



differences or discrimination?



ACKNOWLEDGEMENTS

The Youth Justice Board would like to thank Martina Feilzer and Roger Hood of the Centre for Criminological Research, University of Oxford for their work in undertaking the research, and in compiling and writing the full report upon which this summary is based, in consultation with Marian FitzGerald and Andrew Roddam. The summary, itself, was prepared by Martina Feilzer and Roger Hood in collaboration with the Youth Justice Board.

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The summary of the report on minority ethnic young people in the youth justice system



INTRODUCTION

In commissioning this research, the Youth Justice Board wanted to get as clear a picture as possible of how minority ethnic young people are dealt with at all stages of the youth justice process, compared with white young people. The focus was on finding out whether differences in outcome related to ethnicity or gender were justifiable in terms of case-related or other legitimate factors, or whether there was evidence of discrimination. Thus, the challenge was to look at outcomes for cases that might be expected to have been treated alike.

THE RESEARCH

To do this, eight Youth Offending Teams (Yots) were chosen – seven in urban areas, where there were relatively high concentrations of minority ethnic young people, and one in a rural area with a relatively low concentration. Information was obtained on 17,054 case decisions (14,432 involving males and 2,622 involving females, all aged between 12 and 17) over 15 months in 2001–02 – before the introduction of Referral Orders in April 2002.

When the ethnicity of the young people involved in the cases chosen was analysed:

- **65% were white**
- **17% were black**
- **7% were Asian**
- **3% were identified as being of mixed parentage**
- **1% were identified as being of other ethnicity**
- **7% had not had their ethnicity recorded.**

The number of decisions taken at the eight Yots varied, with one of them contributing a third of all the cases. Consequently, the average picture was affected by the decisions taken in those Yots contributing the largest proportion of cases.

The information gathered about the cases related to four stages of decision-making at which the case was either concluded or proceeded with:

1. the decision by the police as to whether to make a pre-court disposal or to recommend prosecution, and forward the case to the Crown Prosecution Service (CPS)
2. the decision by the CPS as to whether or not to pursue a prosecution, and the decision of a court to order a remand in custody or to grant bail

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3. the decisions made, by the CPS or the court, which led to the case being dropped, withdrawn, acquitted, or to a conviction
4. at the stage of sentencing, the decision made by the court as to the length of the sentence and whether to impose:
 - a custodial sentence
 - a more restrictive community penalty with intensive supervision by a Yot practitioner
 - a less restrictive community sentence
 - a community penalty with no supervision.

In addition to this information on the decisions made about each case, the following data were collected:

- **type of court**
- **the nature and gravity of the main charge**
- **previous offences, convictions and sentences**
- **plea**
- **educational status, e.g. school exclusion, employment status, family structure**
- **other risk factors (collected via the assessment tool known as *Asset*)**
- **the recommendation contained in the pre-sentence report (PSR).**

Because of a lack of detail on some of the circumstances of the offence and social background of the offender, a large sample of 1,905 PSRs was also obtained. These were analysed separately to see whether the findings for the sample as a whole were validated when further information was available on a sample of cases at the more serious end of the spectrum.



Several difficulties were encountered. For example, ethnicity had not been recorded in **7%** of the cases. The profile of these cases was very different from those in which ethnicity was recorded; a very low proportion were sentenced to custody. The most important problem posed by the cases where ethnicity was not recorded was the extent to which they might have skewed the comparisons made between the treatment of cases involving white and minority ethnic young people. An attempt was made to take this into account, and it was found not to have altered the direction of the findings reported below.

In addition, in only **57%** of cases where the young person concerned was identified as being from a minority ethnic group more details supplied about their specific origins, as would be recorded in *Census 2001*. Consequently, it was necessary to classify ethnicity, as in previous studies, as white, black, Asian, mixed parentage and other. The recording of young people's ethnicity by Yots, then, was not satisfactory as a basis for close ethnic monitoring.

