

Independent Advisory Panel on Deaths in Custody submission to the inquiry by the Joint Committee on Human Rights on black people, racism and human rights – September 2020

About the Independent Advisory Panel on Deaths in Custody

The Ministerial Council on Deaths in Custody formally commenced operation on 1 April 2009 and is jointly sponsored by the Ministry of Justice, the Department of Health and Social Care and the Home Office. The Council consists of three tiers:

- Ministerial Board on Deaths in Custody
- Independent Advisory Panel (IAP)
- Practitioner and Stakeholder Group

The remit of the IAP (and overall of the Council) covers deaths, both natural and self-inflicted, which occur in prisons, in or following police custody, immigration detention, the deaths of residents of approved premises and the deaths of those detained under the Mental Health Act (MHA) in hospital. The principles and lessons learned as part of this work also apply to the deaths of those detained under the Mental Capacity Act in hospital.

The role of the IAP, a non-departmental public body, is to provide independent advice and expertise to Ministers, senior officials and the Ministerial Board. It provides guidance on policy and best practice across sectors and makes recommendations to Ministers and operational services. It assists Ministers to meet their human rights obligations to protect life. The IAP's aim is to bring about a continuing and sustained reduction in the number and rate of deaths in all forms of state custody in England and Wales.

Juliet Lyon CBE chairs the IAP.

Members of the IAP appointed in July 2018:

- Deborah Coles, Director, INQUEST
- Professor Seena Fazel, professor of Forensic Psychiatry, University of Oxford
- Professor Jenny Shaw, professor of Forensic Psychiatry, University of Manchester
- Jenny Talbot OBE, Prison Reform Trust
- John Wadham, Chair, National Preventative Mechanism

Further information on the IAP can be found on its website:

www.iapondeathsincustody.org

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Key points:

- **Multiple landmark independent reviews demonstrate that black and minority ethnic people are disproportionately represented in the criminal justice system and in the numbers of those on whom restraint is used during and after arrest.**
- **Incidents of deaths of black people in state custody resonate to a significant degree with the black community's experience of wider racism and reflect wider concerns about discriminatory over-policing, stop and search, and criminalisation.**
- **There is evidence that the number of deaths in police custody where restraint has been used is higher among the black and minority ethnic population. These deaths, and their impact within communities, inevitably contribute to a lack of trust in the justice system.**
- **Comprehensive data on deaths in custody that is aggregated according to characteristics and published promptly and regularly is vital to understanding trends affecting people of different races and ethnicities.**
- **Leadership by government and a preparedness to be called to account is pivotal in unblocking progress that should flow from seminal reports produced by, amongst others, Dame Elish Angiolini, Lord Harris and David Lammy MP.**

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1. The IAP welcomes the opportunity to submit evidence on the impact of racism on the rights of black people. The killing of George Floyd in the US and campaigns by Black Lives Matter, including in the UK, have rightly shed light on these issues, though multiple high-profile relevant reviews and wider research have consistently raised longstanding concerns. The inquiry is right to seek to identify what is preventing progress and blocking reform.
 2. The role of the Independent Advisory Panel on Deaths in Custody¹ (IAP) is to advise Ministers and officials on how they can meet their human rights obligations, prevent deaths and keep those under the care of the state safe, in line with Article 2 of the European Convention on Human Rights.²
 3. This advice draws on major independent reviews to which the IAP has contributed that have been conducted since the major inquiries into the deaths of Stephen Lawrence and Zahid Mubarek.³ These raised continued

¹ Independent Advisory Panel, 'About the Independent Advisory Panel on Deaths in Custody', <https://www.iapondeathsincustody.org/about-us-1>.

