

**London Criminal Courts Solicitors' Association**

**Response to the Home Affairs Committee Inquiry into young black  
people in the criminal justice system.**

The London Criminal Courts Solicitors' Association (LCCSA) represents the interests of specialist criminal lawyers in the London area. Founded in 1984, it now has over 1000 members including lawyers in private practice, Crown prosecutors, freelance advocates and many honorary members who are circuit and district judges.

The objectives of the LCCSA are to encourage and maintain the highest standards of advocacy and practice in the criminal courts in and around London, to participate in discussions on developments in the criminal process, to represent and further the interests of the members on any matters which may affect solicitors who practice in the criminal courts and to improve, develop and maintain the education and knowledge of those actively concerned with the criminal courts including those who are in the course of their training.

Any questions in relation to this response should be referred to either:

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The following members of the Association's Law Reform Sub-Committee have assisted with this response:

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All members of the sub-committee participated as individual members of the LCCSA and the views expressed do not necessarily reflect those of any of their firms.

## **Introduction**

The Home Affairs Committee ("the H.A.C.") have announced that they wish to hold an inquiry into the relationship between young black people and the criminal justice system, focusing particularly on public perceptions of criminality among young black people and the reasons for their over-representation in the system. The H.A.C. have not requested responses to any specific questions and do not refer to any statistical analysis which they have relied upon in finding that young black people are over-represented in the criminal justice system. As a result our response is wide ranging and is limited to the experience and views of the sub-committee.

We do however wish to state we are willing to provide oral submissions to the H.A.C. in due course in relation to the following issues;

1. We are concerned that the current application of the 'stop and search' procedures by the police is likely to lead to the over-representation of young black people in the criminal justice system.
2. We believe there are numerous socio-economic factors outlined below which have a very significant bearing on the vast majority of defendants,

and which equally need to be addressed by the Government.

3. We have no doubt that the reforms proposed by Lord Carter will have the effect of driving ethnic minority firms out of business, lead to under-representation of black lawyers within the criminal justice system and will further deepen the feeling of disenfranchisement amongst young black people.

We do not consider that we can usefully comment on the public's perception of criminality among young black people as we work within the criminal justice system and are therefore not best placed to judge public perception. The only observation we would make is that we regard the media as heavily influential of the public's view of the criminal justice system and that the cases covered by the media are often the more extreme which have a tendency to polarise public opinion. A more balanced coverage of cases might lead to a more balanced and informed debate.

## **Police 'stop and search' procedures**

It is arguable that one of the reasons for the over-representation of young black people in the criminal justice system comes from within the system itself.

Following the inquiry into the investigation of the murder of Stephen Lawrence in 1999, attitudes within the Metropolitan Police were described as demonstrating "institutionalised racism." At the time of the inquiry black people were five times more likely to be stopped and searched than white people. Ironically, two years later, the figure rose to eight and even now the most recently reported statistics demonstrate that a black person is six times more likely to be stopped than a white person.

Such disproportionate use of these powers, whether intentional or not, appears to have a significant impact on the ethnic make-up of the criminal justice system.

Primarily, the pro-active policing effect of searches results in the detection of petty offences that would otherwise pass unnoticed. Examples of these kinds of offences include going equipped to steal, handling stolen goods and

possession of drugs. Drug offences in particular highlight the effect of stop and search procedures in bringing particular sections of the community into the criminal justice system.

England has a higher number of cocaine users in its middle classes than any other country in Europe. Yet this group of offenders is especially under-represented in crime statistics, possibly because they are also a part of a section of society that has little if any experience of being stopped and searched by the police. Young black people who are stopped as a matter of routine will find themselves repeatedly returning to court for possession of small amounts of cannabis.

Previous research on the public perception of stop and search procedures reflects the experiences described by young black defendants we have represented. Whilst the recommendations of the Stephen Lawrence Inquiry included guidance on how to ensure the procedure was not perceived as racist, four out of ten complaints were made by black people who suggested that the police failed to manage the encounters appropriately and gave inadequate explanations to the persons detained. The failure of some police officers to communicate effectively with young people of ethnic minority descent, who themselves are perhaps not sufficiently articulate to respond appropriately, results in considerable tension. It is therefore unsurprising that a number of cases in London's youth courts involving public order offences, especially those contrary to sections 4 and 5 of The Public Order Act, arise from nothing more sinister than a stop and search that has gone awry.

