

# OFFENDER MANAGEMENT BILL

## HOUSE OF LORDS Briefing for Committee

COMMISSION FOR  
RACIAL EQUALITY



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1. The Commission for Racial Equality (the Commission) was established under the Race Relations Act 1976 (the Act) with the duties of working towards the elimination of racial discrimination and the promotion of equality of opportunity and good relations between persons of different racial groups.
2. The Commission is concerned to retain a crucial current safeguard for race equality in the probation service, which will be lost if the Offender Management Bill (the Bill) passes into law as it stands.
3. Clause 7(1) of the Bill provides for the abolition of the 42 local probation boards in England and Wales. These boards are all presently bound by the general race equality duty set out in s.71(1) of the Act. This requires them, in carrying out their functions, to have due regard to the need (i) to eliminate unlawful racial discrimination; (ii) to promote equality of opportunity; and (iii) to promote good relations between persons of different racial groups’.
4. These race obligations have been active since 2<sup>nd</sup> April 2001, and have been supported since 31<sup>st</sup> May 2002 with regulations. Probation Boards, like police forces and all other criminal justice agencies, have been subject not only to the general race equality duty but, to support this, specific duties such as to publish race equality schemes, to monitor their employment patterns and to undertake relevant public consultation.
5. Clause 3(2) of the Bill empowers the Secretary of State to make arrangements with any other person for them to provide probation services, including provision for them to secure services from a third party. Taken with clause 4(1) of the Bill, empowering the Secretary of State to create probation trusts, it appears that the intention is to replace probation boards with probation trusts and to arrange for the latter to sub-contract provision of some or all probation services to other bodies such as private companies or charities. **But there is no provision for any of these bodies to be subject to the race equality duty<sup>1</sup> which has applied hitherto to probation boards.**
6. Probation boards and all other criminal justice agencies have from the outset been bound by the Race Equality Duty. The current procedure for extending this coverage to other public bodies, for example any not included since May 2002 for whatever reason, or any newly-created bodies, has been for the Commission, amongst others, to submit annually

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<sup>1</sup> The race equality duty refers to the general statutory duty under s.71(1) of the Act, and the various specific duties that have been introduced by way of statutory instrument under s.71(2) of the Act since 3<sup>rd</sup> December 2001.

to the Home Office a list of suggested additions. This however is not practicable or efficient here for the following reasons:

- i) Probation trusts and other providers appear likely to be designated piecemeal rather than all at once, which will create time lags until the date of the Commission's (or the Commission for Equality and Human Rights' from October 2007) annual submission.
- ii) Even if they are all designated together, there could still be a time lag of up to a year from the time of any accepted submissions, and there would be a further delay thereafter until any listing through Parliament. This would be the period during which probation trusts were setting up and forming their priorities.
- iii) Perhaps most importantly, the Commission's last two annual submissions have received no response from the Home Office.
- iv) Finally we need to bear in mind that the current 'sister' equality obligations in the fields of disability & gender equality use a generic definition of public authority, that is a body is such if it, and in so far as it undertakes functions of a public nature. Notwithstanding the difficulties that have emerged around the meaning of public functions in relation to the Human Rights Act 1998, it is the case that, perversely, such probation trusts could be automatically bound by the disability & gender obligations, but not by the Race Equality Duty. This would be deeply unsatisfactory.

We therefore conclude that the surest way of safeguarding the legislative intention that underlies the Race Equality Duty is to make probation trusts subject to the same through amendments to the Bill.

### **Proposed Amendment**

Clause 3, Page 3, Line 35, at end insert -

'(d) To implement the general race equality duty under s.71(1) of the Race Relations Act 1976, through (i) collecting and analysing relevant evidence, (ii) involving affected persons & organisations, (iii) taking actions through an equality action plan, and (iv) publicly reporting each year on their performance on race equality.'

*Why this Clause, Why under Clause Three, and Why is it Necessary?*

**1. A Race Equality Gap:** the Bill in its present state will place no direct race equality obligations on the new probation trusts (the trusts). This would constitute a **regression** in practice from the current position of race equality duties applying to local probation boards. It would thus create an unacceptable '**race equality gap**' with trusts having to directly meet the gender & disability equality duties, but not their race equivalents. There would also be no proper linkage in the Bill between race equality, and those that the trusts contract with to actually deliver probation services.

**2. The Probation Trusts Matter for Race Equality:** as is clear the work of these new trusts is anything but trivial. In fact and in practice they will have major impacts on the life chances of those they serve. As such what they do will be important for equality outcomes generally, and for **race equality outcomes in particular**: ethnic minorities are over-represented generally in the Criminal Justice System from initial contact to sentencing, with certain Black groups being massively over-represented in the UK prison population<sup>2</sup>.