² European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf

³ Sir William MacPherson of Cluny, 'The Stephen Lawrence Inquiry', February 1999, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf. Steven Lawrence Inquiry, 1998; Report of the Zahid Mubarek Inquiry, June 2006,

serious concerns about the treatment of black and minority ethnic people (BAME) by the police and the prison service and within the wider criminal justice system. They include Dame Elish Angiolini's landmark independent review of deaths and serious incidents in police custody⁴ commissioned by then Home Secretary, Theresa May, which followed the death of two black men who died in police custody; Lord Harris' independent review into self-inflicted deaths in prison custody of 18-24 year olds⁵; and the recent wide ranging review by David Lammy MP into BAME individuals within the criminal justice system.⁶

4. People from black and minority ethnic backgrounds continue to be considerably overrepresented at all stages of the criminal justice system. 14% of the general population of England and Wales are from BAME groups, but 26% of the prison population are from a minority ethnic group.⁷
5. Despite the significant intervention of the Lammy Review, Cabinet Office statistics continue to demonstrate the disproportional numbers of BAME individuals at every stage of the criminal justice system. For example:
 - Stop and search: between April 2018 and March 2019, there were four stop and searches for every 1,000 White people, compared with 38 for every 1,000 Black people.⁸
 - Arrests: black people were over three times as likely to be arrested as White people – there were 35 arrests for every 1,000 Black people, and 10 arrests for every 1,000 White people.⁹
 - Conviction rates: in 2017, the conviction ratios for Black and Mixed ethnic groups were lowest at 78.7% and 79%, while the conviction ratio was highest for defendants in the White ethnic group, at 85.3%.¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/231789/1082.pdf

⁴ Dame Elish Angiolini, Review into deaths and serious incidents in police custody, October 2017 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

⁵ Lord Harris, Independent Review into Self-inflicted Deaths in Prison Custody of 18-24 year olds, July 2017. <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2015/07/Harris-Review-Report2.pdf>

⁶ David Lammy, 'An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System' [The Lammy Review], September 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf.

⁷ Prison Reform Trust, Bromley Briefings Factfile, Winter 2019, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Winter%202019%20Factfile%20web.pdf>.

⁸ Cabinet Office Race Disparity Unit statistics, March 2020: <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest#main-facts-and-figures>.

⁹ Race Disparity Unit statistics, February 2020 <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/number-of-arrests/latest#main-facts-and-figures>.

¹⁰ Race Disparity Unit, May 2019 <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/courts-sentencing-and-tribunals/prosecutions-and-convictions/latest>.

Deaths in police custody

6. Ongoing casework and monitoring by the charity INQUEST shows that 14% of deaths in police custody or otherwise following contact with the police since 1990 were of black, Asian and minority ethnic people.¹¹
7. While these numbers are broadly proportionate to the wider population. However, as detailed throughout the Angiolini review, deaths of people from BAME communities, in particular young black men, resonate with the black community's experience of systemic racism, and reflect wider concerns about discriminatory over-policing, stop and search, and criminalisation.¹²
8. Such deaths have amplified anguish, anger and frustration among bereaved families about a lack of accountability and learning following deaths in custody and the failure to hold the police and others in the criminal justice system to account where there is believed to be wrongdoing or criminality.¹³ Respectful involvement of families in investigations following a death in custody is crucial in starting to merit or regain their trust.

Leadership and accountability

9. In her review, Dame Elish Angiolini presented the government with a pivotal opportunity to unblock progress and learn from deaths in custody thus reducing the risk of further such tragic deaths. In her review, Dame Elish noted that:

“Recommendations from past reports have not always been followed up in a coherent or joined-up way. There is no single national body that can monitor progress and maintain the momentum and pressure for institutional change. As a result progress tends to be piecemeal. The same failings, and the same issues, appear to manifest themselves time and again.”

10. Referring to opaque or seemingly lenient police misconduct processes, the Angiolini Review concluded:

“There is a wider social and political context in which such deaths have occurred, often involving misinformation in the media about the deceased and their family, and the fact that despite Inquest verdicts of unlawful or excessive force, the authorities rarely appear to be held to account.”¹⁴

11. The Angiolini review made an overarching recommendation that an independent Office for Article 2 Compliance should be established. This recommendation was subsequently rejected by government and an important opportunity missed. While the IAP and the Ministerial Council on Deaths in Custody can and should do more to disseminate learning from deaths in custody, an Office for Article 2 Compliance or a national oversight mechanism, initially proposed by INQUEST,

¹¹ INQUEST, BAME deaths in Police Custody, Inquest casework and monitoring, June 2020. <https://www.inquest.org.uk/bame-deaths-in-police-custody>.

