP, 2021b) against the inspectorate's published standards (HMIP, 2021c). These judgements are recorded on a computerised data capture system (a Microsoft Infopath Form Template), and the submitted forms and the aggregated data are checked for accuracy and sense by the lead inspector and data analysts.

The thematic inspection on race equality set out to answer twelve key questions about the vision and strategy for ethnic minority people on probation, service delivery for ethnic minority people on probation, the analytical capacity of services, the management and supervision of ethnic minority staff, staff training, service user engagement, and the case management of service users. These twelve key questions, and the 61 detailed sub-questions that underpin them, are set out in Annexe B of the final report (HMIP, 2021d).

The time period covered probation work delivered during the COVID-19 pandemic lockdowns. Inspectors also read 51 pre-sentence reports and interviewed a focus group of

nine probation PSR authors. Interviews and focus groups were held in all five areas with staff from all levels including senior leaders, middle managers, and frontline probation staff. Focus groups were also conducted in the five areas, including 49 ethnic minority staff and 41 ethnic minority managers. Procedural justice was not an explicit theme of the interviewing work – nor was it a line of enquiry in any part of the inspection fieldwork – but the inspection report does focus upon aspects of fairness, participation and legitimacy which are central to procedural justice theory.

A confidential survey created and managed by HMIP was distributed by probation services to ethnic minority staff in the five areas yielding 100 responses, which we estimate to be a response rate of approximately 30%. The text responses to the survey were read and coded according to the broad themes of voice, neutrality, respect and trust – which the great majority of responses readily fell into, indicating that the procedural justice lens was an appropriate one.

Finally, we commissioned Empowering People: Inspiring Change (EP:IC), a service user engagement consultancy, to interview ethnic minority people on probation. 81 interviews were conducted using Zoom or telephone; remote interviewing was a necessity given the pandemic. The reported comments again were coded into the key procedural justice themes, which again were a very good fit. The complete raw data from the people on probation was not available for this article, due to the confidentiality guarantees HMIP and EP:IC made to participants. As such, that lack of full access to the raw data is a limitation of this article in that more perspectives around the procedural justice themes and other themes were not accessible.

This article is based upon a re-analysis of the inspection report, we should note that the inspection itself was designed to produce findings relevant to policy-making, rather than contribute directly to research knowledge.

Overall findings from the inspection

Overall, the Chief Inspector of Probation described the results of the inspection as ‘concerning’. The inspectors’ review of cases found scant evidence that in general probation officers had been prepared to discuss and engage with ethnic minority people on probation key social identity issues around race, culture, religion, or their experiences of racism. Ethnic minority people on probation interviewed by EP:IC confirmed this reluctance to engage in conversations about ethnicity and culture was commonly the case.

The inspectors’ report also concluded that services for ethnic minority people on probation have declined in the last decade or so. Probation services have fewer links to community organisations, and probation services do not commission enough culturally appropriate services for their ethnic minority clients.

While ethnic minority staff members are proportionately represented at the frontline, not enough are working at the management level. Many ethnic minority staff had experienced discrimination in supervision and recruitment and advancement, and harassment and incivility in the workplace. However, most did not have confidence to report their concerns about unfair treatment at work to their supervisors or senior managers.

Although HMPPS have since launched a Race Action Programme to address the issues identified by the inspection, HMIP have pledged to reinspect this subject by at least 2023. The inspectorate will also introduce stronger local inspection standards to ensure that race equality remains at the top of the probation agenda.

Key findings through the procedural justice themes of Voice, Neutrality, Respect and Trust

Voice and listening

Procedural justice theory posits that people need to believe that they have had the opportunity to tell their story, and believe that they have been listened to and understood (Hunter and Jacobson, 2021).

Ethnic minority people on probation told EP:IC that they felt their probation worker was reluctant to listen to their experiences of life in a society marred by racism. As one man explained about his relationship with his probation officer:

We don't get along because there is a lot of things that I've been through which he doesn't understand, and I can't just talk to people without struggling.

