

Ethnic Inequalities in Sentencing in the Crown Court - Evidence from the MoJ Data First Criminal Justice datasets

Author: Kitty Lymperopoulou

Date: September 2022

This Data Insight draws on Data First magistrates' and Crown Court datasets to examine ethnic disproportionality in court outcomes and the extent of ethnic disparities in imprisonment for defendants sentenced in the Crown Court after adjusting for defendant and case characteristics.

Background

Over recent years there has been unprecedented attention to racial and ethnic disparities in the Criminal Justice System (CJS). The 2017 Lammy review presented evidence of stark ethnic disparities at all stages of the CJS. From the point of arrest, through prosecution to custodial remand, sentencing and imprisonment, ethnic minority groups were both disproportionately represented and experienced disproportionately worse outcomes. Among its recommendations, the review identified the need for evidence-based explanations into the causes of ethnic disparities underpinned by improvements in the collection and availability of CJS data. The release of the Ministry of Justice (MoJ) Data First linked criminal justice datasets enable researchers to address these evidence gaps to deepen understanding about the extent and drivers of disparities in the CJS. This Data Insight, draws on the Data First magistrates' and Crown Court datasets to examine ethnic disproportionality for defendants appearing in the Crown Court and the extent of ethnic disparities in the likelihood of a custodial sentence after adjusting for a range of defendant and legal characteristics affecting sentencing outcomes.

What we did

We combined four years of the Data First datasets (2017-20) and used the Relative Rate Index (RRI) to examine disproportionality in court outcomes for defendants from ethnic minority groups. This analysis used the 16+1 self-identified ethnic group classification from the 2001 Census. The RRI is the ratio of the rate of an ethnic minority group in a given outcome relative to the rate of the White British group. An RRI close to 1 indicates greater equality between the two groups while an RRI that is not equal to 1 indicates disparity in the outcome between the two groups. To examine ethnic differentials in the likelihood of imprisonment for defendants convicted in the Crown Court, a range of defendant (age, gender, deprivation) and legally relevant case (offence type and severity, previous convictions, pre-trial detention, plea, co-defendants) factors associated with these outcomes were controlled for, using multilevel modelling methods. This enables the association between ethnicity and imprisonment or the extent of ethnic disparities net of other factors to be examined.

What we found

Ethnic disproportionality in court experiences is evident across different stages of court proceedings. As shown in table 1, defendants from ethnic minority groups appearing in magistrates' courts between 2017 and 2020 except for the White Irish, were more likely to be committed to the Crown Court for trial than defendants from the White British group. Among defendants appearing in the Crown Court who entered a plea, ethnic minority defendants had higher rates of a non-guilty plea than White British defendants. Black African and Indian defendants were more likely to enter a non-guilty plea compared to all other groups and were 1.7 times more likely to plead not guilty than the White British group.

Among those convicted in the Crown Court, defendants from the Black Caribbean, Chinese and Other White group were more likely to receive a custodial sentence than the White British group. Ethnic disproportionality is much more pronounced among young male defendants. Black Caribbean young males were more likely to receive a custodial sentence compared to young males from other ethnic groups and were 1.6 times more likely to receive a custodial sentence than those from the White British group. Ethnic disproportionality is also more pronounced for particular types of offences. Among those sentenced for drugs offences a custodial sentence was 1.7 and 1.5 times more likely for defendants in the Chinese and Other White groups compared to the White British group.

Table 1. Defendant experiences in courts 2017-20: committal to Crown Court, remand, plea, and custodial sentence.