Finally, the long term effect of stopping more young black people than any other ethnic origin can become a self-fulfilling prophecy. Sadly, there are some young black people in the criminal justice system simply because they have become demoralised by the repeated 'stops and searches' that can take anywhere between a couple of minutes and three quarters of an hour. There are some defendants who have stated that they have given up the struggle of leading a law abiding lifestyle as they feel the police perceive them as criminals anyway, due to the number of times they are stopped in contrast to their white peers.

### **Socio-economic considerations**

In addition to the effect the application of the 'stop and search' powers may have on the identity of those that enter the criminal justice system we would not want the effect of various socio-economic factors to be underestimated as we consider those factors to be potentially far more significant. We have in mind factors such as poverty, being placed into local authority care, lack of recreational facilities, lack of suitable role models, substance misuse and lack of access to mainstream full-time education.

In reality, and setting aside policing which often targets sections of the community based upon ethnicity, those factors feature in many of our clients' histories irrespective of their racial background. It is equally notable in

boroughs which are very mixed; a significant proportion of their inhabitants are affluent suburbanites (such as Lambeth, Wandsworth, Southwark or Croydon) but relatively few of them appear as defendants before the courts. It would appear that black youths are under-represented amongst this group of people, and over-represented amongst the groups of residents that are more economically deprived.

The significance of economic issues is illustrated by the plight of Bosnian asylum seekers a few years ago. West London Magistrates Court, at this time, saw a significant rise in the number of defendants from the former Yugoslavia, who had applied for asylum and were trying to survive on vouchers. Defendants were often before the courts for pick-pocketing or shop theft or other petty offences, yet at the same time the Lambeth/Wandsworth courts did not seem to show the same rise as they did not house the same number of asylum seekers from that community. These defendants were not black; just impoverished whilst living in an exceedingly materialistic society.

The acquisitorial nature of modern society may also provide more of an explanation for involvement within the criminal justice system. Anecdotally, we have had youths explain that the bottles they shove down their trousers in off licences, when fenced, fund a taste for the latest trainers; another explained how having £4000 in cash at any given point in time from age 12 on in return for acting as look-out for ex brother-in-law drug pedlar was a temptation too great to resist; others commit small scale burglaries aged 15 to 17 until regular paid employment comes their way, and the risks begin to outweigh the

benefits. We take these examples from a cross-section of ethnic backgrounds.

None of these factors are indicative of factors within the criminal justice system itself being responsible for the volume of black youths that come before it. However, when such youths do enter the system, a significant proportion of the operators of that system are not black. Referral Order panels, Intensive Supervision and Surveillance Package workers, and lay magistracy in South London are more ethnically representative, but court clerks remain predominantly white.

### **The likely impact of the Carter Review on young black people**

At the present time there are a number of small BME-owned (Black Minority Ethnic) and controlled law firms that provide services to ethnic communities and provide a service for members of those communities who become involved with the criminal justice system. The existence of such firms means that young black people feel less disenfranchised. This may be because they perceive those firms as having an understanding of their cultures and backgrounds. The presence of such black lawyers in positions of responsibility also provides positive role models for young black people.

Further, the presence of black lawyers in senior positions within law firms means that there is a rich pool from which black lawyers can be selected for posts in the judiciary. Part of the effectiveness of both groups as role models

may stem from the role their professional success plays in dispelling the myth of a glass ceiling within the legal profession.

Lord Carter's review on procurement of legal aid poses a severe threat to such small black firms because it is the apparent perception of Lord Carter that bigger firms are more efficient and more effective than small ones. This is at least insofar as the interim report (published in February 2006) is concerned. The full report is, we understand, due for publication on July 13th. It is interesting that the interim report does not specify in what manner consortias of small independent firms, with different cultures and ways of working, are to be achieved. Firms will not be given the option to grow organically because, in the first of three stages of reform, they will be paid in relation to their historic performance data.

Figures published by the Legal Services Commission show that these measures will disproportionately affect EME firms. In London, 46% of small legal aid firms are owned by ethnic minorities. The choiced given to proprietors of these firms are stark. They either lose influence by amalgamating or by becoming a small cog in a consortium, they become fee earners to other firms or leave the profession entirely.

The effect of these reforms will be to lessen the influence of minority lawyers within the criminal justice system. As a result there will be fewer positive role models and fewer black lawyers in positions of authority from which they can

be selected for judicial roles. Consequently young black people coming into the criminal justice system may feel further alienated from it.

Thus the reforms will have a knock on effect and will once again re-emphasise the sense of alienation that young black youths going through the criminal justice system often experience.