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The range and depth of the analysis of female cases were restricted by the small number of minority ethnic young women who had been dealt with in the eight Yot areas in 2001–02. While there were 1,847 decisions on cases involving white females and 436 involving black females, only 83 involved Asian young women, 67 involved young women of mixed parentage, and 28 involved young females of other ethnicity. Even fewer of them were actually convicted and sentenced.

Finally, for the purpose of this study, community penalties were grouped under three main headings:

- **those that involve no supervision (absolute and conditional discharges, deferred sentences, and fines)**
- **those that are less demanding in terms of the supervision required (Reparation Orders, Action Plan Orders, Curfew Orders and Attendance Centre Orders), which we have called less restrictive community penalties**
- **those that impose on the young offender more requirements, and usually entail some more restrictive forms of social intervention on the part of Yot workers (Supervision Orders, Community Rehabilitation Orders, Community Punishment Orders, and Community Punishment and Rehabilitation Orders), which we have called more restrictive community penalties.**

PROFILE OF CASES

Male

With the exception of two of the eight geographical areas, cases involving young white males were somewhat under-represented, compared with the proportions of white males in the local populations of the Yots. In contrast, cases involving young black males were over-represented – sometimes very considerably – at all eight Yots. Those cases relating to young Asian males were under-represented, to varying degrees, at each of the Yots.

At all the Yots, cases in which the suspected male offender had been identified as being of mixed parentage were under-represented in relation to *Census 2001*. This was almost certainly due to recording practices, and underlines the need for research to be undertaken to understand more fully how the category of mixed parentage is being used by youth justice practitioners and young people themselves.

An analysis of characteristics relating to offences, criminal record and social characteristics of the cases showed that they varied substantially between the ethnic groups. Many of these variables were precisely of the kind that a prevention-oriented youth justice system would want to take into account, as they were a reflection not only of the risks posed by the young people but also of their individual needs. This indicated that one would expect to find some differences in outcome at the various stages of decision-making in relation to cases involving males from different ethnic categories.

the chances of a case involving a mixed-parentage young male being prosecuted were 2.7 times that of a white young male with similar case characteristics

Female

The extent to which white female cases were under- or over-represented in relation to the local population varied considerably between Yots. Cases involving black females were substantially over-represented in relation to the local population at six Yots, but not at the other two. At all eight Yots, Asian females rarely appeared in the system and were greatly under-represented in relation to their proportion in the local population. The same problem emerged, as with males, when comparing those cases identified as of mixed parentage with the youth population identified as such by *Census 2001*.

PRE-COURT DISPOSALS

Male

A pre-court disposal (either a Reprimand or Final Warning) had been most frequently made in cases involving Asian males and males of other ethnicity (around **30%**) and, least frequently, when the case involved a black male (**19%**) and a mixed-parentage male (**10%**). This was, in part, explained by the different proportions that had been eligible (having admitted the offence and having no prior conviction) to receive such a disposal. However, even among those eligible, a lower proportion of cases involving black males, and a much lower proportion of cases involving those of mixed parentage, had received such a disposal than had cases involving Asian or white young males.



Female

A much lower proportion of cases involving mixed-parentage females had been eligible for a pre-court disposal (**42%**) than any other category of young women: Asian, **77%**; black, **65%**; white, **62%**. Furthermore, a much lower proportion of the small number of the female mixed-parentage cases that had been eligible escaped a recommendation for prosecution.

DECISION TO PROSECUTE

Male

Analysis showed that the chances of a young black male being prosecuted were only very slightly higher than those of a young white male. However, the chances of a case involving a mixed-parentage young male being prosecuted were 2.7 times that of a white young male with similar case characteristics. This is statistically significant, and an indication of unfavourable treatment.