The general feeling was one of being misunderstood by probation officers; it was felt that "they lack interest in race". When one man on probation did raise his experience of racism in his supervision session, he "felt uncomfortable" as the probation officer did not want to engage in that conversation. Echoing that experience, one woman on probation told us:

I don't feel comfortable to talk about race with my probation officer as she is white, and my experiences of racism are from white people.

Conversely, the women EP:IC spoke to had all been supported by women's centres, and were very positive about these experiences, as the services provided were personalised and culturally competent. Responses included: 'life changing', the workers 'did not judge', and they 'understand my needs'.

The PSRs examined by inspectors also failed to fully relay the experiences of ethnic minority people at court to the sentencer. Nearly half (21 of 51) were of poor quality, lacking analytical nuance, and failing to capture all relevant information in the case. Indeed, only four PSRs considered diversity at all, and in five cases the name of the client was misspelt.

Inspectors reported the case of 'Anand' (a pseudonym) who was in court for carrying a knife. Anand carried a knife as he was fearful after being himself stabbed. The PSR author notes that Anand showed him the scars of that attack, yet still concluded, 'there is no evidence that the offender has experienced trauma'. This appears to be a startling failure to listen and appreciate a disturbing life experience. The use of the word 'offender' is also at odds with progressive elements in correctional services which highlight the dangers of labelling and stigmatisation (Travers, Williams and Willis, 2020).

There is an 'equality information form' in the PSR package, which can be used to start conversations about race and racism, but it is generally used simply for data collection. Inspectors found that the form was often not completed at all.

The next opportunity for such conversations is in the assessment and planning stages of probation supervision once court processes are complete. Again, inspectors found several cases where race, ethnicity, or religion were not recorded or incorrectly recorded. In many cases, issues of identity and racism were not raised in supervision. This was often because probation officers felt uncomfortable and unskilled in such conversations. As one probation officer commented:

If I had asked him about his experiences in relation to race and ethnicity, I would not have been equipped or prepared for whatever he would have said.

The standard assessment tool for probation OASys (the Offender Assessment System), only offers the officer one section within sentence planning to record discussions on discrimination. This does not prevent officers raising the subject within supervision, but inclusion of the topic of discrimination in other sections of OASys could encourage such conversations. In most cases, this section was left blank, or 'No Issues' was – inappropriately – written in.

Ethnic minority probation workers also told inspectors that their voices were ignored and minimised. As one probation officer put it:

I feel invisible.

Another officer was wary that the new initiatives to listen to ethnic minority staff were shallow and believed that they were likely to be short-lived:

...the current drive has only been influenced by the Black Lives Matter agenda, which I expect to fade once the agenda is no longer politically correct.

Neutrality and fairness

To believe that a criminal justice process or decision is legitimate, people must believe that decision making is unbiased. Those involved must accept that the criminal justice system and its actors are neutral, and would apply the same procedures or come to the same outcome with any and every person in the same situation.

Probation supervision comes at the end of a criminal justice process beginning with arrest, then prosecution, trial and sentencing. The criminal justice system itself comes after the broader social and economic experiences of school, family, community, welfare systems and employment.

The Lammy Report outlines in detail, which we cannot go into here, the racial disparities experienced by visible ethnic minorities who are, for example, more likely to be excluded from school, and more likely to be stopped and searched by the police. The point being that ethnic minority people on probation have already long been treated unfairly by many of the

institutions of society as a 2004 survey of Black and Asian men on probation in England revealed (Cole and Wardak, 2004). Thus, probation officers have to be scrupulously fair to gain or regain trust and acceptance of their legitimacy in order to develop a working alliance, and achieve the aims of rehabilitation and positive change.

As one person on probation put it:

There should be a shared commitment to help us more. Especially because there are so many barriers built against us already in society. Probation don't need to be another one.

Neutrality should not be understood as a simplistic 'race-blind' approach. The inspectors found that issues of race, culture and religion, and experiences of racism and discrimination were not addressed in most cases with people on probation in assessment, planning and supervision. This neglect undermined the ability of probation officers to build an effective working alliance, and thus undermined the fairness of probation supervision through reducing the chances of a successful outcome.