***Percentage of Ethnic Minorities in the Prison Population***

- Data for 2004/05<sup>3</sup> shows that 25% of the prison population were from ethnic minority groups. Ethnic minority groups accounted for 24% of the male population (15% Black, 6% Asian, 3% Mixed and 1% Chinese and other) and 28% of the female population (19% Black, 2% Asian, 5% Mixed and 2% Chinese and other). Nearly two in five (38%) of ethnic minority prisoners were foreign nationals.
- Excluding foreign nationals, the proportion of Black prisoners relative to the population was 7.1 per 1,000 compared to 1.4 per 1,000 for White people. Similarly, people from Mixed ethnic backgrounds were more likely to be in prison than their White counterparts with a rate per 1,000 population of 3.2. In contrast, people from Chinese and other ethnic backgrounds were least likely to be in prison: 0.5 compared to 1.4 and 1.5 per 1,000 population (for White and Asian groups respectively).
- A thematic inspection by HM Inspectorate of Prisons<sup>4</sup> found that although processes were in place to address racism and discrimination, their prisoner surveys regularly and routinely found that ethnic minority prisoners had worse perceptions of their treatment than white prisoners across many key areas of prison life. There were also

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<sup>2</sup> See, respectively, pp.9 & 19 of 'Section 95 Statistics 2004/5 on Race and the Criminal Justice System'.

<sup>3</sup> Home Office (2006) *Statistics on Race and the Criminal Justice System – 2005. A Home Office publication under section 95 of the Criminal Justice Act 1991.*

<sup>4</sup> HM Inspectorate of Prisons (2005) *Parallel Worlds: A thematic review of race relations in prisons.*

differential outcomes for ethnic minority prisoners and a lack of training and support for staff and race relations managers.

### **Probation Service and Pre- Sentence Reports**

- In the probation service, there is a longstanding issue about the inferior quality of Pre-Sentence reports (PSRs) for ethnic minority offenders. HM Inspectorate of Probation's thematic inspection of race equality in 2000<sup>5</sup> concluded that the proportion of reports considered satisfactory or better was considerably higher for white than for African/African-Caribbean offenders in some areas:
  - PSRs varied significantly in quality for different race and ethnic groups: 63% of reports on Asian offenders were satisfactory or better in comparison to just 49% for African/African-Caribbean.
  - There was also a noticeable failure to comment on the management of risk in the majority of PSRs prepared on African/African-Caribbean offenders.
  - Considerable variations were demonstrated between probation services in performance: this was compounded by the lack of data on race and ethnic origin.
- By 2004, although the quality of PSRs had improved considerably, the differential associated with race and ethnicity still remained<sup>6</sup>:
  - there was still an apparent negative quality differential however, with reports on white offenders still tending to be better: a negative quality differential was apparent against virtually every performance variable
  - only 3% of PSRs on white offenders made reference to religious or cultural factors in the offender's background, whereas 38% of minority ethnic offenders' PSRs included such information; however, in a third of these, the points made were considered irrelevant to the risk analysis and proposal which diminished the quality of the PSR

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<sup>5</sup> HM Inspectorate of Probation (2000) *Towards Race Equality: A Thematic Inspection*.

<sup>6</sup> HM Inspectorate of Probation (2004) *Towards Race Equality: Follow-Up Inspection Report*.

### ***Working with Racially Motivated Offenders***

- In terms of working with racially motivated offenders (RMO), HM Inspectorate found<sup>7</sup> little evidence nationally or in local probation areas of a strategic approach to racially motivated offending work. Senior managers had difficulty in ascertaining if RMO policy and practice guidance was followed and areas did not have robust systems for the identification and monitoring of these offenders. Racially motivated offending related interventions were not delivered in a timely way resulting in delays or work not being carried out sufficiently and victim issues required far greater prominence and attention.

**3. Probation Trusts & Race Equality – From Start to Finish:** this amendment is intended to enable probation trusts to embed fairness and race equality from their inception. This is why we propose a new clause 3(3)(d) to empower the Secretary of State to require immediately that race equality is integral to the trusts' work: **race equality won't be an add-on; rather it will be there from the start.**

**4. A Light-Touch, Proportionate but Effective Amendment:** the proposed clause is designed to be light-touch but effective, there to help the new trusts take the **essential steps** towards good race equality practice. It should be clear that the four specific steps are about good evidence-based policy and fair and transparent public services. They also neatly complement the more proportionate, action-oriented steps contained in the gender & disability equality regulations. Finally this **'joined-up' approach** between the race, gender & disability obligations also neatly anticipates the single equality duty that is likely to be part of a Single Equality Act in 2008 or 2009.

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<sup>7</sup> HM Inspectorate of Probation (2005) *"I'm not a racist but..."An Inspection of National Probation Service Work with Racially Motivated Offenders.*