Although prosecution was recommended in a higher proportion of cases involving black males and those of mixed parentage, a

lower proportion of cases involving black young men (**67%**) than white (**75%**), Asian (**78%**) or mixed-parentage (**77%**) males resulted in a conviction and sentence. This came as a result of a much higher rate of discontinuations and acquittals. When case characteristics, such as the nature of the main offence and plea, had been taken into account, cases involving black males were still significantly more likely to be acquitted than their white counterparts.

As a consequence of the various decisions taken at the different stages, only **54%** of all cases involving males resulted in a conviction and sentence. However, the proportion convicted was much higher in cases involving young men identified as of mixed parentage (**70%**) than in cases involving white (**54%**), black (**52%**) and Asian males (**51%**) or males of other ethnicity (**46%**).

Female

The chances of a mixed-parentage female being prosecuted were six times that of a similarly placed white female. Not a single case involving mixed-parentage females – just as had been found for males – was terminated by the CPS, and they were more likely to be convicted than any other group. This was evidence consistent with discriminatory treatment. Furthermore, there were big variations in the rates of prosecution of females across the different Yot areas that were not explained by the characteristics of cases.

REMAND DECISIONS

Male

Higher proportions of cases involving black (**10%**) and mixed-parentage (**13%**) males than white (**8%**) males – a statistically significant difference – had been remanded in secure conditions. Cases involving males from Asian and other ethnic groups (**6%** in each case) were remanded in secure conditions less often than white males. These differences in the use of remand in secure conditions are significant because to have been remanded in

secure conditions puts a young person at a considerable disadvantage when he appears in court, in terms of the severity of the sentence.

Moreover, nearly a quarter of all cases remanded in secure conditions failed to result in convictions once they went to court. There were again ethnic differences: as many as a third of cases where a black male had been remanded in custody failed to result in a conviction, compared with one in five cases involving white males.

Female

Very few females were remanded in secure conditions, and there was no evidence to suggest ethnic bias at this decision stage.

higher proportions of cases involving black and mixed-parentage males than white males had been remanded in secure conditions

SENTENCES IMPOSED

Male

Substantially higher proportions of black (**26%**) and mixed-parentage (**28%**) males had been sentenced to a more restrictive community penalty than white (**21%**), Asian (**23%**) or other ethnicity (**16%**) male offenders. These differences were found mainly in cases involving young people aged between 12 and 15.

Controlling for case characteristics, it was found that white young men were sentenced to a more restrictive community penalty at a lower rate than would have been expected from their case characteristics. All cases involving young men from minority ethnic groups were sentenced to more restrictive community penalties at a higher rate than would have been expected.

However, only in the case of mixed-parentage young males was the difference statistically significant – they were 1.6 times more likely than a white male to receive a more restrictive community penalty.

The data collected from the eight Yots also showed that there were substantial variations in the proportionate use of custody and the more restrictive kind of community penalties between the different areas. After case characteristics had been controlled for, variations in the use of custody and more restrictive community penalties between Yots remained statistically significant.

The proportions of male offenders sentenced to custody or one of the community penalties varied in relation to ethnicity. However, the characteristics of these cases also varied in relation to ethnicity. Of particular interest was the higher proportion of black and Asian males than white males who had been charged with violence or robbery, as well (although at a much lower level) as with a sex- or drug-related offence.

The mixed-parentage male group had more frequently been charged with a breach of a court order and, like the black male offenders, had committed a higher proportion of offences of the kind that were most likely to attract a custodial sentence. Furthermore, a significantly higher proportion of cases involving black and mixed-parentage than white males had been remanded in secure conditions and sentenced in the Crown Court, where the probability of receiving a custodial sentence was very much higher than in the youth court (**59%** as against **10%**).

**the chances of an Asian male offender
being sentenced to custody
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White and Asian males had been sentenced to custody in equal proportions (**12%**). The rates for black (**13%**), mixed-parentage males (**15%**) and those from other ethnic backgrounds (**16%**) were higher.