On a more positive note, the inspectors found that in the great majority (84%, n=70) of cases where enforcement actions were taken by probation officers, these were deemed fair and proportionate by inspectors using their professional judgement according to HMIP standards of practice. Moreover, in several cases, probation professionals had 'gone the extra mile' to liaise with community organisations who could provide support.

Ethnic minority probation staff echoed concerns about lack of fairness in supervision, allocation of casework, and career opportunities. Less than half had been encouraged to apply for promotion, and recognition of their contribution was lacking. One probation officer commented:

You have to work harder than the next person to be recognised or have acknowledgement.

Respect for dignity and rights

Procedural justice requires that people are treated with dignity and that their legal rights are respected.

Being afforded such dignity is not always the lived experience of ethnic minority people who come into contact with the criminal justice system, especially in relation to the police, as the independent police monitoring body reported recently (IOPC, 2022). A man from London related his experience to EP:IC:

When the police turned up at my Mum's to arrest me, they were armed and kicked in the door. I have never been in trouble before and my offence was not related to violence or drugs, yet they came assuming that they needed to be armed. My white friends have never experienced this.

Similar experiences of perceived racism were also described in prison; an Asian man told EP:IC that prison officers had made it difficult for him to gain employment in the prison as:

... some jobs were reserved for white prisoners.

A woman ex-prisoner described how cultural norms around mutual hair and body care were discouraged by prison officers:

When us black women in the gaol got together to do our hair, we were always told by the officers that we were intimidating and were told to separate.

Treatment by probation officers was viewed more positively by the people on probation that EP:IC spoke with. Many described their probation officers as behaving with kindness, and felt that they did not judge or look down at them. One man described his experience as especially positive:

My probation officer asks me in my meetings how I think I've been getting on and whether she should add anything to my sentence plan that we should work towards. I always feel like she's checking in on me and seeing if there's anything else she can do to help. So, I do feel really involved and she's constantly reminding me to let her know if she can help more. When I do need something, she helps and that makes me feel like she listens and gets stuff done.

While there was a clear sense that these people on probation felt that they were treated respectfully by probation staff, for many their experience of supervision was marred by the lack of resources available and the lack of time staff were able to devote to them. Some viewed probation as a 'box-ticking exercise'.

A small number of the EP:IC interviewees had discussed race and ethnicity with their probation officer; this was almost invariably with an ethnic minority member of staff. This minority had experienced a better experience of probation. While a small unrepresentative sample, it is an important insight.

Ethnic minority staff described lack of respect from colleagues and managers, often in egregious terms. For example, a probation officer reported being propositioned by a White male colleague because he had never had sex with a Black woman. She described this as an instance of ongoing:

... oppression, alienation, exclusion, isolation, bullying and harassment.

Through the focus groups, inspectors heard staff describe stereotyping, racist abuse, and false allegations at work, as well as lower level microaggressions which chip away at self-confidence and self-esteem. Over half of the staff we surveyed (55%, n=96 who answered this question) did not feel safe to raise issues of discrimination in the workplace. As a temporary member of staff stated:

... I would not feel confident regarding raising issues of racism against existing permanent members of staff. I have heard racist comments being made which I have just suffered because I have had to weigh up whether I keep my

job or raise the injustice I have experienced.

A probation officer simply wanted:

To find a way that BAME staff can share concerns without being made to feel that they are just being overly sensitive.

Trustworthy relationships

Trust has been shown to be critical to the perception of legitimate authority. Hough et al. (2012, p.6) found in an analysis of England and Wales data from the European Social Survey that trust in the police was an 'extremely powerful' predictor of legitimacy. Those citizens who had high trust in the police also perceived police authority as legitimate, believed their moral code was aligned with that of the police, and were more prepared to cooperate with the police. Such cooperation with the police is vital to crime detection and control in a democratic society.

Durnescu (2020) notes that most prisoners or people on probation have come from marginalised groups in society, and very often feel oppressed by the agencies of the state. Even probation can be perceived as oppression disguised as help. Overcoming such mistrust and suspicion is important to building a working alliance with those being supervised.