	Committed for trial to Crown Court		Plead not guilty		Remand in custody		Custodial sentence		Custodial sentence - Young males		Custodial sentence - Drugs offences	
Indian	1.24	*	1.72	*	0.89	*	1.01		1.07	*	1.13	
Bangladeshi	1.45	*	1.64	*	1.01		1.00		1.26	*	1.21	
Pakistani	1.75	*	1.44	*	0.88	*	1.00		1.18	*	1.25	*
Other Asian	1.46	*	1.71	*	1.09	*	0.99		1.13		1.24	*
Black African	1.44	*	1.75	*	1.16	*	0.97		1.39	*	1.13	*
Black Caribbean	1.31	*	1.61	*	1.20	*	1.05	*	1.57	*	1.17	*
Other Black	1.28	*	1.56	*	1.25	*	1.01		1.37	*	1.10	*
White and Black African	1.33	*	1.33	*	1.24	*	0.99		1.29	*	1.01	
White and Black Caribbean	1.32	*	1.17	*	1.23	*	1.00		1.35	*	1.05	
White and Asian	1.23	*	1.11		1.02		0.90		0.95		1.11	
Other Mixed	1.18	*	1.40	*	1.20	*	0.91	*	1.24	*	1.02	
Chinese	2.05	*	1.32	*	1.29	*	1.14	*	-		1.71	*
Other	1.34	*	1.46	*	1.24	*	1.03		1.43	*	1.26	*
Other White	1.11	*	1.27	*	1.40	*	1.10	*	1.40	*	1.46	*
White Irish	0.96		1.04		1.24	*	1.09		0.97		1.25	

The asterisk (*) marks a statistically significant relative rate.

To determine the extent of ethnic disparities, it is necessary to examine ethnic differences in sentencing outcomes while allowing for defendant (such as age, gender, deprivation) and important legal (case) factors (such as plea, remand status, offence type and severity).

The analysis shows that pleading not-guilty, offence severity, pre-trial detention and previous convictions are associated with an increased likelihood of imprisonment. As shown in Table 2, defendants entering a non-guilty plea for example, were three times more likely to receive a custodial sentence while defendants who were remanded in custody were 7.5 times more likely to be receive a custodial sentence. The likelihood of imprisonment is also higher for defendants with previous convictions and for more serious offences.

Legally relevant factors however, do not fully explain disparities in sentencing between ethnic minority groups and the White British group. There is an independent association between ethnicity and the likelihood of imprisonment after controlling for different factors affecting the likelihood of imprisonment.

A custodial sentence is 41% more likely for Chinese defendants than the White British, while a custodial sentence is between 16% and 21% more likely for defendants in the Asian groups compared with White British defendants. Similarly, a custodial sentence is between 9% and 19% more likely for defendants in the Black groups, and 22% more likely for White and Black African defendants than White British defendants after adjusting for other characteristics.

Why it matters

The analysis shows that ethnic minority defendants appearing in the Crown Court are more likely to plead not guilty and are overrepresented in pre-trial detention, and these factors, together with previous convictions, offence type and severity have a strong effect on the likelihood of imprisonment. Legally relevant factors, however, do not fully explain disparities in sentencing outcomes between ethnic minority groups and the White British group. There is an independent association between ethnicity and the likelihood of imprisonment after controlling for other factors. The higher likelihood of a custodial sentence for ethnic minority groups may be down to biases and stereotyping in the justice system or to other unobserved characteristics, including mitigating and aggravating factors not captured in the Data First datasets. The implication of the research is that policymakers need to examine the processes and practices leading to ethnic minority overrepresentation in pre-sentencing outcomes (such as plea and pre-trial detention) and re-evaluate CJS practices which may contribute to harsher sentencing outcomes for ethnic minority defendants.

What next?

The research examines outcomes at different stages of the CJS including the likelihood of remand (custody) by the police prior to defendants appearing in magistrates' courts, the likelihood of imprisonment and sentence length. The analyses are being extended to better understand differentials in remand and sentencing outcomes between ethnic minority groups and the White British group using decomposition analyses which identify the contribution of each of the factors examined in the models in explaining ethnic gaps in these outcomes.