Taking into account the influence of variables, it was possible to compare the observed rates of custodial sentencing with those that would be expected, given the characteristics of the cases. This showed that the proportions of mixed-parentage male offenders being sentenced to custody were slightly lower than expected, and that black and mixed-parentage males had a slightly lower risk of being sentenced to custody, in comparison with white male offenders. Young black males were also less likely than expected to be given a custodial sentence when sentenced in the Crown Court.

The chances of an Asian male offender being sentenced to custody were slightly higher, at 1.2 times that of a white offender. However, none of the differences was statistically significant. In other words, the raw differences in custody rates were largely explained by different case characteristics that could legitimately be taken into account.

Relatively high rates of custody at some Yots appeared to be linked to a tendency to sentence more male offenders to custody than their case characteristics would appear to justify. A second finding was that the ethnic differences observed at one Yot, which contributed a third of all male cases, would have had a substantial effect on overall ethnic differences observed. It was in this Yot area that the observed custody rate for male black and mixed-parentage offenders was lower than expected, while for male Asian and white offenders it was somewhat higher than

expected. Thus, the overall findings for the sample as a whole masked considerable and unexplained variations between Yots.

The findings relating to the whole sample of cases studied were based on a model that, because of lack of information on many cases, could not control for more detailed circumstances of the offences committed, nor many social variables that might have had an influence on the distribution of sentences imposed on minority ethnic young people. In order to test whether this was the case, a much richer source of information was analysed – a large sample of PSRs. These cases, as shown by the greater use of custody and more restrictive community penalties, were regarded by the courts as more serious or difficult. The PSRs contained a great deal of descriptive information about the nature and seriousness of offences and details of social background, as well as a risk assessment.

The base model, as developed for the whole sample, was applied to the PSR sample. This produced no difference in the findings as regards the comparisons between the chances of white and ethnic minority male defendants being sentenced to either custody or a more restrictive form of community penalty. The next step was to apply a model that included the characteristics of the offence and social variables that had been shown to be significantly related to the outcome. The model, now including this richer data extracted from the PSRs, did not change the direction of the findings. Thus, the detailed statistical analyses, first, for the sample of sentenced male cases as a whole, and then for the sample of more serious male cases for which PSRs had been prepared, pointed towards three broad conclusions.

- **As regards the use of the more restrictive forms of community penalties, there was no evidence of significant differential treatment of white and black males. However, both Asian and mixed-parentage males, especially those aged between 12 and 15, were more likely to be dealt with in this way than could be explained by their case characteristics including indices of their needs and risks.**

- **As regards the use of custodial sentences, there was no evidence consistent with unfair discriminatory treatment of black or mixed-parentage males, compared with white males. However, there was an indication of a greater than expected use of custody for males of Asian background that could not be explained by case characteristics.**
- **There were considerable and statistically significant variations in the pattern of custodial and non-custodial penalties imposed by courts in the eight Yot areas included in this study, even after having taken case characteristics into account. In other words, there was evidence consistent with, as it were, justice by geography.**

Female

As regards the use of more restrictive types of community penalty, analysis showed that the proportion of black females receiving such a penalty was no higher than would be expected, given their case characteristics. Indeed, they were significantly less likely to have been given such an order than a white female.

A very similar pattern of sentences was imposed on white and black young women, with a slightly lower proportion of black (4%) than white (5%) receiving a custodial sentence. None of the 22 Asian young women had been sentenced to custody, and 82% of them received either a community penalty with a less restrictive form of supervision, or a fine or nominal penalty. While a slightly higher proportion of the 46 cases involving mixed-parentage young women had been sentenced to custody (7%), no significance can be attached to these differences because of the small number of cases in the sample.

Among the differences in characteristics between the cases involving black and white females, two stood out. A considerably higher proportion of black (7%) than white (2%) females were sentenced in the Crown Court; this might be explained by the much higher proportion of black cases sentenced for robbery. On the other hand, a considerably lower proportion of black than white females had been identified as persistent young offenders.