The inspectors did see some good examples of trust building with ethnic minority people on probation. A Black man explained his good working relationship with a White probation officer who had been a police officer previously:

He had left his job as a Fed because he realised that he couldn't arrest everyone who committed his crime because of poverty.

This can be seen as a good example of building a working alliance through sharing of personal experiences, demonstrating empathy, and showing an appreciation of the role of social injustice in creating crime.

The women who were interviewed by EP:IC all preferred to be supervised by a non-white probation officer as they 'get it'. As one woman put it:

I felt a sense of calmness. My probation officer was a black woman and I felt really comfortable, we built up a rapport.

However, several men believed that probation officers of their own ethnicity would be harsher with them than White officers. One Asian man commented:

I think because [he is] old and from the Asian community, he looks down on me ... people in our community see us as a lost cause when we get involved in crime. They don't understand how different our life has been from theirs.

Several people on probation believed that a desire to help was more important than a shared ethnic or cultural identity.

When examining case files, inspectors too often found that there were changes in the probation officer managing the case. Such ruptures in the continuity of supervision mean trusting relationships have to be rebuilt, with the added barrier of people on probation being wary of becoming emotionally close to a probation officer who may well soon be reassigned to another case.

Probation court staff, who write PSRs to inform sentencing, told inspectors in a focus group that the fast pace required for court reports precluded the possibility of spending enough time with those being sentenced. Thus, the first opportunity to build trust in the probation service was often being lost.

Ethnic minority staff echoed barriers to building trust in the probation service. Most (51%, n=99) did not believe that probation leaders understood the issues faced by ethnic minority staff. As one probation officer put it:

BAME staff do not have a voice. When issues are raised, we are made to feel like we are the problem. Why should we bother? Who's listening to us?

A large minority (43%, n=97) did not receive sufficient line management to help with their development. Many officers related awful experiences such as these examples:

I was blocked from a promotion as the manager did not 'have the time' to complete the management checklist for the application.

It's a closed shop in my area. No real future [for ethnic minority] staff. Not gotten over secondment experience I had a few years ago – I was a victim of corporate bullying. The probation manager was aware but did little to assist or protect me.

Discussion and next steps

The Chief Inspector of Probation, Justin Russell, described the findings as 'concerning' in his foreword to the inspection report (HMIP, 2021d, p.4). He was surprised and disappointed at the lack of good practice in racial equality that inspectors uncovered. Russell highlighted the decline in specific community services for ethnic minority people on probation, that aspects of case management, particularly around engagement, were poorer than overall inspection results, and that there were significant staff training deficits at all levels in probation services. The head of the inspectorate ended with a promise to reinspect racial equality by 2023 to investigate whether there had been much-needed progress.

It is of especial note that the theme of engagement was singled out for criticism. Engagement, the forming of a working alliance between practitioner and client (especially an involuntary client), is one of the main skills for probation officers, and the ability to establish warm and constructive relationships is highly associated with reduced reoffending (Durnescu, 2020). The reduced likelihood of good engagement with probation officers is denying too many ethnic minority people on probation the chance of avoiding future criminalisation, and also undermines probation's mission to deliver public protection and rehabilitation. The evidence suggests that overall engagement is improved by organisations who adopt procedural justice as a working philosophy. More evidence is needed to establish

whether procedural justice makes a difference to ethnic minority people on probation in England and Wales. Nevertheless, the principles of procedural justice are in themselves ethically necessary in criminal justice policy and practice. Procedural justice is the right thing to do.

The inspectors (HMIP, 2021d) made fifteen recommendations aimed at improving the situation to the HMPPS and to the new, unified, probation service. The first recommendation, aimed at HMPPS, is to ensure that new commissioning arrangements for ethnic minority people on probation include small and local community organisations, and that interventions are provided which are culturally competent. An allied recommendation is to fund research into effective practice with ethnic minority people on probation. Race-specific probation interventions and services is a historically under-researched subject, but there is some evidence that probation can be more effective where staff are culturally aware and sensitive, and services are delivered by staff from similar ethnic backgrounds (Shingler and Pope, 2018, cited in Cole and McLean, 2020).

