

BRIEFING: TRIAL BY JURY

1. *‘One stage in the criminal justice system where B[A]ME groups do not face persistent disproportionality is when a jury reaches a verdict*.’ So found the most thorough study undertaken in this country –‘Are Juries Fair?’ [Cheryl Thomas, MoJ 2010](https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf). All-white juries do not discriminate against defendants from black and minority ethnic backgrounds. The 2010 study was [updated in 2017](Thomas%2C%20C.%20Criminal%20Law%20Review%2C%20number%209.%20Ethnicity%20and%20Fairness%20of%20Jury%20Trials%20in%20England%20and%20Wales%202006-2014%20%282017%29). As with the 2010 study, it found that jury conviction rates are very similar across different ethnic groups. White, Black, Asian and Mixed ethnic defendants are all convicted at rates of between 66% and 68%.
2. Magistrates convict a disproportionate number of BAME women ([Lammy review](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf)) but there is an absence of sound data to conduct detailed analysis.
3. There is strong evidence of racial disparity in sentencing decisions in the Crown court according to [research conducted by the MOJ in 2016](Hopkins%2C%20K.%2C%20Uhrig%2C%20N.%2C%20and%20Colahan%2C%20M.%20Ministry%20of%20Justice%20Associations%20between%20ethnic%20background%20and%20being%20sentenced%20to%20prison%20in%20the%20Crown%20Court%20in%20England%20and%20Wales%20in%202015%2C%20%282016%29%2C%20https%3A/www.gov.uk/government/%20statistics/associations-between-ethnic-background-and-being-sentenced-to-prison-in-the-crown-court-in-%20england-and-wales-in-2015). The Lammy report concludes ‘*The finding that, within drug offences, the odds of receiving a prison sentence were around 240% higher for BAME offenders is deeply worrying. Many will conclude that this is evidence of bias*.’
4. Racial disparity in treatment by judges cannot be corrected easily on appeal as individual decisions are often within the range of judicial discretion ([research conducted by the MOJ in 2016](file:////Users/katebrunner/Dropbox%20%28Albion%20Chambers%29/CIRCUIT%20LEADER/Hopkins%2C%20K.%2C%20Uhrig%2C%20N.%2C%20and%20Colahan%2C%20M.%20Ministry%20of%20Justice%20Associations%20between%20ethnic%20background%20and%20being%20sentenced%20to%20prison%20in%20the%20Crown%20Court%20in%20England%20and%20Wales%20in%202015%2C%20%282016%29%2C%20https%3A/www.gov.uk/government/%20statistics/associations-between-ethnic-background-and-being-sentenced-to-prison-in-the-crown-court-in-%20england-and-wales-in-2015)).
5. A review of the Diplock courts of Northern Ireland found that the trial dynamics were altered profoundly but defendants were not necessarily prejudiced by being tried in Diplock courts. Judges became more interventionist, in particular with their questioning of defence witnesses. ‘*The style of advocacy changed—counsel dropped arguments that might have won sympathy from jurors. (It is a particular risk in a small jurisdiction (or circuit), that counsel feel obliged to tailor their submissions and hesitate to challenge judicial rulings through concern about prejudicing the verdict). There was greater pressure on defence counsel to plea bargain and to plead guilty. Between 1973 and 1979, acquittals fell from 15 per cent to six per cent, and the rate of guilty pleas rose from 59 per cent to 75 per cen*t’. (J. Jackson “Many years on in Northern Ireland: the Diplock legacy” (2009) 60 N.I.L.Q. 213, review in Hannah Quirk’s ‘Covid-1 and jury-less trials’ Crim. L.R.2020 7, 569-571). The DPP for Northern Ireland can still certify that a trial should be held without a jury and there were 42 cases in the last year. The legislation was due to expire after two years but has been extended by successive orders since 2007.
6. The magistracy and Crown court judges are unrepresentative of the population at large in terms of ethnicity, gender, age and socio-ecomonic background ([Judicial diversity statistics](https://www.judiciary.uk/wp-content/uploads/2019/07/Judicial-Diversity-Statistics-2019.pdf)).
7. The most significant study comparing the decision making of a single Judge compared to a Jury is an American study which undertook post-trial questionnaires including the preferred verdicts over a 50 year period. In 20-36% of cases the Judge would have given a different verdict to the one returned by the jury. Where they diverge the Judge was much more likely to find the defendant guilty. Complexity of issue was not a determining factor –jurors simply require more evidence to convict (Divergent Opinions – Judge and Juror - (Hans et al. 2003; Heuer & Penrod 1988, 1989; Kalven & Zeisel 1966).
8. Where a Circuit Judge sits with magistrates, the Judge will dominate decision-making. If that happens and lay participation is not encouraged it lessens the advantages of a diverse fact finding body ([Jury Systems Around the World](https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1378&context=facpub) Hans;2008).
9. Opinion polls consistently show strong public support for jury trials (Bar Council, 2002; ICM, 2007; Thomas, 2007).

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