It was found that the observed proportion of black females sentenced to custody was much lower than the expected rate, given their case characteristics. The difference between the observed rate of custodial sentences imposed on white and black females was statistically significant. Thus, black females appear to have been treated differently from their white counterparts – but not to their disadvantage.

It was not possible, given the relatively small number of minority ethnic females involved, to repeat the validation exercise using PSRs, as had been done with the male sample. As with the males, a PSR recommendation had been recorded for a higher proportion of cases involving black and mixed-parentage females, indicating that the court had regarded the case as more serious or difficult. However, black females on whom a PSR had been prepared were not more likely than a white female to have been sentenced to custody or one of the more restrictive forms of community penalties. The correspondence between PSR recommendations and sentences imposed was very high for both black and white offenders, indicating that PSRs did not disadvantage black young women.

The inclusion of the variable ‘PSR available or not’ had no effect on the direction of the findings relating to the comparative use of custody or restrictive types of community penalty noted above. In other words, there was no evidence to suggest that PSR recommendations had biased the outcome.

**the chances of a
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LENGTH OF SENTENCES IMPOSED

Male

Sentences of over two years can only be imposed by the Crown Court and, as a rule, it hands out longer sentences than youth courts. Only a very small minority of cases (**5%** of all sentenced cases) were sentenced in the Crown Court. However, higher proportions of cases involving black, Asian and mixed-parentage young males (**8%**, **6%** and **7%**) than white (**5%**) offenders were sentenced in the Crown Court.

In the Crown Court, a considerably lower proportion of black males than would be expected from their characteristics were sentenced to custody. However, of those that were given a custodial sentence, a very much higher proportion of the black males (**92%**) than white (**62%**) received a sentence of 12 months or more.

In contrast, the proportions of white and black male offenders who had been given a sentence of 12 months or more in a youth court or magistrates' court were very similar. In part, this was because a much higher percentage of black males than white had been sentenced according to the powers available under sections 90 and 91 of the Powers of the Criminal Courts Act 2000 to impose longer sentences of detention than two years for certain serious offences. However, when these cases were removed from the analysis, the proportion of black young men receiving a custodial sentence of 12 months or more was still nearly twice as high as the proportion of white young men.

The chances of a black young male's custodial sentence at a Crown Court being 12 months or longer were 6.7 times those of a white male. This evidence is consistent with discrimination against cases involving black young male defendants in the Crown Court as regards the length of custodial sentence imposed.

As far as sentences to a more restrictive type of community penalty were concerned, higher proportions of cases involving black and Asian males aged 12 to 15 than white and mixed-parentage young men received an order lasting more than 12 months.

Female

As very few females had received a custodial sentence, no comparisons of sentence length were possible. However, there was no evidence to suggest differences in the lengths of order given when a restrictive form of community penalty had been imposed.

DECISIONS THAT AFFECT SENTENCING OUTCOMES FOR MALES

Several decisions made before sentencing can have an influence on the choice of sentence. Three of them were examined:

- **the decision whether or not to remand a young male in secure conditions**
- **the decision as to the venue of a trial – youth court or Crown Court**
- **the decision as to whether or not to prepare a PSR.**

Logistic regression analysis, controlling for variables that might legitimately be used to justify the decision to remand in custody, showed that, among those convicted, the chances of a black or mixed-parentage male having been remanded in custody was 1.2 and 1.4 times that of a similarly placed white male.

Although these differences were not statistically significant, they suggest that there may have been unfavourable treatment of black and mixed-parentage males in relation to the remand decision – a decision that then increased their chances of receiving a custodial sentence.

Similarly, the decision to commit a case for sentencing to the Crown Court increases the likelihood of a young person being sentenced to custody. In respect of this decision, all minority ethnic males had a slightly higher chance of being committed to the Crown Court than had white males – but, again, none of the differences was statistically significant. Nevertheless, the trend

pointed towards an unfavourable treatment of minority ethnic males in this respect.