The probation service itself is recommended to develop a strategic needs assessment, that can be drilled down to each region to identify what the different areas require in terms of culturally competent services and interventions. Improvements to staff training, staff progression, recruitment focusing upon ensuring fair representation and opportunity for ethnic minority members of staff. In terms of service delivery, the first recommendation is to increase the proportion of pre-sentence reports being completed for ethnic minority people, to ensure these reports fully assess and represent the diversity of the individual, and to take steps to counter bias, whether conscious or unconscious. Similar recommendations are made about the OASys assessments undertaken once supervision by probation commences. There is a call for better community consultation arrangements and more opportunities for mentoring by former clients, both paid and voluntary.

These are all laudable and evidence-informed proposals, indeed some mirror the recommendations made in the historic inspection reports of 2000 and 2004.

In response, HMPPS has published an action plan responding to each recommendation (HMPPS, 2021). The great majority of the recommendations were fully agreed (13 of 15), two were partly agreed; we do not have space here to consider all the action plan responses so will focus upon the most pressing ones. The two partially agreed recommendations were around setting regional targets for ethnic minority staff progression (promotion), this would require additional data collation and analysis to do in practice and will be taken forward once those systems are in place. The second partially agreed proposal was concerned with work with racially motivated offenders (RMO). The inspectors recommended publishing training materials for those working with RMOs, and that ethnic minority staff should be consulted before being allocated a racially motivated offender to supervise, for reasons of safety and emotional well-being. The latter proposal has been agreed, but new training materials await a review of all accredited programmes. It is indicative that the RMO cohort has not been paid sufficient attention that 'From Murmur to Murder' (Kay and Gast, 1999), a training pack produced in 1999, is still in widespread usage despite not being updated to reflect contemporary society.

The HMPPS action plan aims to progress providing culturally sensitive rehabilitation programmes with the promised creation of a national register of ethnic minority led community organisations. The ability of small community organisations to successfully bid for work with large-scale public sector organisations is well documented (see, for example, CLINKS, 2021), future research and inspection should investigate how well the register is facilitating these, often financially vulnerable, organisations.

The key concepts of procedural justice – providing ethnic minority staff and clients with a meaningful voice, assuring the fairness of policy and processes, being respectful of people’s dignity and rights, and (re)building trust – could act as an audit tool for each of the recommendations and each of the action plan points. How well the issues are being tackled can be tested through the procedural justice lens with ethnic minority service user consultation forums, umbrella groups for community services (such as CLINKS) and staff associations. The procedural justice approach could also act as an explicit guide for the planned HMIP inspection of racial equality in 2023.

Conclusion

We have seen evidence from the inspection of race equality in the probation service that the key elements of procedural justice – voice, neutrality, respect and trust – are often missing from both the supervision of ethnic minority people on probation and the treatment of ethnic minority probation staff members. We have summarised the detailed findings of the inspection, which the Chief Inspector described as ‘concerning’. The Chief Inspector finds that the probation service does not take a strategic approach to meeting the needs of ethnic minority people on probation, and service leaders must address the gaps in officer training, the lack of culturally competent services and interventions, and the barriers to progression and development for ethnic minority staff.

The new unified probation service has an opportunity to begin afresh on making progress on racial equality. Procedural justice theory is a useful tool in this challenge as it can help to identify where the failures and barriers are, and what the solutions might look like. The evidence from the world of policing demonstrates that training in procedural justice concepts and practice has a lasting and beneficial effect on community relations (Hough, 2020). The procedural justice approach is in line with probation values, and with best practice in supervision. As Blasko and Taxman (2018) argue, following the pioneering approach of Bonta and Andrews (2010), ‘... environments that are not individual-centred and do not support procedural fairness are unlikely to be successful in implementing evidence-based practices.’

While we should be cautious in overclaiming the benefits of a procedural justice approach, an authentic commitment from senior leaders, communicated to all levels of management, would provide a valuable starting point.

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