Table 2. Multilevel logistic model results of custodial sentence

	b		SE	OR
<i>Ethnicity (ref: White British)</i>				
Indian	0.15	*	0.06	1.16
Pakistani	0.19	*	0.04	1.21
Bangladeshi	0.19	*	0.06	1.21
Other Asian	0.06		0.04	1.06
Black African	0.09	*	0.03	1.09
Black Caribbean	0.17	*	0.03	1.19
Other Black	0.09	*	0.03	1.09
White and Asian	-0.17		0.11	0.84
White and Black African	0.19	*	0.1	1.22
White and Black Caribbean	0.16	*	0.05	1.17
Other Mixed	-0.09		0.06	0.92
Chinese	0.35	*	0.14	1.41
Other	0.03		0.05	1.03
Other White	0.13	*	0.03	1.13
White Irish	0.05		0.06	1.05
<i>Age (ref: under 20)</i>				
20 to 29	2.86	*	0.03	17.54
30 to 50	3.12	*	0.03	22.54
Over 50	3.08	*	0.03	21.76
Gender: Male	0.6	*	0.02	1.83
Income deprived	0.08	*	0.01	1.08
<i>Offence (ref: Other)</i>				
Drug offences	0.02		0.02	1.02
Fraud offences	0.08	*	0.03	1.09
Possession of weapons	-0.32	*	0.02	0.73
Robbery	0.85	*	0.04	2.34
Violence against the person	-0.28	*	0.02	0.76
High severity offence	0.94	*	0.02	2.57
Previous conviction	0.7	*	0.01	2.01
Pre-trial remand	2.02	*	0.01	7.53
Co-defendants	0.19	*	0.02	1.21
Plea Not Guilty	1.17	*	0.02	3.23
Court var	0.09			
AIC			176099.4	
BIC			176451	
N=170428				

b- Regression coefficient
SE - Standard error
OR - Odds ratio

The asterisk (*) marks statistically significant results.

Notes

The analysis presented in this paper draws on four years of data (2017-2020) and excludes summary offences. The model results are based on a subset of defendants selected on the basis they had observations on all factors examined in the models. High severity offences were defined using the 2020 Cambridge Crime Harm Index (CCHI) as those with a starting point sentence of three years. Previous convictions measure whether a defendant has been convicted in cases (other than for summary offences) in any of the years captured by the magistrates' (2011-2020) and Crown Court (2013-2020) datasets. The deprivation variable captures whether a defendant lives in one of the 20% most income deprived LSOAs in England and Wales. The models also control for year.

Disclaimer

This work was produced using administrative data accessed through the ONS Secure Research Service. The use of the data in this work does not imply the endorsement of the ONS data owners (e.g. MoJ and HM Courts and Tribunals Service) in relation to the interpretation or analyses of statistical data.

This work uses research datasets which may not exactly reproduce National Statistics aggregates. National Statistics follow consistent statistical conventions over time and cannot be compared to the Data First linked datasets.

Acknowledgements

This Data Insight is based on research developed as part of the project Ethnic Inequalities in the Criminal Justice System supported by a fellowship from ADR UK (Administrative Data Research UK), an Economic and Social Research Council investment (part of UK Research and Innovation). (Grant number: ES/V015613/1). The author would like to thank Patrick Williams and Jon Bannister at Manchester Metropolitan University and CLINKS and EQUAL for their support in this research.

About ADR UK

ADR UK is a partnership transforming the way researchers access the UK's wealth of public sector data, to enable better informed policy decisions that improve people's lives. By linking together data held by different parts of government, and by facilitating safe and secure access for accredited researchers to these newly joined-up data sets, ADR UK is creating a sustainable body of knowledge about how our society and economy function – tailored to give decision makers the answers they need to solve important policy questions. ADR UK is made up of four national partnerships (ADR England, ADR Scotland, ADR Wales, and ADR NI) and the Office for National Statistics (ONS), and coordinated by a UK-wide Strategic Hub. ADR UK is funded by the Economic and Social Research Council (ESRC), part of UK Research and Innovation.

Contact

Kitty Lympelopoulou
K.Lympelopoulou@mmu.ac.uk