Finally, the impact on sentencing decisions of the preparation of, and the recommendations made in, a PSR was examined. A much higher proportion of minority ethnic males had been made the subject of such a report and, where they had been, were more likely than male white offenders to have received a custodial sentence or one of the more restrictive community penalties – and this was consistent with the recommendations made in the report.

On the other hand, where no PSR recommendation had been recorded, a higher proportion of each minority ethnic group than white offenders had received a less restrictive community penalty, or a penalty without any supervision, e.g. a fine or even a nominal sentence. There was evidence to suggest that practitioners recommended custodial penalties, or stated that they were unable to recommend any alternative, at a slightly higher rate (but not in a manner that was statistically significant) for minority ethnic males than for white males, as compared with what seemed justified by their case characteristics.

As regards more restrictive community penalties, practitioners recommended such penalties at a slightly higher rate (but not in a manner that was statistically significant) for black males than for white, but at a significantly higher rate for males of mixed parentage. Again, these differences appeared not to be justified by variations in case characteristics, even when taking social variables into account. However, adding the 'PSR recommendation made or not' or the 'specific recommendation made' variables did not alter the direction of the findings as regards ethnic differences – either in respect of the use of custody or community sentences with more restrictive forms of supervision.



COMPARISON OF THE TREATMENT OF MALES AND FEMALES

The characteristics of male and female cases were significantly different. For example, a much lower proportion of females than males in all ethnic categories had a criminal record and a higher proportion admitted guilt. Thus, cases involving females were more likely to be eligible for a pre-court disposal. Moreover, the police chose to recommend prosecution in pre-court eligible cases far less often when the offender was a female. The likelihood of a male, eligible for a pre-court disposal, being prosecuted was 1.4 times that of a female.

When the sentencing of males and females were compared, it was found that young males were twice as likely to be sentenced to custody as were their female equivalents. On the other hand, slightly more females received a more restrictive community penalty than would have been expected from their case characteristics. Indeed, the chances of a male receiving a more restrictive community penalty was 20% lower than that of a female. In both cases, these variations were not explained by the differences in male and female case characteristics.

There is evidence consistent with differential treatment of male and female cases both at the pre-court and the sentencing stages.

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CONCLUSIONS

This study has demonstrated that there are large differences between white and ethnic minority young people of both sexes in the youth justice system as a result of the differential inflow of cases. It has also shown that there are considerable variations in the extent of

over- or under-representation of particular ethnic groups in relation to the proportions in the populations served by the eight Yots included in this study. It was not the purpose of this study to investigate why such differences occurred, but it is clear that much more attention must be paid to this issue.



Notwithstanding, this study did find, at various points of the decision-making processes, differences in outcome in the treatment of white, black, Asian and mixed-parentage young people, as well as between males and females. While many of these differences appeared to be accounted for by relevant variations in the characteristics of the cases on which decisions had been reached, this was not always the case. In other words, there were, at various points of the processes, differences that were consistent with discriminatory treatment. Concerns were raised by:

- **the higher rate of prosecution and conviction of mixed-parentage young males**
- **the higher proportion of prosecutions involving black young males**
- **the greater proportion of black and Asian males that had been remanded in custody before sentence, especially the greater proportion of black males remanded whose proceedings had not resulted in a conviction**
- **the slightly greater use of custody for Asian males**

- **the greater use of the more restrictive community penalties for Asian and mixed-parentage males – especially those aged between 12 and 15**
- **a much higher probability that a black male would, if convicted in a Crown Court, receive a sentence of 12 months or more**
- **a greater likelihood that black and Asian males aged between 12 and 15 would be under supervision for longer than 12 months if they received one of the more restrictive type of community sentences**
- **a slightly greater tendency for ethnic minorities to have been committed to the Crown Court**
- **a much greater proportion of mixed-parentage females who were prosecuted**
- **the substantial variations in outcomes between Yot areas.**

Further copies of this summary and the full report on
which it is based can be obtained from:

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