¹² Dame Angiolini Review.

¹³ Ibid.

¹⁴ Ibid.

would ensure compliance made by scrutiny bodies and increase confidence in the fairness of the criminal justice system.

Restraint and use of force in police custody

12. Deaths following the use of restraint are among the most serious in state custody, and alternatives to the use of prolonged physical restraint against detainees must be prioritised, especially when the individual is in a heightened physical and mental state. It must be recognised that the use of force and restraint against anyone experiencing a mental health crisis or suffering from some form of drug or substance induced psychosis presents a risk to life.

13. There is evidence that restraint is disproportionately involved in the deaths of people of black, Asian and minority ethnicity. INQUEST casework shows that the proportion of BAME deaths in custody where restraint is a feature is over two times greater than it is in other deaths in custody, as is the proportion where use of force is a feature.¹⁵ These trends raise serious questions about the influence of racism as a contributing factor to deaths, and have particular capacity to provoke understandable anger and distrust within black communities.

14. The IAP welcomes the recent announcement from the IOPC that it will focus on race discrimination as a thematic area.¹⁶ We hope that the investigation will provide a better understanding of the causes of this disproportionality in areas such as stop and search, restraint and Taser use, and what can be done to address this. Proper attention needs to be paid to any disproportionate use of restraint and PAVA spray against black men in prison custody.¹⁷

Improvements to custody data collection

15. It is difficult to gain a full picture of the extent of potential racial disparities until full, consistent data is gathered and routinely published across all custodial settings. The Equality and Human Rights Commission, in its inquiry looking into the deaths of adults with mental health conditions in custody, called for more data to be collected:

“The police should record and publish the use of restraint in order to allay concerns that there is discriminatory use against people with mental health conditions and people from ethnic minorities” and “improvements are needed in the collection and availability of information ... to provide an overview of the number and features of the deaths. This should include race, gender, age and location of death.”¹⁸

¹⁵ INQUEST, BAME deaths in Police Custody, Inquest casework and monitoring, June 2020.

<https://www.inquest.org.uk/bame-deaths-in-police-custody>.

¹⁴ Independent Office for Police Conduct, 'IOPC announces thematic focus on race discrimination investigations', July 2020, <https://policeconduct.gov.uk/news/iopc-announces-thematic-focus-race-discrimination-investigations>.

¹⁷ The IAP have raised issues around PAVA in correspondence to ministers at the Ministry of Justice. See Juliet Lyon CBE to Rt. Hon. Lord Chancellor Robert Buckland QC, 6 July, <https://static1.squarespace.com/static/5c5ae65ed86cc93b6c1e19a3/t/5f0c1b9f7185980e1918ef22/1594629029919/200624+Juliet+Lyon+to+LC+-+PAVA+spray+-+DRAFT.pdf>.

¹⁸ Equality and Human Rights Commission, 'Preventing Deaths in Detention of Adults with Mental Health Conditions', February 2015,

16. The Angiolini Review reinforced this, calling for data to be published breaking down restraint related deaths by ethnicity, including in healthcare settings where the police were involved and national data collection on the use of force to be analysed by the Home Office to draw out patterns and devise national strategies to address discrimination.¹⁹ This was reiterated by David Lammy in his review in which he recommends “*publishing data in much more detail, thereby enabling outsiders to identify and scrutinise disproportionate treatment.*”²⁰
17. The IAP understands that work is being taken forward relating to data collection by the IOPC and welcomes this development.
18. All places of state detention should publish data about deaths that occur in custody aggregated according to race and ethnicity, as well as other protected characteristics. The IAP will be publishing its own statistical bulletin this year reporting on all deaths, natural and self-inflicted, in all forms of state custody and detention, where statistics are collated, and will provide authoritative summary and analysis on this data, focusing where necessary on any disproportionality across characteristics such as race and gender.²¹

Discrimination and poor treatment in custody

19. In prisons, reports by independent scrutiny bodies often reveal continued instances of serious day-to-day discrimination in custody. HM Inspectorate of Prisons, for example, concluded in their 2018-19 annual report that BAME people in prison often report more negatively about their experience in prison and relationships with staff. Fewer said they felt safe at the time of the inspectorate’s survey, fewer had a member of staff they could turn to for help, fewer said staff treated them with respect, and more said they had been bullied or victimised by staff. Responses by Muslim prisoners in these areas were particularly negative.²²
20. The Angiolini Review called for staff attitudes to be challenged, recommending that investigators should consider if discriminatory attitudes played a part in restraint-related deaths. It also called for the IOPC to address discrimination robustly within misconduct recommendations and for national policing bodies and police forces to implement mandatory training and refresher training on the nature of discrimination.²³
21. The IAP contributed to the review by Lord Harris, which looked into the deaths of young people in prisons and found that:

https://www.equalityhumanrights.com/sites/default/files/adult_deaths_in_detention_inquiry_executive_summary.pdf.

¹⁹ Dame Angiolini Review.

²⁰ The Lammy Review.

²¹ For an earlier example see Independent Advisory Panel on Deaths in Custody, Statistical Release 2013,

<https://static1.squarespace.com/static/5c5ae65ed86cc93b6c1e19a3/t/5ee2549a4fe9e94c206a25d6/1591891100952/Statistical-analysis-of-recorded-deaths-2000-to-2013.pdf>.

²² HM Chief Inspector of Prisons Annual Report 2018-19, July 2019

https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/07/6.5563_HMI-Prisons-AR_2018-19_WEB_FINAL_040719.pdf

²³ Dame Angiolini Review.

- Young adults from BAME groups are overrepresented in custody.
- Young BAME adults felt less safe in prison: *“Black prisoners felt they were stereotyped as drug dealers and Muslim prisoners as terrorists.”*²⁴
- BAME prison officers are underrepresented in the workforce - *“young people from black and other minority ethnic groups are imprisoned in places where the prison workforce is much more likely to be predominantly white”*²⁵
- BAME young men faced differential treatment in custody - *“it was pointed out that these young adults were “being perceived as a risk rather than in need”.*²⁶

22. Work should be progressed to ensure that those working within – and making decisions about – the criminal justice system proportionately represent the population in their care. This also applies to independent scrutiny bodies. For example, the Harris review found low confidence among BAME young people in independent monitoring boards (partly due to the fact that IMB membership was not representative of the prison population) which could result in fewer complaints to the IMB about religious or race concerns.²⁷

23. The Lammy Review concluded that improving staff representation and developing better relationships through recruiting in similar proportions to the country as a whole would help improve treatment and fairness for black and ethnic minority people in custody. There is still considerable progress to be made in this area.²⁸

24. The IAP continues to support the recommendations of the Lammy Review to improve outcomes for BAME individuals and improving fairness within places of custody, including through review of the Incentives and Earned Privileges (IEP) system and a “problem-solving” approach to handling complaints and grievances.

Immigration detention

25. The IAP is working with the Home Office to explore how Immigration Removal Centres can better identify and respond to vulnerable people with mental or physical health needs. Academic research repeatedly demonstrates that immigration detention is, in itself, damaging to the mental health of detainees, while a number of inquests and inquiries have identified cases where missed opportunities to appropriately identify physical health issues have led to deaths.²⁹

²⁴ The Lord Harris Review.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ The Lammy Review.

²⁹ See for example Stephen Shaw, ‘Review into the Welfare in Detention of Vulnerable Persons. A report to the Home Office’

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf> accessed 18 June 2020.